Pl. ÚS 5/19 of 1 October 2019

Taxation of Church Restitutions

The Czech Republic
JUDGMENT
of the Constitutional Court
in the Name of the Republic

The plenum of the Constitutional Court, consisting of Chairman Pavel Rychetský and Justices Ludvík David, Jaroslav Fenyk, Josef Fiala, Jan Filip, Jaromír Jirsa (judge rapporteur), Tomáš Lichovník, Radovan Suchánek, Kateřina Šimáčková, Vojtěch Šimíček, Milada Tomková, David Uhlíř and Jiří Zemánek, concerning a petition from a group of senators, acted for by Senator Ing. Petr Šilar, represented by JUDr. Jakub Kříž, Ph.D., attorney, with his registered office at Týnská 633/12, Prague 1, seeking the annulment, in § 18a par. 1 let. f) of Act no. 586/1992 Coll., on Income Taxes, as amended by Senate Statutory Measure no. 344/2013 Coll. and Act no. 125/2019 Coll., of the words "with the exception of financial compensation," in eventum the annulment of Act no. 125/2019 Coll., which amends Act no. 428/2012 Coll., on Property Settlement with Churches and Religious Communities and Amending Certain Laws (the Act on Property Settlement with Churches and Religious Communities), and Act no. 586/1992 Coll., on Income Taxes, as amended by later regulations, with the participation of the Chamber of Deputies of the Parliament of the Czech Republic and the Senate of the Parliament of the Czech Republic, as parties to the proceedings, and also with the participation of a) the government, b) a group of deputies, acted for by Deputy Marek Benda, c) a group of senators, acted for by Senator Zdeněk Hraba, represented by JUDr. PhDr. Stanislav Balík, Ph.D., attorney, with his registered office at Kolínská 1686/13, Prague 3, as secondary parties to the proceeding, ruled as follows:

I. In § 18a par. 1 let. f) of Act no. 586/1992 Coll., on Income Taxes, as amended by Senate Statutory Measure no. 344/2013 Coll. and Act no. 125/2019 Coll., the words "with the exception of financial compensation" are annulled as of the day this Judgment is promulgated in the Collection of Laws.

II. The petition seeking the annulment of Act no. 125/2019 Coll., which amends Act no. 428/2012 Coll., on Property Settlement with Churches and Religious Communities and Amending Certain Laws (the Act on Property Settlement with Churches and Religious Communities) and Act no. 586/1992 Coll., on Income Taxes, as amended by later regulations, is dismissed.

Reasoning:

I. The Subject Matter of the Proceeding

1. On 24 May 2019 the Constitutional Court received a petition from a group of 44 senators, acted for by Senator Ing. Petr Šilar (the "petitioner" or the "group of senators"), seeking the annulment, in § 18a par. 1 let. f) of Act no. 586/1992 Coll., on Income Taxes, as amended by Senate Statutory Measure no. 344/2013 Coll. and by Act no. 125/2019 Coll. (the "Act on Income Taxes"), of the words "with the exception of financial compensation". In the event that the Constitutional Court does not grant this petition, the petitioner seeks the annulment of Act no. 125/2019 Coll., which amends Act no. 428/2012 Coll., on Property Settlement with Churches and Religious Communities and Amending Certain Laws (the Act on Property Settlement with Churches and Religious Communities), and Act no. 586/1992 Coll., on Income Taxes, as amended by later regulations ("Act no. 125/2019 Coll. "), which is to go into effect on 1 January 2020.

2. On 6 June 2019 the Constitutional Court received a petition from a group of 62 deputies, acted for by Deputy Marek Benda (the "group of deputies"), seeking the annulment of:
1. Act no. 125/2019 Coll.; 2. the words "with the exception of financial compensation" in § 18a par. 1 let. f) of the Act on Income Taxes. The petition was assigned file number Pl. ÚS 9/19.

3. On 12 June 2019 the Constitutional Court received a petition from another group of 19 senators, acted for by Senator Zdeněk Hraba (the "second group of senators"), seeking the annulment of the same statutory provisions that are cited in points 1 and 2. The petition was assigned file number Pl. ÚS 10/19.

4. In view of the fact that the abovementioned petition from the group of senators of 24 May 2019 started a proceeding on the annulment of the abovementioned provisions, whose annulment is also sought by the group of deputies and the second group of senators cited in the previous point (jointly, also the "other petitioners"), the Constitutional Court dismissed the later-submitted petitions in resolutions file no. Pl. ÚS 9/19 and file no. Pl. ÚS 10/19 of 18 June 2019 (all decisions of the Constitutional Court are available at https://nalus.usoud.cz) due to impermissibility due to the obstacle of a pending suit (lis pendens) under § 35 par. 2 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations (the "Act on the Constitutional Court"), whereby the other petitioners acquired the status of secondary parties in the earliest opened proceeding, conducted under file no. Pl. ÚS 5/19.

II. The Contested Legislation

5. The contested Act no. 125/2019 Coll. (art. I) annuls § 15 par. 6 of Act no. 428/2012 Coll., on Property Settlement with Churches and Religious Communities and Amending Certain Laws (the Act on Property Settlement with Churches and Religious Communities), as amended by later regulations (the "Act on Property Settlement"), in this wording:

§ 15
Financial Compensation

(6) Financial compensation is not subject to tax, fees, or any other similar financial performance.

At the same time, Act no. 125/2019 Coll. (art. II) inserts into § 18a par. 1 let. f) of the Act on Income Taxes the contested words "with the exception of financial compensation". Thus, with effect as of 1 January 2020, the cited provision in the version of the cited Act reads:

§ 18a
Special provision on the subject of tax of publicly beneficial taxpayers

(1) For a publicly beneficial taxpayer the following are not subject to tax
[…]
f) income from the payment-free acquisition of a thing with the exception of financial compensation under the Act on Property Settlement with Churches and Religious Communities.

Finally, Act no. 125/2019 Coll. (art. III) sets its effective date on 1 January 2020; it does not contain any other provisions.

6. As a result of the enacted amendment, the annual payments of financial compensation that are paid out to the relevant churches and religious communities since the year 2013 on the basis of § 15 and 16 of the Act on Property Settlement and subsequently concluded settlement agreements, published in Ministry of Culture Communication no. 55/2013 Coll., on the Conclusion of Settlement Agreements with the Relevant Churches ("Ministry of Culture Communication no. 55/2013 Coll. "), become subjects of income tax beginning with the year 2020.

III. Active Procedural Standing and Requirements of the Proceeding

7. Under § 64 par. 1 let. b) of the Act on the Constitutional Court, a group of at least 41 deputies or at least 17 senators has the right to file a petition seeking the annulment of a statute or its individual provisions.

8. The group of 44 senators filed the first petition; in accordance with § 64 par. 5 of the Act on the Constitutional Court it attached a signature list on which each of them individually confirmed that he was joining the petition. Thus, the petitioner meets the requirement of active standing. As the other petitioners (the groups of 62 deputies and 19 senators, confirming participation by their signatures on the signature list) also meet the requirement of active standing, they have a right to take part in the proceeding on the adjudicated petition from the group of senators, with the status of secondary parties, and their filings are included in the subject matter of the proceedings before the Constitutional Court.

9. All three petitions submitted to the Constitutional court in the abovementioned matter contain all the statutory requirements, are permissible under § 66 of the Act on the Constitutional Court, and at the same time none of the reasons for stopping a proceeding under § 67 of the Act exists. Therefore, the Constitutional Court addressed all three petitions jointly on the merits.

IV. The Proceedings before the Constitutional Court

IV. 1 The Petitioner's Arguments

10. As a consequence of the Constitutional Court's case law [cf. judgment file no. Pl. ÚS 9/07 of 1 July 2010 (N 132/58 SbNU 3; no. 242/2010 Coll.)], among other things, after more than 20 years of complicated negotiations, as part of the restitution legislation, the Act on Property Settlement was passed, the aim of which, according to the background report was, first, partial correction of certain property injustices committed by the communist régime against churches and religious communities, and second, creating conditions for the economic separation of the church from the state. One component of the Act was fulfillment of the state's obligation to protect the fundamental rights and freedoms arising from art. 15 par. 1 of the Charter of Fundamental Rights and Freedoms (the "Charter"), guaranteeing the right of freedom of religion, and art. 16 par. 2 of the Charter, under which churches and religious communities govern their own affairs, in particular, establish their own bodies, appoint their clergy, and found religious orders and church institutions, independently of state authorities. The cited Act, within the scope of the state's abilities, taking into account the principle of minimizing effects on third parties, when correcting injustices, combines restitution of property and financial compensation, and complementary to it ends the financing of "personal benefits of the clergy" and other material expenses connected with "the performance of religious services and other religious acts and with church administration". Under § 15 of the Act, registered churches and religious communities, over the course of 30 years, beginning in the year 2013, in the specified ratio (80 % the Roman Catholic Church, 20 % other churches and religious communities) are to be paid a total of CZK 59 billion (before taking inflation into account).

11. The Act on Property Settlement was, in its entirety, reviewed by the Constitutional Court [judgment file no. Pl. ÚS 10/13 of 29 May 2013 (N 96/69 SbNU 465; no. 177/2013 Coll.)]; according to the petitioner, in that judgment the Constitutional Court exhaustively addressed a wide spectrum of objections and disputed claims. These same objections appeared again in Chamber of Deputies debate in support of the contested Act no. 125/2019 Coll., even though since the time of the Constitutional Court's last decision making in the matter, neither the legal nor factual situation had undergone any relevant changes due to which any doubts could arise concerning the validity of the Constitutional Court's conclusions and the constitutionality of the Act on Property Settlement.

12. The petitioner concludes that Act no. 125/2019 Coll. is unconstitutional primarily from the fact that neither its sponsors nor the government assert that it is a tax statute (in the constitutional law sense); on the contrary, they do not disguise the fact that the only aim of the contested Act is the actual reduction of financial compensation provided as restitution, the level of which,

according to current government parties and some non-government parties, is disproportionately high (cf. also the background report to the bill of Act no. 125/2019 Coll.). Although the petitioner is aware that the legislature's intent cannot, in and of itself, make a legal regulation unconstitutional, it is a significant interpretational guide. In the past the Constitutional Court has already taken a position against the imposition of a purely formal tax, which in fact served to unilaterally reduce an existing claim by a third party against the state [judgment file no. Pl. ÚS 53/10 of 19 April 2011 (N 75/61 SbNU 137; no. 119/2011 Coll.) – for more detail, see points 52 and 71 below]. According to the petitioner, the mere political agreement of governmentally responsible parties is not sufficient to heal this unconstitutionality – the entitlement of authorized subjects to financial compensation on the basis of the Act on Property Settlement is reduced retroactively in conflict with art. 1 par. 1 of the Constitution of the Czech Republic (the "Constitution") and art. 11 par. 1 of the Charter and art. 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") and the principle of legal certainty.

13. Another fundamental shortcoming of the contested taxation of the financial compensation in question is that it obviously establishes inequality between the relevant subjects and entitled persons under other restitution regulations, whose compensation was not subject to any tax. The legislature thereby violates art. 3 par. 1 of the Charter and art. 14 of the Convention, as well as art. 1 of the Charter and art. 26 of the International Covenant on Civil and Political Rights (the "Covenant") – see, e.g., judgment file no. Pl. ÚS 18/15 of 28 June 2016 (N 121/81 SbNU 889; no. 271/2016 Coll.). The cited taxation is also discriminatory because it is conditional on the criterion of religion. With Act no. 125/2019 Coll. the legislature also introduces an unjustified inequality between the individual entitlements arising from the Act on Property Settlement, specifically between the untaxed natural obligations and financial compensation for property that cannot be returned itself for various reasons. The ratio of these individual forms of restitution is different among the relevant churches. While, for example, the Roman Catholic Church receives back extensive property in natural form, small churches in a substantially greater proportion receive financial compensation. Therefore, the selected taxation model is disproportionate without an apparent reason.

14. The petitioner expresses its conviction, which it believes is consistent with the Constitutional Court's conclusions stated in judgments file no. Pl. ÚS 10/13 and file no. III. ÚS 3397/17 of 29 January 2019, that for the relevant churches the claim against the state was created in the amount of the entire amount of financial compensation at the moment when they met the conditions set forth in § 15 par. 1 of the Act on Property Settlement, i.e., by the expression of will to conclude a settlement agreement with the state under § 16 of the Act. Nothing about this fact is changed by § 15 par. 3 of the Act, which divides the state's payments into thirty annual installments. The deferred payment of an existing claim and the constitutionally protected legitimate expectation of acquiring it under art. 11 par. 1 of the Charter and art. 1 of the Protocol to the Convention change nothing about the essence of the matter.

15. The petitioner also refers to Ministry of Culture Communication no. 55/2013 Coll. and cites the principle pacta sunt servanda as one of the attributes of a law-based state under art. 1 par. 1 of the Constitution [judgment file no. I. ÚS 34/17 of 25 July 2017 (N 132/86 SbNU 247)], which also functions vis-à-vis the legislature in the form of a command to respect, in its norm-creating activity, existing contractual obligations and legal claims created by them. The entitled subjects, through consensual actions, took upon themselves the risks connected with deferred payments, in order to accommodate the state's needs and its budgetary burden. The conclusion of the agreements created a legitimate expectation consisting in confidence in the law, which the debtor – the state – could change in future (judgment file no. III. ÚS 3397/17, point 37).

