OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00BOH9O *

Ref. UOOU-00148 / 13-96

DECISION

Chairwoman of the Office for Personal Data Protection as an appellate body competent pursuant to § 2, § 29 and § 32 of Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts, and according to § 10 and § 152 of Act No. 500/2004 Coll., Administrative Procedure Code, decided pursuant to § 152 para. a) and § 90 paragraph 1 (a) b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. UOOU-00148 / 13-79 of 18 April 2013 on the basis of an appeal filed by a party to the proceedings, the Czech Republic - the Ministry interior, with its registered office at Nad Štolou 936/3, 170 34 Prague, ID number: 00007064, cancels and the case returns administrative authority of the first instance for a new hearing.

Justification

Administrative proceedings for suspicion of committing an administrative offense pursuant to § 45 para. e) of the Act No. 101/2000 Coll. was initiated by a notification from the Office for Personal Data Protection (hereinafter referred to as "Office"), which was delivered to the party to the proceedings, the Czech Republic - the Ministry of the Interior, on February 7, 2013. The basis for initiating the proceedings was the written material collected in the framework inspections performed at the party to the proceedings by the inspector of the Office for Personal Data Protection RNDr. Kamila Bendová, CSc., From 7 June 2011 to 20 June 2012, including the inspection protocol sp. INSP1-4652 / 11-61 / BYT of 4 July 2012 and the decision of the chairman Of the Office on the Opposition of the Audit No. INSP1-4652 / 11-70 of 7 November 2012. the documents are part of the file material of this administrative proceeding.

It is apparent from the file that the party to the proceedings kept in violation of the law

No. 101/2000 Coll. in the National DNA Database (hereinafter "ND DNA") DNA profiles in 14 identified cases, ie profile XXXXXX, between at least 27 December 2010 and 19 December 2012, XXXXXX from at least 24 January 2011 to 19 December 2012, at least 8 March 2011 to December 19, 2012, XXXXXX at least from October 7, 2011 to the start of criminal prosecution ended by a judgment of the District Court in České Budějovice file no. No. 3 T 170/2011 of 22 February 2012, and XXXXXX, XXXXXX, XXXXXX, XXXXXX, XXXXXX, XXXXXX, XXXXXX, XXXXXX from at least 7 October 2011 to 19 December 2012, and DNA profile XXXXXX a XXXXXX from at least 7 October 2011 to 23 July 2012.

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On 11 February 2011, the Office received a complaint from the above-mentioned legal representative XXXXXX, from which it follows that from the Police Presidium of the Czech Republic (hereinafter referred to as the Presidium ") the request for disposal of the biological sample (buccal swab) was not granted his client, although he was acquitted of a criminal offense under Section 241 of the Act No. 40/2009 Coll., Criminal Code.

On 28 July 2011, the Office received a complaint from the civic association Iuridicum Remedium, o.s. concerning the legitimacy of personal data processing, resp. biological sample (buccal swab) XXXXXX (prosecuted for the crime of fraud pursuant to Section 250 (1) and (3) of the Act No. 140/1961 Coll., but the resolution on the initiation of criminal prosecution was annulled as unjustified) in connection with the use of DNA analysis by the Police of the Czech Republic (hereinafter referred to as the "Police"), including an initiative to assess the legality of the existence of ND DNA by the Office from the point of view of Act No. 101/2000 Coll.

It is also apparent from the file that, in the context of the oral hearing and the local inquiry, On September 21, 2011, the inspector requested 20 identifiers from the Police Presidium for verification purposes the legality of inserting profiles into ND DNA and further finding out which persons these profiles concern. Next you are the inspector requested the file relating to the abovementioned XXXXXX and XXXXXX. The list of identifiers, including the identification of the persons to whom the identifier relates, was

Sent to the Office on 7 October 2011 together with the file dossier relating to XXXXXX and XXXXXX.

Subsequently, the inspector selected 11 of these 20 persons (selected according to the subject identifiers)

cases (XXXXXX) in which the Police Presidium requested the necessary file measures

material to assess the legitimacy of the processing of personal data.

Furthermore, on 14 November 2011, the Office received a complaint from the lawyer XXXXXX [who was in

the execution of a custodial sentence for a criminal offense committed in the form of complicity, and

participation pursuant to § 250 para. 1 and para. 4, taking into account § 9 para. 2 and § 10 para. C)

Act No. 141/1961 Coll., Criminal Procedure Code, performed buccal smear and DNA profile inserted into the ND DNA] in

cases of non-compliance with the repeated request for liquidation of his client's personal data

Police presidium.

Furthermore, on 6 March 2012, the Office received a request from a lawyer XXXXXX to investigate the procedure

police in collecting and storing his client's personal data, given that

the police performed identification procedures, including the collection of his client's biological material

in connection with the investigation of the offense of non - payment of taxes, social security contributions and

similar mandatory payments according to § 241 paragraph 1 of Act No. 40/2009 Coll. Removal of dactyloscopic

fingerprints, biological samples, taking photographs of his client by the police with regard to the nature

the lawyer described the lawyer as exceeding the scope of the legal powers of the police and for

disproportionate interference, ie in breach of the principle of proportionality, with the right to privacy

client.

Reasons for taking biological material (buccal swab) and including DNA profile in

ND DNA by the police and its storage, as is evident from the file, were individual

data subjects as follows:

I. XXXXXX has been prosecuted on suspicion of having committed the offense of non-payment of tax,

social security contributions, health insurance and state policy contributions

employment according to § 147 paragraph 1 of Act No. 140/1961 Coll. (Ref. ORI-1487 / TČ-2008-93), where

a biological sample was taken from him. The judgment of file no. No. 3 T 18/2010

The District Court for Prague 1 of 7 October 2010 was acquitted in full

according to § 226 letter e) of Act No. 141/1961 Coll.

On 27 December 2010, the Police Presidium issued Communication No. PPR-25576-1 / CZ-2010-

99KU, in which he informs the legal representative XXXXXX that his client is registered

performed identification operations, while personal data are processed in the information

system as of November 25, 2010. The Police Presidium stated that the filed applications for liquidation

of biological sample XXXXXX of 2 November 2011 does not comply as the preservation of its

personal data in the information system with regard to its purpose (ie information processing

on performed identification operations, which are used in prevention and detection

crime, identifying perpetrators of criminal offenses and conducting criminal investigations; and

offenses; in connection with the performance of police tasks in the identification of persons and search for persons)

found it still necessary. Furthermore, the Police Presidium argued that the defendant used it

§ 242 of Act No. 40/2009 Coll. (special provisions on effective remorse), ie he has fulfilled his obligation

before the court of first instance began pronouncing the verdict, which doesn't change that

committed the offense.

