2005/06/14 - PL. ÚS 1/05: GENERALLY BINDING ORDINANCE - LOCAL FEES

HEADNOTE

The specification of places used as public grounds (in the settled case law of the Constitutional Court concerning the interpretation of § 14 par. 2 of Act no. 565/1990 Coll., on Local Fees) is necessary, in particular, for the reason of legal certainty of the owners of land considered to be public grounds, because, even though ownership of such land is insignificant in terms of the statutory definition of public grounds under § 34 of the Act on Municipalities, it is undisputed that precisely the owners of such property have an opportunity to defend themselves (through private law proceedings) against special use of their land.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court of the Czech Republic, composed of justices Stanislav Balík, František Duchoň, Vojen Güttler, Pavel Holländer, Ivana Janů, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, Eliška Wagnerová (judge rapporteur) a Michaela Židlická, decided on 14 June 2005 in the matter of a petition from the Minister of the Interior, Mr. F. B., seeking the annulment of Art. 1 par. 1 let. c) and Art. 16 to 22 (part IV.) of the generally binding ordinance of the municipality of Svojšín of 30 December 2003, no. 5/2003, on Local Fees, as amended by generally binding ordinance of the municipality of Svojšín of 24 May 2004, no. 1/2004, with the participation of the municipality of Svojšín, with its registered office at Municipal Office of Svojšín, no. 135, post office Stříbro, represented by K. P., the mayor of the municipality, as follows:

I. Art. 17 of the generally binding ordinance of the municipality of Svojšín of 30 December 2003, no. 5/2003, on Local Fees, as amended by generally binding ordinance of the municipality of Svojšín of 24 May 2004, no. 1/2004, is annulled.

II. The remainder of the petition from the Minister of the Interior is denied.

REASONING

I.

In a petition sent on 13 January 2005, which meets the criteria of content and form under Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations (the "Act on the Constitutional Court"), the Minister of the Interior (the "petitioner") seeks the annulment of the cited provisions of the generally binding ordinance of the municipality of Svojšín no. 5/2003, as amended by generally binding ordinance no. 1/2004, due to their inconsistency with the law.

The cited generally binding ordinance no. 5/2003 went into effect on 1 January 2004. On 18 March, 2004, in accordance with § 124 par. 1 of Act no. 128/2000 Coll., on Municipalities (Municipal Establishment), as amended by later regulations (the "Act on Municipalities"), the Regional Office of the Pilsen Region sent the municipality of Svojšín a notice, no. j. LPVV/690/04, to arrange a correction of the ordinance, as the Regional Office found that Art. 17 and Art. 23 of the ordinance were inconsistent with the law. Based on this notice, the municipality of Svojšín, by generally binding ordinance of 24 May 2004, no. 1/2004, amended the text of Art. 23. However, Art. 17 was not amended by the statutory deadline, and therefore the Regional Office, in its filing of 1 September 2004, file no. Ř/218/04, proposed that the ministry of the interior suspend the effect of generally binding ordinance of the municipality of Svojšín no. 5/2003, as amended by generally binding ordinance no. 1/2004 (the "ordinance"). On 12 November 2004 the ministry opened administrative proceedings to suspend the effect of Art. 1 par. 1 let. c) and Art. 16 to 22 (part IV.) of the ordinance. Because the municipality did not even then arrange a correction in the matter, the ministry of the interior, by decision of 4 January 2005, file no. MS - 1965/1 - 2004, suspended the effect of the cited provisions of the ordinance. This decision was delivered to the municipality of Svojšín on 6 January 2005.

The contested provisions of the ordinance read as follows:

Generally Binding Ordinance no. 5/2003 on Local Fees
The representative body of the municipality of Svojšín, at its meeting on 30 December 2003, decided, on the basis of § 14 par. 2 of Act no. 565/1990 Coll., on Local Fees, as amended by later regulations, and in accordance with § 10 let. d) and § 84 par. 2 let. i) of Act no. 128/2000 Coll., on Municipalities (Municipal Establishment), as amended by later regulations, to issue this generally binding ordinance:

Part I. Basic Provisions
Article 1
1. The municipality of Svojšín introduces and collects these local fees:
a) a fee for dogs,
b) a fee for spa or recreational stays,
c) a fee for the use of public grounds,

d) a fee for accommodation capacity,
e) a fee for the operation of a gambling machine.
2. Local fees shall be administered by the Municipal Office of (the “fee administrator”). Administrative proceedings on fees are subject to Act no. 337/1992 Coll., on Administration of Taxes and Fees, as amended by later regulations, unless Act no. 565/1990 Coll., on Local Fees, as amended by later regulations, provides otherwise.

