# 2007/03/08 - PL. ÚS 69/04: ORDINANCE ON PROSTITUTION

**HEADNOTES**

**1. The text of § 10 of the Act on Municipalities does not contain an express rule under which a municipality could not prohibit activities in all public areas activities that could disturb the public order in the municipality or be inconsistent with good morals, protection of safety, health and property. This conclusion can be drawn from the cited provision only using an argument a contrario. However, this argument can not be used without reservations. In the cited provision, the legislature tried to address the conflict between an individual's constitutionally guaranteed freedom, the right to conduct business, on one side, and protection of the public interests and the municipality's right to self-government on the other side. It resolved this conflict basically so that a municipality may limit the conduct of certain activities, subject it to its conditions, but not completely prohibit it. However, this can not apply absolutely. It is quite evident with the protection of constitutionally protected legal values such as health and life. There is no rational reason why a municipality should have an obligation to tolerate on some of its public areas activities that endanger these fundamental protected values. It would be inconsistent with the constitutionally guaranteed inviolability of the person (Art. 7 of the Charter), which includes protection against interference in the personal integrity of every individual, for a municipality to be required to identify public areas in its territory where it does not prohibit activities that could be inconsistent with protection of health. The same applies to activities inconsistent with protection of property (cf. Art. 11 of the Charter). The provision of § 10 let. a) of the Act on Municipalities must therefore be interpreted so that, if activities interfering with protection of health, property, or safety interfere in these constitutionally protected legal values only in some public areas, the municipality is forbidden to prohibit them in its entire territory. Therefore, the cited provision must be understood as a specific expression of the general principle of proportionality.**

**2. Just as the public authorities are required to protect an individual's freedom, health and property, so are they required to protect public order and good morals. This conduct is inconsistent with good morals, and it is also conduct that disturbs the public order. The above mentioned conclusions regarding protection of health and property must also be applied to prohibitions of activities that violate these values. Thus, if a certain activity may be conducted in certain public areas of the municipality without disturbing the public order or being inconsistent with good morals, the municipality can not prohibit it in all of its public areas. In contrast, if the conduct of a particular activity amounts to potential interference in a protected value, even though it is operated in any public area in the municipality, the municipality may prohibit the conduct of that activity in all its public areas. It is always necessary to evaluate the intensity of the interference and the importance of the endangered right, on one side, and the importance of the activity that is to be prohibited, on the other side.**

**3. In Art. 3 par. 1 let. c) of the Generally Binding Ordinance of the City of Ústí nad Labem č. 1/2004, to Manage Local Matters of Public Order, the City of Ústí**

nad Labem prohibits the offering of sexual services in public areas. It thereby prohibits the offering of sexual services in all public areas of the municipality. This field is not regulated by statute. The offering of this service endangers good morals generally, and very distinctly endangers the moral upbringing of children and youth. The very offering of prostitution that is obvious to children and youth can give them the impression that this is something "normal," acceptable. The importance of this legally protected value, i.e. the moral upbringing of children and youth, must be considered very high. Thus, the ethical values which the municipality, as a society of citizens, is entitled to protected, are affected in an extreme manner. In the Constitutional Court's opinion, none of the other activities cited in Art. 3 of the contested ordinance, even begging, effect a similarly extreme interference in matters of the public order. These endangered, legally protected values must also be measured against the freedom of the individuals providing sexual services. However, the protection of offering this activity in plain view of the public can not stand as against protection of the moral upbringing of children and youth.

4. In interpreting § 10 let. a) of the Act on Municipalities we must also consider Art. 1 par. 2 of the Constitution, under which the Czech Republic shall fulfill all obligations that arise to it under domestic law. The Czech Republic is bound by the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others [UN, New York, 2 December 1949; Czechoslovakia acceded to this treaty on 14 March 1958 (the "New York Convention")]. The Convention considers prostitution to be an evil that consists of traffic in persons and their human dignity, which endangers individuals, the family, and society at large. The aim of the Convention is to prohibit the regulation, and thus actually the recognition and approval, of prostitution (see Art. 6 of the New York Convention). Under Art. 10 of the Constitution, promulgated international treaties that have been ratified by Parliament and by which the Czech Republic is bound are part of the legal order; if an international treaty provides something different than a statute, the international treaty shall apply. Although this international treaty was not promulgated in the Collection of Laws and thus is not an international treaty that is part of the legal order under Art. 10 of the Constitution, in view of Art. 1 par. 2 of the Constitution, it can not be ignored when interpreting simple law. Simple law that permits multiple interpretations must be interpreted in a manner that is consistent with the Czech Republic's international law obligations. As stated above, § 10 of the Act on Municipalities does not contain an unambiguous answer to the question of whether a municipality can prohibit prostitution at all in all its public areas. The interpretation that a municipality may prohibit prostitution not only in some, but also in all public areas, is more compatible with the Czech Republic's international law obligations arising from the New York Convention. Limiting prostitution to only certain public areas in a municipality is basically regulation of it, and that is what the New York Convention wants to prevent. The current legal framework lets a municipality choose either to not regulate prostitution at all, or to completely prohibit it in the municipality's public areas, or to negatively or positively designate certain public areas where prostitution can be offered.

5. Also because prostitution is not regulated by the Parliament of the CR on the statutory level, the Constitutional Court concluded that the City of Ústí nad Labem did not exceed its statutorily given jurisdiction, when, in the generally

**binding ordinance, or prohibited the offering of sexual services in public areas in the entire city, and thus forced prostitution behind closed doors.**

**CZECH REPUBLIC**
**CONSTITUTIONAL COURT**
**JUDGMENT**

**IN THE NAME OF THE CZECH REPUBLIC**

The Plenum of the Constitutional Court, composed of the Chairman JUDr. Pavel Rychetský and judges JUDr. Stanislav Balík, JUDr. František Duchoň, JUDr. Vlasta Formánková, JUDr. Vojen Güttler, JUDr. Pavel Holländer, JUDr. Ivana Janů, JUDr. Dagmar Lastovecká, JUDr. Vladimír Kůrka, JUDr. Jiří Mucha, JUDr. Jan Musil, JUDr. Jiří Nykodým, JUDr. Miloslav Výborný, JUDr. Eliška Wagnerová and JUDr. Michaela Židlická, ruled on a petition from the Minister of the Interior seeking the annulment of the Generally Binding Ordinance of the City of Ústí nad Labem, no. 1/2004, to Manage Local Matters of Public Order, with the participation of the minister of the interior and the City of Ústí nad Labem, as follows:

**I. Article 3 par. 1 let. a), b) and e) and Art. 4 of the Generally Binding Ordinance of the City of Ústí nad Labem, no. 1/2004, to manage local matters of public order, are annulled as of the day this judgment is promulgated in the Collection of Laws.**
**II. The proceeding is stopped in respect of Art. 3 par. 1 let. d) and Art. 5 of the Generally Binding Ordinance of the City of Ústí nad Labem no. 1/2004 to Manage Local Matters of Public Order.**
**III. The remainder of the petition from the minister of the interior is denied.**

**REASONING**

I.

1. On 8 December 2004 the Constitutional Court received a petiton from the minister of the interior, Mgr. F. B., seeking the annulment of the Generally Binding Ordinance of the City of Ústí nad Labem no. 1/2004, to Manage Local Matters of Public Order. Because the petition meets the formal requirements under Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations (the "Act on the Constitutional Court"), nothing prevented the plenum of the Constitutional Court from considering it.