II. XXXXXX was convicted by the judgment of the Regional Court in Hradec Králové No. 9 T 127 / 2000-1605

for a criminal offense of fraud committed in the form of complicity and participation pursuant to Section 250 (1) a

paragraph 4, taking into account § 9 paragraph 2 and § 10 paragraph 1 letter c) of Act No. 141/1961 Coll., whereby

a biological sample was taken from him on 20 June 2007 at the time of serving his sentence

and the DNA profile was inserted into the ND DNA.

In the matter of processing the DNA profile XXXXXX in ND DNA, it was with the Czech Republic - the Ministry

of the Interior as a party to the proceedings, proceedings on an administrative tort pursuant to § 45 para. E)

Act No. 101/2000 Coll. by notification of the Office, which was delivered to the party on 8.

March 2011. By the Office No. SPR-0596 / 11-8 of 10 May 2011, it was found by the Office

breach of the obligation stipulated in § 9 of Act No. 101/2000 Coll., ie the party to the proceedings processed

sensitive data (DNA profiles) without the explicit consent of the data subject and without

from the provisions of § 9 letter b) to i) of Act No. 101/2000 Coll., whereby the participant was for the given conduct

sanctioned by imposing a fine of CZK 35,000.

From the Communication of the Police Presidium No. PPR-5499-13 / ČJ-2011-0099RU of 24 October 2011

it follows that the buccal smear XXXXXX is kept in the information system as of 19 October 2011 under no.

KUP-6038 / CB-2007, with requests for disposal of DNA profile and biological sample

XXXXXX of 7 September 2011 was not complied with as his personal data was found

having regard to the purpose of the information system still needed for the performance of the police and

purposes of future identification in accordance with § 65 paragraph 1 of Act No. 273/2008 Coll.

III. XXXXXX has been prosecuted on suspicion of committing a public offense

factors according to § 155 par. 1 and § 156 par. 1 of Act 140/1961 Coll. (Ref. MRPM-5986 / TČ-2007),

in this connection he underwent a buccal smear (on 27 November 2007). Above

the court legally qualified the said act as an attempted criminal offense of injury to health pursuant to Section 8

paragraph 1 of Act No. 140/1961 Coll. in conjunction with Section 221 (1) of the same Act, with the defendant

he was convicted of him by a judgment of the Pilsen - City District Court of 27 February

2008, sp. No. 32 T 5/2008.

IV. XXXXXX was registered as a defendant and subsequently convicted by a criminal order

Of the District Court in Mladá Boleslav No. 3 T 167 / 2007-24 of 28 June 2007 for a criminal offense

obstruction of the execution of an official decision pursuant to § 171 para. c) of Act No. 140/1961 Coll.,

whereas in connection with this criminal proceeding (Ref. ORMB / DI-TČ-KY-2007) he was

June 2007, a buccal smear was performed and a police application was made on the same day

inserting its DNA profile into ND DNA.

V. XXXXXX was convicted by a judgment of the District Court in Mladá Boleslav No. 3 T

2 / 2009-63 of 20 February 2009 for the criminal offense of sexual abuse pursuant to Section 242 para. 1

Act No. 140/1961 Coll., while in connection with this criminal proceedings (No. ORMB-2265 / TČ-

2008) a biological sample was taken from him.

Furthermore, XXXXXX was convicted as a juvenile by a judgment of the District Court in Mladá Boleslav No. 4 Tm 22 / 2006-85 of 6 December 2006 for attempted guilty of theft committed burglary according to § 247 par. 1 let. b) of Act No. 140/1961 Coll., namely in criminal proceedings file no. zn. ORMB-2602/2006, in which it was filed by the Public Prosecutor of the District Public Prosecutor's Office in Mladá Boleslav indictment No. 2 ZT 254/2006.

VI. XXXXXX has been prosecuted on suspicion of committing a sexual offense abuse according to § 242 paragraph 1 of Act No. 140/1961 Coll. (Ref. ORSU-1858 / TČ-05-2007), where in this connection, a request was made by the police authority to carry out identification procedures (including buccal swab). The above-mentioned person was convicted of this crime Judgment of the District Court in Šumperk No. 3T 43 / 2008-87 of 15 May 2008.

Furthermore, XXXXXX was convicted by a judgment of the District Court in Šumperk No. 3 T 142 / 2009-68 of 27 August 2009 for the crime of theft committed by burglary pursuant to Section 247 paragraph 1 (a) b) of Act No. 140/1961 Coll., within the criminal proceedings No. KRPM-7605 / TČ-009-070917.

VII. XXXXXX was prosecuted as a juvenile for the offense of theft pursuant to § 247 para. a) a písm. b) of Act No. 140/1961 Coll. (Ref. ORCB-5740 / TČ-2008-71) he was prosecuted on 26 January 2009. Prosecution was conditionally stopped by a resolution of the District Court in České Budějovice No. 2 Tm 16 / 2009-59 of 22 May 2009 (came into force on 26 May 2009) pursuant to § 307 paragraph 1 of Act No. 141/1961 Coll.

Furthermore, XXXXXX was convicted as a juvenile by a judgment of the Regional Court in Budějovice No. 1 Tm 6 / 2009-273 of 12 March 2010 for an attempt to commit counterfeiting and alteration of money pursuant to Section 233, Paragraph 2, Second subparagraph of Act No. 40/2009 Coll., in criminal matters Procedure No. KRPC-5395 / TČ-2009.

XXXXXX was convicted in another criminal proceeding (Ref. No. KRPC-7543 / TČ-2011)

Judgment of the District Court in České Budějovice No. 3T 170 / 2011-90 of 22 February

2012 for the crime of illicit production and other treatment of narcotics and psychotropic

substances and poisons according to § 283 par. 1 and par. 2 let. b) of Act No. 40/2009 Coll.

VIII. XXXXXX was convicted by a criminal order of the District Court for Prague 2, file no. No. 7 T 17/2008

of 29 January 2008 for the criminal offense of danger under the influence of an addictive substance pursuant to Section 201

para. 1

Act No. 140/1961 Coll., while in connection with his arrest and delivery to the execution of his sentence was

a buccal smear was performed and on March 23, 2009 a request was made by the police

performing forensic biological and genetic expertise and storing the DNA profile in ND DNA.

