2003/06/24 - PL. ÚS 39/02: WASTE ORDINANCE

HEADNOTES

A petition to annul the generally binding municipal ordinance issued within independent jurisdiction was submitted by an authorized state administration body – the head of the district office (§ 64 par. 3 of Act no. 182/1993 Coll., on the Constitutional Court).

However, the district offices, which were run by the heads, were terminated as of 31 December 2002 as part of the reform of local and regional administration (Act no. 320/2002 Coll., Amending and Repealing Certain Acts in Connection with Terminating the Activity of District Offices). As of 1 January 2003, the minister of the interior is authorized to submit a comparable petition [§ 64 par. 2 let. g) of the Act on the Constitutional Court], and does so at the instigation of the relevant regional office authorized to supervise the exercise of municipal self-government (§ 123 et seq. of the Act on Municipalities).

The kind of proceedings before the Constitutional Court remains the same, there has merely been a change in the body competent to submit a petition. However, there is no reason to consider this change to be a change in the petitioner. Both the head of the district office and the minister of the interior acted (acts) in the name of the state. The head of the district office and the minister of the interior represented, or represent, the same interest in the legality of the law of municipal self-government. When district offices were terminated, regional offices and the Ministry of the Interior took over this agenda, and thus they are informed of on-going of the Constitutional Court proceedings on petitions from chairmen of district offices to annul generally binding municipal ordinances, so that they can change supervisory policy within the bounds of the rules of procedure for proceedings before the Constitutional Court without being called upon to do so. However, they can not withdraw a petition (§ 77 of the Act on the Constitutional Court a contrario).

CZECH REPUBLIC
CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, composed of JUDr. Vojtěch Cepl, JUDr. František Duchoň, JUDr. Miloš Holeček, JUDr. Vladimír Jurka, JUDr. Vladimír Klokočka, JUDr. Jiří Malenovský, JUDr. Jiří Mucha, JUDr. Antonín Procházka, JUDr. Pavel Varvařovský, JUDr. Miloslav Výborný, JUDr. Eliška Wagnerová, and JUDr. Eva Zarembová, ruled on a petition from the head of the District Office in Nový Jičín to annul the generally binding ordinance of the municipality of Vražné no. 02/2001 on a local fee for operation of the system of

gathering, collection, transport, sorting, use, and removal of communal waste of 12 December 2001, as follows:

The part of article 6 par. 2 which reads "(can be replaced by a written affidavit from the owner of the real estate where the exempt payer is registered for permanent residence)" and the part of article 9 par. 2 which reads "or a person provided in article 3 of this ordinance" and the entire article 7 par. 2 of the generally binding ordinance of the municipality of Vražné no. 02/2001 on a local fee for operation of the system of gathering, collection, transport, sorting, use, and removal of communal waste of 12 December 2001 is annulled as of the day this judgment is promulgated in the Collection of Laws.

The petition to annul other provisions of this generally binding ordinance is denied.

REASONING

On 5 November 2002 the Constitutional Court received a petition from the head of the District Office in Nový Jičín to annul the generally binding ordinance of the municipality of Vražné no. 02/2001 on a local fee for operation of the system of gathering, collection, transport, sorting, use, and removal of communal waste of 12 December 2001, which reads as follows:

The representative body of the municipality of Vražné issues on 12 December 2001, under § 15 of Act no. 565/1990 Coll., on Local Fees, as amended by later regulations, and in accordance with § 10 let. a), § 35 and § 84 par. 2 let. i) of Act no. 128/2000 Coll., on Municipalities (Municipal Establishment), this generally binding ordinance on a local fee for operation of the system of gathering, collection, transport, sorting, use, and removal of communal waste (the "communal waste handling system").

Part I Basic Provisions

Article 1
1. The municipality of Vražné collects a local fee for operation of the "communal waste handling system" (the "communal waste fee").