II.

2. From the record of the 10th session of the Ústí nad Labem City Council, held on 11 March 2004, as well as from ordinance no. 1/2004, the Constitutional Court determined that ordinance no. 1/2004 to manage local matters of public order was

duly passed at the 10the session of the Ústí nad Labem City Council, held on 11 March 2004, by twenty six votes, with twenty six representatives present (out of a total of 37). The ordinance was posted on the official bulletin board of Ústí nad Labem City Hall on 12 March 2004 and went into effect on 27 March 2004; it was taken down from the official bulletin board on 26 March 2004. Thus, we can conclude that the contested generally binding ordinance was passed and issued in a constitutionally prescribed manner, by a body authorized thereto [§ 12 par. 1, § 84 par. 2 let. i), § 87 of the Act on Municipalities, as amended by later regulations].

III.

3. The text of the cited generally binding ordinance, approved by the Ústí nad Labem City Council, is the following:

The City of Ústí nad Labem
Generally Binding Ordinance of the City of Ústí nad Labem
no. 1/2004 to manage local matters of public order

The Ústí nad Labem City Council, under § 10, §35 and § 84 par. 2 let. i) of Act no. 128/2000 Coll., on Municipalities (Municipal Establishment), as amended by later regulations, voted on 11 March 2004 to issue the following generally binding ordinance (the "ordinance"):
Art. 1
Introductory provisions
1. The aim of this ordinance is, on the basis of legal authority and in accordance with the valid laws, to ensure public order in the City of Ústí nad Labem (the "city") in those sectors which have been entrusted to its jurisdiction (local matters).

Art. 2
Definition of terms
1. Public areas are all squares, streets, marketplaces, sidewalks, public greens, parks and other spaces accessible to everyone without restriction, i.e. serving for public use, regardless of ownership of the space. 1)
2. Disproportionate noise annoyance of citizens means such conduct as annoys citizens during the day and the night time, in particular by noisy use of musical instruments, musical apparatus, tape recorders, radio and television receivers and the noise of visitors to facilities where alcoholic beverages are served.
3. For purposes of this ordinance and for purpose of inspection of the observance of obligations to protect others from noise and vibrations, night quiet time means the time between 10:00 p.m. and 6:00 a.m. 2)

Art. 3
Specification of activities that could disturb the public order in the city, and the time when these activities are banned
1. Activities that could disturb the public order in the city, in outside and inside spaces, are:
a. conducting public musical productions, live or reproduced (e.g. dance events, balls, discotheques, technoparties, etc.), in particular if they are connected with

the opportunity for alcohol consumption,
b. begging and other annoyance of citizens of a similar nature, except for duly permitted public collections, 3)
c. offering sexual services in public areas,
d. unrestrained movement of dogs in public areas,
e. the production of amusement parks, merry-go-rounds, circuses and mass sporting events in public areas. These activities can be produced only with the prior consent of the appropriate city district office, in places according to the attachment (map).

Art. 4
Protection of citizens from noise and the obligation to ensure protection of citizens from noise
1. Everyone is obligated to behave so that, during the night quiet time specified in Art. 2 par. 3 of this ordinance he will not disturb the night peace beyond the level specified by special regulations.
2. The producer of a public production and the operator of a relevant facility (e.g. restaurants, clubs, games arcades, etc.) is responsible for seeing to it that the noise in the outside and inside spaces will not exceed the highest permitted noise level specified by special regulations. 4)
3. A musical production open to the public may be conducted in inside premises only if they were zoned for that purposes by a decision of the building office. This activity is banned in non-residential or residential premises that are not zoned for it by a building office decision.
4. The producer of a public production is responsible for ensuring a sufficient number of properly marked producer services.
5. Local noise restrictions are in effect in the following localities in the city of Ústí nad Labem:
(a list of the localities follows)

Art. 5
Setting obligations for unleashing dogs in public areas
1. In public areas the owner or possessor of a dog is required to have it identified with an identification tag, which he will obtain when registering the dog at the appropriate office. He is also required to have the dog on a leash, except in localities identified by a sign saying “Area for Unleashed Dogs.” The following localities are designated as “areas for unleashed dogs.”: (a list of the localities follows.
2. In such defined areas, the owner (possessor) of an animal is still fully responsible for his dog, and is required to observe all generally binding legal regulations (e.g. the Civil Code, the Act on Protecting Animals of Abuse, the Veterinary Act, the Act on Wildlife Management, etc.). The localities for unleashed dogs are pictured in an attachment that is an inseparable component of this ordinance.

Art. 6
Inspection
Inspection of observance of this ordinance shall be performed by officers of the City Police of Ústí nad Labem. 5)

Art. 7
Penalties
1. Breach of obligations in this ordinance by an individual or legal entity, and any conduct inconsistent with this ordinance will be penalized
a. with individuals, as a misdemeanor
b. with legal entities or entrepreneurs, in the conduct of their business activity, as another administrative offense, unless it is an offense that can be punished under special legal regulations.
2. Special regulations will be applied for imposing penalties. 6)

Art. 8
Closing provisions
Application of this ordinance does not affect the obligations provided by other regulations. Generally Binding Ordinance of the City of Ústí nad Labem no. 89/2002, on Certain Restrictive Measures to Manage Local Matters of Public Order and to Protect Citizens from Noise, is annulled.
This ordinance goes into effect on the fifteenth day after it is promulgated.

Mgr. Jan Kubata
Deputy Mayor
Mgr. Petr Gandalovič
City Mayor

_____
1) § 34 of Act no. 128/2000 Coll., on Municipalities (Municipal Establishment), as amended by later regulations
2) § 34 par. 2, first sentence, of Act no. 258/2000 Coll., on Protection of Public Health and Amending Certain Related Acts
3) Act no. 117/2001 Coll., on Public Collections and Amending Certain Acts (the Act on Public Collections)
4) government order no. 502/2000 Coll., on Protection of Health from the Detrimental Effects of Noise and Vibrations, as amended by government order no. 88/2004 Coll., with effect as of 1 April 20004 and later regulations
5) § 2 par. 1 let. a) of Act no. 553/1991 Coll., on Municipal Police
6) § 58 of Act no. 128/2000 Coll. no. 200/1990 Coll., on Misdemeanors, as amended by later regulations
§ 58 of Act no. 128/2000 Coll., on Municipalities (Municipal Establishment), as amended by later regulations)

IV.

4. The cited ordinance went into effect on 27 March 2004. By a measure of 17 September 2004, ref. no. MS 1656/2-2004, the petitioner opened administrative proceedings to suspend the ordinance, and the decision to suspend the ordinance was delivered to the city of Ústí nad Labem on 24 November 2004. However, as of the day that this petition was filed, the city of Ústí nad Labem has not arranged a correction in the matter, and therefore the petitioner filed a petition with the Constitutional Court under Art. 87 par. 1 let. b) of the Constitution of the CR and § 64 par. 2 let. g) of the Act on the Constitutional Court seeking the annulment of

this ordinance.

