

2001/07/11 - PL. ÚS 1/01: LOCAL AUTHORITY COMPETENCE

HEADNOTES

The Constitutional Court respects local government as an expression of the right and competence of local bodies to govern public matters within the bounds set by law, as part of their responsibility and in the interest of the local population, but nevertheless believes that the contested ordinance, in Art. 2 para. 1 let. a), subjected to its regulation relationships which cannot be governed in such a manner. The very expression “Celebrations of the Feast of St. Wenceslas” evokes close ties to the church anniversary relating to St. Wenceslas, not only to the religious celebrations and rites connected with this Christian holiday, but also customs and conventions which the civil society has historically created in relation to this holiday outside the framework of church structures. Undoubtedly it is also the right of other communities in the civic society to decide whether, or when and to what extent, they will gather for the celebrations held in this regard. The local government undoubtedly has a right to issue restrictive measures to protect public order, but by appropriating the right to decide the date of these celebrations it is entering into relationships which exist between the citizens and religious or other social entities. By doing so, it steps out of its independent jurisdiction, whose identifying characteristic is precisely the fact that a municipality independently governs “its affairs”. Decision making about the holding of celebrations of the Feast of St. Wenceslas is thus an inappropriate means for protecting the public order, as it exceeds the limits of its local nature.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court decided on 11 July 2001, in the matter of a petition from the chairman of the District Office in Kladno, to annul a generally binding ordinance of the town of Stochov of 19 June 2000 on ensuring public order in the town, as follows:

The generally binding ordinance of the town of Stochov of 19 June 2000 on ensuring public order in the town is annulled as of the day this judgment is published in the Collection of Laws.

REASONING

In his filing of 4 January 2001, the chairman of the District Office in Kladno proposed the annulment of the generally binding ordinance of the town of Stochov on ensuring public order, of 19 June 2000, which reads as follows:

“Generally binding ordinance

of the Town of Stochov

of 19 June 2000

on ensuring public order in the town

The City Council in Stochov, under § 45 let. l) of Czech National Council Act No. 367/1990 Coll., on municipalities, as amended by later regulations, resolved on 19 June 2000 to issue, under § 16 of that Act, and in accordance with § 17, this generally binding ordinance:

Article 1

INTRODUCTORY PROVISION

This ordinance governs the management of local matters of public order in the territory of the town of Stochov, consisting of the real estate registration areas Čelechovice, Honice and Stochov.

Article 2

CELEBRATIONS OF THE FEAST OF ST. WENCESLAS

(1) With regard to the need to ensure public order in the municipality during the public celebrations of the Feast of St. Wenceslas (the “celebrations”), the City Council

a) will determine the date for the celebrations,

b) will determine the place in which, during these celebrations, market stalls, amusement park facilities and other similar attractions will be located.

(2) The City Council will determine the date under paragraph 1 let. a) no later than 31 January each year, and the place under paragraph 1 let b) no later than 30 April each year.

Article 3

JOINT, TRANSITIONAL AND CLOSING PROVISIONS

(1) Violation of obligations set by this ordinance or on its basis can be prosecuted as a misdemeanor¹), except for an act subject to stricter punishment, or other sanctions can be imposed for it in accordance with law²).

(2) The City Council will determine dates under Art. 2 para. 1 for the year 2000 by 31 July 2000.

(3) This ordinance goes into effect on 15 July 2000, with the exception of Art. 2 para. 2, which goes into effect on 1 January 2001.

Ing. Jindřich Sybera in his own hand

Town Mayor

Stanislava Fišerová in her own hand

Deputy Town Mayor

1 § 48 of Act No. 200/1990 Coll., on Misdemeanors

2 e.g. § 50 of Act No. 367/1990 Coll., on Municipalities (municipal establishment)”

In his petition the petitioner stated that he reached the conclusion that Art. 2 para. 1 let. a) of the generally binding ordinance is in conflict with Art. 2 para. 4 of the Constitution of the CR and, together with Art. 2 para. 1 let. b) is also contrary to Art. 11 para. 4 and Art. 26 para. 1 and 2 of the Charter of Fundamental Rights and Freedoms (the “Charter”), and therefore, by his decision of 20 October 2000, file no. Sekr. 20967/2000, stopped enforcement of the generally binding ordinance. At their 15th session, held on 23 November 2000, the representatives of the town of Stochov decided not to annul the ordinance in question, and therefore the petitioner had no alternative but to submit the petition for annulment to the Constitutional Court, together with the following arguments:

In the petitioner’s opinion, by determining the date for holding the public St. Wenceslas celebrations the town of Stochov appropriated the right of the citizens to decide when they will gather for the feast celebration. The purpose of such a gathering is not, in this case, subject to Art. 19 of the Charter, implemented by Act No. 84/1990 Coll., on the Right of Assembly, and therefore the legal framework for its exercise must be sought in Art. 2 para. 4 of the Constitution of the CR, under which everyone may do that which is not forbidden by law and nobody may be compelled to do that which is not imposed by law. According to the petitioner, Art. 2 para. 1 let. a) of the ordinance is in conflict with this constitutional principle.