Part IV. Fee for Use of Public Grounds
Article 16
Subject of the Fee
The subject of the fee is the use of public grounds in a special manner, which means placing garbage dumps there.

Article 17
Public Grounds
Public grounds means the village green, roads, local roadways, sidewalks, public greenery, parks sporting areas, and other areas within the municipality of Svojšín and the settlements of Holyně, Nynkov and Řebří, accessible to everyone without restriction, i.e. available for general use, regardless of ownership of the area.

Article 18
Fee Payer
1. A fee payer is a natural person or legal entity who uses public grounds in the manner provided in article 16.
2. If the same part of public grounds is used by several fee payers, they are jointly and severally liable for payment of the entire fee. The fee administrator may require payment of the fee from any one of them.

Article 19
Obligation to Notify
1. A fee payer is required to notify the fee administrator of use of public grounds in writing or orally, by recording a protocol, no later than the day after use begins. If that day falls on a Saturday, Sunday or public holiday, the day when the fee payer is required to fulfill the notification obligation is the next following business day.
2. In fulfilling the notification obligation, the fee payer is required to give the fee administrator the last name, name or company name of a legal entity, residence or registered address, birth identification number or company identification number. In the case of a natural person or legal entity which is an entrepreneur, he shall also provide the numbers of accounts at financial institutions where funds from the entrepreneurial activity are kept, the area used in square meters, and the expected length of time of use of the public grounds.
3. Upon termination of use of public grounds the fee payer is required to notify the fee administrator of this fact in the same manner and by the same deadline as in par. 1.
4. Par. 1, 2 and 3 shall not apply if the use of public grounds lasted for a period of less than 24 hours.

Article 20
Fee Rates
1. The fee is CZK 10 per square meter, or part thereof, per day, or part thereof, of use of public grounds.
2. A day means one calendar day, regardless of which part or how great a part of the day the fee payer uses the public grounds.
3. The fee is paid through the day when use of public grounds terminated and the public grounds were returned to the original condition.

Article 21
When Fees Are Due
The fee is due:
a) if public grounds are used for a period of up to 30 days, no later than 15 days from the day when use of the public grounds was terminated,
b) if public grounds are used for a period longer than 30 days, no later than the last day of each calendar month.

Article 22
Exemption
1. Use of public grounds is not subject to the fee:
a) if it is used by an owner or co-owner of used real estate which is considered public grounds, provided that his ownership share is at least 25%,
b) in the first 10 calendar days of use.
2. A fee payer is required to notify the fee administrator of the creation of an entitlement to exemption from the fee on the grounds provided in par. 1 let. a) in writing or orally, by recording a protocol, simultaneously with fulfilling the notification obligation under Art. 19 par. 1.
3. A fee payer is required to notify the fee administrator without delay of the expiration of an entitlement to exemption due to the grounds provided in par. 1 let. a) ceasing to exist.

II.

In his filing, the petitioner claims that the definition of the term “public grounds” in Art. 17 of the ordinance is inconsistent with the constitutional order of the Czech Republic, specifically with Art. 2 par. 2, par. 4 of the Constitution of the CR and Art. 2 par. 2, par. 3 and Art. 4 par. 1 of the Charter of Fundamental Rights and Freedoms (the “Charter”), and is also inconsistent with § 14 par. 2 of Act no. 565/1990 Coll., on Local Fees, as amended by later regulations (the “Act on Local Fees”). According to the petitioner, the principle of a law-based state provided by the constitutional order of the Czech Republic quite unquestionably includes the principle of legal certainty, which includes a requirement for specificity of obligations imposed by generally binding legal regulations on individual subjects of law. In the petitioner’s opinion, the wording of Art. 17 of the ordinance does not meet this legal obligation, as the terms “public greenery” and “other areas accessible to all without restriction” are not a precise definition. He also argues that the Constitutional Court has also stated the requirement for precise definition of places for

which fees for use of public grounds are collected in its case law, specifically in decisions published under no. 80/1995 Coll., no. 280/1995 Coll., no. 8/2002 Coll. and no. 567/2004 Coll. In the conclusion of the filing, he proposes that the Constitutional Court annul not only Art. 17 of the ordinance, but also Art. 1 par. 1 let. c) and Art. 16 to Art. 22 of the ordinance, because, in view of the unconstitutionality of Art. 17, these other provisions of the ordinance are also inapplicable.