2. The local fee is administered by the District Office in Vražné the "fee administrator"). Proceedings in matters concerning this local fee are conducted under Act no. 337/1992 Coll., on Administration of Taxes and Fees, as amended by later regulations.
Part II The Fee for Communal Waste (the "Fee")

Article 2 Subject of Fee

1. The Fee is collected for operation of the "communal waste handling system" in the municipality of Vražné, which is set in the generally binding ordinance of the municipality

of Vražné no. 01/2001, on a local fee for operation of the system of gathering, collection, transport, sorting, use, and removal of communal waste of 12 December 2001, which enters into effect on 1 January 2002.

Article 3 The Fee Payer

2. A Fee Payer is every natural person with permanent residence in the municipality, as well as a natural person who owns a building designated or serving for individual recreation located in the municipality of Vražné, in which no person is registered for permanent residence.

3. The fee may be paid for a household by a joint representative, and for a family house or apartment building by the owner or administrator (together with handing in the completed "notice of joint representative" on the form, a sample of which is attached in appendix no. 1 to this generally binding ordinance.

4. If a building designated or serving for individual recreation, in which no person is registered for permanent residence is owned by several people, they are required to pay the fee jointly and severally, in an amount corresponding to the fee for one natural person.

Article 4 Obligation to Notify

1. If the fee obligation arises or changes in respect of a fee payer who is a natural person who owns a building designated or serving for individual recreation located in the municipality of Vražné, and in which no natural person is registered for permanent residence, the fee payer is required to notify the fee administrator of that fact within 15 days from the day the fee obligation arises or changes.

Article 5 Local Fee Rates

1. The annual Communal Waste Fee is:

A) for a natural person who has permanent residence in the municipality of Vražné, CZK 150. The Fee consists of: a) a component set under § 10b par.3 let. a) of Act no. 565/1990 Coll., on Local Fees, in the amount of CZK 15, b) a component set under § 10b par. 3 let. b) of Act no. 565/1990 Coll., on Local Fees, in the amount of CZK 135.
B) for a natural person who owns a building designated or serving for individual recreation, located in the municipality of Vražné, in which no natural person is registered for permanent residence, CZK 150. The fee consists of: a) a component set under § 10b par. 3 let. a) of Act no. 565/1990 Coll., on Local fees, in the amount of CZK 15, b) a component set under § 10b par. 3 let. b) of Act no. 565/1990 Coll., on Local Fees, in the amount of CZK 135.

The allocation of expenses incurred by the municipality of Vražné for the collection and conveying of unsorted communal waste per 1 natural person per year is provided in appendix no. 2 to this ordinance.

Article 6 Exemption

1. The following are exempt from the Fee: a) a natural person who is registered for permanent residence in the municipality but is demonstrably not abiding in the municipality (e.g. a long-term stay abroad, basic military service, a stay in a place of study, a stay in a rehabilitation or other treatment facility).

2. The fee payer cited in article 3 is required to demonstrate to the fee administrator by 31 January of each calendar year that the grounds for exemption continue to exist (this can be replaced by a written affidavit from the owner of real estate where the exempt fee payer is registered for permanent residence).

3. Exemption from the fee expires if the grounds for exemption expire.

Article 7 Creation and Termination of the Fee Obligation

1. The fee is paid from the first day of the month following the day when the fee obligation arose, for individual months until the end of the calendar year, in the amount of 1/12 of the specified annual rate.

2. If the fee obligation terminates, the obligation to pay the fee terminates upon expiration of the month in which that circumstance arose (see Obligation to Notify - article 4 par. 1) of this ordinance).

Article 8 Fee Due Dates

1. The fee is due in semi-annual payments without assessment, by 31 March and 30 September of each calendar year.

2. The fee can also be paid once for the entire year, by 31 March.
3. If the fee obligation arises during the year, the fee is due within 30 days from the time the fee obligation arises.

Article 9 Transitional, Joint and Closing Provisions

1. If the fee is not paid by the deadline set under article 8 of this ordinance or in the correct amount, the fee administrator shall assess the fee by payment assessment, and may increase fee by up to 50%.

2. If the fee payer or a person cited in article 3 of this ordinance does not meet a non-monetary obligation imposed by this ordinance, the fee administrator can repeatedly impose a fine under § 37 a § 37a of Act no. 337/1992 Coll., on Administration of Taxes and Fees, as amended by later regulations.

