No. 3A 182/2016 - 57 The agreement with the original is confirmed by V. B. CZECH REPUBLIC JUDGMENT ON BEHALF OF THE REPUBLIC The Municipal Court in Prague decided in a panel composed of the chairwoman JUDr. Ludmila Sandnerová and judges JUDr. Jan Ryba and Mgr. Ivety Postulková in the case of the plaintiff: CR - Ministry of the Interior, IČO 00007064 registered office Nad Štolou 3, Prague 7 against the defendant: Office for the Protection of Personal Data registered office Plk. Sochora 27, Prague 7 on the action against the decision of the defendant's chairwoman dated 14 September 2016, ID No. UOOU-06477/16-14, as follows: I. The action is dismissed. II. None of the participants is entitled to compensation for the costs of the proceedings. Reasoning: 1. The plaintiff, with a lawsuit filed at the Municipal Court in Prague, demanded the annulment of the above-mentioned decision of the President of the Office for the Protection of Personal Data, which rejected the decision of the Office for the Protection of Personal Data (hereinafter referred to as "ÚOOÚ" or "first-instance authority") from on 20 July 2016, no. UOOU-06477/16-8, by which the plaintiff was fined for an administrative offense pursuant to § 45 paragraph 1 letter e) of Act No. 101/2000 Coll., on the Protection of Personal Data and on Amendments to Certain Acts (hereinafter referred to as "the Personal Data Protection Act"), as the plaintiff processed personal and sensitive data from at least 9 June 2015 to 3 June 2016 (DNA profile) of Mr. Š. S. without his express consent, and without any of the conditions stipulated in § 9 letter b) to i) ZOÚ, thereby violating the obligation set out in § 9 ZOÚ. No. 3A 182/2016 The agreement with the original is confirmed by V. B. 2 2. The plaintiff considers the contested decision to be illegal, as he believes that during the processing of the genetic material, the police did not, and do not, violate the obligations established by law or imposed on them basis during the processing of personal data in the sense of § 9 ZOÚ, and thus an administrative offense could not have been committed. 3. In the first claim, the plaintiff finds the illegality of the decision in connection with the incorrect interpretation of the concept of necessity in connection with the absence of proper consideration of the specific activity of the police and their needs for the consistent performance of the legal tasks and duties of the police. The plaintiff refers to the provisions of § 9 letter i) ZOÚ and further the provisions of § 79 and § 65 paragraph 1 of Act No. 273/2008 Coll., on the Police of the Czech Republic (hereinafter referred to as the "Police Act"), from which it clearly follows that the personal data of Mr. Š. S. obtained by the police legitimately, since the acquisition of the biological sample and determination of the DNA profile took place in connection with the criminal proceedings of the person named as a person accused of committing an intentional crime. Thus, the police obtained personal data legitimately, in accordance with valid legislation. 4. The plaintiff does not agree with the defendant that when assessing the necessity of further processing of personal data, the need for individuality is always

necessary for the purposes of future identification, not the need for a certain template, or the predictability of police action. The plaintiff is convinced that the need for predictability results from the need to ensure public certainty in the police procedure when deciding on the processing of personal data and to ensure objectivity. According to the plaintiff, the further processing of personal data depends on several aspects, such as the age of the perpetrator, the circumstances of the crime, the period of time since the crime was committed, the seriousness of the crime or the form of participation. 5. In the second claim, the plaintiff disagrees with the defendant, according to which it is not a key criterion in the processing of DNA profiles, or for the application of Section 65 of the Police Act, the subjective side of the crime, which indicates the perpetrator's internal relationship to the crime. The plaintiff states in more detail that from a criminological point of view, the processing of the genetic material of a repeat offender of intentional criminal activity is justified and is justified by the previous intentional illegal actions of such a person. The decisive criterion for assessing the legitimacy of the processing of personal data for the purposes of future identification is its necessity for the purposes of preventing, searching or detecting criminal activity. Such a necessity is given if the data is indispensable for the performance of police tasks, such as the detection or conviction of the perpetrator of a specific crime, even in the future. 6. The authorization, but also the obligation, to perform an identification act is in accordance with criminological research showing an increased likelihood of recidivism among perpetrators of intentional crimes. The Institute of Future Identification creates a prerequisite for future identification as a preventive measure. 7. In support of his claims, the plaintiff further refers to the judgment of the Supreme Administrative Court of 30 April 2014, No. 4 As 168/2013, in which it is stated: "the legislation authorizes the police to process personal data, including information about genetic equipment, in cases where it is found necessary to fulfill the purpose, not only for persons serving a sentence of imprisonment for committing an intentional crime, but also for persons accused or suspected in relation to a generally defined category of intentional crimes. At the same time, it cannot be categorically stated that this reason for the processing of personal data will not be found in economic crimes, because genetic data will never be usable, but the intervention must be assessed in relation to the position of the subject in question in the criminal proceedings, even within the broader framework of the definition of this term . The mere fact that in the case of crimes threatening the life, health or safety of persons, there is a relatively higher probability of leaving a biological trace at the scene of the crime and therefore the processing and preservation of the DNA profile is important for the identification of the perpetrator of future crimes, does not mean that economic crimes by nature, the importance of using biological traces in detecting these acts and their perpetrators is marginal.

