Pl. ÚS 10/13 of 29 May 2013
"Church Restitution II"

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE REPUBLIC

HEADNOTES

With effect as of 8 February 1991, the Charter of Fundamental Rights and Freedoms, in a breakthrough, guaranteed religious freedom at the level of constitutional law, and Art. 16 para. 2 recognized internal autonomy for churches.

In terms of the aim of the legislative framework, the Constitutional court has repeatedly found the mitigation of property crimes to be constitutionally desirable and interpreted it extensively to the benefit of entitled persons. If another aim is the settlement of property relationships between the state and churches, this is fulfillment of requirements arising from Art. 1 of the Constitution, Art. 11 para. 1 and 4 of the Charter. If it is also an aim of the regulation to set (future) economic relations between the state and churches so as to create the prerequisite of full religious freedom and the independence of churches and religious societies from the state through renewal of their property base, this is a form of fulfillment of the requirement arising primarily from Art. 16 para. 1 and 2 of the Charter.

Reviewing the possible conflict of the Act with Art. 2 para. 1 of the Charter has three related components. Because this involves objective constitutional guarantees, not violation of subjective fundamental rights, the test is different from the proportionality test:

- **The prohibition on the state identifying itself (positively or negatively) with a particular world view or religious doctrine, which would lead to abandoning the democratic legitimacy of state power.**

- **The prohibition of such exercise of state power, intervening negatively or positively in religious or world view questions (denominational neutrality), as would lead to excessive connection of the state with any religious or world view movement or with any church or religious society.**

- **The prohibition of such exercise of state power as would establish an unjustified equality based exclusively on the criterion of religion or world view.**

VERDICT

On 29 May, 2013, the Plenum of the Constitutional Court, consisting of the Chairman of the Court, Pavel Rychetský and Judges Stanislav Balík (judge rapporteur), Jaroslav Fenyk, Jan Filip, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jan Musil, Jiří Nykodým, Milada Tomková, Miloslav Výborný and Michaela Židlická ruled, under file no. Pl. ÚS 10/13, on a petition from a group of 18 senators of the Parliament of the Czech Republic seeking the annulment of Act no. 428/2012 Coll., on Property Settlement with Churches and Religious Societies and on Amendment of Certain Acts (the Act on Property Settlement with Churches and Religious Societies), or part thereof, 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, the Government of the Czech Republic, a group of 47 deputies of the Parliament of the Czech Republic, and a group of 45 deputies of the Parliament of the Czech Republic, as secondary parties to the proceeding, as follows:

I. The word "fair" in § 5 let. i) of Act no. 428/2012 Coll., on Property Settlement with Churches and Religious Societies and on Amendment of Certain Acts (the Act on Property Settlement with Churches and Religious Societies), is annulled as of the day this judgment is promulgated in the Collection of Laws.

II. The part of the petition directed against § 19 to 25 of Act no. 428/2012 Coll., on Property Settlement with Churches and Religious Societies and on Amendment of Certain Acts (the Act on Property Settlement with Churches and Religious Societies), is denied.

III. The remainder of the petition is dismissed.

REASONING

Review of Competence and the Legislative Process

75. The first group of objections raised by the group of 18 senators and the group of 45 deputies claims a failure to observe the constitutionally prescribed process for adoption of the contested Act. This concerns primarily the objection that the Act was adopted in conflict with the Rules of Procedure of the Chamber of Deputies as a result of it not being discussed at the first possible meeting after it was returned by the Senate, and the objection of systematic violation of the rights of opposition deputies during the entire legislative process.

78. The Constitutional Court states that the deadline set by the words "at the next meeting, but no earlier than in ten days" has no substantive or time connection with the actual decision making process of the Chamber of Deputies, and is an instruction of a technical nature, directed only to the Chairman of the Chamber of Deputies, that administratively governs the connection between the completed legislative process in the Senate, which denied the bill by a resolution, and the repeated vote in the Chamber of Deputies. Apart from the attempt to deal with administrative delays (the "next meeting") it also contains a time limit ("but no earlier than in ten days"), which should provide the deputies sufficient time to acquaint themselves with the course of the legislative process in the Senate and the reasons for denying the bill. Therefore, the expiration of the deadline under § 97 para. 3 of the Rules of Procedure of the Chamber of Deputies, or fulfillment of the obligation of the chairman of the Chamber of Deputies by that deadline, has no influence on the decision making process of the Chamber of Deputies; above all, this is not a lapse period for substantive voting directed to the Chamber of Deputies. The provision, § 97 para. 3 of the Rules of Procedure of the Chamber of Deputies, is fulfilled when the Chairman of the Chamber of Deputies presents the returned bill, and further questions of time or substance connected to the vote shift to the sphere of the Chamber of Deputies (as a whole).

83. The Constitutional Court also considers groundless the parties' objections regarding systematic violation of the rights of opposition deputies. The Constitutional Court previously considered the constitutionality of the legislative process in terms of possible violation of the rights of members of the opposition, primarily in its judgment of 1 March 2011, file no. Pl. ÚS 55/10 (N 27/60 SbNU 279; 80/2011 Coll.) and its judgment of 27 November 2012, file no. Pl. ÚS 1/12 (437/2012 Coll.). As regards the present petition, the Constitutional Court states that it did not find any violation of the binding conclusions of these judgments in the legislative process by which Act no. 428/2012 Coll. was adopted.

87. In the Constitutional Court's opinion, the general shortening of speaking time for individual deputies was done in accordance with § 59 para. 1 of the Rules of Procedure of the Chamber of

Deputies, and in the particular case of Deputy Babák in accordance with § 59 para. 4 of the Rules of Procedure of the Chamber of Deputies; in none of the cases did the Constitutional Court find that the limits set by the Constitution of the Charter were exceeded. The Constitutional Court reviewed part of the record of the relevant meeting of the Chamber of Deputies (available at http://www.psp.cz/eknih/2010ps/stenprot/041schuz/s041125.htm), and concluded that the Chairwoman of the Chamber of Deputies, when denying Deputy Babák the floor, did not violate any provision of the Rules of Procedure of the Chamber of Deputies, all the less so any provision of the constitutional order. The limitation on speaking established in § 59 para. 4 of the Rules of Procedure of the Chamber of Deputies applies to all deputies (or speakers), including in the position of a deputy presenting the position of his parliamentary group. The privilege of a deputy presenting the position of his group cannot, by the nature of the legislative process, apply to non-material speeches, because even a parliamentary group does not have the right to abuse the opportunity to demonstrate its position in public "on the matter" (see § 59 para. 1 second sentence a contrario). We also cannot leave without comment the fact that Deputy Babák was advised several times by the chairwoman that his speech was non-material, and yet he was not willing to depart from the direction of his original speech. We can conclude that the cited limitations were appropriate also based on the advanced stage and length of the legislative process, which clearly testify to the fact that the opponents of the contested Act had sufficient time and means to demonstrate their opinions, because that same day a large number of deputies from opposition parties spoke about the bill.

88. The Constitutional Court also does not agree with the objection that holding the meeting of the Chamber of Deputies in the night hours was impermissible, and agrees with the interpretation of § 53 of the Rules of Procedure of the Chamber of Deputies, as outlined by the Chamber of Deputies in its statement. Thus, the Constitutional Court considers constitutional the interpretation of that provision which gives the Chamber of Deputies, in an extraordinary situation, the ability to meet and vote even after 9 p.m., because a contrary interpretation, restricting the right of the Chamber of Deputies, does not arise from any provision of the constitutional order. The ability of government deputies to grant themselves and opposition representatives sufficient rest is, in principle, only a question of the political culture in the Czech Republic. As the Chamber of Deputies emphasizes in its statement, this procedure was practiced several times in the past and no objections were raised against it. In the Constitutional Court's opinion, this can be described as a constitutional, settled practice, which can be considered a legitimate component of the rules of the legislative process.

89. The Constitutional Court also cannot agree with the objection that the Act was intentionally adopted during a recess, when the opposition deputies were already outside the meeting room.

91. The Constitutional Court also cannot agree with the secondary party's objection that the deputies who voted to approve the contested Act deprived the citizens of the Czech Republic of their right to participate directly in the administration of public affairs through a referendum.

92. Thus, the Constitutional Court did not annul the contested Act on the grounds of violation of the rules of the legislative process, because it did not find that this process, as a whole, failed to allow rational discourse, a hearing of the various parties, and open discussion between those with opposing opinions, including minority opinions, supported by an opportunity for active participation by the participants during the process (cf. Constitutional Court judgment of 1 March 2011, file no. Pl. ÚS 55/10). As regards the other objections, the Constitutional Court emphasizes that it is not authorized to review the constitutionality of such aspects of the legislative process as the interest of the media (include the public media) in the opinions of opposition leaders, promises between the leaders of the (former) government coalition, the government's interpretation of the Constitutional Court's case law, or the government's willingness to respond to questions from opposition deputies. All of these are primarily issues of the political culture in the Czech Republic, which it is not the Constitutional Court's role to protect (Art. 83 of the Constitution a contrario). However much the Constitutional Court may condemn the moral shabbiness of the background to the legislative process, caused by both of the adversarial groups of deputies, it cannot, unless it is to transform from being an expert body for the protection of constitutionality to being a moral arbiter and educator of political representatives,

annul the contested Act purely on the grounds of the disrespect shown by one group of legislators to the others.

Review of the Constitutional Court's Case Law on the Issue

The Constitutional Court's Case Law in Restitution Matters

96. In its case law, the Constitutional Court has repeatedly pointed out that restitution legislation is aimed at mitigating only certain property crimes, and that, even with the best intentions, the legislature's intent cannot be the removal of all crimes committed by the illegal communist regime. The Constitutional Court emphasizes the will of the legislature in the sense that is it up to the legislature to determine the crimes whose consequences it will mitigate.

97. It cannot be overlooked in the Constitutional Court's existing, consistent case law in restitution matters, that, as a negative legislature in terms of the abovementioned favoris restitutionis, as a negative legislature it never annulled a provision of a restitution regulation to the detriment of natural and legal persons for whom the legislature, by a statute, enabled the mitigation of crimes committed against them. Thus, the Constitutional Court's case law annulling statutes was always fundamentally to the benefit of persons to whom restitution was made (permanent residence, national cultural monuments).

98. In its case law the Constitutional Court has never acceded to arguments based on the idea that one restituent should not receive restitution because another person was not included by the legislature among those for whom it did not mitigate property or other crimes.

99. The Constitutional Court also repeatedly ruled in matters of church restitution. From the case law cited below it is evident that it emphasized legitimate expectations and pointed out the legislature's inactivity.

100. It is not the Constitutional Court's role to adjudicate a dispute on the meaning of Czech history, and the petitioners have presented a segment of those arguments.

101. The Constitutional Court, like the ordinary courts, is not only a place of adjudication for deciding matters in which the parties do not agree, but also a court whose activities should lead to preventing disputes and finding peaceful solutions. The adjudicated matter concerns the relationship between the state and churches, that is, an issue that was, is, and will be an inseparable part of the history of Czech statehood. The Constitutional Court believes that application of the principle of minimizing interference, which leads it to deny the petition, opens space for strengthening the consensus reached between the state and the churches more than would be the case if, through its activism, it reopened the problem of seeking a solution.

The Case Law in Matters of Church Entities' Property Claims

102. No later than 2005 the Constitutional Court began to create a distinctive line of case law precisely on the issue of the property claims of church legal entities, exercised under general regulations (complaints for ownership determination). The development of this case law was basically marked by two competing approaches which differed in terms of the degree of possibility on the part of the judicial power to interfere with comprehensive and complex social and political issues, when the locus of responsibility for adoption of a legal arrangement is vested primarily in the legislature.

103. The opinion according to which the interim condition consisting merely of adopting Act no. 298/1990 Coll. on Arrangement of Some Property Relationships of Monastic Orders and Congregations and the Archbishopric of Olomouc, as amended by Act no. 338/1991 Coll. (hereinafter referred to only as "Act no. 298/1990 Coll."), and the contested provisions of § 29 of the Act on Land,

and at the same time under the condition of the continued absence of an act on the historic property of churches (i.e. inactivity on the part of the legislature) is not an obstacle to concurrent protection of property claims from church entities, covered by the "enumerative" Act no. 298/1990 Coll., before the ordinary courts, was superseded. A competitive opinion dominated, that is one which emphasized the primary obligation of the legislature to regulate the issue known as "church restitutions" and considered the interference by the judicial power (protection of individual claims) prior to adopting a special act to be improper judicial activism [Judgment file No. II. ÚS 528/02, dated 2 February 2005 (N 23/36 SbNU 287); an opinion of the Plenum dated 1 November 2005, file No. Pl. ÚS-st. 22/05; resolution dated 19 January 2006, file no. II. ÚS 687/04 (not published in the Collection of Judgments and Rulings /SbNU/) and a number of subsequent decisions].

105. Based on the cited case law foundation, judgment file no. Pl. ÚS 9/07 of 1 July 2010 (N 132/58 SbNU 3; 242/2010 Coll.), was adopted, which dismissed a petition to annul § 29 of Act no. 229/1991 Coll., but which stated, in particular, that "[l]ong-term inactivity on the part of the Parliament of the Czech Republic consisting in non-adoption of a special legal regulation that would settle historic property of churches and religious communities is unconstitutional and violates Art. 1 of the Constitution of the Czech Republic, Art. 11 para. 1 and 4, Art. 15 para. 1, and Art. 16 para. 1 and 2 of the Charter of Fundamental Rights and Basic Freedoms, and Art. 1 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms." In that judgment the Constitutional Court, above all, due to the lack of a relevant statute, identified an unconstitutional gap in the law, because on which the cited provisions of the constitutional order are violated. The Constitutional Court speaks of unconstitutional activity in such a sense that, on the part of the legislature, there must be an obligation to legally regulate a certain area of legal relationships, and this obligation may result either from ordinary law, where the legislature has explicitly imposed such an obligation on itself, or directly from the constitutional order, when non-regulation of a certain area of relationships leads to consequences in terms of constitutional law. In the matter file no. Pl. ÚS 9/07, the Constitutional Court found violation of the constitutional order in three levels. 1. As of the day of the Constitutional Court's decision, the pressure of public interest in removing legal uncertainty resulting from the provisional legal condition (Act No. 298/1990 Coll. in connection with § 29 of Act no. 229/1991 Coll.) has exceeded the tolerable and justifiable limit. Non-adoption of a special act, anticipated by § 29 of Act no. 229/1991 Coll., to which the legislature has explicitly bound itself, for a period of nineteen years, in spite of the legislature being admonished by the Constitutional Court for the problematic nature of its inactivity, is a sign of impermissible legislative arbitrariness, and violates Art. 1 para. 1 of the Constitution. 2. The Constitutional Court stated that in addition to the explicit statutory basis contained in the provision of § 29 of Act no. 229/1991 Coll., the legitimate expectation of churches and religious communities is also based on the general concept of the restitution process in place after 1989, which, either in the individual restitution provisions, or as a whole, cannot be interpreted to the detriment of entire groups of entities. What the Constitutional Court in its case law describes as legitimate expectation is undoubtedly a continuing and specific property interest falling under Art. 11 of the Charter and Art. 1 of the Protocol to the Convention. The impossibility of realizing such a property interest (obtaining compensation) during a period of nineteen years (up to the day of the Court's decision) thus, fulfils the aspect of unconstitutionality, consisting of an omission to legislatively deal with a systemic and comprehensive problem of which the legislature has repeatedly been reminded by the Constitutional Court. 3. Finally, Art. 2 para. 1 of the Charter guarantees the plurality of religions and religious tolerance, that is, separation of the state from specific religious denominations (the principle of a state which is denominationally neutral). The principle of plurality of religions and tolerance is expressed in Art. 15 para. 1 and in Art. 16 of the Charter of Fundamental Rights and Freedoms. The central principle of the state being denominationally neutral is implemented through the co-operative model of the relationship between the state and churches and their mutual independence. What was fundamental for the Constitutional Court's deliberations was whether and to what degree economic self-sufficiency is a material precondition for the independent exercise of rights guaranteed particularly by Art. 16 para. 1 and 2 of the Charter. The constitutional order of the Czech Republic does not contain merely an imperative for independence of the state of churches and religious communities (as part of the ideological and religious neutrality of the state), but also a requirement that churches and religious communities be independent of the state when carrying out

their objectives. The Constitutional Court stated that the then-continuing situation, given the absence of reasonable settlement of historical church property, where the state, as a result of its own inactivity, continues to be the dominant source of income of the relevant churches and religious societies, and, moreover, without an obvious connection to the revenues from the historical property of the churches that it retains, thus violates Art. 16 para. 1 of the Charter as regards freedom to express one's faith in society through public functioning and traditional forms of religiously motivated publicly beneficial activities, using historically formed economic sources, in particular Art. 16 para. 2 of the Charter, in the economic component of church autonomy. For details, the Constitutional Court refers to the cited judgment.