Article 10

1. If a fee payer does not meet a fee obligation specified by this generally binding ordinance, a fee can be assessed until three years from the end of the calendar year in which the fee obligation arose.

2. If an action aimed at assessing the fee or additionally setting it was taken before the expiration of that deadline, the three-year period begins to run again from the end of the year in which the fee payer was informed of that action.

Article 11 Effect

This generally binding ordinance enters into effect on 1 January 2002.
Ludmila Šubová, Deputy Mayor of the municipality of Vražné
Ing. Vladimír Nippert, Mayor of the municipality of Vražné
Appendices: no. 1 – Notice of a joint representative, no. 2 – Allocation of expenses of the municipality of Vražné for collection and conveying of unsorted communal waste
Appendix no. 1 – sample form (not reproduced)

Appendix no. 2 Allocation of expenses of the municipality of Vražné for the collection and conveying of unsorted communal waste

Initial data:

Population of municipality as of 30 November 2001 = 840

Number of buildings designated or serving for recreation = 20

Total expenses of the municipality of Vražné for waste management in 2000 = CZK 11,5928
Allocation of expenses per 1 natural person per year CZK 11,5928 /860 = CZK 135

Resulting fee amount (under §10 par. 3 let. b) of Act no. 565/1990 Coll., on Local Fees): CZK 135

Prepared by: Ing. Vladimír Nippert

In Vražné, 30 November 2001

The petitioner submitted this petition as part of supervision of the exercise of independent municipal jurisdiction, as he concluded that the key provisions in the ordinance violate the law. He stated that the self-governing unit exceeded its statutory authorization. The defects are serious enough that it was necessary to suspend enforcement of the ordinance, but the municipality did not remedy the situation within three months.

The head of the district office pointed to the unique nature of local fees, the introduction and scope of which are decided, based on statutory authorization and within its bounds, by a municipality itself, within its independent jurisdiction [§ 1 and § 35 of Act no. 128/2000 Coll., on Municipalities (Municipal Establishment)]; however, this possibility need not be made use of. A fee has the nature of a local tax; it is a mandatory, non-targeted, non-equivalent and non-refundable payment, which becomes the municipality's revenue. Certain regulatory and protective elements are also important. The head of the district office emphasized the constitutional limits on taxation given by Art. 11 par. 5 of the Charter of Fundamental Rights and Freedoms and by Act no. 565/1990 Coll., on Local Fees, as amended by later regulations. Under this Act, special regulations apply to proceedings, specifically Act no. 337/1992 Coll., on Administration of Taxes and Fees, as amended by

later regulations. The administration of local fees is authoritative in nature, a municipality introduces it within its independent jurisdiction, and the district office administers it within its transferred jurisdiction. Administration can be divided into individual proceedings, but it can not be divided between the municipality and its office. A municipality is not authorized, in the exercise of self-government, to overstep the bounds of the law, and the administrator can not heal such transgression. The administration of taxes is not a municipality's subjective right, it is only a statutorily determined jurisdiction. The municipal office must act as tax administrator, it is not possible for it to fail to implement the public power.

Act no.185/2001 Coll., on Waste, and Amending Certain Other Acts, considers the municipality to be the originator of waste which has its origin in the activities of natural persons not subject to special regulations, once it is deposited in a place designated thereto. At the same time, the municipality's right, in its independent jurisdiction, to govern the waste handling system by a generally binding decree is preserved. Residents are required to place waste in designated places (§ 17 par. 2 and 4 of the Act on Waste).

The related amendment to the Act on Local Fees does not interfere with the concept of local fees. However, the municipality did not respect this because, in conflict with the law, when issuing generally binding ordinances, it used the content of one ordinance to bind another ordinance (Art. 2 of the ordinance, which points to ordinance no. 01/2001) which falls under a different statutory regime. Only statutorily set criteria can be followed when building a system of communal waste handling. Setting rules for handling waste are an instance of optional administration, and the same applies to setting a local fee. The subject of a local fee is something which can be objectively ascribed to fee payers; in the case of a waste fee it is permanent residence or owning a building. Of course, fee payers can not influence the operation of the communal waste handling system.