5. In the constitutional complaint, the petitioner states that, in accordance with 124 par. 2 of Act no. 128/2000 Coll., on Municipalities, as amended by later regulations (the "Act on Municipalities"), he concluded that the ordinance is inconsistent with the law, because it provides obligations (bans) without a statutory basis, and beyond the framework of independent municipal authority, which is inconsistent with Art. 2 par. 3 and Art. 4 par. 1 of the Charter of Fundamental Rights and Freedoms and Art. 2 par. 4 and Art. 104 par. 3 of the Constitution. The petitioner provides the specific reasons for the unlawfulness of the ordinance provisions as follows:

6. Art. 2 par. 1 of the ordinance specifies what public areas are, although only by reference to § 34 of the Act on Municipalities. The ordinance does not specifically designate a public area, or so-called "other areas" in the city. The petitioner points to Constitutional Court judgment Pl. US 2/2000, under which it is necessary for an ordinance to unambiguously designate "other areas" that are accessible to everyone without restriction. Uncertainty regarding places to which the ordinance obligations apply is inconsistent with the principle of legal certainty.

7. Art. 2 par. 2 of the ordinance specifies conduct that could, under the ordinance, cause disproportionate noise annoyance to citizens, in the day time and night quiet time. The petitioner believes that, according to Constitutional Court judgment Pl. US 14/99, limitation of noise should not be the subject matter of a generally binding ordinance, because this involves legal relationships that are regulated by separate legal regulations. As regards conduct that disturbs the night quiet time, this is the misdemeanor of disturbing the night peace, which is already defined in § 47 par. 1 let. b) of Act no. 200/1990 Coll., on Misdemeanors, as amended by later regulations, and annoyance in the day and night quiet time is regulated as a civil law matter under § 127 of the Civil Code.

8. Art. 2 par. 3 of the ordinance defines the night quiet time for purposes of inspection of observance of obligations regarding protection from noise and vibrations. According to the petitioner, because a municipality's independent jurisdiction does not include regulation of noise and vibrations, it therefore also does not include inspection thereof or defining time periods for purposes of inspection.

9. Art. 3 states in the title that it defines activities that could disturb the public order in the city, and defines the time and place where these activities are forbidden; however, the article does not contain any specification of place or time. Under § 10 let. a) of the Act on Municipalities, a municipality may specify that activities that could disturb public order in the municipality may be conducted only at places and times determined by a generally binding ordinance. Thus, according to the petitioner, if the municipality wishes to so define certain activities, it must, in order to maintain legal certainty, specify the place and time that they are conducted.

10. Art. 3 par. 1 let. a) of the ordinance provides that the organization of public productions, in live and recorded form, especially if they are connected to the

possibility of alcohol consumption, in outdoor and indoor premises, are activities that could disturb public order in the city. The municipality does not specify in which public areas activities that could disturb public order in the city can not be conducted, but specifies in a blanket manner the possibility of disturbing public order by these activities in the entire city. According to the petitioner, that is inconsistent with § 10 let. a) of the Act on Municipalities, which specifies that a municipality may specify by generally binding ordinance the places and times of activities that could disturb the public order in the municipality, or specify that such activities are prohibited in certain public areas in the municipality. According to the petitioner, a municipality thus significantly interferes in the legal certainty of citizens, as well as in a fundamental right guaranteed by the Charter of Fundamental Rights and Freedoms, the right to property, which can be limited only in the public interest, on the basis of law, and for compensation. Under § 10 let. b) of the Act on Municipalities, a municipality has a legal entitlement to regulate the arrangement, conduct and termination of publicly accessible businesses, including dance events and discotheques of business activities, but can not prohibit these business activities in a blanket manner. A municipality is also entitled to limit the serving and sale of alcohol under § 4 par. 3 of Act no. 37/1989 Coll., on Protection from Alcoholism and Drug Addiction, as amended by later regulations, but not to prohibit events onnected with the consumption of alcohol, or to define them as activities that disturb the public order in the entire city.

11. Art. 3 par. 1 let. b) of the ordinance provides that activities that could disturb the public order in the entire city include begging and other annoying of citizens of a similar nature. Here, the city defines activities that can disturb the public order, in terms of the entire city, whereby, according to the petitioner, it is again in conflict with § 10 let. a) of the Act on Municipalities. The petitioner believes that everyone can do what is not forbidden by law, as indicated by Art. 2 par. 3 of the Charter. However, begging is not forbidden, and annoyance is governed by the Civil Code in § 127, and evoking public outrage is governed by § 47 par. 1 let. c) of the Act on Misdemeanors. Thus, according to the petitioner, the municipality has exceeded its defined jurisdiction with this provision of the ordinance.

12. Art. 3 par. 1 let. c) of the ordinance provides that offering sexual services in a public area is an activity that could disturb public order. This provision is already inconsistent with the provision where the cited activity can disturb the public order. If the municipality’s intent is to define this activity as one that disturbs the public order in the entire city, then according to the petitioner the city again comes into conflict with § 10 let. a) of the Act on Municipalities. The petitioner believes that by making this definition in a blanket manner, for the entire city, apart from public areas, the municipality could come into conflict with the right to conduct business (Art. 26 par. 1 of the Charter) and with the right to property guaranteed by the Charter of Fundamental Rights and Freedoms. As regards defining the cited activity in public areas, according to the petitioner the municipality is required, in order to ensure the legal certainty of citizens, to specify the public areas where the aktivity is forbidden.

13. Art. 3 par. 1 let. e) of the ordinance provides that the production of amusement parks, merry-go-rounds, circuses, and mass sporting events are activities that could disturb the public order in the city. Under § 10 let. b) of the

Act on Municipalities a municipality may, by ordinance, impose obligations for the production, conduct, and termination of publicly accessible cultural and sporting events. Thus, according to the petitioner, a municipality is not authorized to impose a blanket ban. The petitioner believes that this ban by the municipalities is inconsistent with the right to conduct business, guaranteed by the Charter, and with the right to property, because it makes the ban applicable to the entire city. Operating amusement parks is an unrestricted trade, therefore the exercise of the trade licensing agenda falls under the state administration, and a municipality has no statutory authorization to regulate it through a generally binding ordinance. Thus, according to the petitioner, the city is not authorized to permit these events, but the representative body is authorized to specify where they can be conducted and when.

14. Art. 4 par. 1 of the ordinance provides that everyone is required to behave so as not to disturb the night peace beyond a degree provided by special regulations. Disturbance of the night peace is a misdemeanor under § 47 par. 1 let. b) of the Act on Misdemeanors. Therefore, according to the petitioner, it is up to the specified bodies to evaluate the misdemeanor and, as necessary, arrange for correction, or impose a penalty. The Act on Protection of Public Health provides the requirement to protect citizens from noise, and also identifies the bodies responsible for protection of public health, which do not include a municipality. The petitioner also states that noise annoyance is also governed by § 127 of the Civil Code.

15. Art. 4 par. 2 provides that the producer of a public production and the operator of the relevant facility is responsible for seeing to it that the noise does not exceed the maximum permitted level. The ban on exceeding noise limits for public productions is provided in § 32 of Act no. 258/2000 Coll., on Protection of Public Health; the limits are provided by an implementing regulation. Bodies of state administration of public health may evaluate whether the law was or was not observed, and may specify any liability or penalties; according to the petitioners, a municipality has no statutory authorization to regulate this issue. In this regard, the petitioner points to Constitutional Court judgment Pl. US 14/99, under which the subject matter of a generally binding ordinance is not supposed to be noise restriction, because this involves legal relationships governed by separate legal regulations, such as the Act on Public Health, the Civil Code, or the Act on Misdemeanors.