The Municipality's Mayor, Karel Petráň, responded to the petition in the name of the municipality. In his response, he stated that the definition of "public grounds" in the ordinance is based on the legal definition provided in § 34 of the Act on Municipalities. According to him, the contested ordinance provision in no way exceeds the legal framework for definition of public grounds, and the municipality's requirement imposing a fee for use of public grounds, including in this special manner, is entirely justified. He adds that if a municipality does not intend to impose fees only for the use of certain selected areas, but has decided to impose fees for the special use of all public grounds, it would be superfluous to define the grounds individually. Differentiating grounds in a manner which would not lead to uncertainty, by eliminating the possibility of confusing them, would of course have to be required if the collection of a local fee were to apply only in connection with the use of selected places. However, the municipality of Svojšín, within its jurisdiction, introduced a fee for the use of all public grounds in its territory, and the subject of the fee is only the placement of garbage dumps under further specified conditions, and other special ways of using public grounds are not subject to a fee. As the mayor of the municipality argues further, in view of the fact that ownership is not definitive for classifying areas as public grounds under a positive legal definition, for that reason too, in the situation described above, it is completely impractical to identify the grounds in an individual manner, e.g. by listing properties by lot numbers in the real estate register, or a photograph of the real estate register indicating the relevant lots as an appendix to the generally binding ordinance of the municipality. In his opinion, it would be possible to make such a definition at the time the local legal regulation is issued, but it could not be valid long-term, in view of the practical changes implemented independently of this regulation. In response to the petition from the Minister of the Interior to also annul Art. 1 par. 1 let. c) and Art. 16 - Art. 22 of the ordinance, the municipality states that even if the Constitutional Court found Art. 17 to be unconstitutional, it should not accede to annulling other provisions of the ordinance, as the remaining part of the text, after deleting the defective part, would continue to be legally, logically and linguistically a complete unit capable of independent legal life. The municipality is of the opinion that the abovementioned decision by the ministry of the interior to suspend the effectiveness of the ordinance is inconsistent with Art. 8 and Art. 101 par. 4 of the Constitution of the CR, and therefore proposes that the Constitutional Court deny the petition from the Minister of the Interior.

In response to an inquiry from the Constitutional Court, as to whether he intended to join the proceedings as a secondary party (under § 69 par. 2 of the Act on the Constitutional Court), the Public Defendor of Rights stated that he would not join the proceedings.

III.

After finding that the filed petition was formally admissible, the Constitutional Court proceeded according to the test applied in the matter file no. Pl. ÚS 63/04 (published as no. 210/05 Coll.).

The Constitutional Court first reviewed whether the contested ordinance was issued within the powers of the municipality and passed in a statutory manner.

Under Art. 104 par. 3 of the Constitution of the CR, municipalities, or their representative bodies, are endowed with the power to issue generally binding ordinances within the framework of their jurisdiction. This activity must be seen as original norm creation.

The cited ordinance was duly approved by resolution at the 7th meeting of the representative body of the municipality of Svojšín, held on 30 December 2003. The minutes of the representative body's meeting show that seven of the nine members of the representative body were present (cf. § 87 of the Act on Municipalities); five members voted to approve the ordinance and two members abstained. The ordinance was thus passed by a majority of all members of the representative body (§ 92 par. 3 of the Act on Municipalities) and it was promulgated by being posted on the official notice board of the Municipal Office of Svojšín on 30 December 2003; it was then taken down from the official notice board on 19 January 2004 (§ 12 par. 1 of the Act on Municipalities). Because of pressing public interest, the ordinance went into effect on 1 January 2004 (§ 12 par. 2 of the Act on Municipalities).