Under the Act on Local Fees the obligated party is a person called the fee payer, and proceedings are governed by that Act. The self-governing unit must respect the terminology of the Act, and a legal regulation which it creates may not give that terminology different meaning, e.g. interchange "payer" and "fee payer." Under the Act on Local Fees a joint representative is not a fee payer or payer. This person may be authorized by a fee payer to administer payment, but has no financial obligation, and thus one can not be imposed on him under § 37 and § 37a of the Act on Administration of Taxes and Fees.

Section 15 of the Act on Local Fees requires a municipality to announce the obligation to notify together with a deadline for the fee payer. The disputed ordinance does not comply with the Act and defies logic. The obligation to notify is not imposed on a natural person with permanent residence in the municipality. Moreover, it is not clear whether a "change" in the obligation also includes its termination. Under Act no. 133/2000 Coll., on Record-Keeping of Residents and Personal Identification Numbers and Amending Certain Acts (the Act on Record-Keeping of Residents), district offices are users of data from the information system on residents with permanent residence, but a municipality can not drop the obligation to notify and make use of its access to these data in order to create a register of fee payers.

The rate of fees is composed of two parts, one of which may be zero. The first, in a range of CZK 0-250, results from the political will of the municipality, or its representative body [§ 10b par. 3 let. a) of the Act on Local Fees]; the municipality can set the second, up to CZK 250, based on its actual expenses for the collection and conveying of unsorted communal waste in the previous year [let. b)]. The municipality is to provide an accounting of expenses for the previous year and their allocation per resident in an appendix to the ordinance. The ordinance provision refers to the statutory formulation, but the appendix is identified differently. The petitioner believes that the municipality does not have available accounting documents for setting the second part of the fee, set at CZK 135, as the first part is CZK 15. Of course, nothing prevents setting only the first part of the fee.

An affidavit from the owner of the real estate where a fee payer is registered for permanent residence can not be used to exempt those in defined categories of persons abiding outside the municipality on a long-term basis. Under § 39 of the Administrative Procedure Code, this is not used in tax proceedings.

The petitioner believes that the contested ordinance's provision on the creation and termination of a fee payment obligation, insofar as it sets an obligation to pay beginning with the month following after the day the fee payment obligation arises, conflicts with the Act on Local Fees. Under that Act, what is decisive is the situation at the end of the month which is the first or last of the months for which a proportional part of the fee is paid.

Likewise, the provision on the payment being due within 30 days for persons for whom the fee payment obligation arises during the year unjustifiably establishes inequality with persons who have a permanent obligation, who have the opportunity to make payments on 31 March and 30 September.

The provision on a three-year period for collecting a due fee does not correspond to § 12 of the Act on Local Fees, which mentions a due amount. Statutory interpretation of the term used in the ordinance provision can not be admitted, the possibility of assessing only due fees does not make sense.

According to the petitioner, by issuing the contested ordinance the municipality claimed unlawful jurisdiction, as it imposes obligations beyond the scope of the law and not based on it. The head of the district office does not consider power thus applied to be a service to citizens.

In his position statement, the mayor of the municipality of Vražné, in its name, emphasized that the new legal framework addresses the problem of liquidating communal waste fairly, better than in the past, when only some households delivered waste for collection and paid for its processing, and the rest got rid of it in ways detrimental to the environment. The issuance of the ordinance was preceded by a number of training seminars by the state administration, but there was not time to make it more precise, as the regulation had to be available as of 1 January 2002. The district office in Nový Jičín was consulted about the ordinance concept, and it only began to question its lawfulness

subsequently.

