

2004/10/20 - PL. ÚS 17/02: MUNICIPAL ORDINANCE - ANIMALS

HEADNOTE

The actions of a municipality, as a public law corporation, in the case of unilateral setting of orders and bans within its independent jurisdiction, can not be subject to Art. 2 par. 3 of the Constitution of the Czech Republic and Art. 2 par. 2 of the Charter. The purpose of these constitutional provisions is to guarantee freedom of conduct of persons subject to private law and the expression of their autonomous will. In contrast, a municipality's conduct as a public law corporation, in the case of unilateral setting of orders and prohibitions is subject to Art. 2 par. 3 of the Constitution of the Czech Republic and Art. 2 par. 2 of the Charter of Fundamental Rights and Freedoms, under which state authority may be asserted only in cases and within the bounds provided for by law and only in the manner prescribed by law. This rule must also be extended to the authoritative determination of individuals' relationships in a municipality through generally binding ordinances. A municipality needs statutory authorization to issue generally binding ordinances under its independent jurisdiction, it must observe the limits of its jurisdiction defined by statute, may not regulate issues which are reserved to statutory regulation, and may not regulate matters which are already regulated by legal regulations or public or private law.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, composed of justices JUDr. Stanislav Balík, JUDr. František Duchoň, JUDr. Vojen Güttler, JUDr. Pavel Holländer, JUDr. Ivana Janů, JUDr. Dagmar Lastovecká, JUDr. Jiří Mucha, JUDr. Jan Musil, JUDr. Jiří Nykodým, JUDr. Pavel Rychetský, JUDr. Miloslav Výborný, JUDr. Eliška Wagnerová a JUDr. Michaela Židlická, decided on 20 October 2004 in the matter of a petition from the Chairman of the Municipal Office Pilsen-South seeking the annulment of generally binding ordinance of the Municipality of Nezvěstice no. 1/2001 of 12 March 2001, on the Breeding and Keeping of Animals in the Municipality, with the participation of the Minister of the Interior of the Czech Republic and the Municipality of Nezvěstice, represented by J. H., mayor of the municipality, legally represented by JUDr. J. R., attorney, as follows:

Generally binding ordinance of the Municipality of Nezvěstice no. 1/2001 of 12 March 2001, on the Breeding and Keeping of Animals in the Municipality, is annulled as of the day this judgment is promulgated in the Collection of Laws.

REASONING

I.

In the petition, which meets the formal requirements of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations (the “Act on the Constitutional Court”), the Chairman of the District Office Pilsen-South sought the annulment of generally binding ordinance of the Municipality of Nezvěstice no. 1/2001 of 12 March 2001, on the Breeding and Keeping of Animals in the Municipality. The District Office suspended execution of the ordinance by its decision of 26 April 2001 (624/2001/KP). Because the party to the proceedings did not correct the situation, the petitioner filed a petition with the Constitutional Court to annul the ordinance under Art. 87 par. 1 let. b) of the Constitution of the Czech Republic and § 64 par. 3 of the Act on the Constitutional Court. The text (without corrections of mistakes and typographical errors) of this generally binding ordinance (the “ordinance”) is the following:

“Generally Binding Ordinance

of the Municipality of Nezvěstice

no. 1/2001

of 12 March 2001

on the Breeding and Keeping of Animals in the Municipality

The representative body of the Municipality of Nezvěstice, at its session held on 12 March 2001, approved, as resolution no. 3., in accordance with § 84 let. i of Act no. 128/2000 Coll., on Municipalities, as amended by later regulations, this generally binding ordinance on the breeding and keeping of animals in the municipality.

Art. 1

Introductory Provisions

Animals may be bred in the Municipality of Nezvěstice and its parts provided that health and veterinary regulations, relating to the breeding of animals, housing and caring for them, and regulations on the protection of nature and statutes for the protection of all components of the environment are observed.

Art. 2

Basic Concepts

*1) The ordinance is binding on the breeders and keepers of these kinds of animals.
a) large and medium-sized agricultural animals - cattle, horses, cows, sheep, goats, sows, hogs, ostriches, etc.*

b) small and miniature agricultural animals - scratching and water poultry (hens, turkeys, ducks, geese, etc.) including pigeons and rabbits.

c) fur animals - mink, foxes, silverfoxes, nutria, etc.

d) other animals and birds - dogs, cats, song and miniature birds, aquarium fish, miniature laboratory animals (guinea pigs, hamsters, mice and rats), turtles, snakes and other animal species from subtropical zones .

e) bees

2) A breeder or keeper of animals is someone who, even temporarily, raises animals or cares for them (a “breeder”).