Generally binding ordinance of the municipality of Svojšín of 24 May 2004, no. 1/2004, which amended the abovementioned generally binding ordinance, was approved by resolution of the municipal representative body on 24 May 2004. Out of seven members of the representative body present, 5 members voted to approve this generally binding ordinance. This generally binding ordinance was promulgated by being posted on the official notice board of the municipal office on 24 May 2004; it was taken down from the official notice board on 18 June 2004. Because of pressing public interest, it went into effect on the day of promulgation, i.e. 24 May 2004.

Thus, it is evident that the contested ordinance was issued in a legal manner and within the framework of powers entrusted to the municipality by the Constitution of the Czech Republic.

IV.

The Constitutional Court then focused on reviewing whether the municipality, in issuing the contested ordinance, acted ultra vires, i.e. acted outside the substantive jurisdiction defined for it by law, and also whether it misused the jurisdiction entrusted to it by law (cf. the test from the abovementioned judgment in file no. Pl. ÚS 63/04, published as no. 210/05 Coll.).

Under § 35 par. 3 let. a) of the Act on Municipalities, when exercising its independent jurisdiction (generally defined by § 35 par. 1 of the Act on Municipalities), a municipality is guided by statute when issuing generally binding ordinances. The definition of areas in which a municipality is authorized to create original law corresponds to this statutory instruction. The Act on Municipalities (§ 10) provides in which substantively defined area a municipality may impose obligations through a generally binding ordinance issued within its independent jurisdiction. This includes, among other things, the situation where a municipality is authorized to do so by a special law [§ 10 let. d) of the Act on Municipalities].

In this case that special law is Act no. 565/1990 Coll., on Local Fees, as amended by later regulations (the "Act on Local Fees"), under § 14 par. 2 of which a municipality shall introduce fees through a generally binding ordinance, in which it shall set forth details on how they are to be collected, and in particular shall set a specific rate for fees, a notification obligation concerning the creation and extinction of the obligation to pay the fee, payment deadlines, reductions and possible exemption from fees. With a fee for the use of public grounds, it shall define places in a municipality which are subject to a fee for use of public grounds. The setting of fees by a generally binding ordinance which a municipality introduced in its territory on the basis of statute must be seen as original norm creation, because under § 14 par. 1 of the Act on Local Fees this activity is part of the municipality's independent jurisdiction.

Thus, insofar as the municipality issued an ordinance on local fees which also regulates the imposition of a fee for use of public grounds, these actions can not be considered to be ultra vires, because in this case the municipality was authorized by statute to regulate the particular substantive area by a generally binding ordinance issued within its independent jurisdiction.

The Constitutional Court then addressed the issue of whether the municipality did not misuse its statutorily substantively defined independent jurisdiction. As the Constitutional Court has already stated (see the abovementioned judgment file no. Pl. ÚS 63/04, published as no. 210/05 Coll.), "abuse of this jurisdiction means exercise of power in the statutorily entrusted area 1.) by pursuing a goal which is not approved by statute, 2.) by ignoring relevant considerations in making the decision, or on the contrary, 3.) taking into account irrelevant considerations."

In this case the petition from the Minister of the Interior is aimed against part IV. of the ordinance, which governs the fee for use of public grounds in a special manner, i.e. for placement of garbage dumps. Under § 1 let. c) of the Act on Local Fees, municipalities may collect local fees fro the use of public grounds. This provision is further expanded upon and specified in more detail in § 4 par. 1 of the Act on Local Fees, under which a fee for use of public grounds is collected for special use of public grounds, which includes the placement of garbage dumps.

Insofar as the contested ordinance provides in Art. 16 that a special manner of use means the placement of garbage dumps, there can be no objection against this provision, because the municipality defined the subject matter of the fee quite consistently with the statutory text (see also the abovementioned § 4 par. 1 of the Act on Local Fees).