16. Art. 4 par. 5 of the ordinance defines localities for so-called local noise restrictions. This does not belongs in a municipality's independent jurisdiction; for that reason, according to the petitioner, this is also inconsistent with § 35 par. 1 of the Act on Municipalities.

17. Art. 4 par. 3 of the ordinance provides that a public music production can be held only in premises designated thereto by a decision of the building office. The obligation to use a building only for purposes that were approved by the final approval permit is provided in § 82 of Act no. 50/1976 Coll., on Zoning and the Building Code (the Building Act), as amended by later regulations. Thus, according to the petitioner, a municipality does not have statutory authorization to provide such an obligation in an ordinance; only bodies designated thereto by the Building

Act have an obligation to ensure inspection of the observance of statutory obligations, and only these bodies have the ability to impose penalties. Thus, according to the petitioner, the municipality has acted beyond the framework of its specified independent jurisdiction, and thereby interfered in the exercise of state administration.

18. Art. 4 par. 4 of the ordinance provides that the producer of a production is responsible for ensuring a sufficient number of duly marked producer services. The petitioner sees this as inconsistent with the principle of legal certainty, because a sufficient number of duly marked producer services is a matter of subjective evaluation.

19. Art. 5 par. 1 of the ordinance provides the obligation to have dogs on a leash except in places marked with a sign reading "Area for Unleashed Dogs." Areas designated for unleashed dogs are indicated by the generally binding ordinance. According to the petitioner, an area where dogs must be kept on a leash must be provided by a legal regulation, not by a portable sign; otherwise this is inconsistent with the legal certainty of citizens.

20. Art. 7 of the ordinance provides penalties. According to the petitioner, by setting obligations (bans), the municipality interfered in neighbors' and property rights, which are regulated as civil law rights, and therefore can not be classified as misdemeanors. The petitioner believes that if the proposed articles were deleted from the ordinance, this provision would be consistent with the law.

V.

21. In response to a request from the Constitutional Court, the city of Ústí nad Labem responded to the petition from the minister of the interior in its filing of 7 February 2005. The response states that, as regards the criticism that Art. 2 par. 1 does not precisely define what public areas are, it must be said that a clear designation of particular areas is not practically feasible. In the case of large cities, such as Ústí nad Labem, the city's large land area is a barrier to such unambiguous designation, as is the large number of places to which the designation would apply. Moreover, if the city designated such areas by giving the numbers of individual parcels of land, such a designation would be confusing to the citizens anyway, and certainly would not have the desired result. The designation used in the ordinance is general, but it is more understandable for the citizens; in addition, every time these areas changed the generally binding ordinance would have to be amended.

22. Insofar as the petition argues that a part of the issue is already regulated by special regulations, the response points to Constitutional Court judgment Pl. US 15/97, under which, "if a generally binding ordinance contains a provision that provides an obligation imposed by statute, that provision is a superfluous addition to the statutory regulation, which, in and of itself, does not have a normative content, but the mere redundancy can not be seen as sufficient grounds to find the ordinance unconstitutional or unlawful." As regards the object that part of the issue falls under the regime of Act no. 200/1990 Coll., on Misdemeanors, the city of Ústí nad Labem refers to Constitutional Court judgment Pl. US 18/97, under which,

“under § 48 of Act no. 200/1990 Coll., as amended by later regulations, these generally binding municipal regulations can specify the elements of offenses against the public order.”

23. As regards Article 4 par. 4, the response states that it is not possible to define the necessary number of organizers, e.g. in regards to the expected number of visitors, because, of course, different numbers of organizers will be necessary to maintain public order at an open-air event or at an even in the enclosed area of a football stadium or ice rink; the possibility for subjective evaluation will always exist.

24. Insofar as Art. 5 par. 1 of the ordinance is criticized for inconsistency with legal certainty, because the areas where a dog must be kept on a leash must be provided by legal regulation, the city of Ústí nad Labem states that this article of the ordinance does precisely provide the localities for “unleashed dogs,” and one can therefore conclude that the legal regulation also designates the places where dogs must be kept on a leash. They are all the places other than those that are designated as “areas for unleashed dogs.”

25. The city of Ústí nad Labem considers the most serious aspect to be the fact that certain parts of the generally binding ordinance are criticized for inconsistency with the fundamental rights of citizens guaranteed by the Charter of Fundamental Rights and Freedoms, the right to property and the right to conduct business. In the opinion of the city of Ústí nad Labem, the right to property and the right to conduct business can be restricted, but the specific instances must be reviewed. In general, such a restriction is consistent with one of the fundamental constitutional principles, the principle that one individual’s freedom ends where the freedom of another begins. Insofar as it is objected that the city bans certain activities in a blanket manner, that is not so; the city merely provides stricter rules for the conduct of such activities as, in the experiences of city authorities, most often lead to disturbance of the public order. Such activities are not forbidden by the ordinance; it merely provides rules for their conduct, in view of the interest in keeping public order in the city.

26. The city of Ústí nad Labem concludes its response by stating that insofar as the generally binding ordinance was contested in this extent, it is a question what purposes the statutory authorization of § 10 of the Act on Municipalities serves, when virtually all the activities cited there are already regulated or affected in some manner by other generally binding regulations; the cited provision would thus be in the position of a kind of unusable proclamation, which certainly could not have been, and was not, the intent of the legislature.

27. At the same time, the city of Ústí nad Labem states that it does not agree to waive a hearing in proceedings before the Constitutional Court under § 44 par. 2 of the Act on the Constitutional Court.

28. The ombudsman, JUDr. O. M., stated in his response of 12 January 2005 that he would not participate in the proceedings before the Constitutional Court.

29. In a public hearing on 8 March 2007, the Constitutional Court also considered it proven, from the statements of both parties to the proceedings, that the provisions of Art. 3 par. 1 let. d) and Art. 5 of the generally binding ordinance of the city of Ústí nad Labem no. 1/2004, to manage local matters of public order, ceased to have legal effect before the proceedings before the Constitutional Court were completed.

VI.

30. In ruling on the petition to annul the generally binding ordinance, the Constitutional Court evaluates whether the ordinance was passed and issued without the bounds of the municipal jurisdiction provided by the Constitution of the CR, and in a constitutionally prescribed manner, and whether its content is not inconsistent with constitutional acts and other acts (§ 68 par. 2 of the Act on the Constitutional Court). To make this evaluation, the Constitutional Court generally applies a four-part test: 1) Reviewing the authority of the municipality to issue generally binding ordinances. 2) Reviewing the question of whether the municipality, in issuing the generally binding ordinance, did not act beyond its statutorily defined substantive jurisdiction (conduct ultra vires). 3) Settling the question of whether the municipality, in issuing the generally binding ordinance, did not abuse the jurisdiction entrusted to it by statute. 4) Reviewing the content of the ordinance in terms of "unreasonableness." Here we must state that the first two criteria are formal criteria, and the remaining two apply to the content of the contested regulation, even though these last two criteria also display aspects of conduct ultra vires (in the materiál sense of the word).