Art. 3

Conditions for Breeding Animals

1) Breeding any above-mentioned animal is permitted (with the exception provided in other articles of this ordinance) provided it does not cause hygiene or health problems, does not endanger cleanliness and safety in buildings or public areas, and is not a nuisance to the residence of neighboring apartments or houses, and does not exceed environmental standards, and provided it is not inconsistent with Act no. 114/1992 Coll., on Protection of Nature and the Landscape, as amended by later regulations.

2) It is forbidden to carry, drive or lead animals to children’s playgrounds, sandboxes, swimming pool compounds, cemeteries, and other places with a notice “No animals permitted.” This ban does not apply to working dogs and blind people’s seeing-eye dogs.

3) In areas of family housing breeding animals is permitted on the condition that it does not lead to deterioration of the environment or the appearance of the surroundings, and that there is no violation of the rules of civic cohabitation or endangerment of the quality and amount of subterranean and surface waters. The areas for animals are generally enclosed spaces, e.g. with a barrier.

Art. 4

Obligations of Breeders

1) Animal breeders are required to thoroughly observe hygiene regulations, the cleanliness of the municipality, protection of animals, and the safety of their fellow citizens. Animals must be cared for so that they do not negatively affect the environment or civic cohabitation, and do not contaminate subterranean and surface waters.

2) A breeder is required to observe generally binding legal regulations concerning protection of animals against abuse and the Act on Veterinary Care.

Art. 5

Breeding Large and Medium-Sized Agricultural Animals

1) *Breeding large and medium-sized agricultural animals, see Art. 2 par. "a," is permitted in localities defined in the municipal zoning plans as family and residential houses, and in cottage localities where family houses are also located, only with the consent of the Representative Body of the municipality of Nezvěstice.*

2) *Outside the locales specified in par. 1, breeding large and medium-sized animals is permitted under the conditions specified in Art. 3 of this ordinance.*

3) *The above-mentioned localities are delineated in the municipal zoning plan, the current version of which is available for inspection at the Municipal Office.*

Art. 6

Breeding small and miniature agricultural animals

1) *Breeding small and miniature agricultural animals is permitted at family houses and houses with gardens only under conditions specified in Art. 3 of this ordinance.*

2) *Areas for breeding animals (including runs) must be secured against leaks and situated so that there is no danger to the quality of subterranean waters (a distance of at least 10 meters from wells).*

Art. 7

Breeding Pigeons

1. *Pigeons (carrier, ornamental, non-ornamental) may not be raised in residential buildings and on apartment balconies.*

2. *In family houses (including row houses, the breeding of pigeons is permitted only under the conditions provided in Art. 3 of this ordinance, and always with the consent of the District Office of the municipality of Nezvěstice.*

Art. 8

Breeding Animals for Fur

1) *Breeding animals for fur is permitted only under the conditions provided in Art. 3 of this ordinance only where there are suitable conditions for such breeding, i.e. the facilities for it must be in fenced-in areas at least 100 meters from residential buildings and recreation facilities.*

2) *Breeding animals for fur is permitted only in the peripheral parts of the municipality with the consent of the Municipal Office of the municipality of Nezvěstice.*

Art. 9

Breeding Other Animals

1) *Breeding other animals in apartments or rental houses maybe done only under the conditions provided in Art. 3 of this ordinance.*

2) *Animals roaming about the municipality may be caught - and handed over to employees of the appropriate organizations.*

Art. 10

Breeding Dogs and Cats

1) *A dog owner is required to register the dog at the Municipal Office and pay a local fee.*

2) *A dog owner is required to observe hygiene, veterinary and other generally binding regulations for dog ownership,*

3) *The owner is also required to keep the dog on a leash in common and public areas of buildings and public areas, including sidewalks and local roadways.*

4) *The owner must see to it that the dog does not soil the common areas of buildings, sidewalks, sandboxes and public areas with its feces.*

5) *The owner is required to immediately remove any soiling caused by the dog, at his own expense and on his own responsibility. If he does not do so, he will be brought before the misdemeanor commission.*

6) *Dogs must be secured so they do not escape. Dogs may not run free in public areas.*

Art. 11

Breeding Song and Ornamental Birds

Song and decorate birds can be bred as a hobby provided that veterinary and health regulations are met. Business breeders may conduct the breeding business on the basis of a trade license, provided that they observe Art. 3 of this ordinance and observe valid veterinary regulations.