106. Later case law in particular cases was then based on the conclusions in the plenary judgment file no. Pl. ÚS 9/07. In judgment file no. I. ÚS 2166/10 of 22 February 2011 (N 21/60 SbNU 215) the Constitutional Court broke through the blocking provision (§ 29 of the Act on Land) to the benefit of a natural person, granted that person's constitutional complaint, and thus made possible the transfer (passage) of the ownership right to "another person" under the blocking provision. It found that the natural person had a constitutionally protected interest arising from the previous defective privatization process, and in this particular case it was necessary to give priority to the complainant's rights over the ownership rights of the state and the legitimate expectations of the church, regarding which the Constitutional Court emphasized that "the legitimate expectation of the church … can also be fulfilled through other means," i.e. not only restitution in kind. Judgment file no. II. ÚS 2326/07 of 31 March 2011 (N 58/60 SbNU 745), which also directly followed on from judgment file no. Pl. ÚS 9/07, denied a complaint from religious legal entities with the additional statement that "the cited judgment, file no. Pl. ÚS 9/07 made substantively precise the nature of the legislature's obligation to adopt the statute anticipated by § 29 of the Act on Land, in the form of an additive verdict in the judgment. In these new conditions, we can consider an appropriate time for the adoption of the legislative framework in question to be only a period that corresponds to the demands of a full legislative process." Other judgments followed that granted the constitutional complaints of church entities. Judgment file no. III. ÚS 3207/10 of 31 August 2011 (N 146/62 SbNU 263) granted the complaint of a religious legal entity because the courts had violated the right to a fair trial if they refused to rule on its complaint for determination of ownership of property confiscated in 1949 (on the basis of double ownership). Judgment file no. I. ÚS 562/09 of 31 August 2011 (N 145/62 SbNU 245) also granted the constitutional complaint of religious legal entities and the Constitutional Court stated in more detail that "more than 20 years have passed since the adoption of § 29 of the Act on Land (the "blocking" provision) … The period defined by judgment file no. II. ÚS 2326/07 …, corresponding to a 'full legislative process' can also be considered to have been exceeded … In this regard we must emphasize again that under Art. 89 para. 2 of the Constitution enforceable decisions of the Constitutional Court are binding on all bodies and persons. Parliament is not a sovereign entity that has discretion to determine its agenda and thus serves only its aims, but is bound by the Constitution, that is, it may use its competence only to fulfill the Constitution, not for the opposite." In that situation the courts are required to understand a complaint from religious legal entities as "a complaint sui generis (similar to a restitution complaint) whose aim is to fill the gap arising from the long-term inactivity of the legislature in conflict with Art. 1 of the Constitution of the Czech Republic, Art. 11 para. 1 and 4, Art. 15 para. 1 and Art. 16 para. 1 and 2 of the Charter of Fundamental Rights and Freedoms and Art. 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, in a procedure corresponding to the purpose of mitigating crimes after 1989." In a case of protecting fundamental rights, the courts have a duty to rule on complaints according to general legal principles, so as to bridge the unconstitutional absence of a statute, and, in contrast, may not refuse to decide on fundamental rights with reference to the non-existence of a statute.

107. Lastly the Constitutional Court, in judgment file no. II. ÚS 3120/10 of 29 August 2012, granted the constitutional complaint of religious legal entities in a matter of claims relating to historical church property; the Constitutional Court emphasized that, as in constitutional complaint file no. I. ÚS 562/09, it was in a different situation than it had been at the time of issuing judgment file no. II. ÚS 528/02. A fundamental role is played here by the passage of time. The legitimate expectations on the part of church legal entities has long since reached its "age of majority." The legislature, although it

had been repeatedly advised by the Constitutional Court of its obligation to fulfill the commitment imposed by § 29 of the Act on Land, and thereby fulfill those legitimate expectations, had not yet met its obligation. The Constitutional Court also stated that it was aware that the Parliament of the Czech Republic was presently discussion a bill of the Act on Property Settlement with Churches and Religious Legal Entities and that the legislative process was in an advanced stage. However, because of the urgency, the Court made a substantive judgment. For the Constitutional Court to proceed otherwise could lead to further prolonging the temporarily unconstitutional legal state of affairs.

Substantive Review of the Contested Act

Clarification of Terms

111. Insofar as the petitioners and secondary parties consider a key element of their arguments to be the period legalistic, juristic, or doctrinaire definition of "church assets," they overlook the fact that Act no. 428/2012 Coll. does not apply on the material side to the former "church assets"; on the contrary, in § 2 let. a) it sets forth its own definition of the term "original property," which represents, as will be set forth later, a different set of property than "church assets," one that is in a disputed scope, smaller; in particular, it does not include property originally owned by the state or other parties (in terms of definitions, the group of obligated persons is another question), which the petitioners primarily criticize about Act no. 428/2012 Coll..

The Nature of Catholic Church Property in Private Law

112. The petitioners present the thesis that the churches and religious societies did not own the original property, or that there is "a change in the nature of the ownership," and claim that the churches and religious societies were not "full owners." Secondary party 1), after a detailed analysis of the legislative framework in effect until 31 October 1949 and part of the period case law, concludes that church property was of a "public law nature," or was not owned by the churches and religious societies; it refers to two articles by Antonín Hobza and a statement from the Office of the President from 1946, which it considers to be "accurate." Secondary party 2) indicates that the churches and religious societies had the status of a "detentor" [holder], apparently also at the beginning of the decisive period.

120. In Czechoslovakia, similarly to Austria and Hungary previously, based on so-called "institution" theory (discussed below), subjects having property rights were considered to be individual church entities, but not the entire church; the church, as a whole, has no ownership rights here, and therefore cannot dispose of any part of "church property" as its own thing. The Catholic Church as a whole was not a subject of law at all in Czechoslovakia.

123. Secondary party 1) and partly also the petitioners conclude that it is impossible (unconstitutional) to renew the ownership rights of church entities without taking into account the fact that the law of the time undoubtedly did not contain amortization laws, as a familiar institution in law restricting the possibility of acquiring ownership to the disadvantage of a church subject, and rely in terms of arguments only on the existence of a public law protective and supervisory framework, which (on the contrary) made it more difficult for a church subject to dispose of and burden things it already owned. This interpretation is evidently quite contrary to the law of the time, and thus, in terms of possible renewal of ownership rights, through restrictions on disposition has effects as fundamental as the amortization laws could have had; that is, in both cases there would be no ownership right that could be renewed.

The Nature of Catholic Church Property in Terms of Public Law

126. Depending on the amount of the transaction being considered, state consent was required to dispose of or burden church property; the specific parameters and procedures for reviewing the question are not important now.

127. Neither period doctrine nor case law supports the conclusion by the petitioners and secondary parties that there was a conceptual absence of ownership rights, or, on the contrary, that a special "public ownership" existed.

128. The (public law) interpretation at the time of the term "church assets" also included things that were not the property of church entities, but were only dedicated to church purposes; it is precisely this dedication, i.e. designation of purpose, that shows the intensity of public law regulation. In this spirit, the First Republic Supreme Administrative Court consistently distinguished the level of legal relationships involved in cases involving disputes about church assets: primarily, it did not adjudicate property disputes, because under § 38 of Act no. 50/1874 Coll. of Empire Laws, (civil) courts were competent to decide disputes that were essentially private law disputes, but where disposition of things dedicated to church purposes (bells, chapels, etc.), public law restricted the current owner, even if it was a non-church subject, and administrative bodies were competent to handle such cases concerning disposition [of things] (as a random example, the judgment of the Cisleithanian Administrative Court of 19 March 1891, Budw. XV 5839; Judgments of the Administrative Court, Bohuslav Collection. A 1661/22, 2865/23, 2866/23, 3140/24, 3448/27, 4231/24, 6491/27, 7096/28, 7998/29, and others). Therefore, logically one cannot conclude that if the case law of the Supreme Administrative Court generally contains situations of conflict between the public authorization of a church entity with the ownership rights of another subject, one can also conclude that the church entities also had a non-ownership relationship to other property. The cited case law of the Supreme Administrative Court is complemented by the case law of the Supreme Court, (e.g., Vážný 1461, cited above). It must be emphasized that when secondary party 1) refers to a number of Supreme Administrative Court judgments, it is not evident what aim it is attempting to achieve by these arguments, because the hypothesis concerning a conceptual absence of ownership rights on the part of church entities to original property certainly does not arise from them.

129. It is also indisputable that state approval of disposition of church property was not, according to the law or in practice, such that the state would enter into the position of an owner (co-owner) and that the disposition of the property would depend on the autonomous will of the state.

130. Secondary party 1) emphasizes the "purposefulness" of church assets, that is, their designation under public law to support churches (or the Catholic Church), which is supposed to eliminate ownership relationships to individual things (otherwise this objection makes no sense in this proceeding). It thereby approaches the concept of church assets as an independent public fund (an aggregate of property connected by a public purpose), whose ownership is separate from the church. However, the Supreme Administrative Court also expressly rejected this concept in its case law.

131. It must be emphasized, if it is not evident from the analysis thus far, that the absolute majority of church legal entities of the Catholic Church existed precisely on a property basis (foundation or mixed). Therefore, the cited "purposefulness" was not a limitation forced by the state, but a conceptual element of a foundation-type legal entity (publicly beneficial or ecclesiastical). Viewed in terms of function, the "purposefulness" of church assets arose primarily from the interests of the church itself (more precisely, canon law), which the state accepted into legal regulations. The purposefulness of church assets accepted by public law was not in any case understood as a weakening or even exclusion of the ownership rights of church entities vis-à-vis third parties (those interfering with ownership rights), but as expressing the mutual connection between individual owners of church assets, especially in a situation where there were doubts as to whether the Catholic Church was a legal entity (acted as an owner) within the boundaries of the state as a whole. The law at the time did not recognize any connecting link other than the viewpoint of church purpose, because church activities manifested themselves in various legal forms, in a substantially greater scope than that in which church legal entities are conceived under of Act no. 3/2002 Coll. Incidentally, this is not an unknown concept even in current law, because, for example, church schools are not defined by the legal form of their operators (as a rule they are not directly operated by a registered church or a church legal entity), but by their purpose, derived from Art. 16 of the Charter. Thus, one can see an obvious contradiction in

the argument point made by the petitioners and secondary party 1), that ownership rights cannot be renewed for churches and religious societies, or their religious legal entities within the bounds of contemporary constitutionality, precisely for the reason that in the past this property served for church purposes.

136. It is evident from the foregoing that neither the public law framework nor legal practice intended to exclude things falling within "church assets" from the reach of private law (the General Civil Code, the "GCC"); the administrative and civil courts (government offices) strictly distinguished their competence.

Regarding the Objection of "Non-full" Ownership

137. In response to the special issue of whether the legal relationship of church entities to church assets was one of divided, beneficial ownership (§ 357 et seq. of the GCC), the Constitutional Court answers that this question is not relevant under constitutional law, because the constitutional order does not contain a prohibition on mitigating property crimes committed against beneficial ownership.

Regarding the Objection of "Public" Ownership

139. If a case of "public ownership" is to involve a theoretical construct modifying ownership rights under § 353 et seq. of the GCC, or directly competing with it, we can point to the public and private law doctrine of the time, which rejected such concepts.

142. Austrian and later Czechoslovak law considered the owners of individual things falling within church property to be individual church entities (except in the case of dedicated church assets, to which a reservation of ownership applied).

143. However, if the "theory of public ownership" was not applied in relation to things directly serving the state authority or the wider public administration, or even things considered to be "public" by their nature (the sea coast, waterways), it would be all the more difficult to conclude that there was "public ownership" of things serving for state administration of religious matters (churches), which could only with difficulty (during the first Czechoslovak Republic!) be considered to be things serving for the performance of fundamental state functions. And it would be all the more complicated to derive the existence of "public ownership" of those things among church assets that do not even serve directly for state administration of religious matters (real estate used for business or agriculture). In this regard – if the cited theory was used in practice at all – church assets would be only a peripheral item of interest, not its central substance.

146. If the existence of "public ownership" were to be derived from § 109 para. 1 of Constitutional Charter no. 121/ 1920 Coll., "Private ownership can only be limited by law," based on argument a contrario we must point to the analysis of the time, which gave that sentence the meaning of a declaration to the benefit of "the individualistic economic order," in contrast to the later "collectivist economic order" (for more detail, see Weyr, F. Československé právo ústavní. [Czechoslovak Constitutional Law] Praha, 1937, p. 255 et seq.), and thus not in the indicated sense, that the Constitutional Charter would assume some ownership other than "private" property, with a lower level of protection on the part of church (or other) subjects.

149. It is worth noting that even later church assets (or what remained of them) were not considered to be "public" or property under social, socialist ownership, even after 1948. Doctrine and case law at the time considered such property to be private (in contrast to socialist ownership). The statement of the General Prosecutor's Office of 20 May 1954 no. T 282/54-ZO-33 indicates that the property of churches and religious societies is not under personal socialist ownership and was never nationalized (this must be understood to mean property that had not been nationalized up to that time). The ownership of churches and church institutions continued, while the state only supervises the property.