Of course, the petitioner's main objection is aimed against Art. 17 of the ordinance, which defines (for purposes of the ordinance) the term "public grounds." It states that "Public grounds means the village green, roads, local roadways, sidewalks, public greenery, parks sporting areas, and other areas within the municipality of Svojšín and the settlements of Holyně, Nynkov and Řebří, accessible to everyone without restriction, i.e. available for general use, regardless of ownership of the area." It is evident that in this case, the municipality applied to its real estate registration area the legal definition of the term "public grounds" which is established in § 34 of the Act on Municipalities, under which public grounds are all town squares, streets, marketplaces, sidewalks, public greenery, parks and other areas accessible to everyone without restriction, that is, available for general use, regardless of ownership of the area. This definition generally defines what kind of areas can be considered public grounds.

Art. 11 par. 5 of the Charter directly indicates that taxes and fees can be imposed only on the basis of statute, i.e. that municipalities can introduce through generally binding ordinances only such local fees as are exhaustively defined by the Act on Local Fees and only in the scope made possible by that Act. Under § 14 par. 2 second sentence of the Act on Local Fees, it is the obligation of the municipality to designate places in the municipality which are subject to fees for use of public grounds (under § 4 par. 1 of that Act, this means special, statutorily-defined public grounds).

The Constitutional Court has already addressed in its decisions the degree of specificity in designating areas (public grounds); the Court considers it necessary, from the point of view of protecting the legal certainty of citizens, that the defined public grounds be specified as precisely as possible in a generally binding ordinance (cf. e.g., the judgment file no. Pl. ÚS 50/03, published as no. 567/2004 Coll.). As the Constitutional Court stated, "the imposition of fees need not apply to all public grounds, and therefore the public grounds precisely defined for purposes of a fee for special use must rule out the possibility of confusion. Therefore, it is necessary to specify public grounds for special use by stating the name of the location (if it has one – a town square, street, passageway, etc.) or to describe it by its location in the municipality more precisely so as not to disrupt the legal certainty of citizens" (judgment of the Constitutional Court in file no. Pl. ÚS 14/95,

published as no. 280/1995 Coll.).

It is evident from the foregoing that, in passing the generally binding ordinance, the municipality neglected to respect the statutory requirements concerning the precise definition of places used as public grounds in the manner in which the Constitutional Court previously interpreted it when interpreting § 14 par. 2 of the Act on Local Fees, that is, so that the legal certainty of the municipality's residence would be protected. The specification of such places is necessary, in particular, for the reason of legal certainty of the owners of land considered to be public grounds, because, even though ownership of such land is insignificant in terms of the statutory definition of public grounds under § 34 of the Act on Municipalities, it is undisputed that precisely the owners of such property have an opportunity to defend themselves (through private law proceedings) against special use of their land (cf. judgment of the Constitutional Court file no. Pl. ÚS 21/02, no. 211/05 Coll.).

Thus, insofar as the municipality did not precisely specify in the ordinance the places which it considers to be public grounds in connection with imposing a fee for special use, it abused the independent jurisdiction substantively defined for it, as a result of neglecting to respect the constitutional principle of legal certainty arising from the principle of a law-based state (Art. 1 of the Constitution of the CR), which is reflecting in § 14 par. 2 of the Act on Local Fees, which must be interpreted in a constitutional manner, as previously indicated by the Constitutional Court.

As regards the Minister's petition concerning the annulment of Art. 1 par. 1 let. c) and the remainder of part IV. of the ordinance the Constitutional Court adds that by annulment of Art. 17 of the ordinance the remaining part IV. of the ordinance becomes de facto inapplicable; its provisions, of course, were not found to be inconsistent with the constitutional order. Therefore, to respect the principle of minimizing its interference in the norm creation of municipalities, the Constitutional Court denied this petition form the Minister of the Interior to annul the cited provisions of the decree, because these provisions will again become applicable (unchanged) after the municipality amends the annulled Art. 17 of the ordinance to be consistent with the constitutional order.

In view of the foregoing, the Constitutional Court partially granted the petition from the Minister of the Interior, and without ordering hearings with the consent of the parties to the proceedings, annulled Art. 17 of the contested generally binding ordinance of the municipality of Svojšín no. 5/2003, on Local Fees, under § 70 par. 1 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, as of the day this judgment is promulgated in the Collection of Laws, and denied the remainder of the petition from the Minister of the Interior.

Notice: Decisions of the Constitutional Court cannot be appealed.

Brno, 14 June 2005