Art. 12

Breeding Animals in the ČSCH and ČSZ Settlements

1) *Breeding animals in the ČSCH settlements is not forbidden. The breeding may not cause deterioration of the environment (Art. 3 of this ordinance).*

2) *Breeding of animals in gardening settlements is forbidden by regulations on protection of nature and the landscape.*

Art. 13

Execution of Decision

- 1) *The representative body of the municipality of Nezvěstice may, in cases where animals are bred in conflict with this generally binding ordinance and general regulations, file an application to stop or remove the breeding or keeping of animals.*
- 2) *Par. 1 does not apply to the breeding of individual animals of specially protected species under Act no. 114/1992 Coll. and international CITES treaties.*

Art. 14

2) *Penalties*

Violation of this ordinance shall be judged in accordance with Act no. 200/1990 Coll., on Misdemeanors, as amended by later regulations, Act no. 50/1976 Coll., the Building Code, as amended by later regulations, provided they do not involve a crime.

Art. 15

3) *Closing Provisions*

Generally binding legal regulations apply to matters not specified in this generally binding ordinance.

Art. 16

Effectiveness

1) *This generally binding ordinance goes into effect on the date it is promulgated, i.e. 13 March 2001 for reasons of expediting administrative proceedings conducted in a matter of non-permitted buildings. This provision is in accordance with Act 128/2000 Coll. on Municipalities § 12 par. 2.*

2) *Date of promulgation on official notice board: 13 March 2001.*

Mayor of the Municipality

Deputy Mayor

Posted: 13 March 2001

Removed: 30 March 2001”

II.

The petitioner claims that this ordinance is inconsistent with Art. 104 par. 3 of the Constitution of the Czech Republic, because it interferes in private law relationships governed by the Civil Code (Art. 3 par. 1 and 3, Art. 4 par. 1 and Art. 10 par. 3, 5 and 6 first sentence of the ordinance are regulated by §3, §127 and §415 of the Civil Code) and also violates Art. 2 par. 3 a 4 of the Constitution of the Czech Republic and Art. 2 par. 2 and 3 of the Charter of Fundamental Rights and Freedoms.

The orders and bans in Art. 1, Art. 3, Art. 5 par. 1, Art. 6 par. 1, Art. 7, Art. 8, Art. 9 par. 1, Art. 11, Art. 12 conflict with Art. 4 par. 1 and 2, Art. 11 par. 1, par. 3 and Art. 26 par. 1 and par. 3 of the Charter of Fundamental Rights and Freedoms.

The petitioner also charges that through the ordinance the municipality is also interpreting the content of statutes concerning the exercise of state administration, and even creating norms in the area of state administration. Therefore, it goes outside the area entrusted to independent jurisdiction. In this regard, the petitioner points in detail to the following:

- Art. 3 par. 1 and 3, Art. 4 par. 1, Art. 10 par. 4 and 5 of the ordinance regulation relationships which are governed by § 47 par. 1 let. d), or § 49 par. 1 let. b) and c) of Act no. 200/1990 Coll., on Misdemeanors, as amended by later regulations (the “Act on Misdemeanors”),
- Art. 2 of the ordinance provides definitions inconsistent with § 3 par. 1 let. a) and d) of Act no. 166/1999 Coll., on Veterinary Care and Amending Related acts (the Veterinary Act), as amended by later regulations (the “Veterinary Act”),
- Art. 11 of the ordinance is also inconsistent with Act no. 455/1991 Coll., on Trade Licenses (the Trade License Act), as amended by later regulations (the “Trade License Act”),
- Art. 1, Art. 3, Art. 4, Art. 6 par. 2, Art. 10 par. 2, Art. 11 of the ordinance interfere in relationships governed by Act no. 246/1992 Coll., on Protection of Animals against Abuse, as amended by later regulations (the “Animal Protection Act”), specifically §4 let. c), k) and m), §9 and §13,
- Art. 3 par. 1 and 3, Art. 4 par. 1, Art. 5, Art. 6, Art. 7, Art. 8, Art. 9 par. 1 of the ordinance interfere in relationships also regulated by §81, §82, §85, §138a par. 1 and 2 and § 143 par. 1 let. k) of Act no. 50/1976 Coll., on Zoning and the Building Code (the Building Code), as amended by later regulations (the “Building Code”). As of 1 June 2002 the ordinance articles specified in this point are also inconsistent with § 143 par. 4 let. c) of the Building Code, on the basis of which Decree of the Ministry of Agriculture of the Czech Republic no. 191/2002 Coll., on Technical Requirements for Agricultural Buildings was issued,
- Art. 3 par. 3 and Art. 4 par. 1 of the ordinance regulate a relationship established in §25 par. 1, or §17 par. 1 of Act no. 138/1973 Coll., on Waters, as amended by later regulations, effective as of the day the ordinance is issued, or as of 1 January 2002 v §27 of Act no. 254/2001 Coll., on Waters and Amending Certain Acts (the “Water Act”).