150. Finally, we must add to this that the "theory of public ownership," as discussed above, is not the same as the doctrinaire term "public ownership" (in particular in the objective sense, that is, in the meaning of "property"), as it is used in current literature, in which emphasis is again laid on public use of a thing, not on the absence of a substantive right to it.

151. We cannot overlook the fact that Art. 11 para. 1 of the Charter provides the same content and protection to the ownership rights of all owners. This is preserved even in the case of a justified different degree of public law regulation for various kinds of property or various owners.

152. Historically it is not ruled out that a change in legal relationships under an unchanged legal framework can happen via facti through long-term developments (in the middle of the 19th century the assets of religious funds were still considered to be assets administered by the state in the name of the church, although Bušek, V., Hendrych, J., Laštovka, K., Müller, V. Československé církevní zákony. [Czechoslovak Ecclesiastical Laws] Praha, 1931, p. 375, already states that this opinion "has already been abandoned" and the assets were no longer considered to be those of churches). Undoubtedly there was not enough time for such long-term development up to 25 February 1948; it cannot be understood to mean a sudden self-serving change of interpretation based on political motives. It is undisputable that as of 25 February 1948 the legal order did not contain, nor had court practice accepted, the institution of such "public ownership" in the sense of the cited theory, which would be in contrast to "private ownership" and which, primarily, in the current legal context it would not be possible to renew.

Current doctrinal and case law positions

154. It appears from all the expert statements that the churches, or individual church entities of the Catholic Church, were considered by scholarship, case law, and practice to be owners of things that fell within so-called "church assets" (naturally, except for things with a reservation of ownership by third persons), under civil law (the GCC). Undoubtedly they thus refute the objection of state ownership, or even a special kind of ownership. Public regulation of the administration of church assets, in particular subjecting disposition and burdening to state consent, could not cause a loss of ownership.

155. The foregoing is the basis for all the practices of state bodies and the case law of courts after 1989. In particular, we can point to the fact that where the question of protection of ownership rights before the ordinary courts in quasi-restitution proceedings was reviewed substantively, the courts concluded that church entities were, as of the day their ownership rights were removed, owners of the property in question under the GCC.

The Effects of Changes in Public Law Regulation of Churches on the Time for Property Settlement

157. From the complex set of objections raised by the petitioners and secondary parties we can extract in the alternative two systemic objections against the Act as a whole, against its meaning: (i) churches, especially subjects of the Catholic Church, should not have been owners of the original property at all, (ii) churches, especially subjects of the Catholic Church, should have been owners subject to public law regulation, which, however, had already been annulled as of the day that of Act no. 428/2012 Coll. went into effect.

158. (i) This is basically the fundamental objection, according to which "original property" as defined in § 2 let. a) of Act no. 428/2012 Sb., is supposed to represent an empty set.

159. Church entities, as legal entities, basically had full capacity to own property, as a result of which they were subjects of ownership rights to individual things falling within church property (with the exception of things that belonged as property to third parties; with the exception of particular monastic orders). For example, when the "legal-historical expert study of Charles University in Prague" speaks of a "conceptual restriction of the ownership rights of the Catholic Church by purposefulness, i.e. by designation of the property only for the aims of state administration of religious matters, teaching, and

charity, that do not permit it to pursue other aims, e.g. income-producing ones," this is an unsubstantiated conclusion, in conflict with the analysis provided above and with the factual situation. Church entities quite routinely owned agricultural and business real estate (including, e.g., a brewery or sugar mill) whose income-producing (economic) nature is obvious. Moreover, if this "conceptual restriction" is to arise from Art. 15 of Act no. 142/1867 Coll. of Empire Laws, it is also an unsubstantiated conclusion, because one cannot conclude from the existence of (constitutional) guarantees of church autonomy that the ownership rights of the bearers of this right is "conceptually restricted" only for purposes of activities protected by guarantees of internal autonomy. This also cannot be concluded from any similar guarantees of internal autonomy under the present Art. 16 para. 2 of the Charter.

160. As regards the reliance on the "theory of public ownership," there was no indication in the abovementioned literature, case law, or practice, that it should be implemented before the decisive period in a manner that would conceptually remove church property from the regulation of ownership rights under the GCC and entrust it to church entities exclusively on the basis of a public law title (exclusively rights related to stated administration of religious matters). Apart from the theoretical analysis, we can point to quite practical examples that rule out the theories of the petitioners and secondary parties. It is generally known that basically the only type of real estate whose ownership status was not affected by the illegal acts of the communist regime (with some known exceptions) was precisely churches, chapels, prayer rooms and similar buildings serving state administration of religious matters, although they were subject to intensive public law regulation as public things. If the hypothesis were valid that church entities were not their owners (in view of the independent legal personality of the church), but only holders, users, administrators, etc., then one cannot explain the fact that the legal order and practice from the decisive period until the present considered and still consider them to be owners, even though since the beginning of the decisive period there was demonstrably no transfer (passage) of ownership rights to these subjects (as happened in relation to other real estate through Act no. 298/1990 Coll.).

161. Therefore, in a case where the claims of entitled parties to have a thing issued under Act no. 428/2012 Coll. are exercised, we can speak of a renewal of ownership rights in the true sense, as understood by the previous GCC and the present Civil Code. Beyond that, we can point out that the petitioners and secondary parties also did not present arguments as to why the legislature, pursuing various aims and purposes, could not (theoretically) mitigate the crimes committed by the communist regime as part of a framework for the broader status of entitled persons in the future through the issuance of certain things that were not owned by the affected subject in the past. For example, we can cite Act no. 172/1991 Coll., on Transfer of Some Assets from the Czech Republic to Municipalities, where the state, with the renewal of territorial self-government, transferred real estate to municipalities in a much wider scope than the so-called historical property of the municipality.

162. (ii) The second conceptual approach in the petitions from the petitioners and secondary parties incorrectly assumes that the legal framework in effect as of 25 February 1948 was directed exclusively against the churches themselves, and their property interests, that it involved restrictions where the state had, from a long-term perspective, already in a certain way taken steps to expropriate church property and withdraw it from churches, on the basis of a gradual taking over under public law. With the background of intensive public law regulation of the administration of church assets and restricting the main dispositions of church property it appears unfair (or unconstitutional) to them for the churches in today's legal context to have a more advantageous legal position than on 25 February 1948, as the same intensive public law regulation is not directed against them. However, they completely overlook the fact that at the time that public law regulation (in particular regarding dispositions of property, but also in a number of other aspects) was seen as a privilegium (in the legal sense of the word) that gave the churches, now especially the Catholic Church, a more advantageous position. Act no. 50/1874 Coll. of Empire Laws in § 38 expressly spoke of "protection," which was to reflect the state's interest in preserving church activities (which then permeates the case law and literature). Naturally, this is not to say that it was a period of ideal relationships between the state and churches, factually or legally, although even before 1948 the fundamental elements of internal church

autonomy were recognized by the state. However, if secondary parties 1) conclude that after 1 November 1949 the "new situation of the state property rights of the Catholic Church ... differed from Austrian and inter-war situation only minimally, and its concept was, by its own logically narrowly tied to the previous developments," this is a relatively cynical conclusion in view of the current level of recognition of the nature and practices of the communist regime of Czechoslovakia, when one could not speak of internal church autonomy. In the past the Constitutional Court emphasized that "the 'economic support for churches' was, from the beginning, conceived as one of the instruments of removing the economic independence of churches and religious communities, with the direct intention of not satisfying the freedom of religion, but instead of combating it through direct executive control of religious life, and economic oppression." (file no. Pl. ÚS 9/07, point 102).

163. Secondary party 1) considers the removal of the public law regulation (intensely restrictive from the current perspective) after 1989 to be a fact that renders impossible the renewal of ownership rights, or establishes unconstitutionality. When reviewing this second line of argument, we must point out that, with effect as of 8 February 1991, the Charter of Fundamental Rights and Freedoms, in a breakthrough, guaranteed religious freedom at the level of constitutional law, and Art. 16 para. 2 recognized internal autonomy for churches; the case law of the Constitutional Court and the ECHR includes within that various aspects of the life of churches, including certain elements of economic autonomy (file no. Pl. ÚS 9/07, point 104). At the same time, Art. 11 para. 1 was adopted, protecting ownership, under which everyone has the right to own property. The property rights of all owners have the same statutory content and enjoy the same protection. The main elements of state control of churches and religious societies, as they were interpreted and applied before 1989, thus came into fundamental conflict with the newly implemented idea of a material state based on the rule of law, an essential element of which is respect for the fundamental rights and democratic values, as they were formed in western society. The state interference in the economic affairs of churches and religious societies to which secondary party 1) points after 1 November 1949 was § 10 of Act no. 218/1949 Coll., under which, "[t]he state supervises the property of churches and religious societies" and "[a]ny disposition or burdening of the property of churches and religious societies requires the prior consent of the state administration." However, this provision was annulled by the democratic legislature by Act no. 165/1992 Coll., which annuls certain legal regulations from the cultural sphere, with effect as of 15 April 1992 for the territory of the Czech Republic, or by federal Act no. 522/1992 Coll., which amends Act no. 218/1949 Coll., on State Economic Support for Churches and Religious Societies, as amended by Act no. 16/1990 Coll., with effect as of 20 November 1992. In the view of secondary party 1) it is precisely the annulment of § 10 of Act no. 218/1949 Coll., i.e. annulment of "state supervision," that caused the impossibility (unconstitutionality) of property settlement with churches and religious societies. However, one cannot draw from the explanatory report to Act no. 522/1992 Coll. such a legislative intent, which would be to make impossible future mitigation of property crimes, and even the Constitutional Court does not interpret that step in that way. When annulling § 10 of Act no. 218/1949 Coll. the legislature acted knowing of the existence of the blocking provisions, which anticipated the future adoption of special statutes regarding church property (in particular, § 29 of Act no. 229/1991 Coll.), and there is no record anywhere giving even an indication that these blocking provisions would become obsolete, because restitution under a special Act (or other regulation of property relationships between the state and churches) would no longer be constitutionally permissible after annulment of § 10 of Act no. 218/1949 Coll.. On the contrary, removal of state supervision of churches and religious societies was a concrete implementation of the constitutional guarantees in Art. 11 and 16 of the Charter. We must point out that the Constitutional Court already expressed this view in its case law, when, in judgment file no. Pl. ÚS 6/02 of 27 November 2002 (N 146/28 SbNU 295; 4/2003 Coll.), it annulled in § 27 para. 5 second sentence, the words "and the profit acquired may be used only to meet the aims of the activities of the church and religious society" of Act no. 3/2002 Coll., because the restriction of a church's purpose could not be subordinated under Art. 16 para. 4 of the Charter, and in terms of protection of ownership rights it was also inconsistent with Art. 11 para. 1 of the Charter. State supervision of church property under § 10 of Act no. 218/1949 Coll., in the version in effecting until 19 November 1992 (or until 14 April 1992), is thus undoubtedly ruled out by the guarantees of fundamental rights in Art. 11 para. 1 and Art. 16 para. 2 of the Charter. However, if the secondary parties rely on this state supervision and draw from its

absence fundamentally negative (and surprising, in terms of the level that the law-based state has attained) legal conclusions in relation to the entitled churches and religious societies, their objection comes into direct conflict with Art. 3 para. 3 of the Charter, under which "[n]obody may be caused detriment to his rights merely for asserting his fundamental rights and basic freedom." The fact that the Charter is so far the broadest – and not merely formal – catalog of fundamental rights, and that they are under the protection of the courts and the Constitutional Court, cannot be to the detriment of entitled subjects in the issue of renewal of ownerships rights. Moreover, the Constitutional Court has already said in this regard (file no. Pl. ÚS 9/07, point 106), "[t]he Constitutional Court considers unacceptable such opinion according to which the widely conceived (from the historical point of view) freedom of thought, conscience and religious denomination, as is based on the Czech constitutional order and on international standards and as is protected by ordinary courts and the Constitutional Court, should justify a certain lower level of economic autonomy of churches and religious communities. For example, potentially the existence of the present higher level of fundamental rights and freedoms in comparison with an earlier status (as to 25 February 1948) could be seen as serving as an argument for not granting property composition." Therefore, in this context the ideas constructed by the petitioners and the secondary parties, that adoption of the Charter and annulment § 10 of Act no. 218/1949 Coll. deprived church entities of the ability to share in the mitigation of property crimes are relatively paradoxical, in view of the meaning and purpose of the Charter and the guarantees of fundamental rights that it contains.

164. Likewise at the level of simple law, especially existing restitution regulations, the request of secondary party 1) is inappropriate, because no request for renewing the then-existing public law restrictions (which are no longer part of the legal order) was raised in relation to any entitled person (restitutent). Ownership rights were renewed under current legal conditions. Therefore, secondary party 1) is mistaken when it claims that church entities (entitled persons) "are entitled to dispose of their property quite freely," under public law regulation, not taking into account that all current owners (whether natural or legal persons, not excluding church entities) are subject to a certain level of public law regulation, restrictions on the exercise of ownership rights, which correspond to the present needs of society (cf., as a random example, the extensive complex of norms of environmental law, the intensity of protection of historical monuments, or the scope of taxation); current special public law regulation is found precisely in Act no. 3/2002 Coll., as amended by later regulations, which regulates narrowly defined purposes of churches and religious societies and religious legal entities, including, for example, restrictions on conducting business (§ 15a para. 4, § 27 para. 5). However, any restriction of the fundamental rights guaranteed in Art. 11 or 16 of the Charter must meet the requirements of public interest under the limiting clauses of the Charter, in the event that the petitioners or secondary party 1) feel the need for such legislative measures. However, the fact that renewal of unconstitutional state supervision of church entities is no longer possible, because the constitutional framers gave them wider authorization in the Charter, cannot be applied to their detriment.

165. If public law regulation, and especially removal of it, were to have any fatal consequences for the existence of ownership rights, as secondary party 1) claims, we must point directly to the so-called "blocking" provision, § 29 of Act no. 229/1991 Coll., which, for over twenty years, restricted owners in any disposition with blocked land, under penalty of absolute invalidity, and was thus exceptionally strong public law regulation. However, by the annulment of this provision the original owners got back their rights of disposition, and this fact could not be criticized as impermissible acquisition of new rights from the state. It is then a matter of indifference whether public law regulation was annulled at a time when the ownership was in effect (the abovementioned example of uninterrupted ownership of church buildings) or before acquisition of ownership on the basis of the restitution law. Both cases reflect the expiration of public interest in such regulation (the legislature's will).

Review of Other Objections

170. The interpretation of Art. 2 para. 1 of the Charter (religious neutrality of the state) to the effect that the constitutional framers' intent was to rule out property settlement between the state and

churches would be inconsistent with the guarantees arising from Art. 11 para. 1 and Art. 16 para. 2 of the Charter, as the Constitutional Court interpreted them in judgment file no. Pl. ÚS 9/07 and other judgments.