31. The Constitutional Court chose the same method of testing the generally binding ordinance in the present matter.

32. Re 1) Art. 104 par. 3 of the Constitution of the CR, under which representative bodies, may, within the bounds of their jurisdiction, issue generally binding ordinances, gave municipalities the authority to issue generally binding ordinances. In that sense the Constitutional Court is following on from the decision that it made in the matter file no. Pl. US 5/99, published as no. 216/1999 Coll. It follows from the foregoing that this norm creation by municipalities must be seen as original creation of law.

33. Because the contested generally binding ordinance was issued by the municipal representative body in the manner described in point II. of this judgment, we can conclude that, as regards the performance of its authority, the municipality acted in a constitutional manner.

34. Re 2) Art. 104 par. 3 of the Constitution of the CR, cited above, which establishes municipal competence to issue generally binding ordinances, is applied by § 35 par. 3 let. a) of the Act on Municipalities. Under this provision, a municipality, when exercising its independent jurisdiction (under § 35 par. 1 of the Act on Municipalities), is guided by the law when issuing generally binding ordinances. This statutory order corresponds to the definition in § 35 par. 1 a 2 of the Act on Municipalities, which specifies substantive areas in which a municipality

is authorized to create original law, i.e. without a statutory authorization in the true sense of the word (judgment file no. Pl. US 3/95, published as no. 265/1995 Coll.). Thus, a municipality is limited by the bounds of its jurisdiction as set by statute, can not regulate issues that are reserved to statutory regulation, and can not regulate matters that are already regulated by public or private law regulations (cf. case law of the Constitutional Court, in particular in the area of breeding and owning animals in municipal territory, judgment Pl. US 4/98, published in Collection of Decisions of the Constitutional Court, vol. 14, no. 78, judgment Pl. US 17/02 of 20 October 2004, available in electronic form at www.judikatura.cz). In cases where a municipality is an entity that determines obligations for a citizen by unilateral prohibitions and orders, i.e. if it issues a generally binding ordinance that contains legal obligations, it may do so only on the basis of and within the limits of law, because it is bound by Art. 2 par. 3 of the Constitution of the CR and Art. 2 par. 2 of the Charter of Fundamental Rights and Freedoms.

35. Article 2 par. 2 of the Charter of Fundamental Rights and Freedoms contains this provision: "State authority may be asserted only in cases and within the bounds provided for by law and only in the manner prescribed by law." Article 4 par. 1 states: "Duties may be imposed upon persons only on the basis of and within the bounds of law, and only while respecting the fundamental rights and basic freedoms of the individual." Article 2 par. 4 of the Constitution of the CR states: "All citizens may do that which is not prohibited by law; and nobody may be compelled to do that which is not imposed upon him by law."

36. Act no. 128/2000 Coll., on Municipalities, as amended by later regulations, provides in § 10: "A municipality may impose obligations in the exercise of its independent jurisdiction by issuing a generally binding ordinance
a) to manage local matters of public order; in particular it may specify which activities that could disturb the public order in the municipality or be inconsistent with good morals, protection of security, health and property, can be conducted only in places and at times determined by the generally binding ordinance, or it may specify that such activities are prohibited in certain public areas in the municipality, …"
b) for the organization, conduct and termination of publicly accessible sports and cultural enterprises, including dance events and discotheques, by setting binding conditions in the scope necessary to ensure public order.

37. Thus, if a municipality, in the above-defined area, issues a generally binding ordinance whereby it specifies activities that could disturb the public order in the city, and provides obligations for purses of ensuring the protection of citizens from noise and for unleashing dogs in public areas, such actions can not be considered actions ultra vires; in other words, in such cases the municipality is acting in the substantive area that was entrusted to its independent jurisdiction (intra vires).

38. Re 3) Of course, whether the municipality misused the substantively defined independent jurisdiction entrusted to it by statute is a different question.

39. Under § 35 of the Act on Municipalities, the independent jurisdiction of a municipality covers matters that are in the interest of the municipality and its citizens, unless they have been entrusted by statute to the regions, or unless they

are part of the transferred jurisdiction of municipal bodies or a jurisdiction that has been entrusted to the administrative authorities by a special statute as the exercise of state administration, as well as matters that are entrusted to a municipality's independent jurisdiction by statute. Municipal independent jurisdiction includes, in particular, matters specified § 84, 85 and 102, with the exception of issuing municipal orders. In its independent jurisdiction, and in accordance with local requirements and local customs, a municipality also takes care of creating conditions for developing social services and meeting the needs of its citizens. This includes, in particularly, meeting the needs for housing, protection and development of health, transportation and communications, the need for information, upbringing and education, overall cultural development, and the protection of the public order.

40. In this case the declared purpose of the generally binding ordinance was supposed to be to ensure matters of public order, in particular by specifying activities that could disturb the public order in the city and setting places and times where these activities are prohibited, as well as by imposing obligations for securing protection of the citizens from noise and imposing obligations for the unrestrained movement of dogs in public areas. When reviewing the constitutionality of the ordinance, the Constitutional Court sees to it that the content of obligations that, under § 10 let. a) a let. b) of the Act on Municipalities, may be imposed by a municipality in the area of securing local matters of public order and for the organization, conduct and termination of publicly accessible sporting and cultural enterprises, not be provided in such a way as to become inconsistent with mandatory statutory norms or with the constitutional order. As the Constitutional Court stated in its judgment of 12 June 2001, file no. Pl. US 2/2000, "generally binding municipal ordinances are a form of norm creation by entities of territorial self-government, and in the hierarchy of legal regulations according to their legal force they must be consistent with statutes and the legal regulations issued for their implementation. Statutory frameworks (and their implementing regulations) thus always take precedence: if a statute enacts certain rules for a particular area (and it is not fundamentally limited in doing so), a local government entity may not proceed contra legem when creating norms in its territory.

41. In this regard, concerning the statement from the city of Ústí nad Labem concerning the petition to annul the ordinance, which states that it is a question what purpose is served by the statutory authorization in § 10 of the Act on Municipalities, when practically all the activities provided in it are already in one way or another regulated or affected by other generally binding regulations, and the cited provision would thus have the status of a kind of unusable declaration, the Constitutional Court states the following: We can agree with the city of Ústí nad Labem that the subject of the statutory frameworks includes legal relationships that are otherwise entrusted to independent municipal jurisdiction by § 35 par. 1 and 2 of the Act on Municipalities. This fact also arises from the hierarchy of legal regulations, which reflects the importance of individual state functions and the states of the parties performing them. The priority of constitutional acts and other statutes is a fundamental construction element of the democratic essence of the state, where the parliament, as the representative of a sovereign people, issues generally binding norms of the highest legal force. The

statutory (§ 35 of the Act on Municipalities) and constitutional frameworks (Art. 104 par. 3 of the Constitution of the CR) indicate that a municipality, when issuing generally binding ordinances, may not exceed the bounds of its independent jurisdiction as provided by statute. However, municipal representative bodies, when issuing generally binding ordinances, must also respect the existing legal framework, that is, the existence of statues, as norms of a higher legal force, and they are not authorized to regulate the relationships the statues regulate in a different manner through a generally binding ordinance. If a municipality regulated relationships that had already been regulated by statute, this would not be merely superfluous to the statutory framework. That is manifested in the fact that a special legal framework also contains methods for overseeing the observance of the established rules and related penalty rules. By incorporating a statutory rule into a generally binding municipal the ordinance, a municipality would actually broaden its penalizing activity, because it could independently penalize the violation of a rule provided by the generally binding ordinance. Violation by a legal entity or an individual entrepreneur of a rule provided in a generally binding municipal ordinance would be an administrative offense under § 58 a §59 of the Act on Municipalities. For that reason as well, it is impermissible for a municipality to use a generally binding ordinance to regulate obligations that are already imposed by a special statute.