As a result of technical development, the way in which these economic crimes are committed is changing, and the way to detect such activity should and must go hand in hand with it." ID No. 3A 182/2016 The agreement with the original is confirmed by V. B. 3 8. In the given in this case, it can be stated that Mr. Š. S. has been repeatedly convicted in the past, from a criminological point of view he must be viewed as a repeat offender of intentional criminal activity. The perpetrator committed the crimes with direct or indirect intent, and the defendant considers this subjective aspect of the crime to be a significant qualitative change in human behavior and a fundamental attribute of criminality and criminology, which justify the processing of personal data for the purposes of future identification, i.e. a DNA profile. The character of the last committed crime, for which the perpetrator was convicted, is perceived by the defendant himself as serious. This is an economic criminal activity, during which no small amount of damage was caused, and such activity cannot be trivialized. In addition, it is statistically proven that there is an escalation of criminal activity, when the offender improves and gradually moves to criminal behavior in which he does not hesitate to use violence. 9. In the third claim, the plaintiff disagrees with the defendant's point that the decisive factor is when the crime was committed. When assessing the necessity of processing personal data for the purposes of future identification, the time elapsed since the commission of the last criminal offense cannot be taken into account, as the commission of another criminal activity after any period of time cannot be ruled out, and thus the use of the obtained personal data. When ensuring the fulfillment of their tasks, the police cannot assume a change in behavior and a lower probability of repeating criminal activity, or rather rely on the personal development of an individual in a positive direction and prioritize the rights of perpetrators of intentional criminal activity (even if committed more than twenty years ago) over the rights of society, which respects and complies with the legal order. 10. In the fourth point of claim, the plaintiff refers to the legislation enshrining the acquisition and storage of biological samples and DNA profiles. Administrative courts have stated that the current legal regulation of the processing of personal data for the purposes of future identification is sufficient and also meets the minimum requirements for the legal basis of interference with the right to the protection of private life (cf. the judgment of the Supreme Administrative Court of 30/04/2014, sp. 4 As 168/2013). When obtaining personal data for the purposes of future identification, it is clearly not a general, unlimited processing of personal data. 11. The plaintiff points out that police records processing personal data, including DNA profiles, are non-public records with precisely defined access levels and do not serve as records of a person's criminal history. Similar to the copy from the criminal record, these data are used for the needs of law enforcement authorities. There is no danger that a third party, outside the law enforcement authorities, would find out such

sensitive information. 12. In view of the above-mentioned facts, the plaintiff considers that the contested decision is illegal, because the police processes the subject personal data of Mr. Š. S. in accordance with the applicable legislation, does not violate the obligations set by the legal order, only processes personal data that are necessary for the performance of its legal tasks, and therefore proposes that the court annul this decision for illegality. 13. In a written statement to the lawsuit, the defendant first stated that the lawsuit does not contain any specific reasons from which the plaintiff infers the illegality of the contested decision. The stated fact corresponds to the fact that the plaintiff first filed a blank lawsuit, with which he combined in particular a proposal to grant a suspensive effect. With regard to the above, the defendant only summarized that in the given case the defendant assessed the processing of Mr. Š.S.'s personal and sensitive data in the National DNA Database. After taking into account all the circumstances of the case, in particular the nature of the crimes for which the named person was legally convicted and the time that has passed since the last of them was committed, he came to the conclusion that the processing of the named person's data in the DNA database is unjustified, disproportionate and therefore illegal. In conclusion, the defendant referred to the administrative file and the contested decision. 14. The court adds that the plaintiff, within the deadline for filing the lawsuit, supplemented it with a filing dated 11/10/2016, as stated in points 2 to 12 of this judgment. The addition of objections was sent to the defendant for comments. The defendant did not comment on this submission. No. 3A 182/2016 Conformity with the original is confirmed by V. B. 4 15. In a note dated 19 October 2018, the defendant proposed the suspension of the proceedings on the grounds that the Constitutional Court under no. stamp Pl. ÚS 7/18, the proposal of the Municipal Court in Prague to repeal part of the provisions of Section 65, Paragraph 1 of the Police Act in the words "and to take biological samples enabling the acquisition of information on genetic makeup" and further to repeal Section 65, Paragraph 5 of the Police Act is being discussed. However, the Municipal Court in Prague did not find in this matter that the outcome of the proceedings before the Constitutional Court would have a fundamental influence on the decision on the lawsuit filed pursuant to § 48 paragraph 3 letter d) s. ř. s., for the reasons that will be stated in the final part of this judgment, therefore assessed and decided the matter on its merits. 