16. The change implemented by Act no. 125/2019 Coll. bears the signs of true retroactivity, which is fundamentally impermissible; the petitioner expresses its belief that the technical legislative nature of § 15 par. 1 and 2 of the Act on Property Settlement (the exceptionally justified individual nature of the statutory provision) rules out its direct or indirect amendment, while not violating the prohibition on retroactivity. In the case of Act no. 125/2019 Coll. there are no exceptional reasons for constitutional acceptance of its retroactive effect (e.g., an economic crisis in the state, the context of broader measures to mitigate a crisis, not an isolated selective intervention).

17. The fact that the claim for payment of financial compensation under the concluded agreements, arising from § 15 and 16 of the Act on Property Settlement, was created as a whole in its full amount before Act no. 125/2019 Coll. went into effect can also safely be proved by tax and accounting practices. The claim for payment of financial compensation in the total amount of CZK 59 billion is entered in the Ministry of Culture's balance sheet as an "other long-term obligation" as of the year 2012, when the Act on Property Settlement was passed. The obligation is treated the same way by the Czech Statistical Office and the Supreme Audit Office; the entitled churches also applied the full amount of the part of the financial compensation allocated to them in their tax returns for the year 2013 in accordance with § 18a par. 1 let. f) of the Act on Income Taxes, as in effect at that time, as non-taxable income. From a tax perspective, Act no. 125/2019 Coll. applies to an empty set of incomes, because in terms of tax and accounting a taxable income on the part of the churches will not be created from the financial compensation; § 18a par. 1 let. f) of the Act on Income Taxes will no longer have an effect (neither before nor after amendment).

18. According to the petitioner, from a material viewpoint the tax in question, imposed on financial compensation by Act no. 125/2019 Coll. cannot be considered a tax (see judgment file no. Pl. ÚS 53/10), which is an important fact in terms of the scope of constitutional law review. The issue here is not a constitutionally approved intervention in property rights (art. 11 par. 5 of the Charter), but the legal certainty of an entitled person regarding an already created, individualized legal claim; the spread-out payment of the financial compensation is not decisive. The originally set amount of financial compensation was the result of consensual agreements, confirmed both in § 15 of the Act on Property Settlement, and by the subsequent conclusion of agreements under § 16 of that Act. It is precisely the moment of concluding the agreements, based on the Act on Property Settlement that created for the entitled churches the

legitimate expectation that the claim created would not be subsequently changed or cast in doubt by the state.

19. Reduction of the set level of financial compensation also cannot be defended in terms of the purpose of the payments – their restitutional nature cannot be overlooked. This nature also cannot be cast in doubt in relation to churches or religious communities for which the balancing component of financial compensation outweighed the restitution component, because this is a political agreement between the state and the relevant churches, effective vis-à-vis a wider segment of society pursuant to judgment file no. Pl. ÚS 9/07 (point 101). Insofar as the state was an actor in an agreement preceding the passage of the Act on Property Settlement, under which the financial compensation originally belonging to the Roman Catholic Church was redistributed (with its consent) among other churches, it cannot now object that the financial compensation would thereby lose its restitutional nature, in whole or in part.

20. Further in the petition, the petitioner extensively discusses the proportionality of the amount of financial compensation in terms of the context of mitigating property injustices, current economic conditions, and the extent of the original property of churches, because it was precisely their "disproportionality" that was the legislature's motivation to pass Act no. 125/2019 Coll. The background report to the bill of Act no. 125/2019 Coll. itself does not contain aims specific to tax legislation; on the contrary, it expressly describes the Act as "a step leading to making the ultimate effect of the financial compensation proportionate." The concurring position of the government (Chamber of Deputies Publication no. 38/1) repeats the same conclusion by acknowledging that the intention is to additionally reduce the financial compensation by the tax liability. During the debate about the bill of Act no. 125/2019 Coll., these political actors based their position on the disproportionality of financial compensation on the existence of economic analyses. In this context the petitioner proposes, under § 49 par. 1 of the Act on the Constitutional Court, interviewing the witnesses cited in the petition, in order to determine the factual situation.

21. Citing the Constitutional Court's case law, under which an amendment to a legal regulation does not have independent normative existence, in the petition the petitioner presents as the primary proposed verdict the deletion of the words "with the exception of financial compensation" from § 18a of the Act on Income Taxes. However, as the Constitutional Court already made an exception of this rule in relation to the derogatory part of an amendment [judgment file no. I. ÚS 1696/09 of 8 February 2011 (N 13/60 SbNU 127); judgment file no. Pl. ÚS 2/02 of 9 March 2004 (N 35/32 SbNU 331; č. 278/2004 Coll.)], the petitioner alternatively proposes annulment of Act no. 125/2019 Coll., which also annuls § 15 par. 6 of the Act on Property Settlement; reversal of the effect, which would create an opening in the future for more attempts by the legislature to unconstitutionally reduce the allocated financial compensation, cannot be achieved in any other manner.

IV. 2 The Arguments of the Other Petitioners

22. Beyond the foregoing, the group of deputies points out the legislature's general approach to taxing restitution performance and exempting it from income tax [§ 4 par. 1 let. g) of the Act on Income Taxes], because taxing compensation for property injustices would deny and thwart the purpose of restitutions. Through the contested legislation the legislature is making an unjustified exception to that principle. The restitution of property is not income, but an attempt to renew the original property base; there is no reason to make a difference between natural and financial forms of restitution.

23. The group of deputies sees the concluded agreements as a private law obligation relationship that is analogous to concluding a settlement agreement under § 1903 et seq. of the Civil Code (see also § 16 par. 1 of the Act on Property Settlement, enshrining the subsidiary use of the Civil Code). To emphasize the principle of pacta sunt servanda, the other petitioner mentions art. 5.1 of the model settlement agreement, in which the state expressly committed, that it will not thwart its purpose. The state's sovereign position as the creator of tax regulations is not independent of the effects of tax legislation on its obligation to fulfill its commitments under settlement agreements.

24. The petition from the second group of senators emphasizes that the risk of adopting unconstitutional legislation was often mentioned at the time when the contested provisions were being debated. The legislature was fully aware of this shortcoming, and adopted the legislation anyway. The sponsors of Act no. 125/2019 Coll. were even aware of the fact that the conditions of the concluded settlement agreements cannot be changed unilaterally, and therefore they used the state's position of power, an option that the other contractual party does not have, whereby unjustified inequality is created.

25. According to the other petitioner, the contested legislation thus sends a dangerous signal for the legal certainty of other publicly beneficial taxpayers (e.g. cultural, athletic, or firefighters' associations), that the payments already provided to them under § 18a par. 1 of the Act on Income Taxes will be taxed in the future.

IV. 3 Statements of the Parties and Secondary Parties

26. The Constitutional Court, under § 69 of the Act on the Constitutional Court, called on the Chamber of Deputies and the Senate (as parties to the proceedings), the government, and the Ombudsman to submit statements regarding the petition; the Ombudsman did not join the proceeding.

27. In its statement, the Chamber of Deputies confined itself to the legislative process of passing the contested Act. The Chamber of Deputies bill, which was to insert into § 18a par. 1 let. f) of the Act on Income Taxes the words "with the exception of financial compensation" and annul § 15 par. 6 of the Act on Property Settlement, promulgated as no. 125/2019 Coll. (the "bill"), was distributed to the deputies as Publication no. 38/0 on 20 December 2017, and on the following day sent to the government for its response; the government sent its statement of agreement on 12 January 2018. In the first reading on 28 February 2018 the bill was assigned

to the Committee on Budgetary Control (the guarantee committee) and the Committee on Constitutional and Legal Affairs. The Committee on Budgetary Control, in its resolution of 7 June 2018, recommended approving the bill (publication 38/5), and the Committee on Constitutional and Legal Affairs, on 10 September 2018, recommended adopting amending proposals (publication 38/6). In the second reading, the bill passed through general and detailed debate on 13 December 2018. On 10 January 2019 the deputies received the position from the guarantee committee, which recommended that the Chamber of Deputies adopt the bill (publication 38/8). In the third reading, on 23 January 2019, the bill was adopted by Chamber of Deputies resolution no. 435 in the version of the adopted amending proposals – out of 172 deputies present, 106 voted in favor, 56 were against. The bill was then passed to the Senate, which debated it on 27 February 2019 at its 6th session as senate publication no. 35 and adopted resolution no. 111, whereby it denied it, and adopted accompanying resolution no. 112. The bill, in the wording in which it was passed to the Senate, was delivered to the Chamber of Deputies which, in a vote on 23 April 2019, persisted on the original bill. The President signed the Act on 2 May 2019.

28. In its statement, the Senate stated that the bill was passed to it on 29 January 2019 and the Senate Committee on Agenda and Procedure assigned the bill for discussion to the Committee on Legal and Constitutional Affairs (the guarantee committee) and the Committee on National Economy, Agriculture, and Transport. Both committees recommended denying the bill. In its resolution no. 111 the Senate denied the bill; out of 74 senators present, 64 voted to deny the bill, 3 voted against, and 7 senators abstained from voting. Exceptionally, the Senate also adopted accompanying resolution no. 112, in which it stated that the bill of Act no. 125/2019 Coll. was inconsistent with the fundamental principles of a law-based state. In its statement, the Senate adds an overview of the statements of some of the 26 senators who stated more detailed doubts about the constitutionality of the bill and called on the deputies to not override the Senate's veto.

29. The government stated that it was entering the proceeding as a secondary party, and proposed denying the proposals. In its statement, it said that it was led to consent with the submitted bill by doubts about the method used to calculate the amount of financial compensation, which, according to it, considerably exceed the actual value of the property that is not being returned but is being compensated through the replacement payments. According to the government, taxing the financial compensation is a legitimate means of at least partly leveling the resulting disproportion. The government accents the political aspect of tax legislation, taking as its starting point the Constitutional Court's settled case law [cf. as cited above, judgment file no. Pl. ÚS 18/15, judgment file no. Pl. ÚS 32/15 of 6 December 2016 (N 232/83 SbNU 605; no. 40/2017 Coll.), judgment file no. Pl. ÚS 9/15 of 8 August 2017 (N 138/86 SbNU 333; no. 338/2017 Coll.), judgment file no. Pl. ÚS 29/08 of 21 April 2009 (N 89/53 SbNU 125; no. 181/2009 Coll.)]. The government further states its belief that performance representing compensation of damage or non-property detriment may also be subject to tax (and in some cases is) – it is the choice of the legislature. According to the government, the principle of equality is preserved, because all subjects falling under the personal jurisdiction of the Act on Property Settlement are treated the same way. In view of the

level of the tax burden (19% income tax on legal entities) and the general principles of calculating income tax, there is also no question of the threat of the prohibited suffocating effect [judgment file no. Pl. ÚS 3/02 of 13 August 2002 (N 105/27 SbNU 177; no. 405/2002 Coll.)]. Act no. 125/2019 Coll. is an expression of false retroactivity, which is in principle permissible, and is common in the tax area. The legitimate expectation of entitled persons under of the Act on Property Settlement is also not violated; on the contrary, their expectation was and is fulfilled.

IV. 4 The Response of the Petitioner and the Other Petitioners

30. The Constitutional Court sent all the position statements to the petitioner and the other petitioners for their response. The group of deputies did not submit a response.

31. In its response of 11 July 2019 the group of senators stated that the statement of the government (reflecting the will of the majority of the Chamber of Deputies) makes clear the symbolic significance of the contested legislation prevailing over the rational intent of actual legal consequences – the petitioner rejects such an approach to legal regulation. It further emphasizes the government's newly applied argument that § 15 par. 6 of the Act on Property Settlement is unconstitutional, which is in direct conflict with judgment file no. Pl. ÚS 10/13 (in particular points 220 and 343), in which the Constitutional Court subjected the entire Act on Property Settlement to constitutional law review. Although the petitioner is convinced that the matter does not concern a tax issue and the Constitutional Court is not limited in its review power by its own case law relating to tax questions, in the petitioner's opinion the contested legislation would also not stand if reviewed by the standards for constitutional conformity of tax legislation. Even when adopting tax legislation, the legislature is not released from the obligation to observe the requirements arising from the constitutional order (in addition to the prohibition of a suffocating effect, primarily the prohibition of arbitrariness and preservation of the principle of equality). The contested legislation, the effect of which is to tax sixteen taxpayers, with insignificant revenue for the state budget, primarily lacks a legitimate purpose and rational justification (the expression of an unsubstantiated doubt about the proportionality of the amount of financial compensation is not justification), bears the signs of arbitrariness and violates the principle of equality – evaluation of this aspect by the government, restricting itself to a set of persons entitled under the Act on Property Settlement, is formalistic.

