STUDIA Z PRAWA WYZNANIOWEGO | 2022
Vol. 25, 67–90
https://doi.org/10.31743/spw.13768
Received: Apr18, 2022 | Accepted: Oct 31, 2022 | Published: Dec 22, 2022

Dudová and Duda before the Czech Constitutional Court: The question of autonomy of religious organizations

Dudová i Duda przed czeskim Sądem Konstytucyjnym – kwestia autonomii związków wyznaniowych

MARIÁN ČAČÍK*
https://orcid.org/0000-0001-6184-3018

Abstract: In the Czech Republic, the autonomy of churches is constitutionally guaranteed in a rather broad manner. The constitutional and legal basis for Church autonomy lies in the Charter of Fundamental Rights and Freedoms, which is part of the Czech constitutional order. It represents both an objective institutional guarantee (religious neutrality of the state) and the subjective right of religious communities to independence from the state and self-governance of their own affairs (the right to self-determination). Compared to other domains of the said autonomy, the staffing of churches is a relatively frequent subject of theoretical reflection and decision-making on the part of Czech courts. The Constitutional Court of the Czech Republic had to express its opinion on some problematic cases, in particular, the limits of Church autonomy. The case of Duda and Dudová is an example of a conflict between civil rights and the autonomy of churches in the modern Czech history. It started with Duda and Dudová's dismissal from the pastoral ministry in the Czechoslovak Hussite Church in 1993, and the last (so far) decision related to this case was issued by the Constitutional Court in 2021. This article discusses the long and tortuous journey through the Czech judiciary system, which Duda, Dudová, and the Czechoslovak Hussite Church had to go through in order to clarify consequences of church autonomy. A particular deviation in the Supreme Court's decision-making played an interesting role in this process. However, it was the Constitutional Court, which acted as the guardian of constitutional values (including the internal autonomy of churches), that placed this anomaly in the decision-making of the Supreme Court and, subsequently, general courts back within constitutional limits.

Keywords: church autonomy; clergy; Constitutional Court of the Czech Republic; Supreme Court of the Czech Republic

Streszczenie: W prawie Republiki Czeskiej autonomia kościołów jest dość dobrze zagwarantowana. Konstytucyjnoprawne podstawy kościelnej autonomii odnaleźć można w Karcie Podstawowych Praw i Wolności, która jest częścią czeskiego porządku konstytucyjnego. Karta ta zawiera relewantną gwarancję instytucjonalną (religijna neutralność państwa), zapewniając ponadto wspólnotom religijnym podmiotowe prawo do niezależności od państwa i samorządu terytorialnego w swych własnych sprawach (prawo do samostanowienia o sobie). W porównaniu z innymi sferami objętymi omawianą autonomią,

* Fr. ICLic. PaedDr JC.D., Department of Pastoral Theology and Law Sciences, Catholic Theological Faculty, Charles University, Thákurova 3, 16000 Prague 6, Czech Republic, e-mail: marian.cacik@ktf.cuni.cz.

ISSN 2081-8882 eISSN 2544-3003

obsada stanowisk kościelnych jest relatywnie częstym przedmiotem refleksji teoretycznej i orzeczeń czeskich sądów. Sąd Konstytucyjny Republiki Czeskiej również był już zmuszony do wyrażenia swej opinii na temat kilku problematycznych spraw. Odniósł się w szczególności do granic kościelnej autonomii. We współczesnej historii Czech przykładem konfliktu pomiędzy prawami jednostki i autonomią kościołów stała się sprawa małżonków Duda (Duda i Dudová). Przyczyną konfliktu było ich zwolnienie z pełnienia posługi duszpasterskiej w Czechosłowackim Kościele Husyckim, do czego doszło w 1993 r. Natomiast ostatnie (jak dotąd) orzeczenie dotyczące tej sprawy zostało wydane przez Sąd Konstytucyjny w 2021 r. Celem niniejszego artykułu jest krytyczne omówienie długiej i skomplikowanej drogi sądowej, jaką Duda, Dudová i Czechosłowacki Kościół Husycki musieli pokonać w celu wyjaśnienia konsekwencji kościelnej autonomii. Interesującą rolę w tym procesie odegrało stanowisko, które w swym orzecznictwie zajął Sąd Najwyższy. Pozycję obrońcy wartości konstytucyjnych (włączając w to wewnętrzną autonomię Kościołów) zajął natomiast Sąd Konstytucyjny, który doprowadził do likwidacji anomalii wynikających z orzeczeń wydanych przez Sąd Najwyższy, a następnie również przez sądy powszechne, przywracając zgodność wiążących rozstrzygnięć z zasadami konstytucyjnymi.

Słowa kluczowe: autonomia Kościoła; duchowni; Sąd Konstytucyjny Republiki Czeskiej; Sąd Najwyższy Republiki Czeskiej

1. Autonomy of religious organizations in the Czech Republic: An introduction

The Dudová and Duda case is an example of a conflict between civil rights and the constitutionally guaranteed autonomy of religious organizations in modern Czech history. Their dismissal from pastoral service has been the subject of several judicial reviews, including that of the Constitutional Court, whose decisions have set a quasi-precedent in the Czech legal order.

Considering the autonomy of religious organizations in a given state means clarifying the extent to which they are allowed to independently manage their own affairs (or, in other words, the extent to which they are protected from interference by state authorities). It concerns the internal functioning of these communities as well as their independent existence and activity in areas where they interact with the state and its bodies. Not every state institution will show sufficient magnanimity and understanding to tolerate within its jurisdiction an alien element of ecclesiastical establishments, which declare the existence of their own legal order and require obedience of their members, and which simultaneously operate with concepts that are difficult for civil law to grasp, such as obedience to the laws of God, revealed truth, or voice of conscience.