16. At the meeting held in the matter on 23 November 2018, the plaintiff's representative insisted on the filed lawsuit, including the reasons set forth in it, the defendant's representative proposed the dismissal of the lawsuit, pointing to the justification of the contested decision. 17. The Municipal Court in Prague reviewed the contested decision in the scope of the claims by which it is bound (Section 75, paragraph 2, first sentence, s. ř. s.), based on the factual and legal situation that existed at the time of the decision administrative body (§ 75 paragraph 1 s. ř. s.). 18. The

Municipal Court in Prague considered the matter as follows: 19. According to § 65 paragraph 1 letter a) of the Police Act, when performing their tasks for the purpose of future identification of a person accused of committing an intentional crime or a person who has been informed of the suspicion of committing such a crime, the police may take dactyloscopic fingerprints, detect physical signs, perform body measurements, take images , audio and similar recordings and take biological samples enabling the acquisition of information on genetic equipment. 20. Pursuant to Section 65, Paragraph 5 of the Police Act, the Police shall dispose of personal data obtained pursuant to Paragraph 1 as soon as their processing is not necessary for the purposes of preventing, searching for or detecting criminal activity or prosecuting criminal offenses or ensuring the security of the Czech Republic, public order or internal security. 21. Pursuant to Section 79(1) of the Police Act, the Police may process personal data, including sensitive data, without the consent of the person to whom the data relates (hereinafter referred to as the "data subject"), if this is necessary for the performance of its tasks. 22. According to § 9 letter i) ZOÚ Sensitive data can only be processed if it is processed in accordance with special laws in the prevention, search, detection of criminal activity, prosecution of crimes and searches for persons. 23. Pursuant to § 45 paragraph 1 letter e) ZOÚ, a legal entity or a natural person running a business, as an administrator or processor, commits an offense by processing personal data without the consent of the data subject outside of the cases specified in the law (Section 5 paragraph 2 and Section 9). 24. The court jointly dealt with the objections in the first and in the second claim, as they are intertwined and closely related. The plaintiff does not agree with the defendant's interpretation of the concept of necessity, pointing out the need to take into account the specific activity of the police. The plaintiff also reminds that he took the biological sample and determined the DNA profile in accordance with the law. 25. The court first of all agrees with the plaintiff that when assessing the necessity of further processing of personal data, it is necessary to proceed predictably in order to ensure the public's certainty in the procedure of the police when deciding on the processing of personal data and to ensure objectivity. At the same time, however, it should be noted that the above does not mean that police authorities should proceed completely rigidly. Undoubtedly, it is desirable for administrative authorities to act similarly in similar cases, but this principle cannot be interpreted in a way that completely ignores the necessity of a specific assessment of the specific circumstances of each individual case. Even the plaintiff himself states in the next part of the supplement to the lawsuit that when assessing the necessity of further processing of personal data, it is necessary to take into account all related circumstances, such as the age of the offender, the circumstances of the commission of the crime, etc. In order to assess whether further storage of personal data is necessary for the purposes future

identification of perpetrators of criminal offenses must therefore proceed predictably, but with a rigorous assessment of all relevant circumstances of each individual case. No. 3A 182/2016 The agreement with the original is confirmed by V. B. 5 26. Following the above, one can identify with the plaintiff that the question of the necessity of further processing of personal data is closely related to the nature of the committed crime, the profile of the perpetrator and also the time that has passed since the last final conviction for a specific crime. 27. The plaintiff draws attention to the fact that, from a criminological point of view, the processing of genetic material is justified in the case of a repeat offender of intentional criminal activity and is justified by the previous intentional illegal behavior of this person. 28. The court states that in the case of a repeat offender of intentional criminal activity, it is necessary to deal with each individual intentional criminal act for which the offender was legally convicted. 