32. The second group of senators joined the arguments of the petitioner and the group of deputies and took a position in particular to the government's position statement. Similarly to the petitioner, it states that the government's expressed doubt about the proportionality of the level of the set financial compensation lacks an objective basis. During the legislative process the effect of the bill of the contested Act on the state budget was not made clear at all, as is usual and desirable with tax legislation; the government even admits that if the taxpayers show a loss the taxation of the financial compensation will have no effect, whereby it indirectly confirms the arguments of the petitioners, that the reduction of the financial compensation is not materially a tax matter. Similarly to the petitioner, the second group of senators also points out that the arguments of the petitioners seeking the annulment of the contested legislation does

not contradict the Supreme Court's case law on tax issues cited (generally) by the government; quite to the contrary, it is consistent with and based on it.

IV. 5 Waiver of a Hearing

33. After the course of the proceeding recapitulated above, the Constitutional Court concluded that it is not necessary to hold a hearing, as it would not bring further clarification of the matter than that brought by the written submissions of the petitioner, the parties, and the secondary parties to the proceeding. In view of the wording of § 44 of the Act on the Constitutional Court, the Constitutional Court made its ruling without holding a hearing, and denied as unfounded the proposals to question witnesses Andrej Babiš, Jaroslav Faltýnek, Jan Hamáček, Jan Chvojka and Alena Schillerová. The proposed witnesses cannot be expected to provide any new information on the factual side that could be significant for the Court's decision.

V. The Constitutional Court's Own Assessment

34. The Constitutional Court discussed the petitions before Act no. 125/2019 Coll. went into effect, whereby it de facto granted the petitioners' request for priority processing of the matter. The potential annulment of contested legislation by the Constitutional Court always represents an intervention in the legal certainty of its addressees. Therefore, if there is room to decide on a petition seeking the annulment of legislation before it takes effect as part of the legal order, the Constitutional Court should always do so, in the interest of mitigating the effects of a derogatory judgment.

35. Under § 68 par. 2 of the Act on the Constitutional Court, evaluation of the consistency of a statue with the constitutional order consists of answering three questions: whether it was adopted and promulgated within the bounds of constitutionally specified jurisdiction, whether it was adopted in a constitutionally prescribed manner, and whether its content is consistent with constitutional laws. It concluded that as regards the substantive content of constitutional review, the petitions are justified.

V. 1 The Legislative Process

36. The Constitutional Court's review normally includes an evaluation of whether the constitutionally prescribed procedure of the legislative process was observed, in the sense of participation in it by individual constitutional bodies, and whether the prescribed majority of deputies or senators voted for the bills in each chamber. These are circumstances where violation of constitutionally provided norms would, in and of itself, cast doubt on the very legitimacy of a legal regulation, so they must be taken into account every time that the consistency of a legal regulation with the constitutional order is reviewed [see, e.g., judgment file no. Pl. ÚS 1/12 of 27 November 2012 (N 195/67 SbNU 333; no. 437/2012 Coll.)].

37. The formal procedure of the legislative process set forth by the Constitution and the law was observed in this case. The Constitutional Court also verified the information provided by

the Chamber of Deputies from the stenographic records of the Chamber of Deputies, the Senate, and other publicly accessible documents relating to the legislative process. In any case, none of the petitioners is raising any objections to the legislative process. In short, therefore, we can refer to the description of the course of the legislative process contained in points 27-28 and state that the contested Act was adopted and promulgated within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner.

V. 2 The General Starting Points for Material Review

38. The Constitutional Court then turned its attention to the substantive consistency of the contested legislation with the constitutional order.

V. 2 a) Protection of Acquired Rights, the Prohibition of Retroactivity, Legitimate Expectation

39. The Constitutional Court first considers it necessary to state that in its decision-making activity it consistently emphasizes the principles of legal certainty, confidence in the law and its foreseeability, the prohibition of retroactivity, and protection of acquired rights, as fundamental principles of a democratic society, and requirements arising from art. 1 par. 1 of the Constitution [cf. judgment file no. IV. ÚS 215/94 of 8 June 1995 (N 30/3 SbNU 227)]. In this regard, the Constitutional Court points to its conclusions in judgment file no. Pl. ÚS 21/96 of 4 February 1997 (N 13/7 SbNU 87; no. 63/1997 Coll.), under which the annulment of old legislation and the adoption of new legislation is necessarily tied to intervention in the principles of equality and protection of the citizens' confidence in the law, which, however, occurs as the consequence of protection of another public interest or fundamental right or freedom. The legislature's decision about the method for resolving the chronological conflict between old and new legislation is not, from a constitutional viewpoint, random or arbitrary, but is a matter of weighing conflicting values. Proportionality can be characterized thus: that a higher degree of intensity of a public interest and protection of fundamental rights and freedoms justifies a higher degree of intervention in the principles of equality and protection of citizens' confidence of the law by a new legal regulation. In reviewing the manner of the legislative treatment of the chronological conflict, a role is played not only by the degree of difference between the old and new legislation, but also by other facts, such as the social urgency of introducing the later legislation.

40. Legal theory distinguishes two forms of retroactivity of the effect of a legal norm, one of which is fundamentally impermissible (true retroactivity) and the other is fundamentally permissible (false retroactivity) – exceptions to both can be made in justified cases (see further, judgment file no. Pl. ÚS 53/10, point 145). As follows from judgment file no. Pl. ÚS 21/96, generally permissible false retroactivity can be found impermissible if legislation "interferes in confidence in the factual basis, and the importance of legislative wishes for the public does not exceed, or does not reach, the interest of an individual in the continuation of the existing law (B. Pieroth, Rückwirkung und Übergangsrecht. Verfassungsrechtliche Maßstäbe für

intertemporale Gesetzgebung [Retroactivity and Transitional Law. Constitutional Standards for Intertemporal Legislation], Berlin 1981, p. 380-381)."

41. In judgment file no. Pl. ÚS 53/10 (point 148), the Constitutional Court also stated that in connection with the question of the permissibility of false retroactivity, it is necessary to emphasize the legitimate expectation, the relevant basis of which is a property interest that falls under the protection of art. 11 par. 1 of the Charter and art. 1 of the Protocol to the Convention (cf. judgment file no. Pl. ÚS 2/02 or judgment file no. Pl. ÚS 9/07, points 80 et seq.). The latter provisions sets forth the right of everyone to peaceful enjoyment of his property. Under the settled case law of the European Court of Human Rights, the concept of property must be interpreted to have autonomous scope that is not limited to ownership of tangible assets and does not depend on the formal classification of domestic law (Broniowski v. Poland, judgment of 22 June 2004, application no. 31443/96 -, point 129). It can include both existing property and property values, including claims on the basis of which a plaintiff can assert that he has at least a legitimate expectation of achieving a certain realization of property rights. In accordance with the case law of the European Court of Human Rights, the Constitutional Court stated regarding this principle that "it clearly gives rise to a concept of protection of legitimate expectation as a property entitlement that was already individualized by a legal act, or can be individualized directly on the basis of legislation" (judgment file no. Pl. ÚS 50/04 of 8 March 2006 (N 50/40 SbNU 443; no. 154/2006 Coll., also judgment file no. Pl. ÚS 2/02). Violation of art. 1 of the Protocol by the legislature can occur, if the change of the law made it impossible to acquire property to which certain subjects had a legitimate expectation (cf. judgment file no. Pl. ÚS 2/02).

42. It follows from the foregoing that the creation of a legal entitlement establishes legitimate expectation for an individual (for example, in the form of increase of property). A legal entitlement once acquired can subsequently be changed only provided that the new legal regulation pursues a public interest of a higher degree of intensity than that enjoyed by the principles arising from art. 1 par. 1 of the Constitution. Therefore, conduct by the legislature that does not respect these requirements and shows signs of arbitrariness or abuse of the law is unconstitutional.

V. 2 b) The Nature of Restitution Legislation

43. According to the preambles and introductory provisions of restitution regulations adopted after 1989 their purpose is "the attempt to mitigate the consequences of certain property and other injustices" originating in the period from 1948 to 1989 [in the first place see § 1 of Act no. 403/1990 Coll., on Mitigating the Consequences of Certain property Injustices, also, e.g., the preamble or § 1 of Act no. 87/1991 Coll., on Extrajudicial Rehabilitations, the preamble of Act no. 229/1991 Coll., on the Ownership of Land and Other Agricultural Property (the "Act on Land"), or the preamble and § 1 of the Act on Property Settlement], that is, during the time of non-freedom, when "the regime based on communist ideology that decided on the running of the state and the fates of citizens in Czechoslovakia was […], criminal, illegitimate, and

condemnable" (§ 2 par. 1 of Act no. 198/1993 Coll., on the Illegality of the Communist Regime and on Resistance Against It).

44. During the time of non-freedom religious faith and expressions of it were often grounds for political persecution, which also manifested itself in the property situations of individual churches [see Act no. 218/1949 Coll., on the Economic Securing of Churches and Religious Communities by the State, in the original wording ("Act no. 218/1949 Coll.")]. The legislature adopting the Act on Property Settlement was aware of this, as is clear, for example, from its preamble: "The Parliament, remembering the bitter experiences from the times when human rights and fundamental freedoms were repressed on the territory of today's Czech Republic, resolved to guard and develop the inherited cultural and spiritual wealth, guided by the effort to mitigate the consequences of certain property and other injustices that were committed by the communist regime in the period from 1948 to 1989, to settle property relationships between the state and churches and religious communities, as a prerequisite for full religious freedom and thus to make possible through the renewal of the property base of churches and religious communities the free and independent position of churches and religious communities, whose existence and function it considers to be an essential element of a democratic society …"

45. Although there is no fundamental "right to restitution", if the legislature decided to mitigate certain injustices that arose during the time of non-freedom through the form of restitution legislation, then under art. 90 of the Constitution the courts are called upon, in their decision-making activity, to interpret restitution laws in a manner that permits the fulfilment of their purpose and to provide in a statutorily provided manner protection to the rights acquired on the basis of the laws [see judgment file no. IV. ÚS 302/99 of 9 February 2000 (N 24/17 SbNU 177)]. Such a process corresponds to an individual's subjective right to judicial protection of his rights arising from art. 36 par. 1 of the Charter and art. 6 par. 1 of the Convention.

V. 2 c) Constitutional Law Review of Taxes and the Principle of Equality

46. Article 11 par. 1 of the Charter guarantees the individual (a natural or legal person) the constitutionally protected right to own property. The Constitutional Court's case law indicates that "[i]ntervention in the guarantee of ownership as a fundamental right is possible only through an imperative statutory framework which is subject to requirements corresponding to entitlements from the test of proportionality. Such legislation must also correspond to entitlements arising from the principle of a law-based state, and thus must be clear and accessible, its consequences must be foreseeable, it must limit executive discretion, and there must be a possibility to review the decision making of the executive on intervention in property rights by independent and impartial courts." (see judgment file no. Pl. ÚS 29/08, point 37).

47. Imposing taxes and fees, which is possible only on the basis of statute (art. 11 par. 5 of the Charter), represents one of the legitimate, constitutionally acceptable grounds for limiting the right own property (art. 11 par. 1 of the Charter), because it pursues a public interest in gathering funds in order to secure public goods (acquisition of income / filling the state budget). In order for the state to be a good instrument in the service of the people, it must have for its activity

sufficient funds, the great part of which it acquired precisely through the institutionalization of an obligatory public law obligation to pay taxes (judgment file no. Pl. ÚS 29/08, point 38). In the case of taxes, the Charter presumes a limitation on ownership rights, if the legislature has a constitutional authority to impose taxes, with wide discretion for deciding on the subject, degree, and extent of taxes.

48. Taxes and the tax system fill three fundamental functions – allocation, distribution, and stabilization –setting which falls within the jurisdiction of the democratically elected legislature. If the Constitutional Court wanted to evaluate their unconstitutionality, it would enter the field of individual policies, whose rationality cannot be well evaluated from the viewpoint of constitutionality. Therefore, in the cited judgment file no. Pl. ÚS 29/08 (point 58) it stated that it does not as a rule review the effectiveness of taxes, with the exception of cases when the ineffectiveness of a certain tax would establish obvious inequality in the tax burden of individual domestic persons. It is up to the Constitutional to court to review only whether tax measures interfere in the constitutionally guaranteed property substrate of an owner, whether they can be consider to unjustifiably conflict with the principle of equality, i.e. to be arbitrary.

49. In the last cited judgment the Constitutional Court also summarized the methodology for constitutional law review of legislation in the area of administration of taxes and fees. When reviewing the constitutionality of legislation that imposes taxes on taxpayers, the Constitutional Court fundamentally takes as its starting point a modified version of the principle of proportionality, and reviews possible violation of the prohibition of extreme disproportionality in connection with observance of the principle of equality: "Differentiation leading to violation of the principle of equality is impermissible in two senses: it can function on the one hand as an accessory principle that prohibits discriminating against persons in the exercise of their fundamental right , and on the other hand as a non-accessory principle enshrined in art. 1 of the Charter, which consists of ruling out legislative arbitration in differentiating the rights of certain groups of subjects. In other words, the second case concerns the principle of equality before the law, which is, through art. 26 [of the Covenant] a component of the Czech constitutional order" (again, see judgment file no. Pl. ÚS 29/08, point 56).