The Ministry of the Interior – the civil administration department whose opinion the Constitutional Court judge rapporteur requested, although it is not a party to the proceedings – points out in its statement that the issue of local fees is in the jurisdiction of the Ministry of Finance, and the issue of waste falls under the Ministry of the Environment. Nonetheless, it expresses an opinion on the petition. It points out that the municipality chose to manage local waste through a local fee for operation of the waste handling system. It considers the authorization of the municipal office to administer the local fee to be an exercise of independent municipal jurisdiction which is compatible with the Act on Municipalities. The reference to another generally binding ordinance of the same municipality does not appear to be unlawful. The definition of a fee payer is in accordance with the Act on Local Fees. The possibility of applying penalties against a joint representative does not appear to be lawful; fee payer status is governed by a mandate agreement under the Civil Code. Tax procedure law also forbids transferring a tax obligation to another party. The Ministry considers it disputable whether it is indispensable to use data from the record-keeping of residents for this tax administration, where indispensability is a prerequisite for such use to be legal. It is not clear from the appendix to the ordinance what precisely is included in the expense item that is decisive for calculating the fee. A municipality may, based on the Act on Local Fees, provide exemptions from fee, but it is not clear to the Ministry to what extent it can regulate the manner of proving the grounds for such exemption. The creation and termination of a fee payment obligation is consistent with the Act's provisions. The due dates for new fee payers are evidently discriminatory. Evidently the municipality meant by the term "assessment of a fee" the statutory concept "assessment of a due amount"; a strict interpretation would rule out collecting a due amount exceeding the set fee.

The petition to annul the generally binding municipal ordinance issued within independent jurisdiction was submitted by an authorized state administration body – the head of the district office (§ 64 par. 3 of Act no. 182/1993 Coll., on the Constitutional Court). However, the district offices, which were run by the heads, were terminated as of 31 December 2002 as part of the reform of local and regional administration (Act no. 320/2002 Coll., Amending and Repealing Certain Acts in Connection with Terminating the Activity of District Offices). As of 1 January 2003, the minister of the interior is authorized to submit a comparable petition [§ 64 par. 2 let. g) of the Act on the Constitutional Court], and does so at the instigation of the relevant regional office authorized to supervise the exercise of municipal self-government (§ 123 et seq. of the Act on Municipalities).

The kind of proceedings before the Constitutional Court remains the same, there has merely been a change in the body competent to submit a petition. However, there is no reason to consider this change to be a change in the petitioner. Both the head of the district office and the minister of the interior acted (acts) in the name of the state. The head of the district office and the minister of the interior represented, or represent, the same interest in the legality of the law of municipal self-government. When district offices were terminated, regional offices and the Ministry of the Interior took over this agenda, and thus they are informed of on-going of the Constitutional Court proceedings on petitions

from chairmen of district offices to annul generally binding municipal ordinances, so that they can change supervisory policy within the bounds of the rules of procedure for proceedings before the Constitutional Court without being called upon to do so. However, they can not withdraw a petition (§ 77 of the Act on the Constitutional Court a contrario).

The petitioner's thoughts on the subject of the disputed local fee, the concept of local fees, and its connection to residents with permanent residence, real estate, or communal waste itself are not decisive for reviewing the contested municipal regulation, which basically does what is expected by the new statutory framework on financing the collection of communal waste, i.e. it makes more specific the relevant provisions of the Act on Local Fees for the municipality's particular situation through its self-governing body. Section 14 of the Act on Local Fees itself speaks of a fee for the operation of a local waste handling system. The connection to a resident with permanent residence and other owners is given on the basis that it is these persons who produce communal waste, the collection of which is to be ensured by the municipality out of the revenues from the cited fee.

Likewise, it is not of fundamental importance whether the municipal ordinance cites another ordinance which is closely related to the issue at hand, even though it was passed on the basis of the Act on Waste. This practice does not amount to binding one ordinance by another (though it may be indirect amendment). Anyway, ordinances are passed by the same body – the municipal representative body [§ 84 par. 2 let. j) of the Act on Municipalities] – and the legislative procedure is the same (§ 87 of the Act on Municipalities), so the problem with such community legislative practice can be seen at most in the non-transferred or insufficient reference to the authorizing statutes in the introduction of the ordinances and in the unclear arrangement of community regulations.