29. The court requested a copy of Mr. Š.S.'s criminal record, which shows that the named person was convicted a total of seven times, of which the first six convictions occurred between 1982 and 1986 for less serious crimes. These convictions were expunged for the named person on December 3, 2002. As already stated on page 4 of the contested decision, "At the age of eighteen, the named person used another person's vehicle without authorization and further committed the crime of drunkenness, at the age of nineteen he did not fulfill his tax obligation and forged or altered a public document. More than thirty years have passed since these crimes were committed. " 30. The last seventh conviction is from 1994 for a criminal offense with which he committed not a small amount of damage, i.e. damage in the amount of at least six times and at most nineteen times the minimum wage according to Government Regulation No. 53/1992 Coll., according to § 2 paragraph 1 letter b), in which the minimum monthly wage was set at CZK 2,200, for which he was given a suspended prison sentence, for which he pleaded guilty in 1996. 31. According to § 69 paragraph 1 letter b) of the Criminal Code from 1961, the court shall erase the conviction if the convicted person has led an orderly life continuously for a period of at least five years after the execution or remission of the sentence, or after the statute of limitations has expired, in the case of a sentence of imprisonment exceeding one year. Pursuant to letter a) of this provision, the court shall erase the conviction if the convicted person has led an orderly life continuously for a period of at least ten years after the execution or remission of the sentence, or after the statute of limitations has expired, in the case of a sentence of imprisonment exceeding five years. 32. As already mentioned above, in 2002, the named person's conviction was expunged, after the last conviction, the named person proved himself, led an orderly life and was not legally convicted of any other criminal offense, whether intentional or negligent. The above coincides with the fact that Mr. Š. S. submitted a clean extract from the criminal record of natural persons, without a record, for the proposal for

the destruction of genetic material dated 4/27/2015, i.e. approx. 13 years. 33. In the cases mentioned above, these are criminal offenses for which the named person was not sentenced to a higher prison sentence, as he was twice sentenced to a prison sentence that did not exceed 10 months, which was subsequently canceled by the District Court in Litoměřice, i.e. since a long time has already passed (approx. 10 years to the date of collection of the genetic material obtained on 24/09/2012 as part of the criminal proceedings in the case of false accusation, while on 11/12/2013 Mr. Š. S. was acquitted in the criminal case in question). The court therefore came to the first partial conclusion that in the given case he is no longer a repeat offender and from the point of view of the nature of the crimes committed and the time that has passed since the expungement of the conviction, with regard to the previous intentional illegal actions of his person, further storage of personal data is not necessary for the performance of tasks POLICE. 34. The court also dealt with the seriousness of the crimes committed. In the contested decision, the chairwoman of the ÚOOÚ points to the plaintiff's argument that the main starting point of the first-instance body is Council of Europe Recommendation No. (92) 1 of the Committee of Ministers to member states on the use of deoxyribonucleic acid (DNA) analysis within the criminal justice system (hereinafter referred to as "Recommendation No. R (92)"), while the party to the proceedings states that it is legally non-binding and with regard to technological development, its value is gradually decreasing. 35. Although it can be admitted that the aforementioned recommendation No. R (92) of 10/02/1992 is not up-to-date and is not legally binding, it is appropriate to be inspired by its text in the application of Czech law. The idea, no. 3A 182/2016 The agreement with the original is confirmed by V. B. 6 that the processing of DNA profiles would even now be possible only for persons committing serious criminal activity against the life, health or safety of persons cannot be identified, however the very seriousness of previously committed criminal acts could affect the necessity of keeping genetic information about the offender. However, even the seriousness of the criminal activity must be assessed within the time limits necessary to erase the conviction. 36. None of the crimes for which the perpetrator was convicted were crimes, but only misdemeanors under the current criminal law. The danger of such acts could not be serious enough to justify breaking the institution of erasure of convictions and, as a result, further keeping records of the personal data in question. It is not possible to agree with the plaintiff that the infliction of no small amount of damage is reflected so much in the seriousness of the crime that even after more than twenty years since the conviction, this indication would justify the necessity of keeping this personal data. In this sense, the court agrees with the defendant that it cannot be limited to assessing the subjective side of the crime, i.e. whether the act was committed intentionally or negligently, but it is also necessary to take into account social