50. The Constitutional Court's settled case law indicates that it is up to the state to decide that it will provide one group fewer advantages than another, but it may not do so arbitrarily, and it must be evident from its decision that it does so in the public interest and in the name of public values [see judgment file no. Pl. ÚS 33/96 of 4 June 1997 (N 67/8 SbNU 163; no. 185/1997 Coll.) relating directly to restitution legislation].

51. In connection with the principle of equality and the prohibition of discrimination, the Constitutional Court, in judgment file no. Pl. ÚS 18/15, stated that the intensity of constitutional review in the tax area does not primarily depend on the fact of whether the unequal treatment occurs in relation to another constitutionally guaranteed right (accessorily, see art. 3 par. 1 of the Charter, art. 14 of the Convention), or not (non-accessorily, see art. 1 of the Charter or art. 26 of the Covenant). The key factor is the reason for the different treatment, i.e. the specified differentiating feature (e.g., race, sex, nationality, origin, age, religion, property), and also the

particular right or good, in relation to which there is different treatment (e.g., guarantees of political rights or the obligation to pay taxes); the requirements laid by the Constitutional Court for justification of the legitimacy of the different treatment must then correspond to that.

52. In order to use this modified form of the test of proportionality, it is necessary to first determine with certainty whether the subject matter of the contested legislation is a tax in the foregoing sense. In the past the Constitutional Court has several times concluded that by imposing a tax the legislature has tried to disguise its true intent, which differed from the goal of optimally filling the state treasury. For example, in the case of retroactive reduction and taxation of state support (savings for home construction), to which the addresses of legal norms had already become entitled, the Constitutional Court stated that "[t]he purpose of taxation differs in that case from the taxation of other incomes, because it does not lead to strengthening the revenue part of the state budget. In essence, this is an indirect form of reducing its expenses, or setting their amount, because through it part of the expense remains in the state budget or returns to it" (judgment file no. Pl. ÚS 53/10, point 179). In other words, the Constitutional Court pointed out that if a certain subject individually acquired an individualized entitlement to specific performance by the state, it is not possible to arbitrarily intervene in it, regardless of whether the legislature does so directly or by subsequently imposing a tax obligation, which differs from direct reduction only in its name; otherwise the legislature violates the principle of legal certainty under art. 1 par. 1 of the Constitution (and consequently the prohibition of true retroactivity – regarding which, see below) and legitimate expectation under art. 11 par. 1 of the Charter a art. 1 of the Protocol to the Convention.

53. Thus, if it is appropriate to conclude that in the review of constitutionality a certain "tax" cannot be considered a tax, but a change in legal entitlement, that fact is unavoidably reflected in the constitutional criteria for its evaluation – if certain constitutional principles and fundamental rights serve to protect the individual from intervention by the public authorities, the degree of protection in one of two comparable cases cannot be lower only because the legislature used a different name for the same regulation (judgment file no. Pl. ÚS 53/10, point 181).

V. 2 d) The Principle of Pacta Sunt Servanda

54. The principle of pacta sunt servanda is one of the key principles of a law-based state, arising from art. 1 par. 1 of the Constitution, to which the Constitutional Court fully subscribes [initially, e.g., judgment of 7 October 1996 file no. IV. ÚS 201/96 (N 96/6 SbNU 197), further judgment file no. II. ÚS 3292/09 of 8 July 2010 (N 140/58 SbNU 163), or in recent years the judgments of 17 October 2017 file no. I. ÚS 1653/17, of 4 June 2019 file no. II. ÚS 996/18, or of 17 July 2019 file no. I. ÚS 1091/19], because it reflects the nature of private law, the essence of contractual relationships and the related economic and social function of a contract [e.g., judgment file no. I. ÚS 436/05 of 10 July 2008 (N 129/50 SbNU 131)].

55. In judgment file no. I. ÚS 1653/17, point 36, the Constitutional Court summarized that if there is an agreement in the expressed will of two parties that is not forbidden by law (art. 2 par.

3 of the Charter), and a contract is created, it is precisely the principle of pacta sunt servanda that guarantees that the contract and its legal consequences will be respected by the public authorities and that it will be possible to enforce the rights and obligations arising from it.

56. The Constitutional Court already emphasized the principle of pacta sunt servanda directly in relation to contracts concluded between the state and entitled churches and religious communities under the Act on Property Settlement in judgment file no. III. ÚS 3397/17 (point 37), under which blanket financial settlement under § 15 of the Act on Property Settlement is a component of mitigating property injustices (in situations where the legislature for various reasons did not decide to issue the property). Its implementation in annual installments was subject to the consent of the relevant church subjects, expressed in a settlement agreement under § 16 of that Act – this established for the future a legitimate expectation consisting of confidence in the law that the debtor – the state – could, in future, change. Therefore, a constitutionally conforming interpretation of this legal institution must begin with the assumption that it involves not merely a decision by the legislature, but also the subsequent conclusion of the agreements in question (its occasio legis), establishing the legitimate expectation of both parties that the concluded agreement will be observed as the result of negotiations by the state with the relevant church subjects.

V. 2 e) Constitutional Law Review of the Amending Statute

57. The Constitutional Court's settled case law indicates that the amendment of a statute does not have independent existence, because its content becomes part of the text of the amended statute [see, e.g. resolution file no. Pl. ÚS 25/2000 of 15 August 2000 (U 27/19 SbNU 271)]. Therefore, in a proceeding under art. 87 par. 1 let. a) of the Constitution fundamentally only the amended statute can be contested; there is an exception in cases where the issue raised is one of legislative authority, jurisdiction, or the process of adoption of the amending statute, which is separate from the content aspect of the amended statute.

58. Likewise, it is necessary to make an exception in relation to the derogatory provision of the amending statute, because from the nature of the matter it is not possible to contest in an amended regulation a provision that was deleted. Therefore, the claimed unconstitutionality of the derogation of the original provision cannot be healed otherwise than by annulling the relevant derogatory passages of the amending statute. It is a question, addressed differently in the Constitutional Court's case law in the past, what effects a Constitutional Court decision that derogates the derogatory provision will evoke (the history was last recapitulated in resolution file no. Pl. ÚS 26/13 of 5 August 2014). Thus far the Constitutional Court's case law has settled on the position that the mere annulment of an annulling provision in the amendment of a statute does not, without anything further "revive" the original legislation [judgment file no. I. ÚS 1696/09 of 8 February 2011 (N 13/60 SbNU 127); judgment file no. I. ÚS 1927/09 of 21 March 2011 (N 50/60 SbNU 593); judgment file no. I. ÚS 504/10 of 21 March 2011 (N 51/60 SbNU 609)], because the Constitutional Court would thereby exceed its legally defined jurisdiction and deviate from the role of a "negative" legislature.

59. Since Parliament also may not refuse its obligation to protect the fundamental rights and freedoms, the Constitutional Court can "presume that the legislature will not meet this obligation, and therefore it has discretion to deliberate whether, in the interest of fulfilling its only task – protection of constitutionality and the fundamental rights and freedoms guaranteed by the constitutional order – it will also specify further consequences of its decision. However, the nature of these consequences will always depend on the uniqueness of the facts based on which the proceeding before the Constitutional court occurred, as well as the nature of the endangered (violated) fundamental right or freedom" [see judgment file no. Pl. ÚS 20/05 of 28 February 2006 (N 47/40 SbNU 389; no. 252/2006 Coll.)]. Thus, in the past there were also cases when the Constitutional Court allowed the revival of annulled provisions, and stated that the effect of its derogatory judgment is renewal of the situation before adoption of the amending statute, i.e. "rehabilitation" of the annulled provisions [judgment file no. Pl. ÚS 5/94 of 30 November 1994 (N 59/2 SbNU 155; no. 8/1995 Coll.); judgment file no. Pl. ÚS 2/02].

60. We can conclude that the Constitutional Court's majority opinion (a contrario see the dissenting opinions to resolution file no. Pl. ÚS 26/13) stands on the thesis that a provision once annulled is fundamentally not "revived" by the Constitutional Court's intervention, unless the Constitutional Court finds the existence of exceptional reasons why it is necessary to apply this isolated measure, because correction of the unconstitutional situation cannot be achieved otherwise, and it cannot be expected that the legislature will correct the undesirable situation in the foreseeable future through its legislative jurisdiction. In that case the decisive moment is the entry into effect of the legislation that is contested as unconstitutional before the Constitutional Court: "Although any derogatory intervention by the Constitutional Court should fundamentally apply to the amended provision, in a situation where the unconstitutionality is seen in the very fact of annulment of the previous legislation, for purposes of preserving legal certainty we can accept that the subject matter of constitutional review will also be the relevant amending provision of the amendment to the statute. This ensures that the amendment does not annul a legal regulation or part thereof in a situation where the absence of legislation would result in an unconstitutional situation" [see judgment file no. Pl. ÚS 35/17 of 19 June 2018 (no. 135/2018 Coll.), point 44].

V. 3 Application to the Present Case

61. In its case law the Constitutional Court frequently addresses the legislature's efforts to settle the relationships and injustices created by the communist regime [in the first place see judgment file no. Pl. ÚS 19/93 of 21 December 1993 (N 1/1 SbNU 1; no. 14/1994 Coll.)]. It is not in the powers of the state or anyone else to correct all the injustices committed due to the existence of the totalitarian regime, including injustices against churches and their members. That is why the legislature was left discretion to consider what steps it will choose, and restitution regulations whose aim was to mitigate (i.e. not fully undo) some (i.e. not all) property injustices were found to be legitimate. It is also true that if such legislation was adopted, then persons who met the conditions set by the restitution statute were entitled to compensation and had a legitimate expectation that compensation would be provided to them in the amount, form, and time period provided by the statute.

62. By adopting the Act on Property Settlement the legislature removed a significant deficit in the undoing of the consequences of the communist regime in relation to churches and religious communities, which the Constitutional Court repeatedly found to exist [first in judgment file no. IV. ÚS 298/05 of 8 August 2005 (N 156/38 SbNU 241), followed by the majority position in file no. Pl. ÚS-st. 22/05 of 1 November 2005 (ST 22/39 SbNU 515; no. 13/2006 Coll.), judgment file no. I. ÚS 663/06 of 24 June 2009 (N 149/53 SbNU 811), most emphatically judgment file no. Pl. ÚS 9/07, and finally also judgment file no. II. ÚS 3120/10 of 29 August 2012 (N 145/66 SbNU 201)] and to which the legislature itself committed at the beginning of the 1990s (see Act no. 298/1990 Coll., on Regulation of Certain Property Relationships of Religious Orders and Congregations and the Archidiocese of Olomouc , or the "blocking" provision, § 29 of the Act on Land, in the original wording).

63. It is therefore necessary to start with the meaning and purpose of the Act on Property Settlement, which is primarily mitigating the consequences of certain property and other injustices committed by the communist regime in the years 1948 to 1989 against churches (their members and representatives), which in no way deviates from the abovementioned general meaning and purpose of restitution legislation (see points 43-45); the interpretative guideline in this regard is provided primarily by the preamble and introductory provisions of the Act. Restitution of property cannot be understood as income for the entitled person (in the sense of increasing property), but as an effort to renew the original property base – a correction of the previous illegal reduction.

64. The restitution purpose of the Act on Property Settlement is a fundamental and key purpose (according to § 18 par. 4, when applying the Act, it is necessary to preserve its purpose, which is the mitigation of property injustices caused to registered churches and religious communities in the decisive period), but not the only one. It is supplemented by the legislature's intention "to settle the property relationships between the state and churches and religious communities as a prerequisite for full religious freedom and thus permit, through the renewal of the property base of churches and religious communities the free and independent status of churches and religious communities, whose existence and functioning [Parliament] considers to be an essential element of a democratic society (see the next part of the preamble of the Act). Therefore, the Act on Property Settlement contains in § 17 the state's commitment to pay the relevant churches and religious communities, during a transition period of 17 years, a (gradually decreasing) contribution for support of their activity which, under the fifth paragraph of that provision, is exempt from the basis of tax, fees, or other similar financial performance.

65. However, the existence of the stated intention to establish a transitional regime that will subsequently lead to economic separation of the church from the state changes nothing about the fact that the restitutional nature of the Act on Property Settlement is primary and original, because the financial dependence of former church subjects on the state arose precisely during the time of non-freedom as a means of control that the totalitarian regime needed to gain over the faithful (see Act no. 218/1949 Coll., annulled by the Act on Property Settlement). In other words, without the existence of forty years of the totalitarian regime, the property injustices

would not have occurred that the post-1989 democratic legislature committed (at least partly) to undo, the financial dependence of churches on the state would not have been created, and the need for subsequent financial separation would also not have arisen.

66. The Constitutional Court viewed the constitutional conformity of the contested provisions in light of these described purposes of the Act on Property Settlement – the Court notes that it did not pay closer attention to the petitioner's or the government's arguments on the issue of the proportionality of financial compensation, because it had already considered it in detail in judgment file no. Pl. ÚS 10/13, wherein it stated that the political decision regarding setting the level of financial settlement has no effect on the constitutionality of the Act on Property Settlement (see judgment file no. Pl. ÚS 10/13, points 242-256, likewise also judgment file no. III. ÚS 3397/17, point 37). There it concluded, among other things, that it does not follow from the Act on Property Settlement itself, "that a case of financial compensation under § 15 par. 1, 2 should involve the result of a specific economic or mathematical method that would be applied to a specific set of property, in particular in view of the abovementioned purpose of financial compensation, which has a variable ratio of the compensation and settlement components as regards each of the churches. Thus, it does not follow from the Act that it would presume a specific identification of the compensated property and its valuation with a specific economic method, where the sum of the amounts would then represent the total amount of financial compensation."