At the Second Vatican Council, the Roman Catholic Church declared both the right of the human person to religious freedom and the right of the Church

> […] to preach the faith, to teach her social doctrine, to exercise her role freely among men, and also to pass moral judgment in those matters which regard public order when the fundamental rights of a person or the salvation of souls require it.[1]

John Paul II so aptly stated in his message delivered at the Conference on Security and Cooperation in Europe, which was held in Madrid in November 1980, that it was not a matter of declaring one's sovereignty over state authorities:

> The Apostolic See has no thought or intention of failing to give due respect to the sovereign prerogatives of any state. On the contrary, the Church has a deep concern for the dignity and rights of every nation; she has the desire to contribute to the welfare of each one and she commits herself to do so.[2]

However, the Council's documents strongly advocated the autonomy of religious communities, "[t]he Church and the political community in their own fields are autonomous and independent from each other."[3] Therefore,

> […] provided [that] the just demands of public order are observed, religious communities rightfully claim freedom in order that they may govern themselves according to their own norms, honour the Supreme Being in public worship, assist their members in the practice of the religious life, strengthen them by instruction, and promote institutions in which they may join together for the purpose of ordering their own lives in accordance with their religious principles. Religious communities also have the right not to be hindered, either by legal measures or by administrative action on the part of government, in the selection, training, appointment, and transferral of their own ministers,

1 Second Vatican Council. 1966. "Pastoral constitution on the Church in the modern world *Gaudium et spes*," 7 December 1966, No. 76. https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html [accessed: 19 January 2022].

2 John Paul II. 1980. "Message of John Paul II on the value and content of freedom of conscience and of religion," 14 November 1980. https://www.vatican.va/content/john-paul-ii/en/speeches/1980/november/documents/hf_jp_ii_spe_19801114_atto-helsinki.html [accessed: 1 April 2022].

3 Second Vatican Council. 1966. *Gaudium et spes*, No. 76.

> in communicating with religious authorities and communities abroad, in erecting buildings for religious purposes, and in the acquisition and use of suitable funds or properties. Religious communities also have the right not to be hindered in their public teaching and witness to their faith, whether by the spoken or by the written word.[4]

However, this freedom must not only be "proclaimed in words or simply incorporated in law but also given sincere and practical application."[5]

From the perspective of the Czech law, ecclesiastical autonomy is manifested in the freedom of churches and other religious communities to decide about their own affairs relating to the fulfilment of their mission, especially in matters of belief, organization, management, practical orientation, and personnel.[6] Thus, the state relinquishes any influence over matters related to the organization and functioning of religious organizations, with each of them having the freedom to choose its own system of internal organization and selection of clergy.[7]

In the Czech Republic, the autonomy of churches is constitutionally guaranteed in a rather broad manner. The constitutional and legal basis for church autonomy lies in Art. 16(2) of the Charter of Fundamental Rights and Freedoms,[8] which represents both an objective institutional guarantee, linked to Art. 2(1) of the Charter (religious neutrality of the state), and the subjective right of religious organizations to independdence from the state and self-governance of their own affairs (the right to self-determination). As a result of this legislation, churches and other religious organizations in the Czech Republic enjoy freedom and political independence never before known.[9] This is a significant shift compared to the previous legislation applicable in communist Czechoslovakia. The provisions of the Charter abolished the right of the state to co-decide (but mostly to decide) on the filling of church offices.[10] Thus, doctrinally and

4 Second Vatican Council. 1965. "Declaration on religious freedom *Dignitatis humanae*," 7 December 1965, No. 4. https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html [accessed: 19 January 2022].

5 Ibidem, 13.

6 Cf. Madleňáková 2014, 91.

7 Cf. Klíma 2013, 119.

8 Act No. 2/1993 Coll., Charter of Fundamental Rights and Freedoms, hereinafter: the Charter.

9 Hrdina 2004, 144.

10 Cf. Pavlíček et al. 1999, 173.

jurisprudentially, the scope of matters falling within the church autonomy is specified. They include, in particular, matters of belief, organization, internal regulations, management, practical orientation, and the filling of church offices even though these activities do not have to directly constitute religious expression under Art. 16(1) of the Charter. Only communities of members of a particular religion, whether or not they are legal persons, are subjects of the fundamental right.[11]

Compared to other domains of church autonomy, the filling of churches is a relatively frequent subject of theoretical reflection and decision-making on the part of Czech courts.[12] In practice, the legal act,[13] which is beyond the scope of the Charter of Fundamental Rights and Freedoms, includes not only the appointment of clergypersons independent of state authorities but also their removal, which is not specified in the constitutional provisions. The Constitutional Court also took note of this and further concluded that the removal of clergypersons as a manifestation of the autonomy of churches and other religious communities is a mirror act in relation to their appointment and, therefore, is protected under the Constitution of the Czech Republic[14]. Some problematic cases have resulted in litigation, in which the Constitutional Court of the Czech Republic had to express its opinion after a long journey through the relevant instances of general courts. Therefore, it specified limits of church autonomy guaranteed by the country's constitutional provisions.

The fact that the Constitutional Court has ruled on issues falling within the scope of church autonomy for a long time and has confirmed that they are fundamentally excluded from judicial review is vital to legal practice. Courts are not allowed to interpret the internal regulations of churches and other religious organizations (e.g., the Code of Canon Law) even if doubts arise regarding the canonical validity or permissibility of a legal act.[15]

> The relationship of the clergy to the church and other personnel issues therefore fall entirely within the scope of ecclesiastical autonomy. It follows, first

11 Cf. Jäger 2013, 13–14.
12 Cf. Kříž 2017, 115.
13 Act No. 3/2002 Coll., on Freedom of Religious Belief and the Status of Churches and Religious Organizations
14 Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic; cf. Zechovský 2016, 99.
15 Cf. Wagnerová et al. 2012, 404.