In another criminal proceeding (ref. ORI-5977 / Čj-2009-001180-4), the above-mentioned

convicted by the judgment of the District Court of Prague - East No. 35 T 60 / 2011-98 of 21 June

2011 for the offense of negligence of compulsory maintenance according to § 196 par. 1 and par. 3 let. b) of Act no.

40/2009 Sb.

IX. XXXXXX has been prosecuted on suspicion of having committed the offense of non-payment of tax,

social security contributions, health insurance and state policy contributions

employment according to § 147 paragraph 1 of Act No. 140/1961 Coll. (Ref. ORCH-934 / TČ-80-2007), wherein

by the Resolution of the District Public Prosecutor's Office in Cheb No. 3 ZT 274 / 2007-25 of 28 April

In 2008, the criminal prosecution was stopped pursuant to § 172 para. f) of Act No. 141/1961 Coll.

due to the termination of the criminal offense within the meaning of Section 147a of Act No. 140/1961 Coll., ie special

effective remorse provisions.

X. XXXXXX was convicted by a criminal order of the District Court for Prague 1

No. 1 T 196/2003 of 17 December 2003 for the offense of obstruction of enforcement

official decision according to § 171 par. 1 let. b) of Act No. 140/1961 Coll. in single action

concurrence with the criminal offense of forgery and alteration of a public deed pursuant to § 176 para. 1 of the same

of the Act, while in connection with the criminal proceedings in question (Ref. No. ORI-1968 / SKPV-2003) mu the buccal smear was removed on 7 October 2003 and an application was made by the police on 7 November 2003 on inserting a person's profile into ND DNA and comparing it with DNA profiles from sites not yet elucidated criminal offenses.

XI. XXXXXX has been prosecuted on suspicion of committing the crime of fraud under Section 250 paragraph 1 of Act No. 140/1961 Coll. (Ref. ORBE-2641 / TČ-71-2007), while in connection with by initiating the prosecution in question, his buccal swab was removed. Judgment of the District of the Court in Beroun No. 1 T 7 / 2008-141 of 27 October 2008 was acquitted according to § 226 letter b) of Act No. 141/1961 Coll., as the act identified in the application is not criminal act.

XII. XXXXXX has been prosecuted on suspicion of committing the crime of threat under the influence addictive substances § 201 paragraph 1 of Act No. 140/1961 Coll. (Ref. ORPA-4410 / TČ-70-2007), where In connection with the commencement of criminal proceedings, he was executed on 12 November 2007 smear. The above was convicted by a criminal order No. 4 T 205 / 2007-36 of on 14 December 2007 for the above offense.

XIII. XXXXXX has been prosecuted on suspicion of having committed the offense of non-payment of tax, social security premiums and similar mandatory payments pursuant to Section 241 (1) of the Act No. 40/2009 Coll. (Ref. ORI-12341 / TČ-2010-001192-7-CHA), whereas in connection with the a biological sample was taken from him on 11 January 2011.

The criminal proceedings in question were finally terminated by a judgment of the District Court for Prague 7 sp. No. 25 T 28/2011 of 27 October 2011, by which the above was acquitted.

From the communication of the Police Presidium (Ref. No. PPR-22947-1 / ČJ-2011-0099RU of 24 January 2011) it follows that personal data, ie buccal smear XXXXXX, are processed in the information system as of 14 December 2011. The request to destroy his personal data was not complied with with regard to the purpose of personal data processing in the information system (ie information processing about performed information actions that are used in prevention and detection

crime, identifying perpetrators of criminal offenses and conducting criminal investigations

and in connection with the performance of police tasks in the identification of persons and the search for

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persons), as the personal data in question were found to be still necessary for the performance of the tasks

police. It was further stated that the above-mentioned act committed with the so-called effective remorse

according to § 242 of Act No. 40/2009 Coll. is not a reason for the destruction of personal data.

XIV. XXXXXX submitted an explanation to the police authority pursuant to Section 158 Paragraph 5 of Act No. 141/1961 Coll.

on March 15, 2007 in the case of burglary (official record of the submitted explanation no.

ORKT-506-1 / OOKT-TČ-2007), in connection with which it was carried out with his consent

buccal smear to compare its DNA profile with DNA on the secured trail site and beyond

this was compared with the profiles in ND DNA without agreement as shown

carried out and filed under file number PZC-2523 / KT-E-2007 (expert opinion dated 17

December 2008).

It is also apparent from the case - file that XXXXXX was charged with fraud

§ 250 par. 1 and par. 3 let. b) of Act No. 140/1961 Coll., while criminal prosecution against him as

the accused was initiated on 28 January 2011, when he was served with a resolution to initiate

of Criminal Prosecution No. ORI-7561 / TČ-2010-93-JZ of 10 January 2011. Resolution on the initiation of

criminal prosecution was a resolution of the District Public Prosecutor's Office for Prague 6 No. 1 ZT

8 / 2011-19 of 28 February 2011 repealed as unjustified, leaving the police authority

was delivered on March 4, 2011. Nevertheless, it was a police authority on March 7, 2011

XXXXXX was interrogated, including the performance of identification acts, ie buccal, among other things

smear. At the time of the buccal swab, XXXXXX was no longer in the position of the accused. On

On March 7, 2011, a request was sent to the Criminalistics Institute in Prague by the police

inserting a DNA profile into ND DNA. From the request for destruction of personal data dated 10 March 2011

sent XXXXXX to the police presidium shows that he drew the attention of the police authority to the above

the above-mentioned complaint filed with the District Council for Prague 6. The request in question was

according to the communication of the Police Presidium No. PPR-9036-1 / ČJ-2011-99RU of 15 June 2011 complied with June 10, 2011.

The participant repeatedly commented on the subject of the administrative proceedings, ie especially in the statement of the Police Presidium of 8 September 2011 (Ref. No. PPR-13713-5 / ČJ-2011-0099RU) and of 7 October 2011 (Ref. No. PPR-13713-12 / CZ-2011-0099RU) and in the objections to the control protocol from on July 23, 2012. According to

In his opinion, the police take DNA samples and subsequently

it is processed in accordance with the valid legal regulation, ie Act No. 273/2008 Coll., on the Czech Police Republic, and Act No. 101/2000 Coll., on the basis of authorization in a special act

and to the extent and under the conditions set forth in this special law. For the legal basis for

exercising the authority of the police to collect and store sensitive data and operate ND DNA

considers § 60, § 65 and § 79 of Act No. 273/2008 Coll., while the terms “necessity” and “future

considers "to be definite and easy to interpret if they are to be interpreted

based on Act No. 273/2008 Coll., its systematics and purpose, and the tasks of the police. Purpose

operation of ND DNA is stipulated in § 79 in conjunction with § 65 of Act No. 273/2008 Coll. and it is the future identification for the purpose of searching for or detecting criminal activity and prosecuting criminal offenses,

the purpose being set out in internal acts. Collection of buccal swab and its further processing for

purposes of future identification in the sense of § 65 of Act No. 273/2008 Coll. adjust according to the statement internal proceedings.