67. The Constitutional Court continued: "In terms of the test of the constitutionality of a statute with budgetary effects, it is decisive to what extent the amount of financial compensation has an elementary connection to available data and the price context, that is, whether the contested provisions § 15 par. 1 and 2 are not the result of irrational conduct by the legislature, random changes (errors) in the course of the legislative process, etc." (see judgment Pl. ÚS 10/13, point 247). In this regard, the Constitutional Court did not find a constitutionally relevant shortcoming in § 15 of the Act on Property Settlement (cf. judgment Pl. ÚS 10/13, point 256). The cited conclusion applies fully in the present matter as well, and there is no reason to deviate from it, unless the state and its economic condition are facing a natural catastrophe, serious economic crisis, state of war, or other extraordinary events that would require austerity measures of a more comprehensive scope and would force the Constitutional Court to re-evaluate the validity of its previous conclusion. Therefore, the issue of the proportionality of the financial compensation determined by the Act and by contracts is not relevant for evaluation of the petition, and there is no need to return to it.

68. All three petitions presented to the Constitutional Court seek both the annulment of, in § 18a par. 1 let. f) of the Act on Income Taxes, the words "with the exception of financial compensation," and (in eventum) annulment of Act no. 125/2019 Coll. The Constitutional Court evaluated the justification of each of these points of the proposed verdict separately.

V. 3 a) The provision of § 18a par. 1 let. f) of the Act on Income Taxes

69. The provision of § 18a par. 1 let. f) of the Act on Income Taxes is to introduce, as of 1 January 2020, the obligation of churches and religious communities that concluded settlement agreements with the state on the basis of § 16 of the Act on Property Settlement to pay taxes on the annual payments of agreed financial compensation received in the future (more precisely: the original exemption from income tax for the financial compensation is annulled). The Constitutional Court concluded that this legislation cannot stand from a constitutional law standpoint in view of the summarized general principles, for several reasons.

70. Firstly, in the Constitutional Court's opinion, from a material perspective this case does not involve a tax (it is a tax only formally), but de facto a reduction of financial compensation (mutatis mutandis cf. judgment file no. Pl. ÚS 53/10, points 179-184), and moreover, financial compensation that serves to mitigate the property injustices committed in the time of totalitarianism by the communist regime, which, by the nature of the matter, cannot be income in the tax meaning of the word. Neither the sponsors of the Act, the government stating its consent, or other deputies speaking in support of adopting the bill of Act no. 125/2019 Coll. made any secret of this "disguised" intention during discussion in the Chamber of Deputies (e.g. the statements by the deputies presenting the bill, Vladimír Koníček, Milan Feranec, Vice Chairman of the Chamber of Deputies Tomio Okamura and others – see the stenographic record of the first reading of the bill of Act no. 125/2019 Coll. from the seventh session of the Chamber of Deputies, held on 28 February 2018). For example, Deputy Feranec said the following regarding the bill at that session: "… we will not vote about the Act on Restitutions as such. We will only decide whether we send to the second reading a statute that will permit taxing financial compensation for non-issued property, because according to the sponsors these financial compensations were set at a disproportionately high level." In its statement of agreement, the government expressed concerns about impending interference in the legitimate expectation of entitled subjects; subsequently, in its statement on the present petitions, it admitted that the effect of the taxation in question on the state budget may be minimal, or possibly none, if any of the relevant churches finds itself in economic loss.

71. Although the subject matter of the settlement between the state and the churches is unique and difficult to compare with any other state policies (except the other restitution laws), in a certain regard the present attempt by the legislature to "tax" financial compensation, in terms of its actual intention and chronological effect, can be compared to the case of state support for home construction savings, which savers became legally entitled to at a certain moment, and together with which they had a legitimate expectation that it would be fulfilled, and therefore its level could not be changed (reduced) in a constitutionally acceptable manner without a serious reason – see judgment file no. Pl. ÚS 53/10, points 182-184. The Constitutional Court does not question that the area of taxes is the "domain" of the state, which can sovereignly impose tax obligations in its discretion (the will of the legislature). Taxes must be collected, and must be paid, in order for the state to be able to function at all and manage its revenues effectively. In justified cases taxes need not pursue only a fiscal purpose (e.g. fulfilling the public interest in protection of health when taxing tobacco products or alcohol). In the case of "taxing church restitutions", from the beginning there was evidently not, on the part of the government, an honest effort to fill the state treasury or any other legitimate aim, but a de facto

reduction of an agreed financial compensation intended to mitigate property injustices, and an unjustified penalization of churches and religious communities (see the stenographic record of the remarks by Deputy Koníček, the sponsor of the bill of Act no. 125/2019 Coll., in the introduction to discussion of point 12 at the 7th session of the Chamber of Deputies, held on 28 February 2018), whose ultimate consequence may be to endanger their activity and thereby interfere in the religious freedoms guaranteed by articles 15 par. 1 and 16 par. 1 of the Charter.

72. On the contrary, as the legislature did not pursue a legitimate aim with the contested legislation, and did not base it on any substantial socio-economic changes in society, it would not be appropriate to apply to the matter the conclusions in judgment file no. Pl. ÚS 17/11 of 15 May 2012 (N 102/65 SbNU 367; no. 220/2012 Coll.), in which the Constitutional Court stated, regarding the issue of reducing state support provided to operators of photovoltaic electric power plants by introducing a gift tax on permits acquired free of charge and cancelling the exemption from income tax (using the methodology of review of a tax matter), that the principle of legal certainty cannot be identified as a requirement for absolute unchangeability of legislation, because that is subject to, among other things, social-economic changes. Therefore, as regards the degree of review of the constitutionality of the contested legislation and in relation to the proportionality of the intervention, in particular in view of the guarantees under art. 11 par. 1 of the Charter and art. 1 of the Protocol to the Convention, the Constitutional Court's restraint is not appropriate.

73. The fundamental reason for the unconstitutionality of the contested provision of the Act on Income Taxes, as amended by Act no. 125/2019 Coll., is primarily violation of the right to legitimate expectation of the relevant churches and religious communities, in the meaning of art. 1 par. 1 of the Constitution – that is, the general expectation that the state's promises would be kept, especially in the area of restitutions, and secondarily, the expectation, in the meaning of art. 11 par. 1 of the Charter and art. 1 of the Protocol to the Convention – as a derivative of property rights, that is, a clearly financially enumerable commitment from which that expectation arises [regarding this, see the decision of the European Court of Human Rights in the matter of Broniowski v. Poland cited in point 41, cf. also judgment file no. Pl. ÚS 12/14 of 16 June 2015 (N 109/77 SbNU 577; no. 177/2015 Coll.)]. The legitimate expectation in favor of churches and religious communities arose in two main steps – first in the form of the blocking provision, § 29 of the Act on Land, in the original wording, from the beginning of the 1990s, and the related case law of the Constitutional Court confirming that here the expectation inures to the benefit of the churches and religious communities, and the legislature must fulfil it. In connection to the foregoing, as a second step the legislature adopted the Act on Property Settlement, whereby it specifically fulfilled the general expectation by setting specific amounts and payments. Precisely with regard to the values stated above in points 61-65 this expectation is inviolable and creates a right for protection of the rights already acquired (cf., likewise, also judgment file no. III. ÚS 3397/17, points 35-39).

74. If the legislature, in the contested legislation, did not pursue another legitimate public interest, which, moreover, would have to be of a higher intensity than the principles just described, protected by 1 par. 1 of the Constitution, article 11 par. 1 of the Charter, and article

1 of the Protocol to the Convention, in order to be able to justify the intended intervention in the constitutionally protected legitimate expectation of the relevant churches and religious communities, it acted arbitrarily, whereby it also violated the prohibition of retroactivity (see points 39-42).

75. The Constitutional Court agrees with the view of the petitioner and the other petitioners that the entitlement to payment of financial compensation in full and the related legitimate expectation arose for each individual entitled church or religious society in a single moment, which was the moment of concluding a settlement agreement under § 16 of the Act on Property Settlement, published in Ministry of Culture Communication no. 55/2013 Coll. (see point 56). No other interpretation can be derived from the Act on Property Settlement or from the subsequently concluded agreements; setting thirty annual installments for the payment of the entire amount of the financial compensation does not cast doubt on that fact; in one moment the entitled subjects acquired an entitlement to that performance as a whole. The complicated and multi-year negotiations of the state with the relevant churches and religious communities were not aimed at the amount of the installments being discussed and reevaluated later, which is confirmed precisely by the conclusion of the agreements in question. Conclusion of the agreements created for the relevant churches and religious communities an individualized legal entitlement for payment of financial compensation, and in this regard the state accepted a commitment to provide the financial compensation in full (even increased by the relevant rate of inflation), which cannot end otherwise than by being fulfilled [see § 16 par. 2 let. e) of the Act on Property Settlement and the related relevant provisions of the concluded settlement agreements, whose texts are available in Ministry of Culture Communication no. 55/2013 Coll.].

76. This legitimate expectation of the recipient to acquire property was, in the case of the churches and religious communities further confirmed by the conclusion of settlement agreements under § 16 of the Act on Property Settlement. Thus, in this regard, we can refer to "the highest legal principle, or the highest natural law norm, from which all law is derived," that is, the principle of pacta sunt servanda – agreements must be kept (see judgment file no. II. ÚS 3292/09, point 37). In 2012, the legislature, among other things as a result of the Constitutional Court's earlier case law (see point 62), twenty years later, adopted the Act on Property Settlement. The reason why the state negotiated with the churches and religious communities about the form of settlement (unlike other "ordinary" restituents), is the public interest in their existence in a democratic society (further, see point 83).

77.The fact that the financial compensation is paid to the churches not only on the basis of the Act, but on the basis of the Act in combination with the subsequently concluded agreement is not random and insignificant, both in terms of the will of the relevant churches to accept the conditions offered by the state, and in terms of the intent of the legislature at the time to accept a limitation on itself for the future (see the background report concerning § 16 of the Act on Property Settlement). The provision of § 15 of the Act on Property Settlement declares the amount of financial compensation for individual churches and religious communities; without the subsequent conclusion of settlement of agreements it would not, in and of itself, produce

legal effects. As the Constitutional Court already stated, [the Act on Property Settlement] must be seen as a special type of statute (known as a "Maßnahmengesetz"), that was created to address a particular situation, and it must be interpreted in relation to that situation, [as] it pursues a certain aim, and sets forth certain means, rules, and procedures for the achievement of that aim (regarding this type of statue, cf. e.g., Schneider, H. Gesetzgebung. 3rd edition. Heidelberg: C. F. Müller Verlag 2002, pp. 142-145)" [see judgment file no. III. ÚS 3397/17, point 37]. Such a statute is limited by its aim, and by achieving that aim it becomes obsolete. The Constitutional Court has already confirmed the constitutionality of the special nature of the Act on Property Settlement in judgment file no. Pl. ÚS 10/13 (point 271).

78. By concluding the settlement agreement the churches and religious communities accepted an express agreement that all their claims against the state for their original property (except the claim for natural restitution fulfilment under the Act) are settled by the agreement and by payment of financial compensation [see § 16 par. 2 let. a) of the Act on Property Settlement, art. 2 of the settlement agreement]. Further, a component of the concluded agreement under § 16 par. 2 let. g) of the Act (and subsequently under art. 5.2 of the agreement), is the provision, that the purpose of the agreement is governed by the Act in the wording in effect on the day the agreement is concluded. Therefore, in art. 5.1 of each concluded settlement agreement the state and the relevant church or religious society commit to observe the agreement and not thwart its purpose (defined by the Act on Property Settlement - see points 63-65). To illustrate, the Constitutional Court cites the text of art. 5 of the model settlement agreement that the state concluded with churches and religious communities named in § 15 of the Act on Property Settlement:

Article 5
Common Provisions

1. The Czech Republic and [the relevant church or religious society] commit to observe this agreement and not thwart its purpose.
2. The purpose of this agreement is subject to the Act on Property Settlement with Churches and Religious Communities, in the wording in effect on the day this agreement is concluded.
3. This settlement agreement is subject to the provisions of the Civil Code, with the exception of provisions on the invalidity and objectionability of legal acts, provisions on a change in the person of a debtor or creditor, except in cases of legal succession, and also with the exception of provisions on the expiry of a commitment without satisfaction of the creditor, in particular provisions on withdrawal from an agreement, provisions on termination, and provisions on the impossibility of performance. As regards the payment of financial compensation, the Czech Republic is in the position of the debtor and [the relevant church or religious society] is in the position of the creditor. A claim for financial compensation or an installment payment of financial compensation is not subject to offset, enforcement of a decision, or execution of a decision.