42. In order for a municipality not to exceed its statutory authority when issuing generally binding ordinances, the subject matter of the ordinance must always be local matters; in the event of specifying undesirable conduct, this must be conduct that is not otherwise penalized by the state and that is of a local character. As the Constitutional Court has already ruled several times, generally binding ordinances can not regulated matters that are reserved to statute (e.g. Constitutional Court judgments file no. Pl. US 42/97, Pl. US 2/2000, Pl. US 50/03, Pl. US 14/99). This arises from the essence of the authorizing provision, § 10 of the Act on Municipalities, whose purpose is for a municipality to regulate through generally binding ordinances matters that are, by their nature, not regulated by special regulations as the exercise of state administration and that are also matters of local importance.

43. As stated in the judgment of 17 May 2005, file no. Pl. US 62/04, published in the Collection of Laws as no. 280/2005 Coll., the Constitutional Court respects local government as the expression of the right and capability of local bodies to govern public affairs in the bounds provided by statute, within the scope of their responsibility, and in the interests of the local population. However, responses to socially undesirable events in a municipality can not be handled by authoritative determination of the relationship between individuals through norm creation by the municipality to which it was not authorized by statute. Instead of passing an ordinance, municipalities can use other, constitutional approaches to resolve problems arising in the municipality in connection with managing local matters of public order, e.g. by publishing a “Notice” on the official bulletin board to refer, with a precise citation, to the existing provisions of statutes, or by an announcement that the fulfillment of obligations arising from these statutory regulations will be thoroughly observed and violation will be punished in accordance with the statute, providing references to examples of penalties. In this regard the Constitutional Court refers, in particular to Act no. 200/1990 Coll., on

Misdemeanors, which, in § 47, defines offenses against the public order, and lists as a misdemeanor conduct that disturbs the night peace [§ 47 par. 1 let. b)], evokes public outrage [§ 47 par. 1 let. c)], or that dirties public areas, a publicly accessible building, or publicly beneficial facility [§ 47 par. 1 let. d)]. Of course, from a formal standpoint a municipality could not identify such a notice as an "Ordinance," because an ordinance plays a different role in a municipality's independent jurisdiction. The Act on Municipalities expressly permitted municipalities to use ordinances to specify obligations to manage local matters of public order, but these obligations are aimed at activities not regulated in special statutes by the state administration. The public order is not an absolute category, but a changeable value, whose content is guided by social, ethical, political, and business relationships and opinions. Evaluating whether a particular situation is or is not contrary to the public order is up to the discretion of the relevant administrative entity. This is given by the fact that municipalities fulfills one of their police functions in the area of public order, and often, with inadequate knowledge of the statutory framework and its scope, attempt, by issuing their own statutory regulations, to prohibit certain conduct that they consider harmful, but that is already regulated by valid statutes. It is the form and content of setting new prohibitions, or even obligations consisting of active conduct, that can come into conflict with the constitutional principle that obligations can be imposed only on the basis of statutes. The Constitutional Court believes that the existing legal framework gives municipalities sufficient scope to penalize the flawed conduct by individuals and legal entities that could disturb the public order. However, municipalities are not able to define this scope sufficiently precisely, so it remains a reality that, in issuing generally binding ordinances, they simple reproduce, to a considerable extent, the individual provisions of valid statutes. However, as stated above, that misses the point of issuing generally binding municipal ordinances, which is the administration of their own matters, and can not include mere loose reproduction of statutes concerning the role of the state administration, or even the creation of norms in that area.

## VIII.
## The Review

44. The Constitutional Court evaluated the contested generally binding ordinance of the city of Ústí nad Labem (the "city") in view of the constitutional framework described above, and determined that the provisions of that ordinance cited in the annulling verdict of the judgment are inconsistent with the constitutional order and with statutes.

45. The provision of § 34 of the Act on Municipalities defines public areas as all squares, streets, marketplaces, sidewalks, public greenery and other spaces accessible to everyone without restriction, i.e. serving public use, regardless of ownership of the space. Thus, in article 2 par. 1 of the ordinance the city merely takes over the statutory definition of public areas, which the Constitutional Court does not consider to be unconstitutional. The mere use of a legal term in a generally binding ordinance is not inconsistent with the principle of legal certainty, which does not require a municipality to explicitly define the parcels of land that it

considers to be public areas.

46. We must agree with the petitioner that insofar as the city specified, in article 3 of the ordinance, activities that could disturb public order in the city, then it was fundamentally required, in accordance with § 10 let. a) of the Act on Municipalities, to specify in the ordinance the places and times for these activities to be conducted, or do specify that such activities are prohibited in some public areas in the municipality. As was already state above, under Art. 2 par. 4 of the Constitution, and Art. 2 par. 3 and Art. 4 par. 1 of the Charter, duties may be imposed only on the basis of, and within the bounds of law. In view of this rule, Art. 104 par. 3 of the Constitution must be interpreted to the effect that a generally binding ordinance which imposes obligations on individuals and legal entities presupposes a statutory provision that authorizes it to impose obligations. One such statutory provision is § 10 of the Act on Municipalities, the relevant part of which reads:
"A municipality may impose obligations within its independent jurisdiction by a generally binding ordinance a) to manage local matters of public order; in particular, it may specify what activities that could disturb public order in the municipality or be inconsistent with good morals, protection of safety, health and property, can be conducted only in places and at times determined by the generally binding ordinance, or may provide that such activities are prohibited in certain public areas in the municipality, (…)"

47. The text of § 10 of the Act on Municipalities does not contain an express rule under which a municipality could not prohibit the cited activities in all public areas. This conclusion can be drawn from the cited provision only using an argument a contrario. The result of applying this argument is that a prohibition applying to all public areas can not be based on § 10 let. a), the part of the sentence before the semi-colon. However, this conclusion must be subjected to closer scrutiny. In the cited provision, the legislature tried to address the conflict between an individual's constitutionally guaranteed freedom, the right to conduct business, on one side, and protection of the public interests and the municipality's right to self-government on the other side. It resolved this conflict basically so that a municipality may limit the conduct of certain activities, subject it to its conditions, but not completely prohibit it. However, this can not apply absolutely. It is quite evident with the protection of constitutionally protected legal values such as health and life. There is no rational reason why a municipality should have an obligation to tolerate on some of its public areas activities that endanger these fundamental protected values. It would be inconsistent with the constitutionally guaranteed inviolability of the person (Art. 7 of the Charter), which includes protection against interference in the personal integrity of every individual, for a municipality to be required to identify public areas in its territory where it does not prohibit activities that could be inconsistent with protection of health. The same applies to activities inconsistent with protection of property (cf. Art. 11 of the Charter). The provision of § 10 let. a) of the Act on Municipalities must therefore be interpreted so that, if activities interfering with protection of health, property, or safety interfere in these constitutionally protected legal values only in some public areas, the municipality is forbidden to prohibit them in its entire territory. Therefore, the cited provision must be understood as a specific

expression of the general principle of proportionality.