According to his statement, the police take into account the buccal smear and its further processing

the nature of the crime, as it processes DNA in ND in accordance with Act No. 273/2008 Coll.

only the DNA profiles of perpetrators of intentional crimes. Processing of DNA profiles of offenders

According to the party to the proceedings, intentional acts not only act preventively, but serve in particular

to expose the perpetrator and his conviction.

When collecting genetic material, the police also, according to their statement, take into account procedural ones

status of persons, ie biological samples are taken from persons inspected in accordance with Section 158 (3)
Act No. 141/1961 Coll., if comparative tracks are also sent from the crime scene
and the required genetic testing may provide evidence, further to the persons to whom it was communicated
suspicion of committing an intentional criminal offense (§ 179b and § 179c of Act No. 141/1961 Coll., §
65 of Act No. 273/2008 Coll.) And persons accused of committing an intentional criminal offense (§ 160
Act No. 141/1961 Coll., Section 65 of Act No. 273/2008 Coll.). Furthermore, biological material is collected
persons serving a custodial sentence for an intentional criminal offense, persons
to whom protective treatment has been imposed and to found persons who have been the subject of a search and
which do not have the capacity to perform legal acts in full pursuant to Section 63 of Act No. 273/2008
Sb., Dead persons of unknown identity and the so-called elimination persons, which are persons having
connection with the crime or persons suspected of committing it, eg injured,
the notifier (their DNA profiles are not inserted in the ND DNA), a relative of the missing or
wanted persons and persons belonging to area screening (their DNA profiles are in ND DNA
entered only with their written consent).
According to the police, it is taken into account when deciding on the disposal of biological material
the criminal history of the person whose biological material is to be discarded, others taking place at the same time
criminal proceedings and the method of terminating criminal proceedings. Procedural regulations are also taken into account,
which allow, respectively. In some cases, they do not allow guilt to be pronounced, even though there is evidence
proven and the need for further processing is quite obvious (eg cessation of criminal proceedings
for insanity), ie the nature of the decision on the merits is taken into account. Reality,
that the offender has committed an intentional criminal offense and the resulting processing of a DNA sample,
considers the party to be important information for the clarification of crime, in particular
with respect to recurrence levels heterogeneous. Checking the need for further processing of personal
data shall be carried out at the latest after three years in all cases where the information may be
with regard to time and its nature evaluated as unnecessary, which is important above all
in the case of processing so-called operational information. Personal data are stored in ND DNA,

until the appropriate means of terminating the criminal proceedings have been established, until the death of the person or no later than eighty years after their insertion.

The party further argued in relation to the legitimacy of the police processing DNA profile by the Recommendation of the Committee of Ministers of the Member States of the Council of Europe No. R (92) 1 (hereinafter referred to as "Recommendation"), namely Article 8 ("The results of DNA analysis and the information so derived may, however, be retained where the individual concerned has been convicted of serious offenses against the life, integrity, or security of persons. "), from which it concludes that this does not apply only for criminal offenses (crime or misdemeanor) within the meaning of Act No. 40/2009 Coll., but also for any serious breach of criminal or administrative law (crime, misdemeanor, misdemeanor); the police meet this requirement of the Recommendation, as it only processes DNA profiles in the case of committing intentional criminal offenses. He further refers to Article 2 of the Recommendation, according to which The Recommendation applies to the collection of samples and the use of DNA analysis for purposes identification of the suspect or any other individual in the investigation and prosecution and Article 5 of the Recommendation that the use of DNA analysis should be permitted in in all relevant cases, regardless of the seriousness of the offenses.

According to the participant in the procedure, the purpose of the ND DNA operation is to identify and verify the identity of persons through the DNA profile of persons in connection with the performance of police tasks in the area of detection crime and criminal prosecution and in the search for persons.

It also follows from the objections lodged against the inspection report of 23 July 2012 that that the party to the proceedings is not considered to be the administrator of ND DNA in the sense of § 4 letter j) of Act No. 101/2000 Sb., But considers it the police, because it defined the purpose and means of personal data processing.

The party to the proceedings further stated that it considers the processing of personal data in the ND DNA of the above

entities for processing in accordance with Section 65, Paragraph 1 of Act No. 273/2008 Coll., with the exception of XXXXXX, XXXXXX and XXXXXX. On case XXXXXX, he stated that since the decision prosecutor, the resolution to prosecute his person was annulled, it was not in that necessary in accordance with the provisions of Section 65, Paragraph 5 of Act No. 273/2008 Coll. lead his personal data for the purpose of preventing, searching for or detecting criminal offenses. For these reasons his personal data as of June 10, 2011 were from the information system on identification disposed of. In case XXXXXX, he stated that all his personal data included fingerprints and buccal swabs were disposed of by the police in accordance with the wording of Section 65 (5) of the Act No. 273/2008 Coll., as their further processing is not necessary for the purposes of prevention, search for or detection of criminal offenses or the prosecution or prosecution of criminal offenses security of the Czech Republic, public order or internal security. In this case there was an error by the police authority, which had immediately after receiving the acquittal meritorious decision to inform the information system administrator and, after appropriate lustration, the nominee propose the destruction of his personal data. The undesirable condition was corrected after more than three years. Regarding case XXXXXX, he stated that since he was in that case only as a witness, his DNA profile was inserted into the ND DNA incorrectly. For this reason measures of an administrative nature have been taken to address this misconduct did not occur. The undesirable situation was rectified immediately after its discovery and personal data XXXXXX (including DNA profile) was discarded. Disposal of personal data XXXXXX is also confirmed by the police in the report on the measures taken of 19 December 2012. Of this The report also shows that the police have checked the necessity of processing personal data by the control designated persons for DNA-based identification purposes and concluded that personal the data of other persons will be further processed by the police, as this is necessary for their performance tasks.