79. Thus, through the legislative branch, and subsequently also through the executive branch when concluding the agreements, the state committed to fulfill the obligations it accepted, in

which it was a contractual party. Subsequently, however, in a different role, in the position of the public authority, the state is attempting to change the content of the subject agreements through a statute that does not meet the requirements set forth by the constitutional order, which means that it is violating the legitimate expectation of one of the parties and acting impermissibly retroactively (impermissible false retroactivity). The level of financial compensation, once assigned by statute and by contract, established the legitimate expectation of creditors (the relevant churches and religious communities) that the obligation of the debtor (the state) would be fulfilled in full, and thus created the right to protection of their acquired rights (see point 73). The entitlement to payment of the financial compensation in the amount set by statute and by the agreements was created as a whole at the moment the agreements were concluded; the fact that the payment was divided into thirty annual installments changes nothing about that (further, see points 75-76). It is appropriate here to again refer to judgment file no. III. ÚS 3397/17, point 37, which emphasizes that in a constitutionally conforming interpretation of a flat-fee financial settlement between the state and churches, one must take as a starting point the fact that this involves not only a decision by the legislature, but also the subsequent conclusion of the subject agreements, establishing the legitimate expectation of both parties that the agreement they reached would be observed by the state as the result of negotiations with the relevant church subjects.

80. Regardless of the foregoing, for completeness the Constitutional Court adds that even if it reached conclusion that this is an income tax (although neither the majority of the Chamber of Deputies nor the government attempted to disguise the true purpose of the contested legislation), the contested provision would not withstand the optics of the test of ruling out extreme disproportionality, because it establishes an unjustified inequality between the addresses of tax norms – in several aspects at once.

81. First of all, it cannot be overlooked that the churches and religious communities entitled to restitution performance by the state under the Act on Property Settlement, whether in natural form, or financial compensation, are the only restituents whose claim (which is not income, but a renewal of an original property base) is to be subject to taxation – no other property restitutions or compensations of detriment are subject to taxation. Taxing compensation for property injustices committed during the time of non-freedom by the communist regime denies the purpose of restitutions – if the injustices are to be at least partially mitigated, one cannot first mitigate them and subsequently "tax" them (de facto decrease or reduce the already acknowledged mitigation of injustices). The Constitutional Court does not see any rational need for the adoption of the legislation, in terms of the purpose of collecting taxes and their importance for the state budget. The government's reference to the disproportion of the approved level of financial compensation is not a relevant argument without the presentation of strong proof given the unchanged economic situation of the country (see points 66-67). In any case, doubts were already expressed in the Chamber of Deputies during the debate of the bill of Act no. 125/2019 Coll. regarding whether the church restitutions would stand in comparison with other restitution regulations as a whole, as regards the extent of restituted property in terms of an equal approach to all entitled persons (natural and legal) and the observance of the

fundamental principles of a democratic, law-based state postulated in art. 1 par. 1 of the Constitution.

82. In this regard, the government's argument, that inequality is not created among the addresses of the norms of the Act on Property Settlement because income under the Act are taxed equally for all of them, will not stand. We must agree with the petitioner that the government selected an impermissibly narrow set of subjects for comparison. The decisive indicator is all the recipients of restitution performance from the state, regardless of which restitution regulation created their entitlement. In addition, the contested provision creates an unjustified difference in the position of churches and religious communities in whose case restitution in natural form prevailed, compared to others that were largely left to financial compensation. This is also connected to another aspect of unjustifiably established inequality, the rationally unsubstantiated difference as regards the "taxation" of individual forms of restitution performance, i.e. the natural return of a thing and financial compensation. The purpose of both is the return of property that the government impermissibly confiscated during the time of non-freedom. Financial compensation is applied only in situations where the confiscated property cannot be returned in its original form for various reasons, but there is no reason to treat it differently.

83. The Constitutional Court has not lost sight of the fact that part of the financial compensation intended to be paid out serves to fulfil the purpose of separation of church and state – a fact that was accentuated during the adoption of Act no. 125/2019 Coll. to support the legitimacy of the "taxation" of financial compensation. Nonetheless, this aspect does not cast doubt on the conclusion that a created legal entitlement to payment of the full financial compensation does not entitle a future legislature to unilaterally decrease it in any manner, quite the contrary. For one thing it is not technically possible to set a precise limit for the restitution (primary) and settlement components of financial compensation for each individual church or religious society and treat each of them individually and differently in terms of review. Further, it must be emphasized that the economic separation of a church from the state is not disadvantageous for the state and its budget, because, in addition to meeting the requirements of religious freedoms (art. 15 par. 1 and art. 16 par. 1 of the Charter), in material terms expenses in the state budget, in the form of financing the salaries of clergy and other expenses of registered churches and religious communities, are removed (see the background report concerning § 17 of the Act on Property Settlement).

84. If the process of separating church and state is to be successfully completed in the future, it is essential to create appropriate conditions especially for the smaller churches, so that they can prepare for the new situation, if, for historical reasons, they do not have their own property, capable of generating the necessary income. The Constitutional Court concluded that without this step, in the case of small churches the fulfilment of the second purpose of the Act on Property Settlement, that is, their separation from the state, would not be realistic, because without appropriate performance, given the simultaneous removal of state contributions, they would cease to exist. Regarding this, the background report states regarding § 17 of the Act on Property Settlement: "The purpose of the implemented institution of transitional financing is to

allow the relevant churches and religious communities to adapt – after more than 60 years of consistent property dependence on the state – to a new economic situation, where the state no longer directly finances their clergy nor contributes to the payment of other expenses." Yet, a plurality of religious entities is in the public interest (churches and religious communities represent a society-wide benefit both for their members and for the wider public through their activity in the area of social services, charity, health care, culture, and education) and also a prerequisite for the fulfillment of fundamental religious freedoms under art. 15 par. 1 and art. 16 par. 1 of the Charter [judgment file no. Pl. ÚS 6/02 of 27 November 2002 (N 146/28 SbNU 295; no. 4/2003 Coll.); judgment file no. Pl. ÚS 9/07].

85. In other words, the state has interest both in the separation of a church from the state, which, after the transitional period under the Act on Property Settlement, is tied to the financial independence of registered churches and religious communities (i.e., their cutting off from regular income from the state budget), and in preserving their existence and plurality, because they play an irreplaceable social role and serve the public interest, not only in relation to their members and sympathizers. The petitioner fittingly states that, insofar as the state was an actor in the agreement under which financial compensation restitution originally belonging to the Roman Catholic Church was redistributed among other churches (see the general part of the background report to the bill of the Act on Property Settlement, p. 37, and judgment file no. Pl. ÚS 10/13, point 233), it cannot later claim a lack of restitutional nature in financial compensation for churches in whose case financial compensation serves more of a separation purpose than a restitution one – such that "taxation" of financial compensation would be legitimate.

86. In view of the foregoing, the Constitutional Court concluded that § 18a par. 1 let. f) of the Act on Income Taxes, as amended by the contested Act, is unconstitutional, and its defects cannot be overcome even through a constitutionally conforming interpretation, because such an interpretation does not exist. Therefore, it annulled part of the cited provision, consisting of the contested words.

V. 3 b) Act no. 125/2019 Coll.

87. The alternative proposed verdict contested the amending statute, Act no. 125/2019 Coll., as a whole containing three parts. The first part (art. I) deletes from the legal order with effect as of 1 January 2020, § 15 par. 6 of the Act on Property Settlement, under which the financial compensation at issue is not subject to tax, fees, or any other similar financial performance. The second part (art. II) inserts into § 18a par. 1 let. f) of the Act on Income Taxes the words "with the exception of financial compensation." The third part (art. III) sets the effective date of Act no. 125/2019 Coll. on 1 January 2020. The petitioners' arguments justifying the petition seeking the annulment of the amending statute, Act no. 125/2019 Coll., are directed only against the first part (art. I) – they consider the deletion of § 15 par. 6 of the Act on Property Settlement from the legal order to be dangerous as it removes the safeguard against any future attempts (however disguised) at artificial reduction of acknowledged financial compensation.

88. The Constitutional Court considered the petition only as regards the first part of the contested statute, because the second part [amendment of § 18a par. 1 let. f) of the Act on Income Taxes] was subsumed in the contesting of the amended provision itself (an amendment to a statute fundamentally does not exist independently, because its content becomes part of the text of the amended statute - see above, points 57-58) and the third part contains only a provision about the entry into effect of the contested amendment, which is not in and of itself capable of having an unconstitutional effect..

89. As regards the first part of Act no. 125/2019 Coll., which deletes § 15 par. 6 of the Act on Property Settlement, the Constitutional Court also did not find the petitions justified, in view of its settled decision making.

90. Annulment of § 15 par. 6 of the Act on Property Settlement does not in and of itself directly cause taxation of financial compensation, which is not to say, that its inclusion in the legal order is without significance. Its importance, together with other safeguards that the Act on Property Settlement also contains, lies in the declaration that the state is prepared to fulfill its commitments at the agreed level, which will not be affected by the future composition of Parliament. Nonetheless, the purely psychological effect of § 15 par. 6 of the Act on Property Settlement is not sufficient for the Constitutional Court to declare an unconstitutional situation due to the absence of § 15 par. 6 of the Act on Property Settlement in the legal order, and thus take a step as exceptional as the annulment of an amending regulation (see points 59-60).

91. In any case, in the scope of § 15 and 16 the Act on Property Settlement exceptionally (and constitutionally – see judgment file no. Pl. ÚS 10/13, point 271) served for a one-time fulfilment of foreseen circumstances, and through their fulfilment it became obsolete in the legal order, because the creation of the entitlement foreseen by it was conditional on and accomplished only by the conclusion of a settlement agreement, which is now independently capable of guaranteeing the existence of the commitment (see point 77). Therefore, any legislative amendment of the existing wording of § 15 and 16 of the Act on Property Settlement can no longer change the resulting legal consequences. Dismissal of the petition in the given scope changes nothing about the position and the established entitlements of churches and religious communities – their rights, once acquired, enjoy protection, and it is forbidden to interfere in them arbitrarily.

92. Therefore, the Constitutional Court dismissed the petitions seeking the annulment of the amending statute, Act no. 125/2019 Coll., in full, due to obvious lack of justification [§ 43 par. 2 let. a) of the Act on the Constitutional Court].

VI. Conclusion

93. Restitution serves to undo certain property injustices committed during the period of 1948 to 1989, that is, at a time when "it was a regime based on communist ideology that decided on the management of the state and the fate of citizens in Czechoslovakia […], criminal, illegitimate, and reprehensible" (§ 2 par. 1 of Act no. 198/1993 Coll., on the Illegality of the

Communist Regime and on Resistance Against It). Restitution regulations in the 1990s already expected that in the future the property relationships between the state and churches and religious communities would be adjusted; however, a long period followed in which no political agreement was reached on the form of the settlement.

94. The Act on Property Settlement filled a decades-long legislative gap consisting of the absence of asset settlement between the state and churches and religious communities, which was declared unconstitutional by the Constitutional Court in 2010 (judgment file no. Pl. ÚS 9/07). By this Act, the state made a commitment to be a trustworthy contractual partner for the entitled churches and religious communities and, under specified conditions, to pay them financial compensation for property confiscated by the totalitarian regime that can no longer be returned in natural form. Besides the main purpose of restitution, financial compensation also has the function of preparing the churches and religious communities for their future economic separation from the state, for which the churches perform a number of tasks, in particular in the field of health care and social services. The ratio of these purposes varies with each individual church and religious society for historical and economic reasons.

95. By adopting § 15 and 16 of the Act on Property Settlement, the legislature declared the conditions under which it is willing to conclude settlement agreements with individual churches and religious communities. The relevant churches and religious communities [with the exception of one – see § 15 par. 2 let. b) of the Act in conjunction with Ministry of Culture Communication no. 55/2013 Coll.] accepted the draft agreement presented by the state, and the government concluded settlement agreements with them. Based on the agreements, it was agreed that the financial compensation in the (inflation adjusted) amount specified in the Act and by the agreement would be paid in thirty annual installments.

96. Through the contested legislation the legislature, in an impermissibly retroactive manner (impermissible false retroactivity), did not decide on taxation, but on the de facto reduction of financial compensation, for the full amount of which churches and religious communities acquired a legal entitlement and legitimate expectation at the moment they concluded settlement agreements. Subsequent reduction of financial compensation for injustices caused by the criminal communist regime is directed against the fundamental principles of a democratic law-based state. The legislature thereby violated the principles of legal certainty, confidence in the law and its foreseeability and the protection of acquired rights, as fundamental principles of a democratic society (art. 1 par. 1 of the Constitution), and the right of the relevant subjects to own property under art. 11 par. 1 of the Charter and art. 1 of the Protocol to the Convention in the sense of protection of the legitimate expectation of increasing it.

97. For all the foregoing reasons the Constitutional Court ruled that in § 18a par. 1 let. f) of the Act on Income Taxes, as amended by Senate Statutory Measure no. 344/2013 Coll. and by Act no. 125/2019 Coll., the words “with the exception of financial compensation” are in conflict with the constitutional order, and therefore it annulled the contested words under § 70 par. 1 of the Act on the Constitutional Court with effect as of the day this judgment is promulgated in

the Collection of Laws. The Constitutional Court dismissed the remaining parts of the petition under § 43 par. 2 let. a) of that Act.