> of all, that no one has the right in relation to a particular church to become a member or a minister (priest, pastor, rabbi, preacher, etc.). The most frequently mentioned form of ministry is that of the clergy, which is not given in any way and derives exclusively from the internal regulations of the church. Public authorities have no involvement in the filling of church offices. Churches themselves also assess the fitness of persons to exercise clerical activity and determine their assignment to church offices accordingly. General courts are not competent to decide disputes over the service relationship of clergypersons.[16]

In the case of a relationship between the clergyperson and the church, two rights provided for in the Charter of Fundamental Rights and Freedoms stand in opposition: the autonomy of churches (Art. 16 of the Charter) and the right of every natural person to seek his or her rights before an impartial and independent court (Art. 36[1] of the Charter). The jurisprudence of the Constitutional Court shows that religious self-governance is superior to the subjective right of a natural person to assert his or her rights before an impartial and independent court.[17]

During its existence, the Constitutional Court has commented on the issue of church autonomy and the service relationship of clergypersons numerous times. However, the Duda and Dudová case took the longest time to be heard by general courts and the Constitutional Court. It involved the ministers of the Czechoslovak Hussite Church, whose service was terminated by their Church in 1993. They subsequently took the matter to court, where the spouses questioned the validity of the termination of their employment as ministers of the Czechoslovak Hussite Church and requested that consideration be given to the fact that they had not been provided with documents that would have enabled them to enter into a new employment relationship. They further sought payment for their work from the date of their dismissal from service.

16 Jäger 2013, 14.
17 Cf. Klíma et al. 2009, 1088–1089.

2. Act I: In favor of Church autonomy (1993–2001)

The District Court for Prague 6 dismissed the proceedings due to the lack of jurisdiction and referred the case to the Central Council of the Czechoslovak Hussite Church, which the District Court considered to be the competent authority to decide on the matter. The Municipal Court in Prague (similar to the Court of Appeal) upheld the decision of the Court of First Instance as, according to the Court of Appeal, the validity of the termination of appellants' service could not be examined in civil court proceedings due to its ecclesiastical nature and could only be assessed by the competent ecclesiastical authorities who made the service impossible for the plaintiffs. Furthermore, any interference by the authorities, even judicial ones, in these relations could be regarded as interference contrary to the Constitution of the Czech Republic.[18]

However, Duda and Dudová saw this procedure as a violation of their fundamental human and civil rights as members of the Church and as a violation of democratic principles, as well as international human and civil rights instruments, as they were prevented from pursuing their rights in court. According to them, this was a breach of, in particular, Art. 26(1, 3), as well as Art. 36(1–2) of the Charter of Fundamental Rights and Freedoms,[19] which is why they filed a complaint with the Constitutional Court on this issue.

In its statement, the Central Council of the Czechoslovak Hussite Church indicated that the constitutional complaint is not admissible against a decision of a church body acting as a "public authority" since church bodies are not public authorities. The provisions of the Labor Code[20] cannot be applied to the establishment, amendment, and termination of the service relationship since comprehensive regulations on these issues are included in the Ordinances of the Czechoslovak Hussite Church. The application of the Labor Code is subsidiary in cases where such issues are not regulated in the Church legislation. The service relationship of clergypersons is established via a bilateral expression of will and, therefore, similar in principle to the contractual nature of employment relationships. Corresponding to

[18] Cf. Decision of the Municipal Court in Prague of 30 April 1996, 23 Co 182/96-25, cited in Judgment of the Constitutional Court of 26 March 1997, I. ÚS 211/96.
[19] Cf. Judgment of the Constitutional Court of 26 March 1997, I. ÚS 211/96.
[20] Act No. 65/1965 Coll., Labor Code, hereinafter: LC.

the employment relationship, the service relationship of clergypersons is decided by church authorities who take a similar position as the employer in relation to the employee. However, in the case of a service relationship, this decision is not made under employment law but under the church regulations approved by relevant church bodies.[21]

With regard to determining the invalidity of service termination, the Constitutional Court reached the same conclusion as the Court of Appeal. The Charter provides religious organizations with autonomy by stating that they can manage their own affairs, in particular, establishing their own bodies, appointing their own clergypersons, and setting up religious institutions independent of state authorities.[22] According to the former Act on Freedom of Religious Belief and the Status of Churches and Religious Organizations, persons are performing clerical activities on behalf of churches and religious organizations in accordance with their internal rules and general binding legal regulations. Religious organizations also assess the eligibility of persons to perform clerical activities and accordingly determine their classification.[23] Natural persons do not have the subjective right to exercise clerical functions.[24]

The Constitutional Court stated that the general courts were correct to state that

> […] deciding on the continuation of a clergyperson's service relationship to the Church would impermissibly interfere with the Church internal autonomy and its autonomous and independent decision-making power in this matter, as is evident from the internal regulations of the Church, in particular Article 34 of the Organizational Regulations of the Czechoslovak Hussite Church, which provides that a clergyperson's service with the said Church is terminated by dismissal from the service of the Church by the Central Council.[25]

Therefore, the Constitutional Court dismissed the constitutional complaint in this part.

21 Cf. ibidem.
22 Art. 16(2) of the Charter.
23 Sec. 7(1) and (2) of Act No. 308/1991 Coll., on Freedom of Religious Expression and the Position of Churches and Religious Societies.
24 Cf. Lamparter 2000, 136.
25 Judgment of the Constitutional Court of 26 March 1997, I. ÚS 211/96.

However, it did not apply to the plaintiffs' claim for wage compensation and other claims pursuant to applicable regulations if they were restricted from obtaining employment. In this case, the Constitutional Court did not agree with the general courts. In the matter of wages and possibly other material claims, the Constitutional Court stated that there is no longer any interference with the internal autonomy of the Church and its decision-making power. Here the private law character of the Church as a legal person, which does or does not have obligations toward other natural or legal persons and these persons have equal status before the law, comes to the fore. Pursuant to Sec. 7 of the Code of Civil Procedure,[26] as part of civil court proceedings, courts hear and decide on matters arising out of civil, employment, and other relationships. Therefore, in this instance, the general courts had to assess whether they would proceed under the Civil Code[27] or the Labor Code based on the legal documents that they had requested from the parties and decide accordingly on the plaintiffs' claim, which they had not yet done. This means that if the general courts concluded that they did not have jurisdiction over the case, there was a violation of the fundamental rights and freedoms of the plaintiffs under Art. 36(1) of the Charter, which states that every person may assert his or her rights before an independent and impartial court in accordance with the established procedure, and a breach of Art. 90 of the Constitution of the Czech Republic, pursuant to which courts are primarily called upon to protect rights in the manner prescribed by law.[28]