Therefore, the petitioner proposes that the Constitutional Court issue a judgment annulling the abovementioned ordinance.

III.

The Constitutional Court concluded that the petition formally meets the requirements of the Act on the Constitutional Court. In this regard it states that it has already dealt with the situation where, during the time of proceedings on the legality of a generally binding municipal ordinance the petitioner’s office ceased to exist, in judgment file no. Pl. ÚS 39/02 (no. 205/2003 Coll., Collection of Decisions of the Constitutional Court of the Czech Republic, vol. 30, no. 97). There it concluded that the proceedings in progress are not affected by the fact that district offices, which the chairmen headed, were, as part of the

reform of territorial administration, annulled as of 31 December 2002 by Act no. 320/2002 Coll., on Amendment and Annulment of Certain Acts in Connection with the Termination of Activity of District offices. However, as of 1 January 2003 the minister of the interior is entitled to file such a petition [§ 64 par. 2 let. g) of the Act on the Constitutional Court]. The kind and subject matter of proceedings before the Constitutional Court remain the same; there is only a change of the body which will henceforth take part in the proceedings instead of the previous petitioner, in accordance with the change of that situation in Act no. 320/2002 Coll. Finally, the obligation to address such a petition also arises under §68 par. 1 of the Act on the Constitutional Court. Therefore, on that basis, the Constitutional Court continued the proceedings with the participation of the minister of the interior, who also consented to waive oral proceedings.

In proceedings to annul a legal regulation it is the Constitutional Court's obligation to first review whether the regulation in question was issued in a constitutionally prescribed manner (§68 par. 2 of the Act on the Constitutional Court). The contested generally binding ordinance was duly passed at the 16th public session of the Representative Body of the municipality of Nezvěstice held on 12 March 2001 by twelve votes, out of thirteen members present (one member abstained from voting) from the representative body, which has a total of 15 members. It was posted on 13 March 2001 on the official notice board, from which it was removed on 30 March 2001. Therefore, we can only state that the ordinance was passed by a body authorized to do so, and in a prescribed manner. The validity and effectiveness of the ordinance of 12 March 2001 could not be affected by the failure to meet obligations to the appropriate district office under § 12 par. 3 of the Act on Municipalities, in the version in effect at the time it was passed. Based on an application, the content of the ordinance was reviewed by the District Office Pilsen-South, and the effectiveness of the ordinance was suspended with effect as of 18 May 2001. The deadline to correct the situation passed in vain. Because the party to the proceedings did not correct the situation, and insisted on keeping the full ordinance in the original version, the Chairman of the District Office, under the then-valid wording of § 124 par. 1 of Act no. 128/2000 Coll., on Municipalities (Municipal Establishment), as amended by later regulations (the "Act on Municipalities"), filed a petition with the Constitutional Court to annul the ordinance [Art. 87 par. 1 let. b) of the Constitution of the Czech Republic, §64 par. 3 of the Act on the Constitutional Court].

The conditions for the permissibility of proceedings on the legality of legal regulations include the requirement that legal regulations, according to which the legality of the regulation contested by the petition is being judged, not cease to be valid during the proceedings. In this cases, there was a change in § 10 let. a) and let. d) of the Act on Municipalities. However, these changes are basically legislatively technical changes, where, although Act no. 313/2002 Coll. annulled §10 let. a), which permitted municipalities to impose obligations "in matters specified by a special act," it replaced it with §10 let. d), under which a municipality may do so by ordinance, "if a special act so provides." Further, in §10 let. a), in connection with the new wording of §34 of the act on Municipalities, the words "publicly accessible places" were replaced by the words "public areas." The substance of the authorization of municipalities to impose obligations in this way remained otherwise unaffected. The same is true of individual statues which the petitioner claims in the petition to have been violated. Thus, §3 par. 1 let. a) and d) of the Veterinary Act were amended without this having an effect on the alleged inconsistency

with the ordinance. Likewise, paragraph 4 was added to §82 of the Building Code. The only change occurred through the annulment of Act no. 138/1973 Coll., on waters, which was replaced by Act no. 254/2001 Coll. However, the petition takes this new regulation into account, and claims inconsistency with §27 thereof.