The administrative authority of the first instance in the case found that the information contained in the DNA profile, which is the subject of further processing in ND DNA, they are sensitive data in the sense of § 4 letter b)

Act No. 101/2000 Coll., as the genetic data of the subject are considered to be sensitive data
data. Classification, storage, retrieval, resp. The use of DNA profiles in ND DNA is required by
administrative authority of the first instance to consider as the processing of personal data in the sense of § 4 letter.
e) of Act No. 101/2000 Coll. With regard to its purpose, this processing is subject to Section 3, Paragraph 6 of the Act
No. 101/2000 Coll., and therefore certain obligations under Act No. 101/2000 Coll. do not apply.
However, according to the first-instance administrative authority, these exceptions do not include the administrator's obligation
process personal data only on the basis of the corresponding legal title, ie in accordance with §
5 (2), resp. in the case of sensitive data in accordance with Section 9 of Act No. 101/2000 Coll. Further administrative
The first - instance authority stated that the controller of personal data processed in ND DNA in
within the meaning of § 4 letter j) of Act No. 101/2000 Coll. is the police, but due to the absence of its legal
subjectivity cannot be the subject of an administrative offense, ie a responsible person within the meaning of
§ 45 par. 1 let. e) of Act No. 101/2000 Coll. Therefore, if the administrative offense was committed by an act
police, according to the administrative body of the first instance, should be considered an entity of administrative offense
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The Czech Republic, represented by the Ministry of the Interior, acting on behalf of the Czech Republic
on the basis of Act No. 219/2000 Coll., on the property of the Czech Republic and its appearance in legal
relations (see also the opinion of the Plenum of the Supreme Court of the Czech Republic No. Plsn 2/96), ie
tort liability. The factual and operational manager of ND DNA is the Criminalistics Institute
Prague.
Furthermore, the administrative body of the first instance stated that according to § 9 of Act No. 101/2000 Coll. can
administrator
process sensitive data only if the data subject has explicitly informed him or her
consent, or upon fulfillment of some of the exhaustively defined exceptions according to § 9 letter b) to i)
Act No. 101/2000 Coll. According to § 9 letter i) of Act No. 101/2000 Coll. sensitive data can be processed,
in the case of processing according to special laws in prevention, search, detection
crime, criminal prosecution and search. The law therefore allows here

process sensitive data without the consent of the data subject for the specified purpose, at the same time
the wording "this is processing under special laws" means that such processing
it must be carried out on the basis of an authorization provided for in a special law and to the extent and beyond
conditions laid down in this special law. In this case, according to the administrative body
first degree by this special act Act No. 273/2008 Coll., especially § 2 defining
tasks of the police, § 65 regulating the authority of the police, in the performance of its tasks for future purposes
identification of a specified group of persons, inter alia for the collection of biological samples enabling
obtaining information on genetic equipment, § 79 regulating the authorization of the police for processing
sensitive data without the consent of the person to whom they relate, and § 85 and § 86 governing rights and obligations
police in the processing of personal data.
The above provisions of Act No. 273/2008 Coll. according to the administrative authority of the first instance
the possibility to process personal data of data subjects if this is necessary for the performance of police tasks,
ie to keep ND DNA (on the basis of a general authorization to establish records containing personal
data according to § 86 of Act No. 273/2008 Coll.), although its origin and rules of its management are not
however, the processing of sensitive data (DNA profiles) is
limited to § 9 letter i) of Act No. 101/2000 Coll., from which it follows that it is necessary to specifically document
circumstances indicating the relevance of the processing of the personal data in question, in terms of purpose
crime prevention, detection, detection, prosecution and search
persons.
The first-instance administrative body further stated that Act No. 273/2008 Coll. as the only piece of legislation
regulates special conditions for processing sensitive data by police in ND DNA (unlike
collection of information, including biological samples, which is also regulated by law
No. 141/1961 Coll.), but does not contain an explicit authorization for the police to collect
personal data for the purpose of their storage in ND DNA. Permission to collect personal
data or sensitive data for the purpose of their storage in ND DNA is therefore according to the administrative authority
first degree should be derived from the general provisions of Act No. 273/2008 Coll., which regulate

processing of personal data by the police.

With regard to the systematics and purpose of Act No. 273/2008 Coll. and Act No. 101/2000 Coll., resp. rights and obligations in the processing of personal data, the administrative body of the first instance stated that ND DNA is a record of personal data in the sense of § 86 letter b) of Act No. 273/2008 Coll. Like any other processing of personal data, ND DNA must also have its purpose set [§ 86 letter a) of Act no. 273/2008 Coll.], Which the party to the proceedings is obliged to define as precisely as possible. Administrative body of the first

further stated that due to the use of vague terms "future identification" a

§ 79, as well as § 65 of Act no.

273/2008 Sb. for sufficiently certain provisions, even in connection with § 2 of this Act defining in general terms the tasks of the police, which should serve as a legal basis for processing of personal data in ND DNA, and which would provide a clear basis for such processing. In the case of ND DNA, it is therefore necessary, according to the first-instance administrative body derive this purpose from the internal rules of the party to the proceedings, more precisely a similar purpose The DNA database describes the European Court of Human Rights, which stated that while the initial collection (fingerprints and genetic samples) is designed to determine the connection between a particular person and the individual offense of which it is suspected, the preservation pursues a broader objective, namely identification of future offenders (cf. the decision of the Grand Chamber in S. and Marper v United Kingdom of 4 December 2008, § 100; Summary of judgments of the European Court of Justice for Human Rights No 2/2009). To this end, the administrative body of the first instance stated that the initial collection of traces or The samples serve to convict the offender (or refute his guilt) while their preservation serves in case another criminal offense is committed to detect the offender on the basis of traces left at the crime scene. In relation to the purpose thus defined, the administrative authority of first instance shall, in accordance with

The European Court of Human Rights has stated that this is a legitimate purpose. In the matter

the administrative authority of the first instance noted that all procedures of public authority, including active bodies in criminal proceedings, must comply with the constitutional principles of legality and proportionality (see Article 2 (1)). 2 and Article 4 of the Charter of Fundamental Rights and Freedoms).

Furthermore, the administrative body of the first instance stated that the provisions of Section 79, Paragraph 1 of Act No. 273/2008 Coll.

narrows the legal authorization of the police to process personal data without consent expressed in § 9 letter i) of Act No. 101/2000 Coll. to the extent strictly necessary for the performance of its tasks defined by Act No. 273/2008 Coll. However, according to the administrative body, they are in this law first-degree authorization of the police to process sensitive data (DNA profiles) is defined only very generally and due to the uncertainty of the legal terms used, these provisions are only difficult to unload.