The Constitutional Court annulled both courts' decisions regarding the dismissal of proceedings for wage compensation brought by the plaintiffs. However, it merely provided general instructions on how to proceed. It did not address the fundamental question of how to determine the period for which wages are payable since it is not the court's responsibility to assess the validity of the termination of the service relationship.[29]

On 8 January 1998, after the case had been referred back to the Court of First Instance, the District Court for Prague 6 dismissed the plaintiffs' action in which they claimed that the Central Council of the Czechoslovak Hussite Church should pay them CZK423,388 and CZK407,765 with

[26] Act No. 99/1963 Coll., Code of Civil Procedure, hereinafter: CCP.
[27] Act No. 40/1964 Coll., Civil Code.
[28] Cf. Judgment of the Constitutional Court of 26 March 1997, I. ÚS 211/96.
[29] Cf. Kříž 2017, 117.

interest as compensation for their lost wages. On 16 June 1998, the Municipal Court in Prague overturned the judgment of the District Court and ordered the case to be reconsidered. Accordingly, on 26 February 1999, the latter ruled that the Central Council should pay the first plaintiff (Dudová) the sum of CZK118,480, including interest, and the second plaintiff (Duda) the sum of CZK114,080, including interest, as compensation for their lost wages for the period between 20 July 1993 and 30 April 1995. The court issued a summary judgment and found that the Church violated its organizational bylaws by terminating the plaintiffs' employment through the Diocesan Council rather than the Central Council. However, the Court emphasized that the plaintiffs were entitled to compensation only for the period from 20 July 1993 to 30 April 1995 since they could have entered into a new employment relationship after receiving their statements of earnings on 15 April 1995. On 24 September 1999, the Municipal Court in Prague upheld this judgment.

The disgruntled plaintiffs (affected by subjectively perceived and perhaps objectively defined injustice[30]) took their complaint to the European Court of Human Rights, which found it inadmissible. It stressed that in Czech law, a service relationship between clergypersons and the Church is exclusively regulated by the Church's organizational regulations and is not established in the same way as an employment relationship based on election or appointment under the Labor Code. Clergypersons are admitted to the ministry of the Church by an internal act issued by the body competent to do so in accordance with the organizational regulations. A court decision on the continuation of a clergyperson's service relationship with the Church would constitute an impermissible interference with the Church's internal autonomy and decision-making independence, which is guaranteed by the Charter of Fundamental Rights and Freedoms, as well as the Act on Freedom of Religious Belief and the Status of Churches and Religious Societies. Therefore, the proceedings initiated by the plaintiffs were not in any way based on a "right" that could reasonably be said to be provided for in Czech law.[31]

30 Cf. Přibyl 2005, 50.

31 Cf. Decision of the European Court of Human Rights of 30 January 2001 in *Dudová and Duda v. Czech Republic*, App. No. 40224-98.

Although it is true that when examining the plaintiffs' claim for compensation for their lost wages, both the District Court for Prague 6 and the Municipal Court in Prague found that the Czechoslovak Hussite Church had violated its organizational regulations when the plaintiffs' service relationship was terminated not by the Central Council but by the Diocesan Council, this does not alter the jurisdiction of the Czech courts to rule on the validity or invalidity of the termination of the plaintiffs' service relationship as clergypersons of that Church.[32]

3. Act II: Turning point–the Supreme Court

In the follow-up case, Duda and Dudová asked the court to determine that their service relationship with the Church be continued and, at the same time, sought damages for the second time. The District Court for Prague 6 yet again dismissed the proceedings, which was then confirmed by the Municipal Court in Prague. They invoked the previous ruling of the Constitutional Court since, according to them, the substance of the case was the same and concerned with the invalidity of the termination of a service relationship or its continuation.[33] Subsequently, the Supreme Court stepped in, resulting in an unpleasant tug-of-war between the Supreme Court and the Constitutional Court, which was quite often seen in the Czech judicial environment.

The Supreme Court disagreed with the conclusions of the general courts and, based on the appeal, overturned their decisions. After assessing the nature of the said service relationship, the Supreme Court expanded the opinion of the Constitutional Court by stating that it is a private law relation "close to an employment relationship, since its subject is also the activity of one subject (the clergyperson) for the other (the Church), performed in a dependent capacity and for remuneration, while its contractual basis (the identical and free will of both subjects) is evident."[34]

32 Cf. ibidem.
33 Cf. Kříž 2017, 118.
34 Judgment of the Supreme Court of 30 November 2004, 20 Cdo 1487/2003.

In favor of ensuring the internal autonomy of the Church, the Supreme Court acknowledged that the subject of the ecclesiastical and legal relationship (the clergyperson) accepts that the termination of his or her relationship with the Church will not always be decided by courts but rather by the Church authorities yet emphasizing that a balance must be sought between the protection of the Church autonomy on the one hand and the protection of personal rights on the other.[35] A person entering into a service relationship with a given Church freely waives (to a certain extent) the judicial protection of this relationship, that is, protection through legal institutions that are otherwise regulated as fundamental in the Labor Code. The limit of the clergy's waiver of a certain degree of judicial protection (and the current preference for ecclesiastical autonomy) was then found by the Supreme Court to be a denial of justice when, for example, the termination of a service relationship is decided upon in a manner that has not been provided for in the internal regulations of the Church in question. With regard to circumstances unforeseen by the internal rules, the argument that the clergyperson is voluntarily restricted from entering the service relationship cannot be applied.[36]

Therefore, if someone claims that his or her service relationship with the Church has been terminated (its performance prevented) in violation of the internal regulations of the Church due to the fact that there is no act appropriate for that purpose or it was issued by a Church body that is not competent under those regulations, then, in the opinion of the Supreme Court, he or she can no longer be denied judicial protection. Otherwise, the concerned subject would be impermissibly discriminated in terms of the protection of personal rights. The claim, which is appropriately based on the factual definition provided above, is also a claim for the declaration that the service relationship between the clergyperson and the Church continued as the plaintiffs claimed in the present case. As an attempt to comply with the previous ruling of the Constitutional Court, the Supreme Court added that this does not affect its conclusion that it is not possible to seek judicial invalidation of the termination of a clergyperson's service relationship with the Church nor does it interfere with the internal autonomy of that Church.