Instruction: Decisions of the Constitutional Court cannot be appealed.

Brno, 1 October 2019

Pavel Rychetský /signed/
Chairman of the Constitutional Court

Dissenting Opinion of Justice Radovan Suchánek to judgment file no. Pl. ÚS 5/19

1. I disagree with verdict I. of the judgment, and therefore also with its reasoning. I am of the opinion that the Constitutional Court should have denied the petition seeking the annulment of the words "with the exception of financial compensation" contained in § 18a par. 1 let. f) of Czech National Council Act no. 586/1992 Coll., on Income Taxes, as amended.

I. Disappointment of Legitimate Expectation by Introduction of Taxation?

2. The tenor of the judgment, on which the annulling verdict is based, is that, "The level of financial compensation, once assigned by statute and by contract, established the legitimate expectation of creditors (the relevant churches and religious communities) that the obligation of the debtor (the state) would be fulfilled in full" (point 79), and "a created legal entitlement to payment of the full financial compensation does not entitle a future legislature to unilaterally decrease it in any manner" (point 83).

3. In view of the scope of review (defined by the proposed verdict in the petition) the initial question, of what was the situation with the legitimacy of the very institution of "flat financial compensation" and its amount, allocated to selected registered churches and religious communities (further referred to only as "churches") in § 15 of the Act on Property Settlement with Churches and Religious Communities (the "APS"), which concluded a settlement agreement under § 16 of that Act, now appears to be moot . Yet, this concerns legislation which, in my opinion, conflicts with a number of provisions of the constitutional order – in this regard I agree with the dissenting opinions of Justices Jaroslav Fenyk, Vojen Güttler, Jan Musil and Pavel Rychetský to the judgment of 29 May 2013 file no. Pl. ÚS 10/13 (no. 177/2013 Coll.).

4. The (then and now) questionable proportionality of the amount of financial compensation leads to the casus belli of the present matter, that is, whether the legislature, guided by that doubt – may revise its original decision, whereby it excluded financial compensation from the income tax base (that is all that is involved here!), in a situation where settlement agreements were concluded between the state (the government) and churches that, according to their text, "de facto implement" the state's legal commitment to pay financial compensation. However, regarding the question of the proportionality of the financial compensation, today's judgment, with reference to part of the reasoning of judgment file no. Pl. ÚS 10/13, only laconically states that it "did not pay closer attention to it," because "it is not relevant for evaluation of the petition and there is no need to return to it" (points 66 and 67). However, one can then hardly find an answer as to whether the legitimate expectation of the relevant churches construed by the judgment also included the impermissibility of possible future introduction of taxation, which is the key question here, and is not at all simple. The question of whether introducing taxation of financial compensation is a violation of the obligation not to thwart the purpose of the settlement agreement is now – evidently – disputed between the parties.

5. Insofar as the judgment (point 71) – in connection with the legitimate expectation of churches – compares taxation of financial compensation to taxation of state support for home

construction savings, and in doing so cites only points 179, 181 and 182 to 184 of the reasoning in judgment file no. Pl. ÚS 53/10, which partly annulled this taxation (if it involved an extraordinary withholding tax affecting participants in home construction savings savings who had an individualized legal entitlement to state support for the year 2010), it completely overlooks the fact that the cited judgment otherwise approved the future reduction of that support ("reduction of the amount of annual deposits of state support, to which an entitlement arises after 31 December 2010, for all contracts about home construction savings, regardless of the date when they were concluded"), because in "a situation of merely relying on the fact that state support would not be changed in the future" such confidence cannot be granted protection from a constitutional viewpoint, and "thus the contested provision is not impermissible false retroactivity" (see the reasoning – part VII./d, points 155 to 161, and similarly part VII./e).

6. In any case, neither the constitutional order, the relevant legislation, nor the settlement agreements concluded on its basis, in any way establish the impermissibility of including financial compensation in the tax base for income tax of legal persons. Nothing about this is changed by the statutory norm (in terms of constitutional law review, merely statutory) cited by the judgment, or by a contractual agreement that the obligation to pay financial compensation cannot be terminated without agreement of the parties in any manner other than by being fulfilled [§ 16 par. 2 let. e) of the APS]. The words "with the exception of financial compensation", contained in § 18a par. 1 let. f) of the Act on Income Taxes, undoubtedly do not cause the termination of this obligation.

7. In terms of the principle of equality, § 15 par. 6 of the APS was undoubtedly problematic. Therefore, I consider it correct that it was annulled by Act no. 125/2019 Coll., and that today's judgment changed nothing about that. Therefore, the petitioners' argument about the existence of a legitimate expectation by the relevant churches of obtaining property in the amount stated in § 15 par. 2 of the APS without it being reduced by income tax is not appropriate, because the petitioners base it not on § 15 par. 2 of the APS, but precisely (only) on application of § 15 par. 6 of the APS which, however, even in the past, could not establish a legitimate expectation that it would be non-changeable or non-annullable.

8. Nothing about this is changed by citing the principle of pacta sunt servanda, which, of course, does not represent any such "highest natural law norm, from which all law is derived" (point 76). In a democratic law-based state established on the inviolability of the natural rights of the human being, the rights of the citizen, and the principle of the sovereignty of the law (preamble and art. 1 of the Charter of Fundamental Rights and Freedoms, art. 1 par. 1 and art. 85 par. 2 of the Constitution of the Czech Republic) a contract is not above the law, let alone above a constitutional law. The judgment completely overlooks the maxim ius publicum privatorum pactis mutari non potest (a public law cannot be changed by agreements between private persons), although a legitimate expectation is an institution of public law. In any case, enough was also said about the doubtful legal nature of settlement agreements in the abovementioned dissenting opinions to judgment file no. Pl. ÚS 10/13. Despite that, the provision annulled by the judgment did not lead to a change or violation of any of these agreements, wherefore it is also not appropriate to refer to the cited private law principle.

9. The legitimate expectations of the relevant churches were and are being met: Obligated persons (§ 4 of the APS) fulfilled their obligations concerning the issuance of certain things to entitled persons (part one, chapter II of the APS), the state concluded settlement agreements (§ 16) and also on an ongoing basis, duly and on time, provides the financial performance specified in the Act (financial compensation and contributions to support activities).

II. Taxation, or Reduction of Flat Financial Compensation?

10. The majority of the plenum views the contested provision of § 18a par. 1 let. f) of the Act on Income Taxes as if it did not involve taxation at all (the judgment even puts the word in quotation marks), when it states that "from a material viewpoint this case does not involve … a tax (it is a tax only formally), but de facto a reduction of financial compensation" (point 70, cf. also point 96). I cannot agree with this either. In fact, the situation is rather the contrary: formally, no new tax is introduced (the tax is already established – it is the income tax), but materially the income (financial compensation), in the form of a financial claim satisfied in installment payments, became subject to tax through the entry into effect of Act no. 125/2019 Coll.. The fact that this is a tax follows not only from the title of the statute, but primarily from the fact that the provision annulled by verdict I. was included in § 18a of the Act on Income Taxes, which bears the title, "Special provisions on the tax base of publicly beneficial taxpayers," and the introduction of par. 1 reads: "For a publicly beneficial taxpayer the following are not subject to tax." The provision of § 18a was inserted into the Act on Income Taxes (already) by Senate Statutory Measure no. 344/2013 Coll., on the Amendment of Tax Laws in Connection with Recodification of Private Law and on the Amendment of Certain Acts (art. I, point 204), that is, within wider amendments in the area of tax law. In this connection, this Senate Statutory Measure annulled § 18 par. 4 of the Act on Income Taxes, whose let. e) [as amended by the APS and Act no. 80/2013 Coll., which amends Act no. 586/1992 Coll., on Income Taxes, as amended by later regulations] stated that for taxpayers set forth in par. 3 (who are not established or organized for the purpose of conducting business) income from payment-free acquisition of real estate and moveable property under the Act on Property Settlement with Churches and Religious Communities are not subject to tax. In any case, the fact that, in adopting Act no. 125/2019 Coll., Parliament was making decisions about taxes, is also testified to by the fact that the guarantee committee for the bill of the Act in the Chamber of Deputies was the Budget Committee.

11. However, the majority of the plenum approached the review of the contested legislation in a considerably contradictory manner: Although the judgment first partly bases its reasoning on the Constitutional Court's case law concerning the imposition of taxes and fees (points 46 to 51), in the end it concludes that taxation is not involved, when there is a de facto reduction of financial compensation (point 96). However much the method of taxation introduced by Act no. 125/2019 Coll. (including financial compensation in the tax base) tempts one to such an argument, it cannot stand, of course, in view of the legislation in the Act on Income Taxes. The Act on Income Taxes assumes that performance that takes the form of compensation of damage (which, cum grano salis, also includes financial compensation of a restitutionary type) can be

subject to income tax, when it exempts certain such compensations from tax. For example, § 4 par. 1 let. d) of the Act on Income Taxes expressly states that accepted compensation for property or non-property detriment is exempt from the income tax of natural persons, but it excludes certain kinds of compensation from that exemption, and those are then subject to tax. With the income tax for legal persons – as the government correctly indicated – the Act on Income Taxes does not even generally state that compensation of damages or other property or non-property detriment is generally exempt from the tax or is not included in the tax base. Performance representing compensation of damages or other detriment thus can be (and in certain cases is), subject to the income tax, and the issue of taxing (or exempting) it is fully in the remit of the legislature.

12. Moreover, today's judgment incorrectly takes out of context two sentences from point 179 of the reasoning of judgment file no. Pl. ÚS 53/10 (building savings), which it cites in point 52 as if they were to prove that an indirect form of reducing state expenses by taxing performance provided out of the state budget is completely impermissible. Let us then remember the full text of that point in point 179 of the reasoning of judgment file no. Pl. ÚS 53/10: "The Constitutional Court does not here in any way question that income provided from the state budget or other public budgets can also be subject to a tax obligation. This is also expected by the Act on Income Taxes, which exempts a number of these incomes from tax [cf., e.g., § 4 par. 1 let. i) or t) of that Act, in the wording in effect]. However, in that case the purpose of taxation differs from the taxation of other incomes, because it does not lead to strengthening the revenue part of the state budget. In essence this is an indirect form of reducing its expenses, or setting their level, because thereby part of the expense remains in the state budget or is returned to it. Such a form has its significance primarily if it is connected to some other purpose (e.g., expressing the equal standing of the state and other subjects in certain legal relationships). It should be used in the context of an overall definition of certain performance from the state budget, so that its resulting amount would reflect the purpose pursued by providing it. If a contribution from the state budget is made for a particular purpose, the amount of tax on that contribution should be set in context with setting the amount of the contribution, because otherwise that contribution might not fulfill the presumed purpose."

13. The legislation annulled by today's judgment in no way contradicts the requirements thus formulated, as the resulting level of taxation (through including financial compensation in the tax base) at the tax rate in effect on income of legal persons in no way thwarts the purpose of financial compensation, which is to "mitigate the consequences of certain property and other injustices" (i.e., not to compensate them all), "settle the property relationships between the state and churches" and thus, as a result, "permit …through the renewal of the property base of churches and religious communities" their "free and independent" position" (preamble of the APS).

14. The plenary majority's refusal to look at the contested legislation through the prism of the methodology for review of tax laws then leads to its misleading view of the annulled tax provision as a part of a restitution regulation (see the extensive deliberations about the nature of restitution legislation in points 43 to 45, 93, 94 and at a number of other places in the

reasoning), even though– as part of the Act on Income Taxes – it is evidently not that at all. Thus, although the plenary majority resorted to citing certain Constitutional Court judgments in the area of taxation (e.g., file no. Pl. ÚS 29/08), in fact it did not continue to consistently hold to this case law. Thus, in my opinion, it would be appropriate to address the contested legislation as a tax agenda for which the Constitutional Court's settled case law has defined limits for constitutional law review exceptionally restrictively: ruling out extreme disproportionality, refusing a further test of legitimacy and rationality, not permitting a tax burden only if it would lead to thwarting the very essence of property or the demise of the taxpayer (known as a suffocating or liquidatory effect), and application of the principle of broad legislative discretion in the selection of measures, i.e. in the choice of the subject, degree, and scope of taxation.

15. Of course, the conclusions from judgment file no. Pl. ÚS 24/07 (overlooked by today's judgment) should also have been applied; there the Constitutional Court posed the question of whether the "taxation of any object" is permissible, which it answered by saying that "if, in legislation, the legislature abandons the traditional conceptual definition of income tax, it would be inconsistent with the constitutional order only if that construction had confiscatory effects, if it was extremely disproportional, or if it was uncertain to an extent that would rule out defining its content by the usual interpretation procedures." As the Constitutional Court then found that "none of these alternatives, establishing grounds for derogation, was met in the given case, in particular in view of the rates of income tax under Act no. 586/1992 Coll.", it denied the petition. It should have done so now as well (see also points 16 to 18 of the dissenting opinion of Justice Vladimír Kůrka to judgment file no. Pl. ÚS 53/10).