The municipality of Nezvěstice, as a party to the proceedings, responded to the petition by rejecting the petitioner's conclusion, stating that the ordinance is consistent with the constitutional order and the laws of the Czech Republic, and that it falls under municipal jurisdiction under §10 of the Act on Municipalities. It also stated that the ordinance was not passed arbitrarily, but as a response to a socially undesirable situation, specifically certain administrative proceedings on the removal of buildings used without a final building permit for the breeding of agricultural animals (pigs, cattle, etc.), which cause interference with health and property, the environment, and conduct which is inconsistent with good morals and interferes with the justified interests of others (§ 3 par. 1 of the Civil Code). The municipality believes that Art. 2 of the Constitution of the Czech Republic and Art. 2 par. 3 of the Charter of Fundamental Rights and Freedoms apply to municipal jurisdiction, and a municipality is therefore authorized to issue generally binding ordinances which contain obligations, on the basis of statutory authorization in §10 let. a) to d) of the Act on Municipalities. The municipality also finds support for imposing obligations on breeders in, among other things, the Building Code, the Water Act, the Veterinary Act, and so on. The provisions of this ordinance can be interpreted in a manner compatible with the constitution. Its purpose is not to discriminate against some citizens or to set disadvantageous conditions for them, but to protect the rights and legally protected interests of the majority of citizens. This involves a struggle with problems caused by completely unregulated breeding and keeping of agricultural animals in buildings constructed in violation of building permits or without them, which endangers the environment. The municipality also pointed to the fact that the petitioner "did not meet the conditions for proceedings under §74 of the Act," and proposed that the Constitutional Court deny the petition. The municipality agreed to waive oral proceedings.

In response to a request from the Constitutional Court, the ombudsman stated that he will not participate in these proceedings as a secondary party (§69 par. 2 of the Act on the Constitutional Court).

IV.

On that basis, after reviewing the individual provisions of the ordinance and evaluating them as a whole, the Constitutional Court, in agreement with the petitioner, concluded that the majority of provisions of the reviewed ordinance do not meet the constitutional and statutory requirements for issuing generally binding municipal ordinances under independent jurisdiction. Here the Constitutional Court considers it necessary to emphasize that under the constitutional order and the Act on Municipalities a municipality needs statutory authorization to issue generally binding ordinances, it must observe the limits of its jurisdiction defined by statute, may not regulate issues which are reserved to statute, and may not regulate matters which are already regulated by legal regulations of public or private law. In this regard the Constitutional Court refers to its case law on these issues [cf., in particular for the area of breeding and keeping animals in a municipality, the

plenary judgment of the Constitutional Court in the matter Pl. ÚS 4/98 (in Constitutional Court of the Czech Republic: Collection of Decisions - volume 14, 1st edition, no. 78, Prague 2000; and in the Collection of Laws as no. 126/1999 Coll.), also, e.g. Pl. ÚS 42/97 (in The Constitutional Court of the Czech Republic: Collection of Decisions - volume 14, 1st edition, no. 85, Prague 2000 and in the Collection of Laws as no. 162/1999 Coll.), Pl. ÚS 5/99 (in Constitutional Court of the Czech Republic: Collection of Decisions - volume 15, 1st edition, no. 112, Prague 2000 and in the Collection of Laws as no. 216/1999 Coll.)). Therefore, it was necessary to annul the ordinance as a whole, as the Constitutional Court found no reason to diverge from its case law (Art. 89 par. 2 of the Constitution of the Czech Republic).