171. Thus, at the level of general criticisms against the Act, which were based on references to the legal framework governing church assets up to25 February 1948, the Constitutional Court found that the objections are based on incorrect assumptions. As of the decisive date, 25 February 1948, neither the legal order nor case law ruled out the existence of ownership rights to things falling within the concept of "church assets" used at the time, all the less so the existence of ownership rights on the part of church legal entities. Thus, in the case of Act no. 428/2012 Coll. renewal of ownership rights, or compensation, as methods for mitigating property crimes, are not legally or constitutionally ruled out, just as they were not ruled out in previous restitution legislation. Insofar as the petitions emphasize that the subjects of ownership rights were individual church entities (institutions), not the church as a whole, current legal views and practice, even Act no. 428/2012 Coll. itself, are undoubtedly based on that concept.

172. At that level, one can reach a partial conclusion that systemic objections to the Act as a whole are not justified. Moreover, we can again conclude that the constitutional order does not prevent the legislature from mitigating property injustices concerning rights other than ownership rights or by methods other than restitutio in integrum stricto sensu.

Review of the Constitutionality of Restitution in kind (§ 1–14 of the Act on Settlement with Churches)

K § 1 (the subject matter of regulation)

174. As regards the objection of secondary party 1), that the Act "conceals" the reasons for the legislative framework, the Constitutional Court points to § 1, and also to the preamble of the Act on Settlement with Churches, which speaks of the effort "to settle property relationships between the state and churches and religious societies as a prerequisite for full religious freedom and thus, through the renewal of the property foundation of churches and religious societies, to make possible the free and independent position of churches and religious societies," and also points to the extensive explanatory report and parliamentary discussion.

175. In terms of the aim of the legislative framework, we must repeat that the Constitutional court has repeatedly found the mitigation of property crimes to be constitutionally desirable and interpreted it extensively to the benefit of entitled persons. Here we can of course point to the recapitulation of fundamental restitution case law given above. If another aim is the settlement of property relationships between the state and churches, this is fulfillment of requirements arising from Art. 1 of the Constitution, Art. 11 para. 1 and 4 of the Charter (file no. Pl. ÚS 9/07, verdict II, points 72–91). If it is also an aim of the regulation to set (future) economic relations between the state and churches so as to create the prerequisite of full religious freedom and the independence of churches and religious societies from the state through renewal of their property base, this is a form of fulfillment of the requirement arising primarily from Art. 16 para. 1 and 2 of the Charter (file no. Pl. ÚS 9/07, verdict II, points 92–107). In that sense, then, Act no. 428/2012 Coll. – its decisive provisions – is a parametric expression of these aims. As regards the related objection of secondary party 1), we must emphasize that it is not correct to claim that previous restitution laws mitigated only certain crimes committed by the communist regime, whereas Act no. 428/2012 Coll. is to mitigate all crimes committed against church entities. The legislature's approach to restitution was and is de facto limited by the existence and condition of the things whose confiscation caused a property crime (in relation to that by the possible evidentiary situation, etc.). A regular part of the definitions in restitution regulations is that subject matter jurisdiction is defined primarily in relation to real estate, and exceptionally to personal property. This principle has also been met in Act no. 428/2012 Coll. In contrast, the term "mitigation of certain property crimes" expresses the actual impossibility of mitigation undisputed and undoubted other property crimes, beyond the scope of the subject matter definition in the relevant laws (cash,

securities, receivables, but also non-property crimes, reflected in human lives and destinies). Act no. 428/2012 Coll. does not go beyond this scope , and understandably does not compensate "all" crimes, as secondary party 1) claims, but only property crimes relating to real estate, not to money, lost profits, unperformed patronage obligations, etc. which follows from the scope of the restitution entitlements in § 5, which corresponds to previous restitution laws.

176. The question of defining the so-called decisive period is not constitutionally relevant – as the Constitutional Court's case law indicates – because it is a political decision, and thus its determination is not a subject for constitutional review. The basic principle is what the Constitutional Court stated in its earlier judgments in relation to setting a decisive period [e.g., judgment file no. Pl. ÚS 45/97 of 25 March 1998 (N 41/10 SbNU 277; 79/1998 Coll.)]: "The fundamental statutory condition is the transfer of things to the state in the so-called decisive period, which the legislature defined in the contested provision. It set the beginning date as 25 February 1948, i.e. the starting date of the regime that quite consciously, programmatically, and permanently violated the principles of state governed by the rule of law." In the same spirit, see the position of file no. Pl. ÚS-st. 21/05; even a possible "breach" (meaning setting an earlier date for the beginning for the decisive period) is not ruled out in the express wording in the restitution law (Act no. 243/1992 Coll., which governs certain issues relating to Act no. 229/1991 Coll., on Regulation of Ownership of Land and Other Agricultural Property, as amended by Act no. 93/1992 Coll., adopted on the basis of authorization contained in § 7 of Act no. 229/1991 Coll.). The petitions do not contain specific objections to the setting of the decisive period from 25 February 1948 to 1 January 1990. Therefore, it is sufficient to point to the identical legislative framework in earlier restitution and rehabilitation laws: § 4 para. 1 of Act no. 229/1991 Coll.; § 1 para. 1 of Act no. 87/1991 Coll., on Extra-judicial Rehabilitation; § 2 para. 1 of Act no. 119/1990 Coll., on Judicial Rehabilitation, etc.

Re § 2 (original property)
178. The petitioners object that the definition includes property, or things, that only "appurtained" to the churches, which is meant to be a relationship other than ownership rights. The Constitutional Court could not overlook the fact that the phrasing in § 2 let. a) is overloaded in meaning and the list in § 2 let. a) includes in the relationship of "appurtaining" things and rights equally, without more precise differentiation. The legal order, then or now, does not recognize a relationship of "appurtaining" that would be a kind of (substantive) right.

181. It cannot be ruled out that the interpretation of the cited provision may appear unclear in practical application. However, this is not a lack of clarity that could not be overcome by interpretation, as indicated in the explanatory report. That is, the idea that § 2 let. a) of Act no. 428/2012 Coll. can be interpreted only so as to not include things that were, at the time of the property crime, demonstrably owned by third persons (typically private chapels, for which a church had a public law disposition). The term "appurtained" will than apply only to "property rights and other property values, including joint ownership shares," and not to "things." Restitution regulations up to the present are based on the principle of renewing ownership rights, not renewing the public law relationships of the time. On the contrary, the interpretation of § 2 let. a) in connection with § 5 of Act no. 428/2012 Coll. must also include in the concept of original property those things in relation to which a property crime, as defined by the Act, was committed by an act of the public authorities. This applies above all, generally to the factual elements of restitution, based on illegally making it impossible to assume ownership rights, in fact or in law, for example, to § 5 let. g), under which refusal of inheritance in an inheritance proceeding is considered a property crime if the refusal of inheritance occurred under duress.

182. This interpretation is fully in accordance with existing restitution legislation, under which the subject matter jurisdiction of the laws (analogously to the definition of original property) included precisely those things in relation to which the entitled person suffered a statutorily defined property crime, without these laws distinguishing in this regard in their definition between a "right" and a "thing".

Regarding § 3 (entitled persons)

186. As regards the arguments generally questioning the position of legal entities in the restitution process, as entitled persons, the Constitutional Court points to the existing restitution laws, in which legal entities had this position, without that raising any constitutional law questions. Thus, Act no. 428/2012 Coll. is in no way alone in this regard.

187. As regards questioning the position of church entities (and the Ecclesiastical Administration Fund [Náboženská matice], in view of the list in § 3), neither the mitigation of property crimes nor the aim of economically separating churches from the states can be implemented conceptually vis-à-vis persons other than church entities. It is not evident on what basis these subjects should be ruled out, because it is precisely their legal situation in the question of settlement of historical property that is concerned in norms from as early as the beginning of the 1990s (Act no. 403/1990 Coll., Act no. 298/1990 Coll., § 29 of Act no. 229/1991 Coll., § 3 para. 1 of Act no. 92/1991 Coll., on Conditions for Transfer of State Property to Other Persons) and an area of the Constitutional Court's case law (see above). If the petitioners' conclusions (part 5.1) were valid, it would be objectively impossible to fulfill these norms and the Constitutional Court's case law within the bounds of constitutionality, which, given the cited passage of time, would be a relatively surprising finding. Fundamentally, the previous statement continues to be valid, that "it is not the role of the Constitutional Court to review to what extent the scope of restitutions defined by the legislature is perfect or complete; the Court only emphasizes that the constitutional order of the Czech Republic entrusts this scope exclusively to the legislature, and not to the Constitutional Court" (judgment file no. Pl. ÚS 14/04 of 25 January 2006). In this regard the objection based on alleged inequality was a regular component of constitutional complaints from persons who, for whatever reason, did not receive a restitution entitlement (the obstacle of lack of citizenship, the crime occurring before the decisive date, etc.).

189. The general conclusions regarding the criteria for determining the group of entitled persons (i.e. distinguishing them from other subjects) are applicable to the present matter. Primarily, one cannot seriously claim that the definition of the original property of churches, the aim of mitigating property crimes caused by confiscation of property from the entitled persons, and especially the aim of economically separating churches from the state, goes to the benefit of subjects other than those listed in § 3. That is, there are other subjects who would be in an interchangeable situation in these relationships. This is a separate legal and constitutional law issue (apart from Art. 11 it involves Art. 2 para. 1, Art. 15 and 16 of the Charter); there are no other subjects who would be in the same legal or constitutional law situation. The constitutional court systematically addresses this in this manner – that is, as a separate issue (beginning with decisions file no. II. ÚS 528/02 and file no. Pl. ÚS-st. 22/05 and a number of other related decisions). Since the beginning of the 1990s the question of settling the historical property of churches was connected to the need to generally regulate the church-state relationship. In this, Act no. 298/1990 Coll. was merely a provisional measure (file no. Pl. ÚS-st. 22/05). It is this fact that the Constitutional Court took into account when it gave the legislature time to adopt "a legislative framework settling the historical property of churches and religious societies which takes into account the objective particulars of the present matter and de facto consumes § 29 of the Act on Land" (judgment file no. Pl. ÚS 9/07, point 25), with awareness of the complexity and political riskiness of this issue. If the Constitutional Court sets aside the absolute understanding of equality ruled out above, then we can only point to the objective facts that provide a rational basis for a separate legislative framework, and not necessarily for a legislative framework that includes other kinds of legal persons. The return of property to churches corresponds to their purpose, traditional function, and organizational structure [within which secondary party 1) incorrectly stresses only the performance of state administration]; as a result this fulfils the prerequisite that the law partially mitigate "damages caused by the state in relation to the constitutional right to freedom of religion, and not (primarily) damages caused to ownership rights. The historical role of churches in society and the publicly-oriented nature of their activities to some degree distinguishes them from other natural persons or legal entities (taking into account the nature of their assets) and also makes comparison possible – in terms of the requirement of independence from the state – with local self-governments (municipalities), which are, as an agglomeration, also indivisible from the individual right of a citizen to self-determination (read: self-government)" – file no. Pl. ÚS 9/07, point 105. The petitioners also overlooked the fact that the absence of a legislative framework that would settle the historical property

of churches, before the adoption of the contested Act no. 428/2012 Coll., was intensive enough to be unconstitutional (file no. Pl. ÚS 9/07, verdict II), and thus the question of adoption of a legislative framework applicable to church entities (in terms of their purpose) became exceptionally urgent. It is also necessary to emphasize that the list of entitled persons and the construction of the statute is to a considerable degree justified by the attempt to regulate, through property settlement, the future relationship between the state and churches by removing economic dependence, as Act no. 218/1949 Coll., on State Economic Support for Churches and Religious Societies was annulled. Yet, although the possible continuation of a certain form of "economic support" concurrently with partial property restitution does not appear to be political sustainable, it does not appear to be legally impossible. As regards the future relationship between the state and churches, the legislature had wider discretion for deliberation than in relation to partial mitigation of property crimes, where the existing restitution legislation offered settled or proven procedures.

191. No constitutional law objections have been submitted to the individual parts of § 3 that would exclude the cited subjects from the relationships established by Act no. 428/2012 Coll. No provision of the constitutional order indicates that the named subjects could not be part of legal, especially property law, relationships, or that the state could not address to them the settlement of historical property of churches. As regards the objection that natural persons forming the churches and religious societies today are not the same as the religious faithful and priests on 25 February 1948, the Constitutional Court states that neither in the decisive period nor today is church property owned by individual members of a church (they are not entitled to shares in property, especially as regards priests, cf. the nature of benefices, explained above), and therefore the situation is not one of satisfying the property claims of individual church members or priests or their heirs; on the contrary, it is evident that the purposes and functioning of churches and religious societies, as they traditionally appear in society, exceed the individual private interests of individual church members. At the same time this is an exceptionally cynical argument, in view of the fact that during the decisive period a number of members of churches died a not exactly natural death, and generally it can hardly be held against churches that they do not consist of the same persons as sixty years ago.

194. When secondary party 1) objects regarding § 3 let. b), c) that the original property "did not belong to entitled persons – registered churches and religious societies and other legal persons set forth in § 3 let. b) to d), nor did it belong to their legal predecessors, but [it is] property that often belonged to completely different church entities," this objection is not completely clear to the Constitutional Court. The alleged conflict with § 2 let. a) is ruled out conceptually. The original property to which the Act applies is defined ex lege as property that appurtained precisely to the named subjects. It is not clear what other "church entities" whose property comes under § 2 let. a) and who at the same time are not set forth in § 3 let. a) to d) the secondary party has in mind. If secondary party 1) merely wanted to say again that the church property appurtained "to other subjects" (i.e., the state or third parties), that is, that the church entities were not "owners" of the property, it needs to cite an existing interpretation. The existence of legal continuity and legal succession is a question of individual circumstances, regarding which the Constitutional Court refers to its previous case law. In any case, secondary party 1) must be aware of the fundamentally unquestioned legal continuity of religious legal entities in view of the actions of the Ministry of Culture in 2001, when, with the intention of preventing application of property claims by the original church entities (now entitled persons), the relevant public register was annulled on the basis of Ministry of Culture order no.. 32/2001, with the assumption that the legal personality of these persons would terminate. Constitutional Court resolution file no. Pl. ÚS 2/04 of 19 August 2004 (not published in the Collection of Decisions, available at http://nalus.usoud.cz) subsequently described this act as only "an internal normative directive, aimed at regulating the obligations of departments or employees of the Ministry of Culture," from which "in no event does regulation of the group of registered legal persons follow." In the subsequent judgment file no. IV. ÚS 34/06 of 21 November 2007 (N 201/47 SbNU 597) it was quite specifically said that "regarding the loss of legal personality, the general rule applies that the mere annulment of the legal framework for a particular kind of legal persons without those persons being expressly terminated cannot create a situation where their existence is questioned," so even "[c]ancellation of this aggregate registration list could not have an effect on the legal existence of legal

entities registered in it." An opposite interpretation appeared paradoxical to the Constitutional Court, "all the more so because previous case law from the time of the communist regime, that is from a time that was one of the darkest in our history as regards the trampling on law and justice, when the communist party and its coworkers did everything they could to limit the influence of the church (not only the Catholic Church), but also of religion and faith on the population generally, and one of the means of achieving that was to weaken the Catholic Church economically [cf. judgment file no. II. ÚS 189/02 of 3 August 2005 (N 148/38 SbNU 175)], never cast doubt on the existence of these legal entities, and the only condition for their legal personality in the general case law was that they must have the status of legal entities under the church's internal regulations." We must emphasize that the currently submitted principles of continuity of legal person in the context of the communist regime are not in any way specific to church entities, but apply generally, as was shown in judgment file no. III. ÚS 462/98 of 11 January 2000 (N 2/17 SbNU 7), which is also undoubtedly know to secondary party 1), because it was fundamentally a decision in a its own matter. As regard the ecclesiastical character of the affected legal entities, it is conceptually given by the ecclesiastical purpose of the given entity, not formally by its legal form. The activities of churches were routinely conducted in various forms of legal persons, because Act no. 50/1874 Coll. did not recognize a special, or even exclusive, form of religious legal entities, as conceived in the present Act no. 3/2002 Coll., as amended by later regulations. In any case, it also does not limit this functioning of churches only to certain legal forms; on the contrary, it explicitly anticipates the functioning of registered churches and religious societies through legal entities, established under other statutes (§ 15a para. 2), that are connected to a registered church by their purpose, or the same focus on the exercise of rights under Art. 16 of the Charter (typically educational legal entities operating church schools).