35 Cf. ibidem.
36 Cf. Kříž 2017, 118.

The court did not impermissibly restrict the independent decision-making power of the Church (in this context) by its action since it had not reviewed legal acts issued by Church bodies.[37] Therefore, the Supreme Court set aside the order of the Court of Appeal and, due to reasons for which it applied to the decision of the Court of First Instance, also set aside this decision and referred the case back to that court for further investigation.

Thus, the conclusions of this order of the Supreme Court can be summarized as follows: courts have the power to decide on the continuation of the service relationship of clergypersons by examining whether a legal act capable of terminating the service relationship exists in the Church in question and whether this act was issued by the competent authority in accordance with the internal regulations of the Church. In the opinion of the Supreme Court, review can be limited from the points of view laid down by it.[38] The substantive grounds of the act cannot, of course, be reviewed. The Supreme Court held that denial of judicial protection would result in impermissible discrimination against the plaintiffs. In its reasoning, the Supreme Court established a difference between the *nullity* of an act (the absence of an act capable of terminating the relationship or its issuance by an incompetent authority) and its *invalidity* (review of an act issued by a Church authority). While the assessment of the former is entrusted to courts, the latter is protected by the constitutionally guaranteed autonomy of the Church concerned, with its assessment falling exclusively within the competence of Church authorities.[39]

The case was then brought before the District Court for Prague 6, which, seemingly unwilling to explore the definition of the constitutional protection of Church autonomy, decided to dismiss the action due to the expiration of the two-month limitation period[40] under the Labor Code enforced at the time:

> The invalidity of the termination of the employment relationship by notice, immediate termination, termination during the probationary period or by agreement may be brought before the court by both the employer and

[37] Cf. Judgment of the Supreme Court of 30 November 2004, 20 Cdo 1487/2003.
[38] Cf. Štefko 2013, 67.
[39] Cf. Kříž 2017, 119.
[40] Cf. Decision of the District Court for Prague 6 of 25 November 2008, 4 C 25/2005-119, cited in the Judgment of the Constitutional Court of 20 October 2011, IV. ÚS 3597/10.

> the employee within a period of two months from the date on which the employment relationship should have ended by such termination.[41]

The Court of Appeal did not share the legal opinion of the Court of First Instance. According to the former, it was an action for determining the legal relationship between the parties.[42] Therefore, after referring to the case law of the Supreme Court, it concluded that the internal regulations of the sued Church entrust the decision to dismiss a clergyperson from his or her service relationship exclusively to its Central Council, without the possibility of delegating this authority to another body. However, if the Diocesan Council in Pilsen had decided on the plaintiffs' service relationship, it would be an absolutely incompetent body, and the subsequent approval of this procedure by the plenary session of the Central Council does not alter this fact. Moreover, the Charter of 20 July 1993 issued by the Diocesan Council cannot be regarded as a proper individual legal act according to the Municipal Court of Prague.[43]

After the defendant appealed to the Supreme Court, the Court, faithful to the limits it set in the previous order, approved the Court of Appeal's procedure. It stated that the Court of Appeal followed the previously defined application or interpretation conclusions of the Constitutional Court. The Supreme Court reached a substantively correct decision:

> The decision at issue here to the detriment of the plaintiffs' service was made by an incompetent body (the Diocesan, not the Central Council), and the act of that body did not adequately express the will of the ecclesiastical body to dismiss the plaintiffs from their service relationship.[44]

4. Act III: Response of the Constitutional Court

The Czechoslovak Hussite Church naturally turned to the Constitutional Court, which provided the Church with protection and overturned both the judgment of the Supreme Court and the Municipal Court in Prague.

41 Sec. 64 LC.
42 Sec. 80(c) CCP.
43 Cf. Decision of the Municipal Court in Prague of 11 November 2009, 62 Co 302/2009-248, cited in the Judgment of the Constitutional Court of 20 October 2011, IV. ÚS 3597/10.
44 Judgment of the Supreme Court of 8 September 2010, 28 Cdo 2082/2010.

In its reasoning, the Constitutional Court engaged in a sharp polemic with the conclusions of the Supreme Court and, thus, provided a quasi-precedential key to other similar cases with its treatise on the Church autonomy.

As it had emphasized in its previous case law,

> […] the Czech Republic is based on the principle of a secular state, accepting religious pluralism and tolerance. Religious freedom, meaning the freedom of everyone to profess his or her religion and faith, forms a forum internum within the churches, or their institutions, in which third parties, especially the public authorities, are not allowed to interfere. The principle of the autonomy of churches and religious societies thus finds expression in the maximum possible limitation of State interference in their activities, with the proviso that, in particular, the internal affairs of these entities cannot, in principle, be made subject to judicial review.[45]

Currently in its previous ruling on this dispute, the subject of which included (among other things) the assessment of the decision issued by general courts to declare the termination of the clergy's service relationship null and void, the Constitutional Court concluded that:

> […] the general courts were correct to take the position that deciding on the continuation of the clergyperson's service relationship with the Church would impermissibly interfere with the internal autonomy of the Church and its autonomous and independent decision-making power in this matter, as it is apparent from the internal regulations of the church.[46]

If the Constitutional Court had previously stated that the general courts do not have jurisdiction to hear and decide on the invalidity of the termination of a clergyperson's service relationship with the Church, the same was applied to the present dispute since the substance of the case remained the same. Although in the justification of their decisions, the Municipal Court in Prague and the Supreme Court claimed that the opinion of the Constitutional Court (ruling I. ÚS 211/96) was respected in the present case, according to the Constitutional Court, it was, in fact, denied and,

[45] Judgment of the Constitutional Court of 20 October 2011, IV. ÚS 3597/10.
[46] Judgment of the Constitutional Court of 26 March 1997, I. ÚS 211/96.