Because the Constitutional Court agrees with the petitioner's abovementioned arguments (under I.) in relation to violation or interference in an area governed by the Civil Code, the Building Code, the Act on Misdemeanors, the Act on Veterinary Care, the Act on Trade Licenses, the Act on Waters, and the Act on Animal Protection, it does not consider it necessary to repeat all these arguments in relation to the violation of constitutional and statutory rules for issuing generally binding ordinances under independent jurisdiction, as that is based on the Constitutional Court's existing case law. As stated above, the amendment of certain provisions of statutes with which this ordinance is said to be inconsistent, changes nothing about these arguments, because the legal regulation in question is still valid. In this regard, one could also point to conflict with implementing regulations which were issued for these statutes. In particular, we must mention decree of the Ministry of Agriculture and Nutrition no. 286/1999 Coll., which implemented provisions of Act no. 166/1999 Coll., on Veterinary Care and Amending Certain Related Acts (the Veterinary Act), on the Health of Animals and Its Protection, on Veterinary Conditions for the Import, Export and Transit of Veterinary Goods, on Veterinary Culling and on Attestation Studies, replaced by the now-valid decree no. 296/2003 Coll., on the Health of Animals and Its Protection, on the Relocation and Transportation of Animals and Expert Qualification for the Exercise of Certain Expert Veterinary Activities.

Beyond the petitioner's arguments we only add that legal relationships which the ordinance as a whole aims to regulate fall into the area now regulated in particular in Act no. 258/2000 Coll., on Protection of Public Health, as amended by later regulations. Of course, its amending provision (§96) only permits municipalities to use generally binding ordinances to order special protective insect or rat removal for their territories or part thereof, in order to protect health from the inception and spreading of infectious diseases. However, in the area of public health protection, it does not permit them to issue ordinances with the content that the reviewed ordinance has. The tasks which this ordinance is to achieve, according to the response to the petition by the party to the proceedings, are entrusted by that Act to other state administration bodies.

Further, Art. 3 par. 2 of the ordinance regulates matters the regulation of which is entrusted to municipalities, but through a public code for a public cemetery (§19 of Act no. 256/2001 Coll., on Funeral Services and Amending Certain Acts). However, the prior consent of the appropriate state administration body is required in order to issue it, whether by a council or representative body which reserves such issuance to itself (§ 102 par. 3 of the act on Municipalities). At present that is the regional office; at the time the ordinance was issued, it was the appropriate health inspection service body (§19 par. 3 of

Ministry of Health of the Czech Socialist Republic decree no. 19/1988 Coll., on Procedures upon Death and Funeral Services).

As regards the criticism that the ordinance interferes in matters regulated by the Civil Code, the Constitutional Court adds that under its case law (judgment no. 126/1999 Coll., The Constitutional Court of the Czech Republic: Collection of Decisions - volume 14, judgment no. 78) Art. 3 and Art. 9 par. 1 of the ordinance also interfere in the subject matter of § 663n. of the Civil Code.

In other provisions (in particular Art. 1, Art. 3 par. 1, Art. 4, Art. 11, Art. 12 par. 2, Art. 13 par. 2, Art. 14), the ordinance inexactly refers to the general legal regulation of breeding animals and related issues in the appropriate statutes. We must emphasize that these statutes concerning the statewide exercise of state administration in this area. Therefore, there is no reason for an ordinance to adopt them in this unsuitable manner for the territory of one municipality. We find equally unclear and incomprehensible, and thus inconsistent with the principles of a law-based state, Art. 13 par. 1 of the ordinance, entitled “enforcement of decisions,” under which, in the event of breeding of animals inconsistent with the ordinance, the representative body of the Municipality of Nezvěstice may file an application to stop or remove the breeding or keeping of animals.

Art. 14 of the ordinance states that violation of the ordinance will be judged in accordance with the Act on Misdemeanors and the Building Code, provided that it does not involve a crime. This provision is also ambiguous and unclear. It is not possible to formulate anew or in more detail the definitions of misdemeanors or other offenses defined in a statute (cf., e.g., Pl. ÚS 47/93, in The Constitutional Court of the Czech Republic: Collection of Decisions - volume 2, 1st edition, no. 39, Prague, and in the Collection of Laws as no. 179/1994), as could be concluded from grammatical analysis of this article.

As a whole, the reviewed ordinance is cast in doubt by Art. 15, which provides only supporting validity of the above-mentioned statewide legal regulations. According to the ordinance, these statutes can be applied only in the event that the ordinance does not provide otherwise. A provision formulated in this manner can not stand in a law-based state.