Regarding § 5 (property injustices)
197. The Constitutional Court emphasizes that the legal construction "property crimes" is a completely standard component of restitution legislation, based on which, from present and past viewpoints, illegal and extralegal actions by the state aimed (primarily) at the property sphere of an affected person are identified for purposes of restitution legislation.

200. As regards § 5 let. a), which considers a property crime to be the taking of a thing without compensation in a procedure described in Act no. 142/1947 Coll. or Act no. 46/1948 Coll., on New Land Reform (permanent regulation of ownership of agricultural and forest land), the Constitutional Court refers to the identical provision contained in § 6 para. 1 let. b) of Act no. 229/1991 Coll. since the beginning of the 1990s, as one of the main restitution regulations. There is already extensive case law on this, which never questioned the cited restitution entitlement in terms of the relationship to the decisive period. In the case of individual restitution entitlements, in connection with the introduction referring explicitly to the decisive period, a "breach" of the date 25 February 1948 is ruled out by terminology (although even in terms of definition of the decisive period this is not a question of constitutional significance). The Constitutional Court sees no reason why things should be different in the case of church entities. It appears that this objection, which found fertile ground in the Parliament, as the stenographic records show, is based only on lack of knowledge of the legislation of the time. The effects of expropriation, either in a procedure under Act no. 215/1919 Coll., on Seizure of Large Lands, as amended by later regulations, and Act no. 329/1920 Coll., on Taking Over and Compensation for Seized Land (the Compensation Act), as amended by later regulations, or later under Act no. 142/1947 Coll. on Revision of the First Land Reform, as amended by later regulations, did not arise directly from the statute, as of the date it went into effect, i.e. differently before the decisive period. The transfer of ownership rights did not happen through the seizing or on the basis of a note of an intended taking over. Similarly, in relation to a "note of revision" under government order no. 194/1947 Coll., on the listing of lands for the revision of the first land reform and on its designation in public records. Therefore, it is quite incorrect to speak of a breach of the decisive date of 25 February 1948 only because the applied statute formally went into effect (at any time) before the decisive period.

203. Under § 5 let. i), a circumstance which led to property crimes in the decisive period is nationalization or expropriation performed in conflict with the then-valid legal regulations or without payment of fair compensation.
204. Regardless of the objections submitted, the Constitutional Court weighed to what extent the adjective "fair" is sufficient in that context in terms of its understandability and clarity, that is, formal requirements that must be applied to a right. This is an uncertain term. For example, it is not evident, whether the "fairness" of compensation relates to the time of expropriation, or to today's context and level of protection of fundamental rights. While the question of paying compensation, at the level of facts, ranges only between paid and unpaid, the question of reviewing fairness, proportionality, and other aspects can seem practically impossible to implement, if we consider that the facts happened 60 years ago, and the scope of evidence concerning the state, value and features of the expropriated thing should include a number of factual determinations made at the time. This procedure appears objectively impossible in practice, regardless of the fact that the passage of time can only be attributed to the state.

205. Likewise, previous restitution regulations did not contain this condition.

206. Therefore, in this context, the text of the contested provision raises fundamental legal uncertainty about the content of restitution entitlement in § 5 let. i) of Act no. 428/2012 Coll., which appears to be inconsistent with Art. 1 para. 1 of the Constitution (the principles of a state governed by the rule of law). Applied in practice, this would result in a risk of different and unpredictable procedures by various obligated persons and a risk of inequality between individual entitled persons.

207. After derogation of the provision as stated, the wording and the purpose of the factual elements of restitution are identical to the corresponding provisions in previous restitution laws; the Constitutional Court has already made a settled interpretation of these provisions [judgment file no. IV. ÚS 126/97 of 9 June 1999 (N 91/14 SbNU 253); judgment file no. IV. ÚS 8/2000 of 22 May 2000 (N 71/18 SbNU 127) etc.].

Financial compensation and a settlement agreement

Regarding § 15 and 16 (general starting points)
215. The amount of financial compensation, as explained above, is not, and need not be based on a purely economic and financial basis. In any case, that would be difficult to achieve, partly because it should then include compensation for use of the real estate seized by the state, during the period since their seizure, or at least during the period of the legislature's unconstitutional inactivity.

216. For reasons of respecting the principle of minimizing interference, and analogously for reasons due to which, for example, the Act on the State Budget cannot be subject to constitutional review, the Constitutional Court does not find the fact that the legislature set the amount of financial compensation in a combined manner based on several factors to be an unconstitutional circumstance.
217. The relationship between the state and individual churches established by the contested statutory provisions and subsequently by contracts which, however, in view of the predominant consensual element and political overlap, were more in the nature of memoranda, brings a transition to a new framework for the relationship between state and churches. As regards settlement of financial compensation, this establishes an obligation relationship in which the state is in the position of a debtor and individual churches and religious societies are in the position of creditors.

218. The Constitutional Court does not consider a two-sided solution to be unconstitutional, either from a historical perspective or in the context of the current democratic, law-based state; it believes that, on the contrary, it establishes a dignified relationship between the state and churches, and that – as regards financial settlement – it should be an ideal basis for possible steps required by economic circumstances, leading to, for example, a change in a "payment calendar" or adjustments to the "inflation index," and so on. Even from a long-term perspective, one cannot expect that churches in the Czech Republic would cease to exist; on the contrary, it must be taken into account that the state

authority is in practice no longer guided by the hypothesis that religion depends on historic or material conditions and is in the nature of a relic, on which Act no. 218/1949 Coll. was based; on the contrary, the present legislation (Act no. 3/2002 Coll., as amended by later regulations) expects that churches and religious societies will continue to function into the future. In this situation, a view that would place the state and churches in a confrontational and contentious relationship is extremely inappropriate; the leaders of both sides should encourage tolerance, understanding, and mutual respect.

Regarding § 15 and 16 (financial compensation and settlement contracts)
224. In view of the purpose of the contested Act, we must point out that individual provisions (or individual institutions) of Act no. 428/2012 Coll. cannot be isolated from each other and interpreted independently. Under § 1 the subject matter of the Act is the mitigation of property crimes that were committed by the communist regime, and also settlement of property relationships between the state and registered churches and religious societies.

225. The explanatory report also indicates that when the specific form of legislation was being considered, the alternative of only restitution in kind was considered, on the basis of Act no. 229/1991 Coll. This alternative was discarded, because of its completely unsatisfactory consequences for the relationship between the state and churches: restitution in kind would basically apply only to the Roman Catholic Church (98% of property). Other churches and religious societies would receive virtually no property through this process, and would remain dependent on financing from the state budget. Compensation for land that was not issued would be provided according to prices in effect at the time the law was adopted; however, present reality does not correspond at all to 1991 prices. The legislature's inactivity for 20 years cannot be applied to the detriment of entitled subjects. Under Act no. 229/1991 Coll. obligated persons are, in addition to the state, also municipalities and other subjects, which, given the passage of time, can establish new property crimes and a number of lawsuits.
226. The constitutional order does not prohibit regulating certain relationships into the future together with mitigation of property crimes. Restitution legislation did not in any way make absolute the attempt to renew property relationships as of the beginning of the decisive period, but took into account the present political or public interest (in the legal sense). A classic example of this is the implementation of the economic doctrine of liberal economic transformation, in which restitution primarily played the role of denationalization of social wealth. This was also reflected in the specific parameters of restitution laws (definition of personal, material and time effects of laws, exemptions from issuing things, etc.).

227. In this regard the concrete form of the intent to end the direct financing of churches and religious societies with the aim of economic separation from the state is fundamentally a political decision. In the scope of determining the value of non-issued property, as well as regarding the distribution of financial compensation in installment payments, this is an economic deliberation made by the legislature in light of the state's budgetary possibilities.

228. The subject matter of the following review is the principle of financial compensation (§ 15), which is variable in relation to the individual churches (given various ratios between the compensation component and the settlement component of restitution), and the principle of a transitional period of degressive direct financing (§ 17). In view of the nature of the objections, where the petitioners and secondary parties allege violation of a fundamental right (Art. 11 para. 1 of the Charter) in only one case, and otherwise allege only a generally formulated discrimination and inequality (non-accessory inequality; as a result of the legislature's arbitrariness), the Constitutional Court is acting only on the basis of the rationality test for legislation. The question of religious neutrality of the state under Art. 2 para. 1 of the Charter is a matter for separate review.

Regarding § 15 para. 1, 2 (alleged conflict with Art. 11 para. 1 in connection with Art. 3 para. 1 of the Charter)
231. The Constitutional Court states that violation of these fundamental rights is conceptually ruled out. The provision of Art. 11 para. 1 second sentence of the Charter is directed at the already cited

practice under the communist regime after 1948, when the legal order (including constitutions) recognized various kinds of ownership for various groups of people, which then had correspondingly various levels of legal (judicial) protection (in this context we must point out the objections based on the theory of "public ownership"). However, the ownership right established by the procedure under § 15 para. 1 and 2 does not modify the institution of ownership, either for entitled persons or for third persons. In other words, church entities receive the same ownership rights under Act no. 428/2012 Coll. as any other entitled person, or any other owner in the jurisdiction of the Czech Republic. Therefore, even potential removal of § 15 para. 1 and 2 will not change the content and protection of ownership on the part of third persons.

Regarding § 15 para. 1 and 2 (financial compensation, including for churches without a restitution entitlement)

232. The provision of § 15 para. 2 establishes a conditional entitlement to financial compensation, in a specified amount (see the table). In view of the purposes of Act no. 428/2012 Coll. this financial compensation is of a mixed nature: as part of financial compensation, churches will be paid CZK 59 billion over 30 years, divided between churches and religious societies in the ratio: 80% Roman Catholic Church, 20% other churches and religious societies (explanatory report, p. 37). Thus, financial compensation under § 15 is not of a purely compensatory (restitution) nature; through it the legislature sought to partially balance the status of affected churches and religious societies compared to the Roman Catholic Church. We must point out that even § 15 does not construe financial compensation in relation to the market prices of individual non-issued pieces of real estate. The compensatory and balancing component of financial compensation is thus evidently different for each individual church and religious society: with the Roman Catholic Church there is a fully compensatory (restitution) component; with other churches the balancing component may be completely dominant (part or all of the financial compensation will be paid beyond the scope of the original property). The specific ratios of both components of financial compensation for individual churches are irrelevant for review of constitutionality.

233. As regards the differing nature of the shares of individual churches in financial compensation, the Constitutional Court is of the opinion that 1. partial redistribution (modification) of financial compensation between individual churches in a limited scope is within the political discretion of the legislature, and 2. the already stated consent of the affected churches and religious societies rules out illegality, or constitutionally relevant inequality of entitled persons. Regarding issue 1., the Constitutional Court adds that when the legislature conceives the relationship between the state and churches for the future, a formal historical fairness (equality of entitled persons) is not the only criterion by which it is necessarily bound. Especially because the relationship between the state and churches went through so many fundamental changes as in the 20th century, political discretion is appropriate, in view of the changed social and economic conditions, and also in view of the individual churches' adaptation to these changes. The recommendation of the Venice Commission concerning laws governing issues of religion and denomination, for example speaks in the context of the current law-based state and property settlement with churches of the need for special "sensitivity." If the question of property settlement contains the termination of the existing model of direct state financing, the method of restitution (in kind, financial) appears not as the aim, but as one of the forms for achieving that aim. Insofar as the legislature indicated that emphasis on purely restitution principles in property settlement can, in the present conditions, cause disproportionate harshness that would negatively affect non-Catholic churches and religious societies, this can be justified in view of the confidence of these churches in Act no. 218/1949 Coll., to which a number of church activities necessarily adapted themselves in the absence of other possibilities. The purpose of Act no. 428/2012 Coll. undoubtedly is not the sudden limitation or termination of (generally long-term) activities of non-Catholic churches that were not significant owners of agricultural land on 25 February 1948. Regarding 2., we must also point out that the ratio of partial redistribution of financial compensation among individual churches and religious societies was conceived from the beginning as a (political) agreement between the affected churches and religious societies (see the appendix to the government's statement, "submission the results of church agreement on the division of financial compensation for non-issued original church property"), which is not as important as the related fact that the subsequent legally relevant consent of the affected churches and religious societies arose through contracts

concluded under § 16, in which the question of the shares of individual churches and religious societies in financial compensation is stipulated.

234. In relation to the claimed effect of making churches even more dependent on the state through payments, we must emphasize that secondary party 1) does not quite precisely capture the logic of the Constitutional Court's conclusions. Financial compensation under § 15 is conceived quite differently; primarily, payments are not – every year – dependent on (political) budgetary priorities, and create a certain outlook for churches and religious societies, even if it is limited in time by the termination of direct payments. We must emphasize again that the unconstitutional dependence of churches on the state was not formulated in judgment file no. Pl. ÚS 9/07 in relation to economic deliberations on the actual economic expenses of churches and the amount of actual payment from the state under Act no. 218/1949 Coll. Even though the total amount based on entitlements under § 15 para. 2 and § 17 can mean that individual churches will have a temporarily higher or lower income from the state than their potential income under Act no. 218/1949 Coll., this does not establish dependence in the abovementioned sense.