harm and other factors affecting the seriousness of the illegal act. 37. The stated opinion coincides with the opinion of the Municipal Court in Prague in the judgment of 13/04/2016, No. 3 A 86/2013-99, where the court stated that "the same applies in terms of the principle of proportionality to J.P., who has committed the crime of obstructing the execution of an official decision, which by its nature is generally not a criminal activity serious enough in its intensity to make it necessary to keep a DNA profile. This follows, for example, from a comparison with violent or drug-related criminal activity, and on the other hand, in the case of this less serious crime, it was not a recidivism, at least a general one. Regarding recidivism, the court reminds us again that in the case of Mr. Š. S., due to the long time that has passed since the conviction was expunged, he cannot be a repeat offender in the sense of the current criminal code. 38. Under the above-mentioned circumstances, i.e. taking into account the above-mentioned conclusion that the case under consideration is not a repeat offender, it cannot even be claimed that it is statistically proven that there is an escalation of criminal activity, when the offender improves and gradually transitions to a criminal behavior in which he does not hesitate to use violence, be the reason for the continued record keeping of personal data of Mr. Š. S. Interference with the basic human right to protection against unauthorized collection, publication or other misuse of personal data, resulting from Article 10, paragraph 3 of the Charter fundamental rights and freedoms cannot be justified only by statistical data. 39. Regarding the plaintiff's authorization to take a biological sample and establish a DNA profile, the court states that the said authorization of the plaintiff is not disputed by the defendant in any way. Identification operations were carried out on 24 September 2012 in accordance with § 65 paragraph 1 letter a) of the Police Act. At that time, Mr. Š. S. was a person accused of committing an intentional criminal activity in connection with the criminal proceedings conducted under ID No. KRPU-32046/TČ-2011-040971 in the matter of the crime of false accusation pursuant to § 345 paragraph 2 and paragraph 3 letters c), e) of the new TZ. In the given case, however, the subject of judicial review is the decision to impose a fine for further retention of personal data, not their removal, therefore the court found this objection irrelevant. 40. In the third claim, the plaintiff objects that "it is also not decisive when the crime was committed. When assessing the necessity of processing personal data for the purposes of future identification, the time elapsed since the commission of the last criminal offense cannot be taken into account, as the commission of another criminal activity after any time and thus the use of the obtained personal data cannot be excluded. 41. The court could not accept this objection either. The current criminal code and the criminal law preceding it contain the institution of erasure of conviction or limitation of criminal liability, which enable the reintegration of persons who have proven their behavior into normal social life. Lifetime or

the time-limited keeping of records of biological samples and DNA profiles of perpetrators of intentional criminal activity makes this reintegration difficult in the sense that, even if this record is not public, a person who has been leading an orderly life for many years and is aware of the storage of genetic information about his person, can feel "tainted" by the "permanent" management in this record, without her actions, i.e. ID No. 3A 182/2016 Conformity with the original is confirmed by V.B. 7 subsequently leading an orderly life, able to influence the preservation of genetic information about her person in any way. In this context, the court points to the fact that the copy of the criminal record of natural persons is also non-public and the data from it is not deleted. However, these data are only used to record the criminal activity of the population, or to assess the person of the offender and may play a role in determining the type of punishment and do not constitute a significant interference with the right to protection against unauthorized collection, publication or other misuse of personal data. 42. In some member states of the European Union, the maximum retention period of DNA profiles is enshrined in law of 40 years, and moreover only for persons convicted of particularly serious crimes, such as terrorism, crimes against humanity, etc., as follows from the decision of the European Court of Human Rights in the case of Aycaguer v. France, complaint No. 8806/12 of 22 June 2017 (point 42). The Czech legal system does not stipulate the maximum length of storage of this data, however, there is a corrective to the necessity listed in Section 65, Paragraph 5 of the Police Act. 43. Therefore, in view of the above and also taking into account the fact that after the conviction has been expunged, since 2002 the person of the offender has been looked at as if he had not been convicted, the court came to another partial conclusion that it cannot be considered necessary to keep records of the personal data of Mr. Š. S. 44. In the fourth claim, the plaintiff disputes the defendant's opinion that the legal regulation