The Constitutional Court also could not, under its case law, agree with the arguments of the party to the proceedings, according to which Art. 2 of the Constitution of the Czech Republic and Art. 2 par. 3 of the Charter apply to municipal procedures in issuing generally binding ordinances under independent jurisdiction. The purpose of these constitutional provisions is to guarantee the freedom of persons to act under private law and to express the autonomy of their will. In contrast, the actions of a municipality, as a public law corporation, in the case of unilateral setting of orders and bans, are subject to Art. 2 par. 3 of the Constitution of the Czech Republic and Art. 2 par. 2 of the Charter, under which state authority may be asserted only in cases and within the bounds provided for by law and only in the manner prescribed by law. The purpose of these constitutional provisions is to guarantee freedom of conduct of persons subject to private law and the expression of their autonomous will. This rule must also be extended to the authoritative determination of individuals' relationships in a municipality through generally binding ordinances. Anything else would mean violation of the principle of a law-based state under which the

public power is bound by laws in its actions, while the individual, as a subject of private law, is permitted to do everything which the law does not forbid, and is required to do only what the law requires/imposes. In this case, however, the municipality exceeded these constitutional rules by its ordinance, and used its norm-creation to regulate issues which the laws do not entrust to it, or did so in a manner inconsistent with the laws. As regards the reference to the need for constitutionally consistent interpretation of the ordinance, we must note that this manner of interpretation is one of the guarantees of constitutionality, and therefore can not be used for a completely contrary purpose.

In view of the foregoing, therefore, we must state that a municipality needs statutory authorization to issue generally binding ordinances under independent jurisdiction, it must observe the limits of its jurisdiction defined by statute, may not regulate issues which are reserved to statutory regulation, and may not regulate matters which are already regulated by legal regulations or public or private law. The reviewed ordinance violates these rules in all these points. In the course of reviewing the petition, three years from the issuance of the ordinance there was only one substantial change in the legal status quo, regulation of the unrestrained movement, when Act no. 77/2004 Coll. amended §24 of Act no. 246/1992 Coll., on the Protection of Animals from Abuse. At present, under paragraph 2 of that provision, a municipality may, by generally binding ordinance, set rules for the movement of dogs in public areas and define spaces where they may be unrestrained. In view of the fact that leaving some parts of Art. 10 in the contested generally binding decree would lose meaning and lead to it being unclear (not to mention the confusing heading of that provision), the generally binding ordinance was annulled in its entirety, with the provision that the municipality may, in its discretion, make use of the new opportunity to set rules for the movement of dogs within the bounds of §24 par. 2 of Act no. 246/1992 Coll. However, the amendment of the Act on Protection of Animals against Abuse had no effect on the main aim of the ordinance, which, according to the party to the proceedings, is addressing the issue of removing buildings used without buildings permits for the breeding of agricultural animals (pigs, cattle, etc.), which results in interference with health and property, the environment, and in actions which are inconsistent with good morals and interfere with the justified interests of others.

Thus, we can only close by saying that a municipality may use generally binding ordinance to regulate only those of its matters which have been entrusted to its independent jurisdiction, and these ordinances must be consistent with the laws (Art. 104 par. 3 of the Constitution of the Czech Republic, § 35 of the Act on Municipalities). However, they can not be used to regulate matters which fall into an area reserved to state administration, or to the area of private law relationships. This is not changed at all by the fact that the exercise of state administration may also be transferred to municipalities. If the municipalities wish to use an ordinance to regulate detrimental elements in building proceedings, which is how it explained the passage of the ordinance in its statement, this is an impermissible manner of regulation, as the building office is a body of state administration, not a body of local administration.

Finally, we could not agree with the claim of the party to the proceedings that the petitioner did not meet the conditions for proceedings under §74 of the Act on the Constitutional Court. Application of this provision only comes into consideration in proceedings on a constitutional complaint. For that reason it can not be applied in

proceedings on a petition to annul a generally binding municipal ordinance. Therefore, the Constitutional Court did not find that formal grounds existed due to which the matter could not be addressed substantively.

For the reasons thus explained, it was decided that the generally binding ordinance of the Municipality of Nezvěstice no. 1/2001, of 12 March 2001, on the Breeding and Keeping of Animals in the Municipality, will be annulled in its entirety, due to inconsistency with Art. 1, Art. 2 par. 3 and Art. 104 par. 3 of the Constitution of the Czech Republic, with Art. 2 par. 2, Art. 4 par. 1 of the Charter, as well as with §10 and §35 of the Act on Municipalities, as of the day this judgment is published in the Collection of Laws (§70 par. 1 of the Act on the Constitutional Court).

Notice: Decisions of the Constitutional Court cannot be appealed.

Brno, 20 October 2004