The first-instance administrative body further stated that the preservation of the DNA profile in ND DNA is, in principle possible only for perpetrators of certain crimes. However, the range of these crimes according to administrative authority of the first instance is not the same as all intentional crimes, on the contrary these are only particularly serious intentional crimes against life, health or threatening safety of persons, as stated in Article 8 of the Recommendation, of which, according to the administrative body The first instance implies that the preservation of DNA profiles should be considered as an exception and not as an exception rule. Although Article 8 of the Recommendation does not refer only to criminal offenses in this terminology, however, in the Czech legal system, these are exclusively criminal offenses (and only a few, in principle crimes) which can be considered as serious infringements of the rules of law against life, health or security of persons. Article 5 Recommendation explicitly stating that the use of DNA analysis should be admissible in all appropriate cases, regardless of the seriousness of the offense, does not directly relate to the question of whether these people's DNA profiles should be specific after use investigations are also further processed, resp. stored in ND DNA (this is regulated separately Article 8 of the Recommendation). Article 2 The Recommendation only broadly defines the scope and limitations of the scope Recommendations, however, in relation to the preservation of DNA profiles are further specified in

cited in Article 8.

The interpretation of the term "necessity" resulting from § 79 paragraph 1 of Act No. 273/2008 Coll., Must be according to finding of the administrative body of the first instance on the basis of the performed proportionality test based on objective criteria that are sufficiently definite and comprehensible, and therefore subsequently reviewable. According to the administrative body of the first instance, the given criteria are the reasonableness of the retention, the seriousness of the offense and the actual applicability of the DNA profile

to the intended purpose, the necessity of which must be assessed on a case-by-case basis case individually, as no legislation in this area entitles the police to an undifferentiated or area-based procedure. The administrative authority of the first instance further stated that the general condition for the processing of any data by the police is their further need for purposes for which they were kept (Judgment of the Supreme Administrative Court No. 8 As 76 / 2010-52). Regarding the notion of "future identification", the first instance administration stated that this was the case o a vague concept that does not appear elsewhere and in another context in the legal system. This concept is not connected with or linked to other provisions of Title X of Act No. 273/2008 Coll., moreover, § 65 of Act No. 273/2008 Coll. the heading "Collection of personal data for future identification purposes", from which it is not clear how it relates to subsequent storage and further processing in this way personal data obtained. It also considers the first-instance administrative body to be unsystematic inclusion of paragraph 5 in § 65 of the cited Act, as this is to regulate the liquidation of such obtained data.

The administrative body of the first instance further stated that the statutory authority of the state, which would justify and allow interference with the privacy of the persons concerned, as protected by Article 10 (3) Charter of Fundamental Rights and Freedoms, as provided for in Article 8 (2) of the Convention for the Protection of Human Rights rights and freedoms, must be sufficiently accessible in accordance with the rule of law, predictable, ie expressed with a high degree of precision (cf. the judgment of the European

Human Rights in S. and Marper v. the United Kingdom of 4 December 2008, § 95 a
et al., or the Judgment of the Constitutional Court of 22 March 2011 No. 94/2011 Coll., Pl. ÚS 24/10, points
36 and 37; www.nalus.cz). The administrative authority of the first instance stated that these attributes by the provision of
which can be derived the authority of the police to conduct ND DNA, are missing, and for the purposes of this procedure is
therefore, he had to infer by an ad hoc interpretation himself. Nevertheless, even with this procedure, it remains in the opinion
the administrative authority of the first instance whether the provisions cited are sufficiently
so that it can in itself form a legal basis for the exercise of state power in the form of the creation of an ND
DNA within the meaning of Article 2 (2) of the Charter of Fundamental Rights and Freedoms, in particular because they do not
comply
nor the minimum requirements for determining the extent and use of DNA profiles, length of storage, use and
third party access, data protection and confidentiality procedures and procedures
their destruction.
Furthermore, the administrative body of the first instance stated that no law addresses how it will be with the biological
material for how long the samples and DNA profiles will be stored, who will keep them
will have access to when and how they will be liquidated, taking these significant circumstances
concerning the further handling of DNA samples and profiles is regulated by its internal police regulations
president, which represents a serious legal deficit in relation to the handling of carriers to such an extent
intimate data (information), what DNA samples and profiles are (cf. the judgment of the Municipal Court
in Prague No. 31C 70/2012). Modification of ND DNA in the internal regulations of the police thus an administrative body
did not consider it sufficient.
In relation to the assessment of the nature of the offenses and their seriousness, including legitimacy
processing of DNA profile in ND DNA and its storage, in the case of 14 above-mentioned subjects,
the administrative authority of the first instance stated the following.
In XXXXXX, XXXXXX and XXXXXX, the administrative authority of first instance stated that they were courts
acquittal in full pursuant to § 226 letter e) of Act No. 141/1961 Coll. (when
XXXXXX, the criminal prosecution was stopped by the public prosecutor pursuant to § 172 para. f) of the Act

No. 141/1961 Coll.), ie using the institute of effective remorse. According to the administrative body of the first instance

the criteria of severity, justification and factual applicability have not been met and the DNA profile is not

in this case necessary for the performance of the police.

In the case of XXXXXX, the first instance administrative authority considers the preservation of the DNA profile to be

unjustified,

as the nature of property crimes does not justify the need to keep them in the ND DNA,

due to insufficient factual applicability. The crime of fraud is not a criminal offense

acts against the life, health or safety of persons within the meaning of the Recommendation, irrespective of

the fact that due to the damage caused it was a crime committed in the strictest

qualification. Therefore, in the absence of legal regulation of ND DNA, the preservation of the DNA profile cannot be

considered

necessary for the performance of police tasks.

In the case of XXXXXX, XXXXXX, XXXXXX, XXXXXX and XXXXXX, according to the administrative authority of the first

instance

it is a criminal offense that does not meet the criterion of seriousness and therefore the preservation of the DNA profile is not

necessary according to § 79 of Act No. 273/2008 Coll. to perform police tasks. In this case (at

absence of an explicit legal regulation for ND DNA) is therefore not possible according to the administrative body of the first

criminal offense which fulfills the necessity criterion in accordance with Article 8

Recommendation as it is not a serious crime against life, health or safety

persons.