enshrining the acquisition and storage of biological samples and DNA profiles is insufficient. Here, the Municipal Court in Prague agrees with the opinion of the plaintiff, namely that the administrative courts have repeatedly dealt with the level of processing of personal data referred to in Section 65(1) of the Police Act and have found that the regulation is sufficient. The stated opinion follows, for example, from the judgment of the Supreme Administrative Court of 24 October 2017, No. 8 As 134/2016-44: "The Supreme Administrative Court, in line with what it has already stated in its jurisprudence, summarizes that the legal regulation of the Police Act regarding the processing of sensitive data for the purposes of the case being dealt with now meets the minimum requirements for the legal basis of the interference with the right to the protection of private life, as formulated in their jurisprudence by the European Court of Human Rights and the Constitutional Court. However, this is not an objection that could affect the legality of the decision or the entire procedure and is therefore not

relevant for assessing the legality of the fine. 45. For the sake of completeness, the court states that in the case in which a DNA profile was created for Mr. Š. S. (suspicion of committing the crime of false accusation according to § 345 paragraphs 2, 3 letters c) and e) of the new Criminal Code), the perpetrator was acquitted charges, so he is looked upon as innocent. In accordance with the preservation of the principle of presumption of innocence, the collection of the biological sample no longer had a legal reason, and it should no longer be stored in the National DNA Database. It can also be debated here whether it was necessary and expedient to take a biological sample of the offender and establish a DNA profile in connection with the conduct of this criminal proceeding. Although according to the law, the Police is not obliged to take biological samples only in connection with crimes where the DNA profile could be of some use in detecting and preventing the criminal activity of the perpetrator, the question arises here as to what purposes the DNA profile of the perpetrator of the crime of false accusation could serve , during which a minimal amount of biological traces is created. 46. Finally, the court refers to the judgment of the Supreme Administrative Court of 30 April 2014, No. 4 As 168/2013-40, in which "The Supreme Administrative Court is aware that the collection, storage and processing of a DNA profile constitutes interference with the rights of the person (cf. judgments of the European Court of Human Rights in the case of S. and Marper v. United Kingdom Nos. 30562/04 and 30566/04) to which this DNA profile relates, on the other hand, emphasizes that this interference is justified previous intentional and illegal actions of this person, who must be aware that criminal proceedings may be conducted against him and a penalty may be imposed on him if the relevant conditions are met, and in connection with this he will be kept in the Criminal Register and in the relevant registers kept by the Police, i.e. .that he must bear the negative consequences associated with the commission of an illegal act. At the same time, the Supreme Administrative Court points out that the National Database of DNA Profiles is not publicly accessible, because there is no danger that a third party, outside the law enforcement authorities, would use it to find out sensitive information about the data subject, or about perpetrators of crimes, i.e. further defamation of such a person is not possible based on the preservation of his profile in the National Database. Information No. 3A 182/2016 Conformity with the original is confirmed by V. B. 8 stated there will be used only in case of verification of conformity with traces found at the scene of the commission of another crime. 47. Despite this opinion, however, the Municipal Court in Prague did not find the retention of Mr. Š.S.'s personal data necessary for the performance of the police's tasks in detecting and preventing criminal activity, as the named criminal had already proven himself and the conviction was expunged, since the conviction for the last more than 16 years have passed since the crime was committed, and for the crime for which biological samples were taken from him and

a DNA profile was determined, he was legally acquitted. 48. In conclusion, regarding the motion to suspend the proceedings, the court states that due to the fact that the motion to revoke part of the provisions of Section 65 of the Police Act only concerns the authorization to take biological samples, not their storage, it concluded that it does not have proceedings conducted under sp. stamp Pl. ÚS 7/18 influence on decision-making on the contested decision. Here, too, reference can be made to the above-mentioned NSS judgment No. j. 8 As 134/2016-44: "The Supreme Administrative Court also did not find a reason to submit a proposal to repeal Section 65, Paragraph 1 of the Police Act in the words "and take biological samples enabling the acquisition information on genetic equipment" to the Constitutional Court. In the case currently under consideration, the subject of assessment is not the taking of biological samples pursuant to Section 65, Paragraph 1 of the Police Act, but their subsequent processing pursuant to Section 79, Paragraph 1 of the same Act. According