16. Thus, I agree with today's judgment that the "tax area" is the "domain" of the state, which can sovereignly impose tax obligations in its discretion (the will of the legislature)", that "in justified cases, taxes need not pursue only a fiscal purpose" (point 71), wherefore "it is up to the Constitutional Court to review only whether tax measures interfere in the constitutionally guaranteed substrate of an owner, whether they can be considered to unjustifiably conflict with the principle of equality, i.e. to be arbitrary" (point 48). Therefore, I consider wholly inappropriate its conclusion that the taxation (reduction) of financial compensation did not pursue any legitimate purpose (point 71). As follows from the foregoing, the evaluation of the legitimacy (of the purpose) of taxation is exclusively a matter for the Parliament, not for the Constitutional Court. Now, however, the plenary majority is abandoning the Constitutional Court's very restrained approach to this question, first declared by the majority itself, and is reviewing the "rational need" for the implementation of taxation of financial compensation, "in terms of the purpose of the collection of taxes and their importance for the state budget," and, in the "unchanged economic situation of the country" it requires "the presentation of strong proof" for them (point 81). As we see, in the end the plenary majority is acting like an arbiter of what and under what conditions Parliament may or may not make subject to tax, whereby it steps fully onto the field of purely political deliberation, which is reserved to the legislature. The tax burden is precisely one of the political questions the solution of which flows from social consensus, preferences, the values and the mentality of the population, traditions, and so on (e.g., judgments file no. Pl. ÚS 18/15 and Pl. ÚS 32/15).

17. Nor can I agree with the plenary majority's opinion that taxing financial compensation involved "an unjustified penalization of churches and religious communities … whose ultimate consequence may be to endanger their activity and thereby interfere in the religious freedom guaranteed by articles 15 par. 1 and 16 par. 1 of the Charter" (point 71). Here the judgment cites the statements of a deputy, one of the sponsors of the bill, during debate in the Chamber of Deputies. Apparently these of his words were a "thorn in the eye" for the majority of the plenum of the Constitutional Court: "This bill is also a reaction to the behavior of the churches after adoption of this Act, who receive financial compensation for unreturned property, that is, property which, at the time the Act was adopted, was held by municipalities, regions, or other natural and legal persons, but at the same time file complaints seeking the determination of the owner of that property, and, in the event that it came back to the state, they ask for its physical return, so that in the end they would both have the physical property and have received financial compensation for it." In my opinion, this is, of course, a completely acceptable statement, which not only says nothing about the will of the legislature to somehow punish the churches, but quite precisely describes the reality faced on a daily basis by a number of municipalities, regions, private persons, and finally also the general courts and the Constitutional Court (which can be confirmed, e.g. by the publicly available last Report on the Progress of Returning Property under the Act on Property Settlement with Churches and Religious Communities, prepared by the former government committee established for the effects of this Act, attached to which is a report on the state of court proceedings conducted under the same Act; there one finds that hundreds of proceedings were opened before the courts on the basis of complaints filed by churches or entities established by them, not only against the state (the obligated person under § 4 of the APS), but frequently also against municipalities and regions, and against other persons). It is unfortunate that during its deliberations the plenary majority did not remember that the settlement agreements also include "an express agreement that by concluding the settlement agreement all claims of the relevant churches and religious communities for the original property of registered churches and religious communities, which, during the decisive period became the object of a property injustice as a result of one of the facts set forth in § 5, which is not returned under this Act, are settled, with the provision that return of things under this Act is not affected by this agreement" [§ 16 par. 2 let. a) of the APS]. The majority of the plenum thus also unwittingly denied the legal opinion it cites, in the judgment of 29 January 2019 file no. III. ÚS 3397/17 (point 73), that "a claim for financial compensation for unreturned historically-owned property cannot stand simultaneously beside a claim for natural restitution, nota bene of something that was not the object of a specific legitimate expectation" (see point 37 of the reasoning).

18. The majority of plenum can hardly seriously mean (see above, the citation in point 71 of the judgment), that the activity of the relevant churches and thereby also the freedom of religion and freedom to express one's religion or faith alone or together with others could be endangered by the taxation of financial compensation at a standard 19% tax rate on the income of legal persons, or, precisely stated, by inclusion of that income in the tax base. The rate is applied to the taxpayer's complete tax base, i.e. it also applies to potential losses from its other activities, or losses from past tax periods; if the taxpayer were in a difficult economic situation, the increase of its tax basis from one activity would be partly or fully compensated by the negative

result from another activity – the result, with a such a taxpayer, would then be that de facto taxation does not occur at all. Moreover, in the context of other significant performance (natural restitution and an untaxed contribution to support activity), which the relevant churches receive under the Act on Property Settlement with Churches and Religious Communities, one cannot but agree with the government's opinion that such taxation is undoubtedly not capable of "thwarting the very essence of property" or of "destroying the property foundations" of a taxpayer, that is, situations that the Constitutional Court defined as impermissible in the area of taxation (e.g., judgment file no. Pl. ÚS 3/02). In any case, after thirty years of the existence of a democratic society, and after virtually seven years of the cited Act being in effect, the relevant churches should be able to satisfy the needs for their activities primarily from those who join them.

19. Of course, I agree with the fact that the judgment left in effect Act no. 125/2019 Coll., article I of which led to annulment of § 15 par. 6 of the APS (in contrast to the contribution for support of activities of the relevant churches and religious communities under § 17 of the APS, par. 5 of which remained unaffected by the amendment). As a result, as of 1 January 2020, the legislature can again decide whether it will again subject financial compensation to tax, or a fee or other similar financial performance. However, the apex of the confused reasoning in today's judgment is the assessment of the effects of § 15 par. 6 of the APS (annulled by the Act). On one hand, the judgment states that "its importance, together with other safeguards … lies in the declaration that the state is prepared to fulfill its commitments at the agreed level" and on the other hand it then immediately accords it a "purely psychological effect" (sic!), which is not sufficient for its absence to be considered an "unconstitutional situation" (point 90). If the plenary majority, instead of fantasizing about the psychological effects of § 15 par. 6 of the APS, focused on analysis of the positive legislation, it might discover that it is precisely on the basis of this provision, in conjunction with the then-valid § 18 par. 4 let. e) of the Act on Income Taxes, that financial compensation was removed from taxation starting with its first installment, that is from 2013 (§ 15 par. 4 and § 26 of the APS), while § 18a was inserted into the Act on Income Taxes with effect only as of 1 January 2014 (art. LXV of Senate Statutory Measure no. 344/2014 Coll.).

III. Is There Impermissible Retroactivity?

20. I also disagree with the judgment's conclusion that in the case of the annulled provision the legislature "acted arbitrarily, whereby it also violated the prohibition of retroactivity" (point 74), that it decided "in an impermissibly retroactive manner (impermissible false retroactivity)" (point 96, see point 41). I also believe that Act no. 125/2019 Coll. is based on false retroactivity, which is of course fundamentally permissible, because the Act changes the taxation regime arising from a legal relationship established before the day the Act went into effect, but does not change the legal relationship itself, nor does it apply to the already paid parts of the performance (installment payments of financial compensation for years before the day the Act went into effect). Such a procedure is generally permissible, or in the tax field completely routine, when newly introduced legislation is applied to rights and obligations for a tax period that begins after the legislation goes into effect, that is, regardless of when the legal relationship

that provides income that results in a tax obligation was established. Act no. 125/2019 Coll. (i.e., including the provision annulled by the judgment) by subjecting to tax a performance that taxpayers receive after it went into effect, does not deviate from this practice.

21. It is understandable that the petitions from the groups of senators and deputies submitted to the Constitutional Court do not mention the arguments that were made in support of the bill (adopted as Act no. 125/2019 Coll.) during debate in the chambers of Parliament. The Constitutional Court judgment should have considered them all the more carefully when reviewing the question of whether the legislature acted arbitrarily. Discussion of the bill was quite extensive in both chambers, a number of deputies and senators made statements in the debate (their parliamentary speeches make up several hundred pages of text), and the Constitutional Law Committee of the Chamber of Deputies requested legal evaluations of the issue from the Law School of Charles University in Prague, The Law School of Masaryk University in Brno, the Institute of State and Law of the Academy of Sciences of the Cech Republic, and the Government Legislative Council (see its resolution from the 13th meeting of 28 March 2018, no. 32). However, we find none of this in the judgment. Unlike the majority of the plenum, I am of the opinion that the petitioners did not present any proof supporting the alleged arbitrariness of the legislature, and certainly not with the result of adopting an impermissibly retroactive statute.

IV. Where Is the Inequality between Addressees of Tax Norms?

22. The majority of the plenum asserts that the annulled provision "establishes an unjustified inequality between the addresses of tax norms – in several aspects at once" (point 80). However, in those aspects where the majority finds it, there is in fact no impermissible inequality. Primarily, it is not true that "no other property restitutions or compensations of detriment are subject to tax" (point 81), as I already demonstrated above.

23. Insofar as the judgment then concludes that the provision it annulled violated equality between individual groups of restituents, as "the decisive indicator is all the recipients of restitution performance from the state, regardless of which restitution regulation created their entitlement" (point 82), then one cannot but state that, on the contrary, no group of restiuents received such generous satisfaction of their claims (as regards the scope of the returned property and the amount of compensation for the unreturned property) as was provided by the legislature in the case of the Act on Property Settlement with Churches and Religious Communities. As Justice Vojen Güttler fittingly stated in his dissenting opinion to judgment file no. Pl. ÚS 10/13: "It is evident … that the Act is very accommodating to church subjects in comparison with previous restituents. This is not fully in accordance with the principle of a lay, religiously neutral state (believers v. atheists), as follows from, among other things, art. 2 par. 1 of the Charter." I also refer to part II. of the dissenting opinion of Justice Jan Musil to the same judgment, in which he documented in detail which aspects provide advantages to churches vis-à-vis other subjects that were subject to earlier restitution legislation (in particular point 17.). Including financial compensation in the tax basis of the relevant churches would at least mitigate this inequality.

24. The claim that "the contested provision creates an unjustified difference in the position of churches and religious communities in whose case restitution in natural form prevailed, compared to others that were largely left to financial compensation" (point 82) does not prove an impermissible unequal treatment. That difference has, of course, existed since the beginning, even without including financial compensation in the tax base of any church.

25. It is similar with the claim that there is an "unsubstantiated difference as regards the 'taxation' of individual forms of restitution performance, i.e. the natural return of a thing and financial compensation" (point 82). Here the judgment takes as its starting point the fact that financial compensation "is applied only in situations where the confiscated property cannot be returned in its original form for various reasons, but there is no reason to treat it differently", but then immediately denies itself, when it recognizes that "besides the main purpose of restitution, financial compensation also has the function of preparing churches for their future separation from the state" (point 94, also 83-85).

V. In Conclusion:

26. "Then the Pharisees went and plotted how they might entangle Him in His talk. And they sent to Him their disciples with the Herodians, saying, 'Teacher, we know that You are true, and teach the way of God in truth; nor do You care about anyone, for You do not regard the person of men. Tell us, therefore, what do You think? Is it lawful to pay taxes to Caesar, or not?' But Jesus perceived their wickedness, and said, 'Why do you test Me, you hypocrites? Show Me the tax money.' So they brought Him a denarius. And He said to them, 'Whose image and inscription is this?' They said to Him, 'Caesar's.' And He said to them, 'Render therefore to Caesar the things that are Caesar's, and to God the things that are God's.' When they had heard these words, they marveled, and left Him and went their way." (Bible, New Testament, Matthew 22:15-22; cf. also Mark 12:13-17 and Luke 20:20-26).

"Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honor to whom honor." (Bible, New Testament, Romans 13:7).

"This step would really have an international effect. We would have to take steps that I dislike." (Archbishop of Prague, Cardinal Dominik Duka, O. P., after a meeting of the 114th plenary session of the Czech Bishops' Conference – https://ct24.ceskatelevize.cz/domaci/2531506-duka-varuje-pred-zdanenim-restituci-museli-bychom-pristoupit-ke-krokum-ktere-se-mi; 7 July 2018).

Brno 1 October 2019

Radovan Suchánek

Dissenting Opinion of Justice Josef Fiala to the judgment in the matter file no. Pl. ÚS 5/19

Under § 14 of Act no. 182/1993 Coll., on the Constitutional Court, I file a dissenting opinion to verdict I. of the Constitutional Court judgment in the matter file no. Pl. ÚS 5/19. I do not agree with this verdict, or with its reasoning, and I agree with the detailed arguments formulated in the dissenting opinion by Justice Radovan Suchánek. Therefore, I merely summarize, that the judgment does not sufficiently distinguish between financial compensation for allegedly unsettled restitutions and financial compensation connected with separation, and I add that the legitimate expectation on which the reasoning of the judgment is based cannot arise from illegitimate, even though legal, restitution. I consider legally defective those parts of the reasoning that asses the allegedly retroactive effects of the contested legislation (cf. judgment file no. Pl. ÚS 6/17).

For those reasons, I am of the opinion that the Constitutional Court should have denied the petition seeking the annulment of the words "with the exception of financial compensation" contained in § 18a par. 1 let. f) of Act no. 586/1992 Coll., as amended by Senate Statutory Measure no. 344/2013 Coll. and Act no. 125/2019 Coll..

Brno 1 October 2019

Josef Fiala