In the case of XXXXXX, which was acquitted according to § 226 letter b) of Act No. 141/1961 Coll.,

according to the first-instance administrative body, its DNA profile should not have been inserted into the DNA DNA at all,

as there was no legal reason for this, and there was a profile after the acquittal

DNA discarded in three years.

In the case of XXXXXX in relation to the crime of sexual abuse, the administrative authority of the first

degree stated that the criterion of severity for maintaining the DNA profile in ND DNA in
sense of necessity pursuant to Section 79 of Act No. 273/2008 Coll., with regard to factual
circumstances, which the court assessed by imposing a penalty at the very lower limit of the statutory criminal offense
therefore, in the present case, the conduct of the convicted person cannot be considered a serious criminal offense. And
in relation to the attempted guilty of theft by burglary, the conditions were not met
the seriousness of the offense, and it was not a crime against life, health or safety
persons within the meaning of the Recommendation, the offense of theft being committed as a juvenile, and v
in these cases, the possibility of taking DNA samples from the juvenile offender should be considered; and
its further preservation more strictly than for adult offenders.
In the case of XXXXXX in relation to the crime of sexual abuse, the administrative authority of the first
degree stated that the criterion of severity for maintaining the DNA profile in ND DNA in
sense of necessity pursuant to Section 79 of Act No. 273/2008 Coll., with regard to factual
circumstances, which the court assessed by imposing a penalty at the very lower limit of the statutory criminal offense
rates. Furthermore, the above was convicted of the crime of theft, which was not
serious crime.
In the case of XXXXXX, who provided the comparative voluntarily as the person providing the explanation
material so that he can be ruled out as a suspect of burglary,
the administrative authority of the first instance stated that the criteria of seriousness, justification and
the maintenance of the DNA profile cannot be considered necessary for
performing police tasks. According to the first-instance administrative body, his DNA profile should not have been in the
National Park
DNA inserted at all.
12/19
In case XXXXXX, in relation to the crime of theft, the administrative authority of first instance stated that
the criminal prosecution was suspended by a court order. Therefore, the conditions were not met
the seriousness of the offense and was not a crime against life, health or safety

persons within the meaning of the Recommendation, the offense of theft being committed as a juvenile, and v

In these cases, as mentioned above, the possibility of DNA sampling should be considered

juvenile offender and its continued preservation more strictly than adult offenders. When

the crime of counterfeiting and altering money at the trial stage was not a criminal offense

against the life, health or safety of persons within the meaning of the Recommendation, but as a criminal offense

economic. Although it was a serious crime with a penalty of three to eight years (in the case of

adjusted to one to four years), which XXXXXX committed as a juvenile.

In contrast, in the case of the crime of illicit manufacturing and other drug treatment

and psychotropic substances and poisons [for such a crime (offense) has been in the last three years

already convicted] his actions were qualified according to § 283 par. 1 and par. 2 let. b) of Act no.

40/2009 Coll., So it was a crime against the health and safety of persons. The penalty rate is in

in this case between two and ten years, and, although XXXXXX was convicted only

to a suspended sentence of two years' imprisonment with a probationary period of four years, we can talk about

serious crime. In view of the above in the case of this crime considers

administrative body inserting the DNA profile XXXXXX into the DNA DNA and keeping it as appropriate for all

the above criteria, ie seriousness, justification and factual applicability.

Furthermore, the administrative body of the first instance assessed the participant's conduct as a so-called continuing

administrative offense,

because the party to the proceedings has caused an illegal situation and it maintains, resp. maintained.

Concerning XXXXXX, which was also mentioned in the notice of initiation of this administrative proceeding,

the administrative body of the first instance stated that in accordance with § 46 para. 3 of Act No. 101/2000 Coll.

the liability of a legal person for an administrative offense ceases if the administrative body has not initiated it

proceedings within 1 year of learning about it, but no later than 3 years from the date on which it was committed.

Given that the initiative of the civic association Iuridicum Remedium, o.s., in the case of

the right to the processing of personal data XXXXXX was delivered to the Office on 28 July 2011 a

it follows from the communication of the Police Presidium No. PPR-9036-1 / ČJ-2011-99RU of 15 June 2011,

that XXXXXX's request to destroy his personal data had been granted on 10 June
2011, the Office did not initiate proceedings within the set subjective period of 1 year. So it happened
to the limitation period for liability for an administrative offense, and this complaint has only been
control powers of the Office.
On the basis of the above, the administrative body of the first instance therefore considered it proven that
that the party to the proceedings violated § 9 of Act No. 101/2000 Coll. and thus committed an administrative offense under §
45
paragraph 1 (a) e) of this Act, for which by decision no. UOOU-00148 / 13-79 of
On 18 April 2013, in accordance with Section 45 (3) of Act No. 101/2000 Coll. a fine of
CZK 650,000 and, pursuant to Section 79 (5) of the Administrative Procedure Code, the obligation to reimburse the costs of
the proceedings
in the amount of CZK 1,000.
In determining the amount of the sanction, the administrative body of the first instance took into account as aggravating
circumstances, in particular the fact that one of the data subjects, ie XXXXXX, already had
established by final decision No. SPR-0596 / 11-8 of 10 May 2011
breach of the obligation stipulated in § 9 of Act No. 101/2000 Coll. and the party to the proceedings was administrative
authority imposed a fine for processing its DNA profile in ND DNA, yet this one from ND DNA
has not been removed. He then took into account as an aggravating circumstance the fact that in similar

cases (see Office Decision No. SPR-3309 / 09-18 of 7 September 2009 and No. SPR-0836 / 08-14
of 30 May 2008) the party to the proceedings had already been sanctioned by the Office, ie it had to be
illegality of his
acting aware. Furthermore, the maintenance period was taken into account
illegal status. At the same time, the first-instance administrative body considered it aggravating
circumstances to the fact that the unauthorized processing concerned sensitive data which
nature is subject to greater legal protection, as well as to the extent of the invasion of privacy by the

in the exercise of official authority, the rights of the entities concerned must be protected and followed exclusively

in accordance with the applicable laws (pursuant to Article 2 (2) and Article 4 (1) and (4) of the Charter of Fundamental Rights and Freedoms).

In the case of XXXXXX, the administrative authority of the first instance took into account that its DNA profile had been inserted

and stored in ND DNA, although it was a person giving an explanation according to § 158 para. 5

Act No. 141/1961 Coll.