48. Just as the public authorities are required to protect health and property, so are they required to protect public order. Although the cited provision distinguishes public order and good morals, it is not possible to have a sharp distinction between the two. The public order can also be disturbed by conduct that is inconsistent with good morals. Prostitution in public areas is a typical example. This conduct is inconsistent with good morals, and it is also conduct that disturbs the public order. The above mentioned conclusions regarding protection of health and property must also be applied to prohibitions of these activities. Thus, if a certain activity may be conducted in certain public areas of the municipality without disturbing the public order or being inconsistent with good morals, the municipality can not prohibit it in all of its public areas. In contrast, if the conduct of a particular activity amounts to potential interference in a protected value, even though it is operated in any public area in the municipality, the municipality may prohibit the conduct of that activity in all its public areas. It is always necessary to evaluate the intensity of the interference and the importance of the endangered right, on one side, and the importance of the activity that is to be prohibited, on the other side.

49. If the city specified activities that could disturb the public order in the city in article 3 of the ordinance, then, in accordance with § 10 let. a) of the Act on Municipalities, it was required to determine the place and time for the conduct of such activities in the contested ordinance, or provide that such activities are prohibited in some public areas in the municipality, unless there exist the abovementioned grounds on which it can prohibit them in all public areas in the municipality.

50. In Art. 3 par. 1 let. c) of the contested ordinance the city prohibits the offering of sexual services in public areas. It thereby prohibits the offering of sexual services in all public areas of the municipality. This field is not regulated by statute, in view of the New York agreement cited below. From the use of the word “sexual services” and form the fact that this is an activity that can disturb the public order, we can conclude that the prohibition is aimed against the offer of sexual services for payment; in other words, this provision of the contested ordinance prohibits prostitution. The conduct of this activity endangers good morals generally, and very distinctly endangers the moral upbringing of children and youth. The very conduct of prostitution that is obvious to children and youth can give them the impression that this is something “normal,” acceptable. The importance of this legally protected value, i.e. the moral upbringing of children and youth, must be considered very high. Thus, the ethical values which the municipality, as a society of citizens, is entitled to protected, are affected in an extreme manner. In the Constitutional Court’s opinion, none of the other activities cited in Art. 3 of the contested ordinance, even begging, effect a similarly extreme interference in matters of the public order. These endangered, legally protected values must also be measured against the freedom of the individuals providing sexual services. However, the protection of the conduct of this activity in plain view of the public can not stand as against protection of the moral upbringing of children and youth.

51. In interpreting § 10 let. a) of the Act on Municipalities we must also consider Art. 1 par. 2 of the Constitution, under which the Czech Republic shall fulfill all obligations that arise to it under domestic law. The Czech Republic is bound by the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others [UN, New York, 2 December 1949; Czechoslovakia acceded to this treaty on 14 March 1958 (the "New York Convention")]. The Convention considers prostitution to be an evil that consists of traffic in persons and their human dignity, which endangers individuals, the family, and society at large. The aim of the Convention is to prohibit the regulation, and thus actually the recognition and approval, of prostitution (see Art. 6 of the New York Convention). Under Art. 10 of the Constitution, promulgated international treaties that have been ratified by Parliament and by which the Czech Republic is bound are part of the legal order; if an international treaty provides something different than a statute, the international treaty shall apply. Although this international treaty was not promulgated in the Collection of Laws and thus is not an international treaty that is part of the legal order under Art. 10 of the Constitution, in view of Art. 1 par. 2 of the Constitution, it can not be ignored when interpreting simple law. Even if an international treaty is not part of the Czech legal order under Art. 10 of the Constitution, simple law that permits multiple interpretations must be interpreted in a manner that is consistent with the Czech Republic's international law obligations. As stated above, § 10 of the Act on Municipalities does not contain an unambiguous answer to the question of whether a municipality can prohibit prostitution at all in all its public areas. The interpretation that a municipality may prohibit prostitution not only in some, but also in all public areas, is more compatible with the Czech Republic's international law obligations arising from the New York Convention. Limiting prostitution to only certain public areas in a municipality is basically regulation of it, and that is what the New York Convention wants to prevent. However, the Constitutional Court, obiter dictum, points to the fact that an international treaty that does not meet the requirements of Art. 10 of the Constitution can not be used to override an unambiguous provision of domestic law. If a provision of simple law is clear (lex clara), it is not possible to apply an international treaty that is not a treaty under Art. 10 of the Constitution, but the undisputed provision of the simple law of the Czech Republic should be applied. This rule is important in resolving the question of whether the existence of the New York Convention prevents municipalities from merely defining certain public areas where prostitution can be offered. However, § 10 let. a) of the Act on Municipalities has resolved this question unambiguously. It is clear from it that a municipality may designate certain public areas where prostitution can be offered. In this regard, the interpretation of the cited provision is completely clear, and it can not be rejected simply by reference to an international treaty that does not meet the requirements of Art. 10 of the Constitution. Thus, we can summarize that the current legal framework lets a municipality choose either to not regulate prostitution at all, or to completely prohibit it in the municipality's public areas, or to negatively or positively designate certain public areas where prostitution can be offered.

52. As regards offering prostitution, this conclusion can also be supported by historical analysis. The above mentioned § 10 let. a) of the Act on Municipalities is inspired by § 17 of the previous Act on Municipalities, i.e. Act no. 367/1990 Coll., under which a municipality could, through a generally binding ordinance issued in

its independent jurisdiction, specify, in order to manage local matters of public order, which activities that could disturb public order in the municipality can be conducted only in places and times specified by the ordinance, or could specify that such activities are prohibited in certainly publicly accessible areas in the municipality. That provision was included in the then Act on Municipalities by Act no. 279/1995 Coll. According to the background report to that Act, prostitution is a socially pathological phenomenon, which, history shows, can not be completely eradicated. However, it can be regulated so that it does not disturb the public order, does not endanger the upbringing of children and youth, and does not insult the public's moral sense. The aim of the proposed legal regulation, therefore, is to enable municipalities, in their independent jurisdiction, to use generally binding ordinances, in the local environment, to effectively combat the negative consequences of prostitution. Insofar as the text § 17 of the previous Act on Municipalities was almost word for word used in the present Act on Municipalities, we can assume that the legislature thereby also accepted the reasons that led to the existing legal framework. The background report does not in any way indicate that municipalities should be forced to tolerate prostitution in some public areas, if its conduct there can disturb the public order, endanger the upbringing children and youth, or offend the public moral sensibility. On the contrary, it indicates that they have the ability to prohibit prostitution everywhere where its conduct can have these consequences.

53. For these reasons, and also because prostitution is not regulated by Parliament on the statutory level, the Constitutional Court concluded that the city of Ústí nad Labem did not exceed its statutorily given jurisdiction, when, in the generally binding ordinance, or prohibited the offering of sexual services in public areas in the entire city, and thus forced prostitution behind closed doors.