thus, resulted in the violation of the Constitution of the Czech Republic,[47] which states that "enforceable decisions of the Constitutional Court are binding on all authorities and persons."[48]

In its ruling, the Constitutional Court stated that:

> […] there is no justifiable reason to distinguish, in terms of the issue of the jurisdiction of civil courts to decide on the continuation of the service relationship of clergy, whether the alleged invalidity of the termination of service […] is based on the fact that the act by which the termination of the service relationship was to be effected is invalid […] because it was issued by an authority not competent under the ecclesiastical regulations or […] it is invalid because it suffers from some other defect consisting in any other breach of the ecclesiastical regulations. There is no justification for one ground for the eventual invalidity of a termination of service (consisting in the fact that the act by which the service was terminated had been issued by an incompetent authority) to be subject to review by civil courts, while other grounds (consisting, for example, in a defect in the substantive content of such an act or in a defect in its form) could no longer be subject to review by civil courts.
>
> Furthermore, the Constitutional Court does not agree with […] the distinction made by the Supreme Court between the nullity of an act (the absence of an eligible act) and the invalidity of an act […], since from the point of view of the right to ecclesiastical self-governance, it is completely irrelevant whether the act which is to terminate the clergyperson's service relationship is deemed null and void or invalid. Whether one can generally agree with such a theoretical distinction, from the point of view of the issue under consideration, and the right to ecclesiastical self-governance, the assessment of nullity and invalidity thus constructed must fall within the competence of the same authorities (it is still a question of assessing the duration of the clergyperson's service relationship). These authorities are undoubtedly ecclesiastical authorities and not civil courts.[49]

The Constitutional Court has also provided guidance on how to proceed with material claims in cases where the assessment of the duration of the service relationship is necessary to make a decision. Since courts

47 Cf. Judgment of the Constitutional Court of 20 October 2011, IV. ÚS 3597/10.
48 Art. 89(2) of Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic.
49 Judgment of the Constitutional Court of 20 October 2011, IV. ÚS 3597/10.

themselves cannot decide on when a service relationship ends, it is up to the "aggrieved" person to institute proceedings before the competent authority of the Church concerned, which is called upon to decide the duration of his or her service relationship as a clergyperson. This is the same procedure that needs to be followed if the dispute was not about whether the act by which such service was to be terminated was invalid (null and void) because it had not been issued by the competent authority, but whether it was invalid, for example, because of a defect in its form or substance.[50]

The Municipal Court in Prague then set aside the judgment of the Court of First Instance and dismissed the proceedings. It also decided that after the validation of this resolution, the matter would be referred to the Central Council of the Czechoslovak Hussite Church to whose jurisdiction it belongs.[51] Duda and Dudová's further defense before the Constitutional Court was unsuccessful, and their constitutional complaint was rejected as manifestly unfounded.[52]

5. Act IV: Supreme Court strikes back

Feeling dissatisfied, Duda and Dudová once again appealed to the Supreme Court against the ruling of the Municipal Court in Prague, arguing that even after almost 20 years of proceedings before independent courts, they still remained in a legal vacuum and uncertainty. Even if their material claims had been resolved by an independent tribunal after assessing whether the Czechoslovak Hussite Church had duly proved that their service relationship with it had ceased by a decision of the competent authority (as the Constitutional Court had urged in its annulment judgment), there was still no definitive decision on the continuation of their service relationship or on its termination on one specific date in relation to, for example, public authorities (retirement pension, plaintiff's disability pension, plaintiff's other employment, health insurance, etc.). Therefore, they claimed that their case had involved impermissible discrimination and that they had

50 Cf. ibidem.

51 Cf. Decision of the Municipal Court in Prague of 5 January 2012, 62 Co 302/2009-294, cited in the Judgment of the Constitutional Court of 21 March 2012, I. ÚS 850/12.

52 Cf. Judgment of the Constitutional Court of 21 March 2012, I. ÚS 850/12.

been denied the protection of their fundamental rights by an independent tribunal. They requested that the ruling of the Municipal Court in Prague be set aside and that the case be referred back to the court in Prague for further investigation.[53]

The Supreme Court agreed with the plaintiffs and held that the Court of Appeal's rulings were incorrect, subsequently annulling them and returning the case to the Municipal Court in Prague for further investigation. At the same time, it made a minor remark against the Constitutional Court. The Supreme Court reminded the Constitutional Court that although the Supreme Court was bound by the Constitutional Court's overruling decision No. IV. ÚS 3597/10, according to which the court's jurisdiction to hear this dispute is, therefore, not given, it was the Supreme Court that had previously concluded that the order to not interfere in the affairs of churches does not result in the dismissal of the proceedings due to the lack of jurisdiction (it is a private law relationship, and no law stipulates that it is to be heard and decided by other authorities[54]) but rather in the final dismissal of the proceedings because the autonomy of churches prevents the court from considering the issue.

The claim for damages and compensation of remuneration and rank allowance was yet again rejected by the District Court for Prague 6,[55] the Municipal Court in Prague,[56] and the Supreme Court.[57] In response to the plaintiffs' objection that the Czechoslovak Hussite Church had failed to prove that their service relationship with the Church had ceased on a specific date by a decision of the competent authority and to the controversy that the Central Council of the Church had only "approved" the termination of the plaintiffs' service relationship and not "decided" to terminate it, the latter court replied that:

> […] in the present case, it is not relevant what specific words the Central Council of the Church used to formulate its decision (i.e., whether it used the words

53 Cf. Judgment of the Supreme Court of 23 July 2013, 21 Cdo 2279/2012.
54 See: Sec. 7 CCP, *a contrario*.
55 Cf. Decision of the District Court for Prague 6 of 7 September 2015, 4 C 129/2002-212, cited in the Judgment of the Constitutional Court of 16 October 2018, III. ÚS 3910/17.
56 Cf. Decision of the Municipal Court in Prague of 1 June 2016, 13 Co 120/2016-120, cited in the Judgment of the Constitutional Court of 16 October 2018, III. ÚS 3910/17.
57 Cf. Judgment of the Supreme Court of 26 September 2017, 21 Cdo 1992/2017-367.