The ordinance does not use the term "payer," so the petitioner's objections that it is interchanged with the term "fee payer" are groundless. However, there are grounds for the objection concerning distinguishing a joint representative from a payer or fee payer. The Act on Local Fees is unclear in defining the role of the joint representative. It is evident that the joint representative acts on the basis of expressed or unexpressed consensus with the other members of a household, or analogously, an owner or administrator of an apartment building in agreement with its residents. The statutorily imposed obligation to provide information about the represented fee payers is a natural prerequisite for this representation, but failure to perform it can hardly be penalized otherwise than by not recognizing the actions of a joint representative, owner or administrator. The obligation to supervise their representative remains with the individual fee payers, it is they who risk penalties for not fulfilling the notification and payment obligation. Therefore, applying § 37 and § 37a of the Act on Administration of Taxes and Fees, on fines for violating non-monetary obligations, does not appear to be lawful. In evaluating its status one can agree with the position statement from the Ministry of the Interior.

The limitation on imposing the obligation to notify to an owner of real estate who is not registered in the municipality for permanent residence (art. 4 of the ordinance) deserves a more detailed review. Compared to other local fees, paid by fee payers of whom the state administration does not keep a list, it is organizationally possible with a fee for operating the communal waste handling system to use the register kept of residents with permanent residence in a municipality, because each of them is a fee payer [§ 10b par. 1 let. a) of the Act on Local Fees]. However, it is necessary to weigh whether it is legal to make use of the register. Section 5 of Act no.133/2001 Coll., on the Record-Keeping of Residents and Personal Identification Numbers, emphasizes the municipality's authorization to use the register for indispensable aims. This use need not be indispensable to the collection of fees, in view of the statutorily envisaged obligation to notify (§ 14 par.2 of the Act on Local Fees). Of course, the result of the obligation to notify of residents with permanent residence in the municipality will be that an identical database will be created, and data from the register will be used anyway to add the fee payers who have not met their obligation to notify. Thus, the municipal office will create a second register of residents for fee payment purposes, even though it already has it available. The requirement of creating such a register appears hardly compatible with the principle of economical municipal administration (§ 2 and 38 of the Act on Municipalities). It can hardly be seen as misuse of access to the residents register. Yet, ensuring the collection and liquidation of communal waste, and financing it, is a task entrusted to municipalities as holders of public power. Nor is the problem in the absence of a more precise definition of the manner in which this register will be used to prescribe a fee for residents. The ordinance does not expressly state that the municipality shall send (or in what manner) residents and other notified fee payers a fee notice together with a partly pre-completed payment cheque or (a) information on the municipality's bank account and the manner of identifying the paying fee payer (the "variable" symbol, usually the personal identification number). The wording of the provision on a fee being due without assessment (art. 8 of the ordinance) indicates that the municipality informs the residents about the manner of paying the fee only by non-targeted announcements which are usual in the municipality (official notice board, outdoor notices, flyers, a municipal magazine). For comparison, state-wide Czech financial legislation also does not specifically state the numbers of bank accounts for deposits; rather, the individual financial administration bodies inform fee payers and payers about them by suitable means. The same applies to other financial transactions between residents and public bodies. This practice has not been evaluated yet, let alone found to be an unconstitutional and unlawful exercise of public power, and it would probably be exaggerated to consider it so. Regardless of the specific practice in a municipality, the situation can also be seen to be such that the obligation to report (register) (the ordinance speaks of an "obligation to notify," but the petition does not criticize this terminological difference) is also met by such form of meeting the fee payment obligation (payment of the fee) which permits the municipality (the municipal office), as fee administrator, to identify the fee payer. The Act on Local Fees does not require a temporal or act-based distinction between the obligation to report (register) and the payment obligation.

Of course, the possibility of an affidavit from the owner of the real estate in which such a fee payer is registered for permanent residence, that the fee payer is demonstrably not abiding in the municipality, can be considered problematic. Although the Act on Administration of Taxes and Fees does not expressly rule out an affidavit, it should be done

personally by the person whose legal status it concerns, not by another person. Somewhat paradoxically, under art. 6 par. 2 of the ordinance this possibility is not given to the fee payer himself. In the Constitutional Court's opinion, this provision of the ordinance is inconsistent with the Act.