235. Thus, in relation to the fact that the shares of individual churches in financial compensation under § 15 para. 2 do not correspond to their shares in the original property, the Constitutional Court concludes that it will meet the test of rationality, because it leads to removing the economic dependence of churches on the state, or mitigates (together with entitlements under § 17) the effects of immediate cancellation of "economic support" under Act no. 218/1949 Coll., and to some degree evens out the historically based different property situations of various churches and religious societies, whereby it minimizes the sudden negative effects of state actions on the activities of churches (and religious freedom generally). The foregoing also does not support a conclusion that the legislature acted with unconstitutional arbitrariness. It is necessary to emphasize that this argument by the petitioners and secondary parties could not even theoretically lead to a blanket annulment of the contested legislative framework as regards all the affected churches, but only as regards those churches whose financial contribution contains a balancing component beyond the framework of purely restitutional compensation.

Regarding § 15 para. 1 and 2 (the amount of financial compensation)
242. The secondary parties state that "nowhere in the Act or in the explanatory report" is there a precise list of the property on which the valuation was made. Also, according to secondary party 1) it is not evident whether the list of compensated property took into account Act no. 298/1990 Coll., property issued through "executive" procedures in 1996 to 1998 and the amounts issued on the grounds of "economic support" under Act no. 218/1949 Coll. The petitioners then state that "[t]he amount for damages for allegedly un-issued property is discriminatory (churches are paid compensation for allegedly market prices, and all other restituents, including persons whose property was confiscated since 1919 on the basis of land reform, for prices according to a table)," and that there is no obligation on the state to compensate anything, especially not for market prices.

246. These objections are of double intensity: a) the scope of original property includes real estate subject to Act no. 142/1947 Coll., on Revision of the First Land Reform, as amended by later regulations, and the data in the explanatory report were thereby overvalued by several degrees over reality; b) the scope of original property, as contained in the explanatory report, because of insufficient additional documentation, is not precise.

247. Regarding both objections we must state that it does not follow from Act no. 428/2012 Coll. alone that a case of financial compensation under § 15 para. 1 and 2 would involve the results of a specific economic or mathematical method that would be applied to a specific set of property, especially in view of the abovementioned aim of financial compensation, which has a variable ratio of compensatory and balancing components for each of the churches. Thus, the Act does not indicate that it presumed a specific identification of property and its valuation by a specific economic method, where the sum of the amounts would then be the total amount of financial compensation. In terms of a test of the constitutionality of a statute with budgetary effects, the decisive factor is to what extent the

amount of financial compensation has an elementary connection to available data and prices, that is, whether the contested § 15 para. 1 and 2 are not the result of irrational conduct by the legislature, accidental changes (errors) in the legislative process, etc.

248. Regarding the objection in a), we must add that it is based on an incorrect assumption that the real estate coming within Act no. 142/1947 Coll. is (should be) excluded from restitution legislation because the property crime was to have occurred before the decisive date of 25 February 1948. The decisive factor for inclusion in the decisive period is when the property crime occurred, not when the law went into effect. Act no. 142/1947 Coll. was adopted on 11 July 1947, with effect as of 12 August 1947; however, it was implemented in the decisive scope only after 25 February 1948. The implementing government order no. 1/1948 Coll., which implements certain provisions of the Act on Revision of the First Land Reform, did not take effect until 9 January 1948. Under this order, an owner had to be given notice so that the land could be taken over as of 1 March or 1 October of the current year. In § 23 para. 1 of government order no. 1/1948 Coll., as amended by government order no. 90/1948 Coll., it was set forth that notice of termination of management of seized real estate under § 12 of the compensation law i.e. of Act no. 329/1920 Coll. must be at least three months, so that the taking over of the land could be performed either as of 1 March, or 1 October of the current year, with the exception that a one month notice is sufficient for taking over land as of 1 March 1948.

249. Regarding the objection in b), we must add that the review of constitutionality is not based on reviewing the measurement of the original property. In terms of the criteria above, it is the role of the Constitutional Court to review whether there are connections between these measurements to data that the legislature and the Constitutional Court had available, thus, whether the legislative framework is not the result of irrational conduct by the legislature or accidental changes (errors) in the legislative process. In that case the requirement of secondary party 1) for precision (following from the requirement of an itemized list of the original property) is substantially relativized in favor of verifying the fundamental data on the original property, especially in the scope of forest land of 181,326 hectares and agricultural land of 72,202 hectares. However, these data were not disputed by the petitioners or the secondary parties in any substantial way.

250. In its statement, the government states that when the bill of the Act was being prepared available archive materials concerning the scope of church property were reviewed. As a result of the floods in 2002, data on the original church property from the period of the first land reform are not available now. Therefore, data related to the implementation of the first land reform were used, also in view of the quality that officials produced during the First Republic compared to the period after World War II. The government also considers it necessary to add that the first land reform applied only to large estates with agricultural land over 150 hectares or all land over 250 hectares. Church estates of smaller size , e.g. parish land, smaller estates owned by religious orders and congregations, are not included in these numbers. Church property acquired in the second half of the 1930s through purchases, gifts and inheritance that was not registered in the first land reform as church property is also not included.

251. At the same time it is evident that the state (any of its bodies) did not in the past, and does not today, maintain an independent list of church assets or church property owned by entitled persons or their legal predecessors, or a list of original property, as defined in § 2 let. a). The webpage of the Ministry of Culture contains more detailed information regarding the scope of church property falling under the first land reform and copies or archive materials (especially regarding the size of individual large estates owned by churches). After the land reform, individual investigation documented 118,327 hectares of all land owned by Catholic Church dioceses and 67,515 hectares owned by the religious orders of the Catholic Church, a total of 185,842 hectares. The Constitutional Court had no reason to seek more detail on these data or require evidence about them. These measurements do not include property units that did not meet the size definition for large land property (“more than 150 hectares of agricultural land (fields, meadows, gardens, vineyards, hops fields), or 250 hectares of ground overall”), that is, smaller land units. The size of parish properties alone was estimated in 1949 to be 30,612 hectares (material from the Ministry of Education, Science and Art, file no P 2398/49-P/6, available on the webpage cited above). The measurements drawn from specialized literature or

individually documented also do not include measurements of real estate acquired in the 1930s and 1940s, and especially the property of other churches (non-Catholic churches and Jewish communities) and religious foundations and church associations. As regards the ratio between issued and non-issued (compensated) property, this basically involves subtraction of the issued property on the basis of the records of the Land Fund of the Czech Republic and Lesů České republiky, s. p. [Forests of the Czech Republic, state company], from the total property.

252. When one considers the foregoing facts, it is evident that the measurement of original property on which the explanatory report was based (as were previous negotiations between the state and churches), if it is to be a measure of the rationality or constitutionality of § 15 para. 1 and 2 of the Act on Settlement with Churches, does not show signs of arbitrariness or error by the legislature, but has a reasonable and proportional connection to available historical data. The Constitutional Court emphasizes that to reach this conclusion it was not necessary to further verify or prove the precision of these data. We can cite peripherally the Constitutional Court's approach to restitution in the 1990s, when it was repeatedly stated that the state power, which, by the nature of the matter is supposed to have the appropriate documentation at its disposal, may not take a formalistic approach toward the entitled persons and transfer to them, with a delay of forty, now sixty, years, a disproportionate burden in terms of review of the overall evidentiary situation. In any case, it is a question to what extent a precise list of the original property, including tens of thousands of items, is technically possible with a delay of sixty years.

255. As regards individual objections, it is sufficient now to point out that the available materials (the file, the stenographic record of parliamentary debates, the publicly accessible webpage of the Ministry of Culture) do not in any way indicate that the cited measurements should include property issued to churches and religious societies before 31 December 2012. As regards the valuation of original property that will not be issued, we must again emphasize that the criterion of constitutionality is not the precision or correctness of the estimated value of the original property, even though these considerations support the total amount contained in § 15 par 2.

Regarding § 15 para. 1 and 2 (unconstitutional inequality of the restituents)
260. The existing restitution legislation and the Constitutional Court's case law considers the fundamental method of mitigating property crimes (if the Constitutional Court now sets aside the wider purpose of Act no. 428/2012 Coll.) to be restitution in kind. The difficulty of comparing the financial (monetary) compensation applied so far, which the petitioners and secondary parties request, comes primarily from their subsidiary nature. Under Act no. 229/1991 Coll., an entitled person has a claim for the issuance of land, and if there are reasons for not issuing the land, a subsidiary entitlement is created for payment-free transfer of another piece of land to the entitled person (§ 11 para. 2; § 11a para. 1). Only for land that will note be issued under Act no. 229/1991 Coll. and for which the entitled person cannot be issued another piece of land, is there a second subsidiary entitlement, the entitlement to financial compensation (§ 16 para. 1).

261. In this regard there is no doubt that the construction and purpose of financial compensation "at prices in effect as of 24 June 1991" under Act no. 229/1991 Coll. are completely different from financial compensation under § 15 para. 1 and 2 of the Act on Settlement with Churches, which is connected to the concept of gradual economic separation of churches from the state, including the already cited consideration of the situation of non-catholic churches, which, for historical reasons, cannot benefit from strict restitution principles.

262. Thus, the selection of the uniform criterion of prices valid as of 24 June 1991 in Act no. 229/1991 Coll. did not serve primarily for direct payment of financial compensation, because that arises only as the second subsidiary entitlement, but primarily for setting the "value" of the restitution entitlement. Replacement ("other") pieces of land that were formally designated as the equivalent of the restitution entitlement in 1991 prices were transferred to entitled persons as part of the subsidiary entitlement. Therefore, the set price served primarily to determine equivalent replacement land, also to determine the order of several entitled persons who were successively offered, based on the "entitlement

amount," a contract under § 11a para. 9, or to designate forest land "of corresponding size and quality under § 11 para. 2 of Act no. 229/1991 Coll. However, that was at a time when the lands thus assessed already had a real market value, usually a higher one. If financial compensation was paid as a second subsidiary entitlement, the compensation had only a quite systemic "symbolic satisfaction function" (file no. Pl. ÚS 6/05, part VIII/f). The chosen construction of the calculation of real estate prices as of 1991 is based primarily on an attempt to set a uniform reference criterion for setting the prices of real estate for the entire multi-year process of restitution of agricultural land. The main reason was the non-existence of a market in agricultural real estate, the creation of which was to be enabled by Act no. 229/1991 Coll., and thus the impossibility of determining the usual price. Therefore, this construction can also be viewed as a protective mechanism for entitled persons and a means for preserving equal treatment of all restitutents.

266. It is evident from the foregoing that the case law of the Constitutional Court and the Supreme Court (and later also lower courts) in practice corrects the question of the equivalence and proportionality of financial compensation in restitution legislation thus far, in view of the quite different economic and social conditions (changes in real estate prices) compared to the early 1990s. It is not evident why this principle – nota bene, in a statute adopted in 2012 – could not apply to the benefit of church entities too.

267. When secondary party 1) seeks application of decree no. 182/1988 Coll., on prices for buildings, lands, permanent vegetation, compensation for establishing personal use rights for land and compensation for temporary use of land, as amended by later regulations, and sees the use of prices as of 24 June 1991 as equal treatment, and the petitioners even refer to the "historical traditions" arising from "table prices" in land reform after 1919, the Constitutional Court does not see sustainable legal arguments in the cited verdicts, if, moreover, the foregoing is presented as the only constitutional solution.

Regarding § 16 para. 1 (contract between the state and the affected church)
275. Secondary party 1) objects that the construction of contracts creates a 'forced patronage" of the affected churches and religious societies, regardless of whether the church will observe the laws in the future or whether it will want to terminate payments early. Although constitutional law arguments are not attached, secondary party 1) is apparently suggesting that the legislation is an element of coercion, as the length of time of the contract is not within the discretion of the parties (in particular, the churches). First of all, we must emphasize that under § 11 para. 1 of Act no. 218/1949 Coll. "[a]ll private and public patronage of churches, benefices and other church institutions" was already transferred to the state when the Act went into effect. This patronage was carried out in a constitutionally acceptable scope through Act no. 218/1949 Coll. until 31 December 2012. In view of the content of contracts under § 16 para. 2 let. a) of the Act on Settlement with Churches, patronage, i.e. the claims of primarily the Catholic Church arising from it, is also subject matter for settlement. Second, if the objection focuses on the aspect of "coercion" on the part of the state, we must emphasize that the Act does not create an obligation to conclude a contract under § 16 para. 1; according to publicly available information one of the affected churches took advantage of the opportunity to not conclude a contract. As regards interpretation of § 16 para. 1 in terms of the alleged threat of forced sufferance of payment of financial compensation payments against the current will of the affected church, see the interpretation regarding Art. 2 para. 1 of the Charter below. As regards the concern that payments will also be made to those affected churches that violate the laws during the cited thirty year period, the Constitutional Court refers secondary party 1) to Act no. 3/2002 Coll., as amended by later regulations, which contains relatively strict regulation of churches and religious societies as registered legal entities; in particular § 5 sets forth an extensive list of conditions under which the ministry may, under § 22 of Act no. 3/2002 Coll., as amended by later regulations, begin proceedings to cancel the registration. Upon deletion from the register the church ceases to exist as a legal entity, and the termination of the affected church is undoubtedly tied to the termination of rights and obligations from a contract under § 16 para. 1 of the Act on Settlement with Churches.

276. The secondary parties are mistaken when they claim that § 16 para. 1 establishes an obligation on the state to provide the affected churches financial compensation. This entitlement is evidently established by § 15 para. 1 and 2, ex lege, upon fulfillment of the condition that the church does not refuse to conclude an agreement on settlement with the state (§ 15 para. 1).

Regarding § 16 para. 2 (content of a settlement agreement)
277. Secondary party 1) raises an objection to § 16 para. 2 let. a), and claims that the affected churches could not hold entitlements to the original property, because in the past they never owned the original property. Here the Constitutional Court refers to the interpretation provided above. In the event of a further objection that it is not clear what private law relationships are settled and to what degree the legislature took into account § 2 of Act no. 298/1990 Coll., we must state that this objection is not connected to an allegation of unconstitutionality.

Regarding § 16 para. 3 (lack of government authorization under Art. 78 of the Constitution)
278. When secondary party 1) claims that, under Art. 78 of the Constitution, the government is not authorized to negotiate "private law contracts with normative effects," we must state that it is not evident where the "normativeness" of a contract under § 16 par 1 is to be seen. Contracts under § 16 do not involve "implementation of a statute" but an act of application of a statute, which, in this regard, is a substantial difference. Such an act by the government is not a decision taken as part of the exercise of state, i.e. public, power, for which it is reserved by law (Art. 2 para. 3 of the Constitution), but a decision issued as part of "non-sovereign" administration, which also includes deciding about the handling of property where the state, through its bodies, acts as an owner, and not as a representative of state power. Yet, Act no. 219/2000 Coll., on the Property of the Czech Republic and Its Role in Legal Relationships, as amended by later regulations, in a number of provisions expressly gives the government powers to decide on the handling of state property. The authority to conclude settlement agreements is given to the government by § 16 para. 3 of Act no. 428/2012 Coll., which is a lex specialis to provisions of Act no. 219/2000 Coll., as amended by later regulations. Anyway, this Act itself assumes, in § 7 para. 1, that legal acts in the name of the state are made by the head of the organizational component that the acts apply to, unless a special regulation provides otherwise. In this case § 16 para. 3 of Act no. 219/2000 Coll., as amended by later regulations provides "otherwise."