Under Art. 11 para. 4 of the Charter, property rights can be restricted only in the public interest, on the basis of law, and for compensation. Examples of implementation of the cited article are § 128 of the Civil Code, or § 108 et seq. of Act No. 50/1976 Coll., on Zoning and the Building Code, from which it is clearly evident that regulation of interference in property rights of the affected entities is subject to state government, and not local government. According to the petitioner, by enshrining the obligation to operate amusement park facilities and other similar attractions at a time and on parcels of land owned by persons other than the municipality itself, the municipality interferes in the exercise of property rights of the persons in question.

The right to do business and conduct other commercial activity is guaranteed by Art. 26 para. 1 of the Charter, and conditions for and limitations on this right can only be set by law. Act No. 455/1991 Coll., on Licensed Trades, indicates that operating folk technical entertainment, or facilities used for purposes of entertainment, is an unrestricted trade. Except for observing the general obligations arising for every trade license holder and the general obligations imposed by the legal order for every person, the legal order does not impose any special obligation for the operation of amusement parks and other similar attractions. The trade licensing agenda falls under state government, and a municipality has no authority to regulate this area through ordinances issued under its independent jurisdiction. The town of Stochov is only authorized to issue an ordinance determining the locations for market stalls and fair attractions on its property, or, on the basis of § 18 of the Trades Licensing Act it may regulate sales and provision of services outside a place of business through an order (before Act No. 128/2000 Coll. went into effect this was by generally binding ordinance under delegated jurisdiction). According to the petitioner, article 2 para. 1 let. a) and b) of the ordinance implicitly contain limitations on the right to do business, as it permits the exercise of business activity only at a restricted location and space, and in that regard these provisions are in conflict with Art. 26 para. 1 and 2 of the Charter.

II.

The town of Stochov responded to the petition on 12 March 2001.

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III.

Under Art. 87 para. 1 let. b) of the Constitution of the CR, the Constitutional Court has jurisdiction to annul other legal enactments, including generally binding municipal ordinances, issued under municipalities' independent jurisdiction, if they are inconsistent with a constitutional act, a statute, or an international treaty under Art. 10 of the Constitution. In these proceedings, in view of § 68 para. 2 of Act No. 182/1993 Coll., on the Constitutional Court, the Constitutional Court is also required to review whether the contested legal regulation was issued in a constitutional manner. The Constitutional Court stated that the contested generally binding ordinance was passed and issued in a constitutionally prescribed manner.

IV.

In evaluating whether the contested ordinance was issued under the municipality's independent or delegated jurisdiction, it was necessary to take into account that the generally binding ordinance was approved while the now annulled Czech National Council Act No. 367/1990 Coll., on Municipalities (Municipal Establishment), was still in effect, under whose provisions a municipality could issued generally binding ordinances in matters

falling under delegated jurisdiction only on the basis of authorization by statute and within its bounds (§ 24 para. 1), and in matters falling under independent jurisdiction (§ 14 para. 1 and 2) it could, by generally binding ordinance, set restrictive measures in order to manage local matters of public order (§ 17).

The date of 28 September, on which the St. Wenceslas religious rites take place, was declared a national holiday and the day of Czech statehood by Act No. 245/2000 Coll., in effect as of 9 August 2000. Under § 3, this is a non-working day, but no authorization arises from its text. Because the Czech legal order did not contain, at the time the ordinance was issued, nor does it now contain, any other law authorizing a municipality to issue generally binding ordinances permitting any regulation or organization of folk celebrations in connection with religious holidays or anniversaries, we can conclude that the contested ordinance does not fall in the area of delegated jurisdiction.

The ordinance relies on § 14 para. 1 let. o) of the previous Act on Municipalities, under which a municipality's independent jurisdiction included "local matters of public order and the establishment of municipal (town) police, with the exception of adjudicating misdemeanors". In view of § 17, a municipality could "In order to manage local matters of public order [§ 14 para. 1 let. o)] ... by generally binding ordinance issued under its independent jurisdiction, determine which activities, which could interfere with public order in the municipality, may be conducted only in places and at times determined by the ordinance, or provide that such activities are forbidden in certain publicly accessible places in the municipality". This was not changed in any way by the new, current regulation of municipal establishment implemented by Act No. 128/2000, on Municipalities (Municipal Establishment), in effect as of 12 November 2000, under which independent municipal jurisdiction includes the regulation of matters which are in the interest of the municipality and its citizens, unless they are entrusted by statute to the regions, or except for the exercise of delegated jurisdiction, as well as matters which are entrusted to independent municipal jurisdiction by a separate statute (§ 35 para. 1). As part of their independent jurisdiction, municipalities are authorized to issue generally binding municipal decrees [§ 84 para. 2 let. i)]. Based on the foregoing, one can assume that the contested ordinance, by delimitation of the regulated issues, falls under and was issued under independent municipal jurisdiction.