> "approval" or "decision" to express its will to terminate the plaintiffs' service relationship); what is decisive in the present case is the fact that the competent Church body expressed its will to terminate the plaintiffs' service relationship (to dismiss the plaintiffs from service to the Church) in a specific and intelligible manner. […] In this case, these are words of the same (similar) meaning, the possible substitution of which has no effect on the result of the interpretation of the expression of the will of this body.[58]

6. Act V: Epilogue

Duda and Dudová's determination was reflected in their willingness to appeal to the Constitutional Court, which now took up the case for the fourth time. This time, they argued against the interference with their right to judicial and other types of protection,[59] not allowed by the procedure of the general courts since, in their opinion, it was clear that the issue of material claims and material damage caused by the Church to the plaintiffs extremely interfered with their "civil" life. They were also denied the right to freely choose their profession and earn a living through work[60] as

> […] they were unemployed for a long time, or rather unemployable since, until the final conclusion of the proceedings to determine the duration of the service relationship, the competent authorities and bodies assumed that the service relationship of the clergypersons to the Church was not terminated, since they could not even submit to the authorities concerned the relevant documents on the termination of the service relationship […], and were therefore not even included in the employment office register. The plaintiffs have therefore been denied the possibility of obtaining any stable income for a long time, to which must be added the corresponding effects on public health insurance, social security, and both disability and old-age pensions; […] their assets have been reduced literally to a subsistence level, as they have been forced to sell their movable and immovable property gradually, for example as a result of the executions imposed on them by the General Health Insurance

58 Ibidem.
59 Art. 36(1) of the Charter.
60 Art. 26(1) and (3) of the Charter.

> Fund of the Czech Republic. The whole impasse and legal uncertainty have had an impact on the health of the plaintiffs.[61]

Thus, the decisions of the general courts were in violation of the principle of legal certainty that is included in the predictability of the law, as they did not respect the legal conclusions set out in ruling No. IV. ÚS 3597/10. After more than twenty years of litigation, the plaintiffs' general confidence in the rule of law has been seriously undermined by these decisions. Therefore, they considered that this should also help them achieve their subjective claims, and they sought the annulment of the contested decisions.[62]

The Constitutional Court recalled that the plaintiffs had been shown the way to seek a resolution of their dispute, that is, to initiate proceedings before the competent authority of the Church, which was called upon to decide on the duration of their service relationship, already in ruling No. IV. ÚS 3597/10.[63] The resolution of the Central Council of the Church on 22 February 2012 then confirmed that "the service relationship of the plaintiffs has ceased." In this constitutional complaint, the plaintiffs, in fact, asked the Constitutional Court to reconsider the conclusions of the courts in a way that would indicate the validity of their legal opinion based their constitutional complaint on mostly the same arguments, which the general courts had already dealt with. In doing so, they de facto placed the Constitutional Court in the role of another appellate court, which is not its function.[64] The Constitutional Court is a judicial body that aims to protect constitutionality, which stands outside the system of courts[65] and cannot be regarded as another "super-audit" instance in the system of general justice, entitled to (indirectly) replace the decisions of the general courts with its own. Its task is "only" to review the constitutionality of judicial decisions and the proceedings taking place before them. Therefore, it is necessary to assert the rule that the conduct of proceedings, the determination and evaluation of facts, the interpretation of "sub-constitutional law," and its application to individual cases is, in principle, the responsibility of general courts, and the intervention of the Constitutional Court in

61 Sec. 7 of the Judgment of the Constitutional Court of 16 October 2018, III. ÚS 3910/17.
62 Cf. ibidem.
63 Cf. Judgment of the Constitutional Court of 20 October 2011, IV. ÚS 3597/10.
64 Cf. Sec. 27 of the Judgment of the Constitutional Court of 16 October 2018, III. ÚS 3910/17.
65 Art. 91(1) of the Constitution of the Czech Republic.

their decisions may be considered in situations where their decision-making is affected by interference resulting in a violation of constitutionality.[66] In the case under review, the Constitutional Court did not find any interference with the applicants' fundamental rights in the procedures and decisions of the general courts that could be assessed as a qualified error in the form of their infringement and which should, therefore, lead to the cessation of the contested decisions.[67]

The Constitutional Court stated that in the case at hand, the decisive factor was that according to the Constitution of the Czechoslovak Hussite Church, the competent body of the Church had expressed its will to terminate the plaintiffs service relationship in a clear and comprehensible manner at the plenary session of the Central Council held in 1993 and confirmed this conclusion in the aforementioned 2012 resolution. The Constitutional Court did not find any extreme deviation from the rules of interpretation of constitutional relevance in this conclusion, on which the contested order of the Supreme Court was based. It further stated that the contested rulings of the Supreme Court, as well as the preceding decisions of the District Court and the Municipal Court, are properly reasoned, clear, and logical.[68]

In conclusion, the Constitutional Court merely claimed that although the position of the plaintiffs in the context of a service relationship of a clergyperson might appear to be unequal in relation to the Church, it results from the right to ecclesiastical self-governance guaranteed by the Charter of Fundamental Rights and Freedoms. Therefore, it was the responsibility of the plaintiffs to take this aspect into consideration when entering into a service relationship with the Church in question and, if necessary, not to enter it.[69]

The Constitutional Court hinted that this ruling may not be the end of all of their court battles with regard to the plaintiffs' claims that they had been denied the opportunity to earn a steady income for a long time and had been unable to register at the employment office by stating that the subject of the court proceedings under review was compensation for damages against the Czechoslovak Hussite Church and not against

66 Cf. Sec. 16 of the Judgment of the Constitutional Court of 16 October 2018, III. ÚS 3910/17.
67 Cf. ibidem, Sec. 17.
68 Cf. ibidem, Sec. 28.
69 Cf. ibidem, Sec. 34.

the state. Therefore, if the plaintiffs believed that the labor authorities (or other public authorities) had not respected the autonomous decisions of the Church and erroneously had not considered them unemployed, this fact could be the subject of further proceedings against the intervention of the state authority rather than the Church if the legal criteria were met.[70] However, the couple decided not to engage in another action.