to the Supreme Administrative Court, therefore, the proposal regarding the cancellation of part of the provision regulating the collection of biological samples is irrelevant to the subject of the proceedings. "The question of the constitutionality of the provision, which obliges the Police to destroy the information in question, if it is not necessary for the execution of the Police's actions, also arises here. As it follows from the proposal to repeal part of the law, in which the above-mentioned proceedings are being conducted at the Constitutional Court, the provisions of § 65 paragraph 5 of the Police Act lack the maximum time for which the data in the register can be kept: "It can therefore be summarized that the legal the regulation of the collection and storage of DNA samples of accused of crimes corresponded to the constitutional guarantees of fundamental rights, it would have to meet the following criteria: (i) specifically and in detail establish that DNA samples can only be taken from persons who are accused or convicted of serious crimes, the nature of which this interference with the right to privacy is justified by, (ii) specifying specifically and in detail how long the collected samples can be stored, again depending on the seriousness of the crime, (iii) prohibiting the storage of samples of accused persons who were not later convicted. (Proposal of the Municipal Court in Prague dated 16 January 2018, no. 10 A 150/2015-116). Even with regard to the above, however, the court did not find a reason to suspend the proceedings, because the reason for which it would be necessary to store the subject personal data of Mr. Š. S., disappeared, among other things, at the moment of the final acquittal of the indictment by the judgment of the Regional Court in Ústí nad Labem dated 11.12. 2013, No. 4 To 155/2013-150. 49. With regard to the new legislation on administrative punishment, effective from 1 July 2017, the court compared the sanctioning legislation effective before that date (i.e. also at the time of the commission of the administrative offense and also at the time of its final administrative punishment

by the first-instance and appellate authorities) and new sanction legislation, from the point of view of whether the new legislation is not more favorable for the plaintiff (Article 40, paragraph 6 of the Charter of Fundamental Rights and Freedoms, § 112, paragraph 1 of Act No. 250/2016 Coll.). From a comparison of the legal regulation of § 45 paragraph 3 of the ZOÚ effective before 1 July 2017 and the legal regulation of this provision amended by Article LXXXII of Act No. 183/2017 Coll. with effect from 1 July 2017, it follows that this is not the case and that nothing has changed for the plaintiff regarding the sanctioning of an administrative offense (today an offense according to the cited provision) in the sense that the administrative punishment could be more favorable for him as defined in the question the facts of the administrative offence, or offence, as well as the maximum possible amount of the imposed fine and the period when it can be imposed. 50. For the above reasons, the court came to the conclusion that the lawsuit is not well-founded, and therefore rejected it in accordance with § 78, paragraph 7 of the Criminal Procedure Code. 51. The court decided on the costs of the proceedings in accordance with § 60, paragraph 1, s. he had no success. The defendant was fully successful in the matter, but the defendant did not incur any costs in the proceedings beyond the scope of his normal activities. The court therefore decided that none of the parties has the right to compensation for the costs of this proceeding. No. 3A 182/2016 Conformity with the original is confirmed by V. B. 9 Instruction: A cassation complaint can be filed against this decision within two weeks from the date of its delivery. The cassation complaint is submitted in two copies to the Supreme Administrative Court, with its seat at Moravské náměstí 6, Brno. The Supreme Administrative Court decides on cassation appeals. The time limit for filing a cassation complaint ends with the expiration of the day which, with its designation, coincides with the day that determined the beginning of the time limit (the day of delivery of the decision). If the last day of the deadline falls on a Saturday, Sunday or holiday, the last day of the deadline is the closest following business day. Missing the deadline for filing a cassation complaint cannot be excused. A cassation complaint can only be filed for the reasons listed in § 103, paragraph 1, s. s. s., and in addition to the general requirements of the filing, it must contain an indication of the decision against which it is directed, to what extent and for what reasons the complainant is challenging it, and an indication of when the decision was delivered to him. In cassation appeal proceedings, the complainant must be represented by a lawyer; this does not apply if the complainant, his employee or a member acting for him or representing him has a university degree in law which is required by special laws for the practice of law. The court fee for a cassation appeal is collected by the Supreme Administrative Court. The variable symbol for paying the court fee to the account of the Supreme Administrative Court can be obtained on its website: www.nssoud.cz. Prague, November 23, 2018

JUDr. Ludmila Sandnerová, former President of the Senate