Regarding § 17 (the transitional period)
279. The provision of § 17 establishes a seventeen year transitional period, during which the state pays the affected churches and religious societies a contribution to support their activities. The amount of the contribution is derived from the amount paid to the individual entitled church in 2011; in the first three years of the transitional period the full amount of the reference amount is paid, and in every additional year the amount is reduced by 5% of the amount paid in the first year of the transitional period. The contribution for support is constructed degressively, without indexing, is not subject to tax, fees, or similar financial requirement, and is paid by 31 January of each year.

281. Objections against the transitional period are raised primarily by secondary party 1). It alleges conflict with Art. 2 para. 1 of the Charter, in terms of the religious and denominational neutrality of the state. It questions the group of affected churches and religious societies in view of the existence of churches that did not apply by 31 December 2012 to have a right to economic support recognized, or churches that will be formed in the future, questions the length of the transitional period, and objects that it is impossible to withdraw the contribution for support if the affected church or religious society ceases to fulfill its obligations and begins to violate the laws.

283. It is unquestionable that the contribution for support is tied to the legal situation in effect until 31 December 2012, on the basis of § 7 para. 1 let. c) of Act no. 3/2002 Coll., in the version in effect until 31 December 2012, and Act no. 218/1949 Coll. In relation to Act no. 218/1949 Coll. the legislature was forced to respond to a certain anachronism (though not an anomaly from a comparative form of view) in terms of the existing legal and political developments, caused by the change in the legal and political context in Czechoslovakia after 1989. Thus, Act no. 428/2012 Coll. is not based on completely free legislative discretion, which would establish any kind of relationship between the state

and a church; rather, its subject matter is regulation of legal institutions and relationships already existing, established in the decisive period.

285. Concerning the question of the length of the transitional period (17 years), the Constitutional Court evaluates this parameter in connection with the degressive and non-indexed mechanism of allocating specific amounts, where the real significance of the temporary payment, in a degressive amount, from the point of view raised, can be described as termination of direct financing, and not as continuation or even strengthening of it, as claimed by secondary party 1), which inappropriately uses words concerning introduction of the concept of "state churches."

286. Thus, unlike financial compensation under Art. 15 para. 1 and 2, or its balancing component, the contribution for support is not construed directly in a close connection to the restitution component of the settlement of property relationships between the state and churches.

290. After weighing these aspects of the contribution – temporariness, degression, and derivation from a previously acknowledged special right to state financing – the Constitutional Court did not find the contested framework to be unconstitutional, in the sense of being based on irrational or arbitrary discretion by the legislature. The contested legislation does not cause unjustified inequality, because the existence of the previously acknowledged special right to state financing under Act no. 3/2002 Coll. is an objective fact, on which one can base the transitional contribution for support of affected churches and religious societies.

Regarding the question of state religious neutrality under Art. 2 para. 1 of the Charter

303. Under Art. 2 para. 1 of the Charter, which the petitioners and secondary parties repeatedly cite, "[t]he state is based on democratic values and cannot be bound either to an exclusively ideology or to a religious faith."

304. The core of the cited provision is the expression of the secular foundation of the state, which does not derive its legitimacy from religious justification (the will of a higher power), but from democratic and legal principles that are also considered to be unchangeable (Art. 9 para. 2 of the Constitution). This is an inherent quality of the modern state, which, however, does not testify to a specific model of the relationship between the state and a church or the religiosity of the population. In the European context, the beginning of the process of separating the state from religion, or churches, can be attributed to the experience of religious wars and the emerging religious plurality in society (in Czech translation, e.g.,. Böckenförde, E. W. Vznik státu jako proces sekularizace. [The Creation of the State as a Process of Secularization] Praha: Občanský institut, 2005, 19 s.).

305. However, the secular nature of the state does not mean agreeing with an ideology of secularism, understood as the active focus by the state power on excluding religion from public life.

307. In this regard, the Constitutional Court's case law speaks of the principle of pluralism and religious tolerance, where the state does not take positions on the content of individual religious faiths (as regards truth, usefulness, etc.), but takes the role, where it is necessary, of an impartial moderator with the aim of regulating the legal and factual context for the exercise of fundamental rights.

309. The foregoing also indicates that the existence and functioning of churches and religious societies is not seen by the constitutional order as a threat to the secular foundations of the state, if at the same time this same constitutional order recognizes extensive religious freedom and church autonomy, not even in the scope of the existing cooperation (coordination) between the state and churches in certain traditional areas of social life.

310. Finally, we must emphasize that the concept of religious and ideological neutrality does not commit the state to reject the roots of its values and history, on which religious experience had a considerable influence. Of course, the philosophical, cultural and social inheritance, carried for more

than a thousand years, especially by Christianity and Christian churches, and still manifesting itself in society, is a matter of fact, not of religious faith.

The test of neutrality of religion and world views

311. Reviewing the possible conflict of the Act with Art. 2 para. 1 of the Charter has three related components. Because this involves objective constitutional guarantees, not violation of subjective fundamental rights, the test is different from the proportionality test:

i. The prohibition on the state identifying itself (positively or negatively) with a particular world view or religious doctrine, which would lead to abandoning the democratic legitimacy of state power.

ii. The prohibition of such exercise of state power, intervening negatively or positively in religious or world view questions (denominational neutrality), as would lead to excessive connection of the state with any religious or world view movement or with any church or religious society.

iii. The prohibition of such exercise of state power as would establish an unjustified equality based exclusively on the criterion of religion or world view.

312. Re i. In the first step, the Constitutional Court reviews to what extent the elements of a democratic and law-based state were removed from the legal order (or the exercise of the state power) and were replaced by religious or other world-view justifications. Identification of the state with a particular religion or world view that aims toward legitimizing the exercise of state power exclusive on the basis of religious arguments can be considered unconstitutional. In such a case we can speak of the loss of the state's secular nature and conceptual exclusion of plurality and tolerance of other religious and world view movements by the state power. In this regard the Constitutional Court did not find that the cited guarantees were affected, and the petitioners and secondary parties did not make any such objections.

313. Re ii. The subject matter of the second step is to review whether there is a process on the part of the state (the public power) that could be considered as adopting fundamental positions on the content and practices of religious and world view doctrines (denominational neutrality). In this regard it does not matter whether the state is engaged positively (preferences) or negatively (restrictions). The constitutional prohibition applies to excessive connection of the state with any religious or world view movement that would lead to state indoctrination or other coercion of individuals in questions of religion and world view (the human rights level), and to excessive connection of the state with any church or religious society aiming toward creating a mutual (organizational, personnel, and material) dependence of the state and church, or directly to the creation of a state church (the institutional level). The state also accepts and tolerates the existence of various world view and religious movements and groups and their members and defenders, for whom it creates a free environment for the exercise of their fundamental rights (the principle of religious plurality and tolerance). Setting the limits of a fundamental right under Art. 16 para. 4 of the Charter is not considered to be such excessive connection.

314. First of all, we must add regarding steps ii. and iii. that the question of mitigating property crimes (after 1989) is not understood in the Constitutional Court's case law as an ordinary institution of a standard law-based state, but as a sui generis legal and political anomaly, which has historical causes that precede the law-based state. The Constitutional Court views it in terms of formal legal continuity, but also as a clearly stated value discontinuity of the Czech state with the previous non-democratic regime (judgment of 21 December1993 file no. Pl. ÚS 19/93), as a general obligation of a democratic, law-based state, expressed in Art. 1 of the Constitution and especially in individual provisions of the Charter of Fundamental Rights and Freedoms "that of ensuring not only the formal but also the actual renewal of material guarantees for the exercise of fundamental rights and freedoms, where previously – in spite of the elementary human rights content in the international ius cogens – the state has failed. Adoption of the Charter of Fundamental Rights and Freedoms, and acknowledging other international instruments for protecting fundamental rights, however, does not represent a "starting point, from

which the obligation of the state would commence, as a limit, and where it is necessary, to actively create preconditions for the exercise of fundamental rights. To the contrary, in relation to the individual bearers of the fundamental right, it is impossible to fail to take into consideration the historically created context of the situation in which they currently and by fault of the state find themselves. In other words, it would be in contravention of the concept of development and reinforcement of fundamental rights if social changes repeatedly resulted in establishing lower standards of fundamental rights on the basis of ignoring historic causes for the condition as exists at present. The history of democratic and rule of law states cannot consist of lines marking out separation of the past; instead lessons taken from prior experience must be reflected as guarantees for non-repetition of past mistakes in the future" (file no. Pl. ÚS 9/07, point 94). Therefore, in this regard the restitution, rehabilitation and general transformational actions by the state after 1989 cannot be evaluated by classic constitutional criteria as an isolated expression of legislative will not conditioned on anything, but as a response to a concrete historical fact, which the democratic legislature did not cause but which it is forced (as part of formal legal continuity) to connect to. One of the most typical doctrines relating to that was set forth in judgment file no. Pl. ÚS 16/93 of 24 May 1994 (N 25/1 SbNU 189; 131/1994 Coll.) and was last repeated in judgment file no. Pl. ÚS 33/10 of 23 April 2013: "Whereas restitution is the removal of illegality in the transfer of ownership, or illegal interference in ownership rights, by returning a thing to the original legal relationship, expropriation is a forced removal of ownership rights in the public interest, on the basis of law, and for compensation. The reason for restitution is exclusively illegality, whereas the reason for expropriation is the public interest, i.e. a different concept. Thus, restitution is not a forced removal of ownership, but an obligation to renew the original legal situation." In this regard, satisfaction of property entitlements arising from a wider (historical) justice through basically one-time restitution, rehabilitation and transformational acts cannot be compared in constitutional law with acts of the functioning legislature (as regards starting points and aims) fully in the context of a law-based state. This view is reflected in both the issues of equality of entitled persons and, for example, review of the constitutionality of, e.g. enumerative restitution laws, which otherwise without substantially taking the foregoing into account, due to the lack of generality of the legal regulation, would only with difficult survive an abstract review of norms. These conclusions can only be reached with the awareness that "at least partial remedy of cases of injustice from the past predetermines the nature of further democratic development" (file no. Pl. ÚS 9/07, point 32).

315. Second, we must emphasize regarding steps ii. and iii. that the question of religious neutrality is closely tied to the conditions for the exercise of religious freedom in the sense of a subjective fundamental right. The human rights approach is completely predominant in the Constitutional Court's case law in interpretation of Art. 2 para. 1 of the Charter.

316. However, the interpretations of Art. 2 para. 1 of the Charter, or more precisely repeated invocation of it in the petitioners, contain an assumption that it is this provision that prevents the state from intervening in the legal situation in effect until 31 December 2012 with a positive, or viewed narrowly, "advantage" giving statute that would settle the historical property of churches (file no. Pl. ÚS 9/07, verdict II), within the larger context of the relationship between the state and churches (points 23, 38), when "complex political decisions" are necessary (body 86, 108). However, the prism defended by the petitioners and secondary parties necessarily implies that this unconstitutional situation basically has no constitutional solution. However, the Constitutional Court does not agree with this view. The more than twenty years between the adoption of Act no. 428/2012 Coll. and the main wave of restitution and transformation legislation does not take away this specific character, however much social awareness about the ethos and purpose of restitution legislation after 1989 (though more about its very existence) has weakened today.

317. Therefore, in this context, especially regarding step ii., the Constitutional Court does not evaluate Act no. 428/2012 Coll. as an isolated act – unconditioned and unforced from a historical and constitutional viewpoint – that would defy the approaches summarized above (introduced by "first" and "second"). Taking these starting points into account, we must reject the assumption that the Charter petrified the status quo in the relationship between the state and churches as of the day it went

into effect, and that any subsequent act by the state power to the benefit or disadvantage of churches and religious societies deflects that situation one way or another, and is thus an unconstitutional violation of the religious neutrality of the state. On the contrary, it is characteristic for the present issue that the situation before 1 January 1990 (before the decisive period) was an abnormality (deviation) both in terms of historical justice, and especially in terms of constitutional law; in relation to churches and religious societies, in terms of the guarantees in Art. 15 and 16 of the Charter and in terms of the dependence churches and religious societies on the state (Art. 2 para. 1 of the Charter), created by the state, the situation until 31 December 2012 was an anomaly. Act no. 428/2012 Coll. is one of the possible ways to mitigate the earlier crimes and adjust the relationship between the state and churches within the bounds of the constitutional order. Therefore, this is not an excessive connection between the state and churches, because such an understanding of Art. 2 para. 1 of the Charter would mean that churches and religious societies were the only subjects vis-à-vis whom the constitutional order does not permit restitution, rehabilitation, or transformational action by the legislature, However, this was not the intent of the constitutional framers, and therefore the Constitutional Court did not cast doubt on Act no. 298/1990 Coll., which explicitly "preferred" only a certain type of church legal entities, and only in relation to one church (the Roman Catholic Church), but, on the contrary, included it in the set of other – standard – restitution laws (file no. Pl. ÚS-st. 22/05). In this review the scope and value of the affected property is not relevant, because they are predetermined by historical fact, and not the free discretion of the legislature.

318. Regarding the question whether the purpose itself of the Act, i.e. the termination of direct financing of churches and religious societies (economic separation), is constitutional, the Constitutional Court states that this is one of the ways of regulating the relationship between the state and churches within the bounds of Art. 2 para. 1 of the Charter. That Article does not contain a separatist proposition as an imperative, but also does not rule it out; in any case, even after implementation of Act no. 428/2012 Coll. (while preserving other religious law regulations) the resulting situation will not have a strict separation of churches from the state, but will only approach a (theoretical) state of separation, undoubtedly in comparison with the existing model of direct financing under Act no. 218/1949 Coll.