Instead, Dudová engaged in a litigation against the Czech Social Security Administration, which did not grant her an old-age pension as she failed to meet the statutory requirement[71] of 33 years of service due to the fact that she could not be employed because of uncertainties regarding the termination of her service relationship with the Church and, thus, calculated her length of service at just under 24 years. Dudová brought a court case against the decision on 16 March 2017 of this office before the Municipal Court in Prague, which, however, did not rule in her favor.[72] Therefore, she lodged a cassation complaint with the Supreme Administrative Court, which also rejected it.

The court did acknowledge that it found it "problematic that the plaintiff's litigation lasted for a very long time, while the civil courts first assured her that the service relationship was ongoing. The plaintiff may understandably feel it is unjust that years later, these decisions have been overturned on the basis that the general courts cannot assess the issue."[73] However, the Supreme Administrative Court also indicated that:

> […] she could not be sure of the continuity of her service and, therefore, of her participation in the pension scheme since 1993, [as] the Church had shown its willingness to terminate her service relationship and had not assigned her any work. […] The fact that the Labor Office refused to include the plaintiff in the register of job applicants in February 2000 on the grounds that her service had not been terminated does not alter these conclusions. If the complainant considered that the Labor Office had disregarded the autonomous ecclesiastical decision and wrongly failed to consider her unemployed, this fact could

70 Cf. ibidem, Sec. 33.

71 Sec. 29(1)(i) of Act No. 155/1995 Coll. on Pension Insurance.

72 Decision of the Municipal Court in Prague of 27 January 2020, 2 Ad 19/2017-65, cited in the Judgment of the Constitutional Court of 16 February 2021, III. ÚS 2464/20.

73 Sec. 28 of the Judgment of the Supreme Administrative Court of 25 June 2020, 1 Ads 124/2020-43, cited in the Judgment of the Constitutional Court of 16 February 2021, III. ÚS 2464/20.

only be the subject of additional proceedings under legal conditions, which the complainant clearly did not initiate.[74]

As a matter of fact, at the beginning of 2013, when Dudová asked to be allowed to engage in another gainful employment, the Church officials responded that it was not their place to make such decisions as she was not an employee of the Church.[75]

Dudová filed a constitutional complaint against the judgment of the Supreme Administrative Court, and the Constitutional Court for the fifth time expressed its opinion on this judicial evergreen. As expected, it dismissed her complaint and emphasized that its previous rulings "contain detailed and persuasive reasoning answering all of the plaintiff's objections, from which there is no reason to deviate."[76] It did not consider it useful to repeat the relevant conclusions and merely referred her to the constitutionally consistent reasons for the contested decisions and rulings of the Constitutional Court.

Conclusion

This case is an interesting example of the consistency of the Constitutional Court's decision-making in favor of Church autonomy, as well as a witness to a particular deviation in the decision-making of the Supreme Court, which caused several years of delay in the resolution of this action. However, it was the Constitutional Court, acting as the guardian of constitutional values (including the internal autonomy of churches), that brought this anomaly in the decision-making of the Supreme Court and, subsequently, the general courts back within constitutional limits. The Constitutional Court has proved and demonstrated that religious organizations are granted a high degree of autonomy in the Czech legal system, where this constitutionally protected value is perceived to be of such value and gravity that it does not allow courts in the Czech Republic to review and intervene in the internal

74 Ibidem, Sec. 28–29.
75 Cf. ibidem, Sec. 30.
76 Judgment of the Constitutional Court of 16 February 2021, III. ÚS 2464/20.

disputes between churches and their clergypersons even if such lack of intervention might, in some cases, appear unjust to some individuals.

References

Hrdina, Antonín Ignác. 2004. *Náboženská svoboda v právu České Republiky*. Praha: Eurolex Bohemia.

Jäger, Petr. 2013. "Napětí mezi zvláštními právy a církevní autonomií." In: *Církev a stát*, ed. Jaroslav Benák, 10–29. Brno: Masarykova univerzita.

Kříž, Jakub. 2017. *Autonomie církví*. Praha: C.H. Beck.

Klíma, Karel et al. 2009. *Komentář k Ústavě a Listině*. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk.

Klíma, Karel. 2013. "Několik poznámek ke vztahu ústavního /státního/ a kanonického /ústavního/ práva." In: *Melior est aquisitio scientiae negotiation argenti*, ed. Evermod Gejza Šidlovský, Václav Valeš, Jan Polesný, 115–122. Praha: Královská kanonie premonstrátů na Strahově.

Lamparter, Michal. 2000. "České konfesní procesní právo – dva vybrané příklady." In: *Základní lidská práva a právní stát v judikatuře ústavních soudů*, ed. Břetislav Dančák, Vojtěch Šimíček, 133–138. Brno: Masarykova univerzita.

Madleňáková, Lucia. 2014. *Církve a náboženské společnosti: Správněprávní aspekty jejich vzniku a činnosti*. Praha: Leges.

Pavlíček, Václav et al. 1999. *Ústava a ústavní řád České republiky: Komentář*. Díl 2. *Práva a svobody*. Praha: Linde Praha.

Přibyl, Stanislav. 2005. "Vnitrocírkevní autonomie v rozhodování ústavních soudů České republiky a Slovenské republiky o služebním poměru duchovních." *Revue Církevního Práva* 1: 40–59.

Štefko, Martin. 2013. "Ochrana duchovních před skončením služebního poměru." In: *Právní postavení náboženských menšin*, ed. Harald Christian Scheu, Jakub Kříž, Kateřina Děkanovská, 61–72. Praha: Univerzita Karlova v Praze.

Wagnerová, Eliška et al. 2012. *Listina základních práv a svobod: Komentář*. Praha: Wolters Kluwer Česká republika.

Zechovský, Jakub. 2016. "Autonomie církví a postavení duchovních v České republice." *Revue Církevního Práva* 2: 89–107.