The constitutional limits for issuing generally binding municipal ordinances under independent municipal jurisdiction are set in Art. 104 para. 3 of the Constitution of the CR, under which municipal representative bodies can, within the scope of their jurisdiction, issue generally binding ordinances. This municipal jurisdiction arose from § 13 para. 2 of the now annulled Czech National Council Act No. 367/1990 Coll., on Municipalities, under which a municipality, in exercising its independent jurisdiction, was governed only by statutes and generally binding legal regulations issued by central bodies for their implementation. Under § 16 para. 2 of this Act, generally binding ordinances had to be in accordance with statutes and their generally binding implementing regulations.

In its earlier findings, the Constitutional Court ruled that the list contained in § 14 para. 1 of the previous Act on municipalities "in terms of its interpretation as a statutory authorization to issue generally binding municipal ordinances, must be considered enumerative. Its demonstrative text, as well as the general nature of the delineation of

independent municipal jurisdiction, contained in § 14 para. 2 of the Act on Municipalities, must be applied only to that independent municipal jurisdiction where the municipality does not act as an entity which determines obligations for citizens by one-sided orders and bans” (US, vol. 1, no. 4). The Constitutional Court has also ruled several times that Art. 4 para. 1, Art. 2 para. 3 of the Charter and Art. 2 para. 4 of the Constitution of the CR, indicate, as far as municipal jurisdiction is concerned, that in cases where the municipality does act as an entity which determines obligations for citizens by one-sided bans and orders, i.e. if it issues generally binding ordinances which regulate legal obligations, it can do so only in the event of express statutory authorization (US, vol.1 no. 4 and 12).

In the matter in question, the Constitutional Court took into consideration the legislative developments which occurred due to the new Act No. 128/2000 Coll., while being aware that the contested ordinance was approved when Czech National Council Act No. 367/1990 Coll. was still in effect. Under § 10 let. b) of Act No. 128/2000 Coll., a municipality is authorized, under its independent jurisdiction, to impose, by generally binding ordinance, obligations “to manage local matters of public order; in particular, it may determine which activities, which could interfere with public order in the municipality or be in conflict with good morals, protection of safety, health and property, can be performed only in places and at times set by the generally binding ordinance, or provide that such activities are banned in some publicly accessible places in the municipality”, and under § 10 let. c) of the Act, obligations “for the organization, conduct and termination of publicly accessible sporting and cultural events, including dances and discotheques, by setting binding conditions in the scope necessary to ensure public order”.

The Constitutional Court respects local government as an expression of the right and competence of local bodies to govern public matters within the bounds set by law, as part of their responsibility and in the interest of the local population, but nevertheless believes that the contested ordinance, in Art. 2 para. 1 let. a), subjected to its regulation relationships which cannot be governed in such a manner. The very expression “Celebrations of the Feast of St. Wenceslas” evokes close ties to the church anniversary relating to St. Wenceslas, not only to the religious celebrations and rites connected with this Christian holiday, but also customs and conventions which the civil society has historically created in relation to this holiday outside the framework of church structures. Undoubtedly it is also the right of other communities in the civic society to decide whether, or when and to what extent, they will gather for the celebrations held in this regard. The local government undoubtedly has a right to issue restrictive measures to protect public order, but by appropriating the right to decide the date of these celebrations it is entering into relationships which exist between the citizens and religious or other social entities. By doing so, it steps out of its independent jurisdiction, whose identifying characteristic is precisely the fact that a municipality independently governs “its affairs”. Decision making about the holding of celebrations of the Feast of St. Wenceslas is thus an inappropriate means for protecting the public order, as it exceeds the limits of its local nature.

Therefore, the Constitutional Court shares the petitioner’s opinion that Art. 2 para. 1 let. a) of the generally binding ordinance of the town of Stochov is in conflict with Art. 4 para. 1 of the Charter, under which obligations may be imposed only on the basis of and within the bounds of law, and with Art. 2 para. 4 of the Constitution of the CR and Art. 2 para.. 3

of the Charter, under which nobody may be compelled to do that which is not imposed on him by law.

Likewise, in the Constitutional Court's opinion, Art. 2 para. 1 let. b) of the ordinance, under which the City Council will determine the place at which, during the celebrations, market stalls and amusement park facilities and other similar attractions will be located, can not stand. Under § 17 of the now annulled Czech National Council Act No. 367/1990 Coll., as well as under the current regulation in § 10 let. b) of Act No. 128/2000 Coll., a municipality may determine by generally binding ordinance which activities, which could interfere with public order in the municipality, may be conducted only in places and at times determined by the ordinance, or provide that such activities are forbidden in certain publicly accessible places in the municipality. The contested ordinance does not determine such places, and the fact that it authorizes the city council to determine them ad hoc, is not in accordance with legal regulations. The Constitutional Court believes that this provision of the ordinance is also in conflict with Art. 2 para. 4 of the Constitution of the CR and Art. 2 para. 3 and Art. 4 para. 1 of the Charter.

For the reasons given above, the Constitutional Court granted the petition of the chairman of the District Office in Kladno, and annulled the contested ordinance of the town of Stochov under § 70 para. 1 of Act No. 182/1993 Coll., on the Constitutional Court, as of the day this judgment is published in the Collection of Laws.

Decisions of the Constitutional Court can not be appealed.

Brno, 11 July 2001