54. In article 3 par. 1 let. a) and b) the city also defines other activities that could disturb the public order in the city, without specifying a place and time where these activities can be conducted, and without specifying that such activities are prohibited in certain public areas in the municipality. None of these activities disturbs the public order as seriously as the offering of sexual services in public. There is thus no international law obligation of the Czech Republic that would prohibit regulation of these activities. It is also, unlike with prostitution, generally evident, nor do the city's statements indicate, that the conduct of these activities would interfere in legally protected interests in all public areas in the city. Therefore, it is necessary to begin with the premise that the city was not authorized to prohibit these activities generally, but only in certain public areas. However, these were not defined in the generally binding ordinance. In view of this fact, the Constitutional Court found these provisions of the ordinance to be inconsistent with § 10 let. a) of the Act on Municipalities, and therefore annulled them.

55. Art. 3 let. e) provides, that the production of amusement parks, merry-go-rounds, circuses, and mass sports events in public areas is possible only with the prior consent of the offices of municipal districts (ÚMO) in the locations in the appendix. Here the Constitutional Court agrees with the petitioner that § 10 let. b) of the Act on Municipalities authorizes the municipality to use a generally binding ordinance to set binding conditions for the organization, conduct and termination

of publicly accessible sporting and cultural enterprises, including dance events and discotheques, in the scope necessary to secure the public order, but not to tie the opportunity to conduct such publicly accessible sporting and cultural enterprises to the prior consent of the municipality. Thus, that provision of the ordinance is inconsistent with § 10 let. b) of the Act on Municipalities.

56. As regards article 4 par. 1 of the ordinance, on disturbance of the night quiet time, the legal relationships governed by that provisions are subject to § 47 par. 1 let. b) of Act no. 200/1990 Coll., on Misdemeanors, which provides that "anyone who disturbs the night quiet time commits a misdemeanor." In view of this, setting obligations concerning the observance of night time quiet can not be the subject matter of a generally binding municipal ordinance. The petitioner also points to the Civil Code, whose § 127 prohibits annoying one's neighbors with noise over a level appropriate to the situation. However, private law legal regulations basically do not regulate matters of public order, but the private interests of persons. Therefore, the private law framework in § 127 of the Civil Code (unlike the framework in the Act on Misdemeanors) is also not a legal framework that would prevent a municipality from regulating matters of public order in connection with noise annoyance. If a municipality wished to use an ordinance to regulate private law relationships analogously to § 127 of the Civil Code, it would be acting ultra vires, because private law relationships are not a matter of public order.

57. Responsibility to not exceed the public health noise limits regulated by article 4 par. 2 of the ordinance is enshrined in § 32 of Act no. 258/2000 Coll., on Protection of Public Health, so that fulfillment of that obligation shall be ensured by the person operating a services, and, in the case of a public musical production, the organizer, and if the organizer can not be determined, then the person who provided a building, other facility, or land for that purpose. In view of the fact that the cited Act clearly regulates the responsibility for exceeding public health noise limits from service providing facilities and noise from public musical productions, the city is not authorized, on the basis of the authorizing provision of § 10 let. b) of the Act on Municipalities, to regulate this responsibility differently through a generally binding ordinance. Thus, that provision of the ordinance is inconsistent with § 35 par. 3 let. b) of the Act on Municipalities and with Article 104 par. 3 of the Constitution.

58. The prohibition on organizing publicly accessible musical productions outside the premises designated thereto by a decision from the building office arises from § 85 of Act no. 50/1976 Coll., on Zoning and the Building Code (the Building Code), as amended by later regulations, under which a building can be used only for the purposes provided in the final building permit, or in the construction permit. Insofar as Art. 4 par. 3 of the ordinance limits the organizing of publicly accessible musical productions only to non-residential or residential premises that are designated thereto by a decision of the building office, this is therefore a regulation that, in view of § 85 par. 1 of that Act, is redundant; at the same time, this is a legal framework that governs relationships regulated by statute, which, as stated above, makes that provision inconsistent with § 35 par. 1 of the Act on Municipalities, because the city subjected to the ordinance relationships that fall in an area regulated by statutes, and the observance of obligations arising from those

relationships is under the inspection of state administration bodies.

59. As regards the responsibility of an organizer to ensure sufficient an duly identified organizer services, as regulated by Art. 4 par. 4 of the ordinance, the Constitutional Court does not share the petitioner's opinion that the cited article is inconsistent with the principle of legal certainty, which requires all generally binding regulations to have a precise, clear, and understandable formulation. This provision corresponds to a considerable extent to § 6 par. 5 let. b) of Act no. 84/1990 Coll., on the Right to Assembly, under which the person calling an assembly is required to ensure a sufficient number of competent organizers of at least 18 years of age. However, the legislative activity of a municipality can not be subjected to stricter requirements than the legislative activity of the legislature. In this case the use of a relatively indefinite legal term is substantively justified by the variety of situations to which it is to be applied, as the City of Ústí nad Labem indicates. Thus, this provision is within the bounds of certainty that are necessary to respect the principle of legal certainty. On the other hand, however, in this framework the City of Ústí nad Labem regulates an area that is already regulated by statute, the Act on the Right to Assembly. Therefore, the Constitutional Court also had to annul that provision, for the abovementioned reasons.

60. In contrast, however, the Constitutional Court agrees with the petitioner that Article 4 par. 5 of the ordinance, which provides that local noise restrictions are in effect in the subsequently named localities, is, in view of the uncertainty of its content, from which it is not clear what local noise restrictions means, is inconsistent with the principle of legal certainty.

61. Evaluating whether the municipality acted reasonably is not simply a question of whether it acted in accordance with the authorization provided to it by statute. Rather, finding a lack of reasonableness requires weighing the contested ordinance in terms of its effects, measured by general reasonableness (cf. Constitutional Court judgment of 13 September 2006, file no. Pl. US 57/05). Insofar as it is already clear from the findings that some parts of the ordinance will not stand, either in terms of review of the question whether the municipality acted ultra vires when issuing it, in terms of misusing the competence entrusted to it by statue, it was not necessary to review those sections of the ordinance for unreasonableness. In those parts of the contested ordinance where the municipality acted within the authority entrusted to it, the Constitutional Court did not find any facts that would indicate that these provisions of the contested ordinance were generally unreasonable.

## IX.

62. In view of the foregoing, the Constitutional Court had to annul Art. 3 par. 1 let. a), b) and e) and Art. 4 of the generally binding ordinance of the City of Ústí nad Labem, no. 1/2004 to manage local matters of public order, under § 70 par. 1 of the Act on the Constitutional Court, due to inconsistency with the cited provisions of the Constitution of the Czech Republic, the Charter of Fundamental Rights and Freedoms, and Act no. 128/2000 Coll., on Municipalities, as amended by later regulations. In view of the fact that Art. 3 par. 1 let. d) and Art. 5 of the generally

binding ordinance of the City of Ústí nad Labem no. 1/2004, to manage local matters of public order, ceased to be in legal effect even before proceedings before the Constitutional Court were concluded, the Constitutional Court stopped that part of the proceedings under § 67 par. 1 of the Act on the Constitutional Court. It denied the remaining part of the petition from the minister of the interior of the CR.

**Instruction: Judgments of the Constitutional Court can not be appealed.**

Brno, 8 March 2007