319. The abovementioned conclusions about the wider limits provided to the legislature in adopting restitution, rehabilitation and transformational legislation apply fully to the narrowly restitutional aspects of the Act, in the parts concerning restitution in kind and compensation component of financial compensation. As regards the balancing component of financial compensation, it is supposed to be a component of the concept of material correction of a historical fact that appeared to the legislature to be a disproportionate harshness continuing into the future. This aspect was to be the fact that the dominant owner of real estate as of the decisive date, 25 February 1949, was only one of the churches (the Catholic Church), and the selection of only a restitution model when terminating direct financing would mean a disproportionate effect on other churches, which were financed directly by the state until now, in the scope of entitlements under Act no. 218/1949 Coll.. However, the aspect of denominational neutrality under Art. 2 para. 1 of the Charter, as interpreted by the Constitutional Court, was established not on the formal viewpoint, but on the material viewpoint (incidentally, as an interpretation of a number of other provisions of the constitutional order). In this the redistribution of the part of financial compensation between non-Catholic churches and religious societies appears to the Constitutional Court to be a procedure that precedes extremely disproportional effects of the restitution component Act no. 428/2012 Coll., within the bounds of the denominational neutrality of the state. Theoretically, one can consider to the contrary that implementation of only the restitution component of Act no. 428/2012 Coll. would disproportionately (although indirectly) support only one church, and the largest one, while for all others the effects of the Act would approach material liquidation. In terms of Art. 2 para. 1 of the Charter, this procedure would undoubtedly be much more intensive state interference in the status quo that the state actively, unilaterally built on a long-term basis (the legal framework for the relationship between the state and churches before and after 1 November 1949, and later, after 1989). The zero alternative (non-adoption of the Act) would only increase the previous unconstitutional situation (file no. Pl. ÚS 9/07). The same can be said in relation to the transitional period, when termination of "economic support" through a time-limited degressive

contribution cannot be considered an excessive connection of the state with the affected religious movements or churches. All the more so, that even a special right to "be financed under a special legal regulation about financial support of churches and religious societies" [§ 7 para. 1 let. c) of Act no. 3/2002 Coll.] as regards the basis of the entitlement to open-ended direct financing was not questioned by the Constitutional Court in terms of constitutionality during review of the constitutionality of Act no. 3/2002 Coll. (file no. Pl. ÚS 6/02). In this regard, the contested provision, § 17 of the Act on Settlement with Churches, does not establish a completely new institution in the relationship of the state and churches, but gradually removes it.

320. In this regard then, Act no. 428/2012 Coll. undoubtedly removes the unconstitutional dependence of churches on the state, as it was previously defined. For this unconstitutional dependence it is not the actual economic situations of individual churches and specific amounts of funds that are decisive, but only the fact that the state, through its unilateral acts (expropriation of all business property and introduction of "economic support") caused and maintained this economic dependence. This unconstitutional dependence cannot be conceptually removed either through a considerable strengthening of direct state financing of churches (whether from the state budget or from a fund set up for that purpose or by the model of immediate termination of direct financing.

321. However, special consideration in the question of religious neutrality is required by the construction of agreements under § 15 and 16 and the transitional period under § 17, in the aspect of possible state coercion. The settled view of the Constitutional Court and the European Court of Human Rights is that the exercise of religious freedom on the part of the state requires a certain degree of public law regulation, typically in the question of registration of churches for purpose of acquiring legal personality, without which one cannot enter into legal relationships. However, at the same time, if the state accepts a certain form of public law regulation, exercise of religious freedom cannot be conditioned on it (e.g. by introducing mandatory registration of churches that are not interested in it). At the level of religious neutrality of the state this aspect manifests itself in a prohibition of coercion by the state power. In part of restitution in kind the construction of exercising a restitution entitlement is fully at the disposal of the entitled person (however, cf. this aspect in the application of an enumeration statute); however, the construction of agreements (§ 15 para. 1 "the church … will acquire) permits disposition of the entitlement only within the scope of refusal or non-refusal to sign an agreement, and the construction of the transitional period (§ 17 para. 1 "the state pays") does not permit disposition with the entitlement at all. Here the Constitutional Court emphasizes the constitutionally conforming interpretation of these provisions in the sense that the state, even if an agreement under § 15 para. 1 is signed, cannot directly or indirectly "force" the affected church to accept performance in which it ceased to be interested while exercising entitlements under the Act, and informed the state accordingly. Thus, even after the signature of an agreement, there must be entitlements on the part of the affected churches and religious societies that are interpreted as a whole and in part as being completely in the disposition of the affected church; mandatory provisions of the Act may not be interpreted as an obligation to accept the performance.

322. Thus, for the foregoing reasons, in this step no excessive connection between the state and churches was found, in the sense of the imperative of state religious neutrality.

327. In this regard the Constitutional Court finds that in the question of distinguishing between individual churches and religious societies and entitled persons under Act no. 428/2012 Coll. and under previous statutes the legislature chose objective and reasonable criteria. These are primarily the existence of ownership rights to things whose removal caused a property crime and the existence of a recognized 'special right" under § 7 para. 1 let. c) of Act no. 3/2002 Coll., in the wording in effect until 31 December 2012. Even this second criterion is not formal or self-serving, because public law self-regulation of churches and religious societies has basically existed in the Czech lands for centuries, and "both the historic role of churches in society and the nature of their activities oriented to the public to some degree distinguish the churches from other natural persons or legal entities … and also make comparison possible – in terms of the requirement of independence of the state – with local

self-governments (municipalities), which are, as a whole, also indivisible from the individual right of a citizen to self-determination" (file no. Pl. ÚS 9/07, point 105).

330. When the Constitutional Court weighs these criteria, it must conclude that, on the contrary, the petitioners and the secondary parties did not demonstrate their relatively general claims that the legislature gave advantages to a particular religious movement vis-à-vis other religious and world view doctrines and violated religious neutrality in a situation where the previous restitution, rehabilitation and transformation processes, in relation to natural persons and other legal persons, took place about two decades ago, and the law does not indicate, even indirectly, a preference for a particular religious movement (for example, through an arbitrary determination of a formal, fictitious criterion). If the petitioners mean the economically markedly different position of the Catholic Church, this is not a position that is unequal in the constitutional sense, but a reflection of its historical and contemporary factual position in society. A certain correction in the mutual position of churches and religious societies occurs through the cited balancing component of financial compensation under § 16, which works to the benefit of non-Catholic churches. As regards the position of other registered churches and religious societies, which did not apply by 31 December 2012 to have a decisive special right recognized under of Act no. 3/2002 Coll., this involves an expression of disposition with this entitlement, which does not establish inequality (this situation could not be changed otherwise than by state coercion). As regards the position of churches and religious societies that will be registered in the future, at a time when it will no longer be possible to apply for recognition of a special right to economic support, we must add that this issue remains in the discretion of the legislature, and also that when economic support terminates the essence of the action is precisely the termination of existing, and elimination of future, direct payments by the state. The foregoing also cannot be seen as discrimination in the sense of violation of religious neutrality.

331. On the contrary, it was not proved that the purpose of the Act was supposed to be unilateral advantaging of a particular church or religious society, on the basis of certain evaluation approaches taken by the legislature to individual religious movements or world views. We must emphasize that the affected churches and religious societies did not find themselves in a relationship with the state at a certain constitutionally relevant level of intensity only on the basis of Act no. 428/2012 Coll., but on the basis of legal relationships established earlier, and Act no. 428/2012 Coll. does not increase the intensity of these relationships (let alone an abrupt or permanent change), but does exactly the opposite.

332. Thus, we can conclude that Act no. 428/2012 Coll. is not an instance of the state treating certain religious and world view movements in an unequal and discriminatory manner, because objective and reasonable criteria were used for distinguishing them (setting the scope of competence of the Act), and criteria of preference for or rejection of a particular religious movement or world view.

Preliminary issue

333. Regarding the petition to submit a preliminary issue to the European Court of Justice as to whether registered churches and religious societies and church legal entities are a business under Art. 107 para. 1 of the Treaty on the Functioning of the European Union (the "TFEU"), the Constitutional Court states that this issue is outside the sphere of reviewing the constitutionality of Act no. 428/2012 Coll., especially review of the procedure of adoption of a statute in terms of the issue of whether the statute was adopted in a constitutionally prescribed manner. EU law cannot be a referential criterion for evaluation of the constitutionality of a domestic regulation. The abstract review of constitutionality is not subject to the interpretation of European law by the European Court of Justice. European law, even primary law, with respect to its fundamental formal or informal influence on the Constitutional Court, is not a component of the constitutional order, and thus is also not a referential measure for constitutionality.

334. Beyond the foregoing, we must emphasize that property settlement between the state and churches is based on facts that were established long before the Czech Republic's accession to the European Union, and the system of direct, open-ended state financing of churches existed here until 31

December 2012 on the basis of Act no. 218/1949 Coll., without this specific, and in case of property settlement one-time, question being subject to regulation by European law, or even being questioned in terms conformity with the obligations that arise from the Czech Republic's membership in the European Union.

335. Further, in this context we could not leave out Art. 17 para. 1 of the Treaty on the Functioning of the European Union, under which "The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States." The Lisbon Treaty included this provision in its principles, and it gives rise to an imperative to respect the special position of churches and religious societies generally, as well as in view of the special features of their mutual relationship with a particular member state. At the same time, this provision gives rise to a prohibition on interfering (affecting), which applies not only to areas of their own functioning, but also to other areas.

Obiter dictum

337. Beyond the foregoing, basically preventively, and also not for the first time, the Constitutional Court must, on the basis of the hearing, point out that a proceeding before the Constitutional Court is not intended to be used to strengthen the legitimacy or credibility of political positions by capturing them in a court proceeding followed by the media, nor is it a forum for political discussion for. A proceeding on abstract review of constitutionality of a statute is intended to protect objective constitutionality, not to protect, or even merely popularize, subjective interests or opinions of the persons with active standing.

Summary of conclusions

338. After considering the question of the constitutionality of the Act on Settlement with Churches in the abovementioned scope, with regard to the legislative process of adoption of the Act and the content of the Act as a whole and its individual provisions separately, the Constitutional Court concluded that the petitions of the petitioners and the secondary parties for the annulment of the contested Act are partially justified.

339. Regardless of the objections submitted, the Constitutional Court weighed to what extent the adjective "fair" in § 5 let. i) of the Act on Settlement with Churches is sufficient in this context in terms of its understandability and clarity, that is, the formal requirements that must be applied to the law. This is an uncertain term. For example, it is not evident whether the "fairness" of compensation applies to the period of expropriation or to today's conditions and level of protection of fundamental rights. For these reasons, there was no choice but to annul that part of § 5 let. i) of the Act on Settlement with Churches.

340. The Constitutional Court did not decide to annul the contested act on the grounds of violation of the rules of the legislative process, because it did not find that the process as a whole did not permit rational discourse, a hearing of the parties, and open discussion between the representatives of competing opinions, including minority opinions, supported by an opportunity for active participation by the participants during the process. Although the Constitutional Court condemns the moral shabbiness of the background to the legislative process, caused by both adversarial groups of deputies, it cannot, unless it is to change from an expert body for protection of constitutionality into a moral arbiter and educator of political representatives, annul the contested Act only because of a lack of respect by one group of legislators to another.

341. From its first decisions in restitution matters the Constitutional Court acted ex favore restitutionis and emphasized countless times that restitution matters must be approached taking into account the fact that those to whom property is being restituted had, in the past, been victims of a number of crimes, including the property crimes. It is unmistakable in the Constitutional Court's consistent case law in restitution matters that, as a negative legislator, it never annulled a provision of a restitution regulation to the detriment of natural persons or legal entities for whom the legislature, by a statute, enabled the mitigation of crimes committed against them. Thus, the Constitutional Court's case law

annulling statutes was always basically to the benefit of persons to whom restitution was made (permanent residence, national cultural monuments). The Constitutional Court did not agree in the restitution matter with argumentation based on the idea that one restituent should not receive restitution because the legislature classified another person among those for whom the legislature did not mitigate property or other crimes. The Constitutional Court also repeatedly ruled in the matter of church restitutions. It is evident from its abovementioned case law that it stressed legitimate expectations and pointed to the legislature's inactivity. In such a situation, a derogation decision by the Constitutional Court shortly after the legislation was finally adopted would be surprising and would justifiably create the impression that it is marked by elements of caprice and arbitrariness. In its decision making the Constitutional Court is fully aware that it is not its role to decide a dispute about the purpose of Czech history, part of the arguments of which the petitioners have raised.

342. On the basis of legal historical analysis, the Constitutional Court explained the reasons why it did not find justified the arguments of the petitioners and the secondary parties that churches and religious societies did not own original property, or that there is a "change in the nature of ownership" and that churches and religious societies were not "full owners" or that church property was of a "public law" nature, or was not owned by churches and religious societies. The Constitutional Court concluded that church entities, as legal entities, basically had full capacity to own property, as a result of which they were subjects of ownership rights to individual things that were part of church property (except for things belonging to third parties, with the exception of specific religious orders). Neither the expert literature, period case law, or practice indicate that church property was conceptually excluded from the regulation of ownership rights under the GCC and entrusted to church entities exclusively on the basis of entitlements (exclusively rights relating to state administration of religious matters). Apart from the theoretical analysis we can point to completely practical examples. It is generally known that basically the only type of real estate the ownership status of which was not affected by the communist regime (with well-known exceptions), were churches, chapels, prayer rooms and similar buildings serving state administration of religious matters, although it was precisely these that were subject to intensive public law regulation as public things. If it were correct that church entities were not owners in relation to them (in view of the independent legal personality of a church), but only holders, users, administrators, etc., then one cannot explain the fact that the legal order and practice considered them to be owners in the decisive period and consider them as such now, although from the beginning of the decisive period (after 25 February 1948) there was demonstrably no transfer (passage) of ownership rights to these subjects.

343. The Constitutional Court took into account that financial compensation does not stand, and need not stand, on a purely economic and mathematical basis. In any case, that would be difficult to achieve, because it would then have to include compensation for use of the real estate confiscated by the state, during the period since the confiscation, possibly at least during the period of the legislature's unconstitutional inactivity. For reasons of respecting the principle of minimizing interference as well, and analogously for reasons for which, for example, the Act on the State Budget cannot be subject to constitutional review, the Constitutional Court does not find the fact that the legislature set the amount of financial compensation in a combined manner, based on several factors, to be an unconstitutional circumstance. Financial compensation (§15) is of a variable nature in relation to individual churches (a different ratio between the compensation component and the balancing component of restitution). The Constitutional Court also reviewed the principle of a transitional period of degressive direct financing (§ 17). In view of the nature of the objections concerning violation of a fundamental right (Art. 11 para. 1 of the Charter) and the only generally formulated discrimination and inequality (non-accessory; as a result of legislative arbitrariness), the Constitutional Court conducted a test of the rationality of the legal framework, which passed the test. It also independently reviewed the question of the religious neutrality of the state under Art. 2 para. 1 of the Charter.

344. For the foregoing reasons the Constitutional Court annulled the word "fair" in § 5 let. i) of Act no. 428/2012 Coll., under § 70 para. 1 of the Act on the Constitutional Court, because it found it inconsistent with Art. 1 para. 1 of the Constitution. The Constitutional Court denied the part of the petition directed against § 19 to 25 of Act no. 428/2012 Coll., under § 43 para. 2 let. a) of the Act on

the Constitutional Court as a clearly unjustified petition. The Constitutional Court denied the remaining parts of the petition seeking annulment of Act no. 428/2012 Coll., under § 70 para. 2 of the Act on the Constitutional Court, as unjustified.

Dissenting opinions to the decision of the Plenum, under § 14 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, were submitted by Justices Jaroslav Fenyk, Vojen Güttler, Jan Musil and Pavel Rychetský.