The Act on Local Fees speaks vaguely of exemption from fees, and only emphasizes that it is possible to reduce or excuse them in individual cases in order to avoid harshness (§ 16) and in a list of sample requisites for an ordinance it speaks, with no further specification, of possible exemption (§ 14). These exemptions may not be based on constitutionally impermissible differentiation or discrimination (Art. 1, Art. 3 par.1 and Art. 4 par. 3 of the Charter of Fundamental Rights and Freedoms). In view of their understandability and reasonableness, the reviewed exemptions appear to be compatible with these constitutional principles. The sample list includes persons who abide long-term outside the municipality and do not burden it with the creation of communal waste.

The structure of setting fee amounts is such that the second part can be set, up to CZK 250, only on the basis of the municipality's actual per capita expenses for the collection and conveying of unsorted communal waste. The Constitutional Court can adequately evaluate the supported reference to possible failure to observe these statutory limitations only by examining the municipality's accounting records. In a particular case it is certainly possible that the "total municipal expenses for waste management" are equal to the "expense for collection and conveying of unsorted communal waste." In view of the correct labeling of appendix no. 2 with the heading "Allocation of the expenses of the municipality of Vražné for the collection and conveying of unsorted communal waste," the different term can be considered a legislative abbreviation.

However, it does not appear necessary to clarify these facts, as the municipality (the representative body) may, in its discretion, and without documenting the expense for the previous year, set the first part of the fee up to CZK 250 by an appropriate ordinance. The contested ordinance sets the total fee at only CZK 150. Thus, the only part which can appear problematic is the legislative provision emphasizing the use of both possibilities for determining the fee amount. If the ordinance only set the fee at CZK 150, then legally this would be a completely unquestionable determination of the amount and the effect on the fee payer would be the same, as there are no separate rules for payment of the individual parts of the fee or exemption from them.

The ordinance provision on the beginning of the fee payment obligation when it arises during the course of the year really does not correspond to the wording of § 10b par. 4 of the Act on Local Fees, because it removes from a new fee payer the obligation to pay the appropriate part of the fee for the month when he became a fee payer (art. 7 par. 1 of the ordinance). However, this alleviation can be considered an acceptable exemption, negligible in amount (CZK 12,50) under § 14 of the Act on Local Fees for those who became new citizens of the municipality. In contrast, under the ordinance the obligation to pay a proportional part of the fee continues beyond the framework of the law for a fee payer for whom the grounds for the payment obligation ended during the course of a month (art. 7 par. 2).

Setting the due dates of fee payments for those whose payment obligation arose during the course of the year at 30 days after it arose can be considered discriminator only with a literal interpretation of the cited provision (art. 8 par. 3 of the ordinance). A non-disadvantaging interpretation established on the connection of this provision to the provision setting the payment due dates for continuing fee payers (art. 8 par. 1) leads to the conclusion that the deadline of 30 days applies only if the general due date has passed (31 March and 30 September), i.e. in the second and fourth quarters, whereas in the first and third quarters the fee is due only on the stated days.

In the case of applying a penalty in the form of increasing a fee the Act on Local Fees still speaks of fees (§ 11 of the Act on Local Fees). The so-called due amount (§ 12 of the Act on Local Fees) is thus nothing more than the thus-increased fees. The penalty for failure to fulfill the notification/registration obligation is regulated differently by a provision of the Act on Administration of Taxes and Fees. The terminological disunity appears to be more in the text of the statute, but it is a disunity which can be overcome by methods of interpretation. The Constitutional Court should surely not force municipalities to repeat this terminological disunity in their ordinances.

The Constitutional Court finds unlawful only the possibility of an affidavit with effects for another, the penalization of the joint representative for failure to met the non-monetary (i.e. notification/registration) obligation, and the fee applied beyond the scope of the law vis-à-vis persons for whom the fee payment obligation terminates. Therefore, it annuls the ordinance provisions which establish these rules under § 70 par. 1 of the Act on the Constitutional Court.

All other provisions of the contested municipal ordinance were not found unlawful, let alone unconstitutional, and therefore the Constitutional Court denied the petition to annul them under § 70 par. 2 of the Act on the Constitutional Court.

Notice: Decisions of the Constitutional Court can not be appealed.

Brno, 24 June 2003