He took into account the vague legislation as an attenuating circumstance, given its excessive nature

generalities in the field of processing and storage of DNA profiles in ND DNA. Number of entities concerned

(14) was not considered mitigating or aggravating by the administrative authority of the first instance

circumstance. After assessing the above circumstances, the case was imposed by the administrative authority of the first instance

sanction in the lower half of the statutory rate.

The above decision was notified to the party on 18 April 2013. Against this

The decision was lodged by the party to the proceedings within the statutory time limit of 3 May 2013 (delivered to the Office on 6 May 2013). On 9 May 2013, the Office received a supplement to this appeal.

The party in the appeal and

his addition stated that he is not a trustee either

processor of personal data according to § 4 letter j) and k) of Act No. 101/2000 Coll. and therefore not

with regard to § 45 paragraph 1 of this Act, which defines the range of entities that may

to commit the administrative offenses referred to in this provision, has sufficient passive legitimacy.

According to the party to the proceedings, the conduct of the police cannot be attributed to him. The party further stated that it was not

clear on the basis of which the Office concluded that he is the subject of the administrative offense, because he is not

by no means the ND DNA administrator.

Furthermore, the party to the proceedings stated that it had not violated the obligation stipulated in Section 9 of Act No.

101/2000 Coll.

and therefore could not commit an administrative offense. The police process DNA profiles for purposes
detection of criminal offenses and the identification of their perpetrators, thus fulfilling the exception set out in
§ 9 letter i) of Act No. 101/2000 Coll., according to which it is possible to process sensitive data without consent
the data subject, if this processing is carried out for the stated purposes according to a special law,
which is Act No. 273/2008 Coll. Specific legal titles for the operation of ND DNA are according to
participant in the proceedings § 60, § 65 and § 79 of Act No. 273/2008 Coll. This law therefore gives all
essential facts necessary for the filling of ND DNA and further processing of DNA profiles,
in particular, the category of persons and the retention period, which is determined by the need to process personal data
data for the performance of police tasks, thus fulfilling the element of legality of the operation of ND DNA. Party
proceedings do not agree with the opinion of the administrative body of the first instance that the provisions of § 65 and §
79 of Act No. 273/2008 Coll. they are not specific enough to allow everyone
anticipate whether, when and what data the police will decide to process. From the diction quoted
This provision stipulates what personal data and for which categories of persons the police may in the performance of their
duties
tasks and to process them, even without the consent of the persons. In particular § 79 of Act No. 273/2008
Sb. considers the party to be a transparent and unquestionable legal title for processing
personal data in ND DNA and terms used as "necessity" and "future identification" are according to
in his opinion in certain and easily interpretable terms, provided that they are interpreted
from the systematics and purpose of Act No. 273/2008 Coll. The need to take genetic material a

according to the party to the proceedings, its preservation is clearly stated if it is for detection
connections between a specific person and an individual offense or for identification
processing of the DNA profile is necessary for the future offender, ie if its preservation is indispensable
in the sense of the impossibility of performing the task of the police. The party to the proceedings considers that the Office
clearly

the institute does not understand "future identification". This institute may be in the logical interpretation of § 65
Act No. 273/2008 Coll. be used only for the purpose of preventing, searching or
detecting criminal activity or prosecuting criminal offenses or ensuring the security of the Czech Republic
Republic, public order or internal security. According to the party to the proceedings, this indicates
and the circle of persons against whom it can be applied. In this context, the inclusion of paragraph 5 in § 65
of the law is entirely logical and emphasizes the obligation of the police to verify the need
processed data explicitly to personal data that are obtained directly from entities
data. The party to the proceedings thus considers the Office 's interpretation to be inaccurate, contrary to the systematic and
logical interpretation of Act No. 273/2008 Coll.
The party to the proceedings further stated in the appeal that the assessment in which criminal offenses there is recovery
DNA profile is possible, it is entirely outside the remit of the Office. Biological samples are taken by the police
only accused of intentional crimes, while committing an intentional crime
considers the party to the proceedings to be a significant qualitative change in the human behavior that he justifies
DNA profile processing. By the police processing DNA profiles only specified by law
categories of persons and examines the necessity of their processing, saves the essence and meaning of fundamental rights
and freedoms and thus respects the limits of the exercise of state power.
With regard to the preservation of the DNA profiles of persons who were not found guilty, the party stated that
such processing of personal data cannot be considered necessary. However, it is necessary according to his
take into account procedural rules, which in some cases do not allow for guilt,
although the evidence is proven and the need for further processing of the DNA profile is quite clear.
The police therefore take into account the nature of the decision on the merits, as the need for processing
DNA profile cannot be formally linked to a particular type of decision, but must be taken into account
its content. After all, the legislator in § 82 of Act No. 273/2008 Coll. presupposes consideration
decisions of law enforcement agencies do not categorically determine the influence of certain types
decision for further processing of personal data. The principle of the presumption of innocence is not a procedure
violated by the police, as its actions did not result in a guilty plea.

Furthermore, the appellant stated in its appeal that it did not agree with the interpretation of Article 8 of the Recommendation, since, according to this article, it is not only a criminal offense within the meaning of Act No. 40/2009 Coll., the Criminal Code, but for any serious breach of criminal or administrative law, crime, misdemeanor or misdemeanor. Therefore, if the police process DNA profiles of persons who committed an intentional criminal offense, then, according to the party to the proceedings, it fully meets the resulting requirement of that Recommendation, as it takes into account the risk of infringements. According to all criminal offenses, whether intentional or not, are dangerous to the party to the proceedings negligence or even misdemeanors. In addition, the Recommendation states in its Article 5 that recovery DNA analysis should be allowed in all appropriate cases, regardless of severity crime. Furthermore, the party to the proceedings stated that the Recommendation applies to collecting samples and using DNA analysis to identify the suspect; or any other individual in the investigation and prosecution of criminal offenses. Police action at processing the DNA profile of perpetrators of intentional crimes is thus quite right, as it is decisive for the fulfillment of the police's obligations imposed by law and consisting in ensuring protection life, health and safety of individuals and society as a whole from the perpetrators of all crimes.

Furthermore, the party to the proceedings stated that the fulfillment of the corrective measure consisting in the imposition of an obligation the destruction of personal data processed in ND DNA would lead to a breach of proportionality and breach of the principle of proportionality between the right to privacy and the right to privacy security (eg the right to life, the inviolability of the home) as defined in the Charter fundamental rights and freedoms.

The party to the proceedings further stated that the Office took into account the unclear legal regulation of ND DNA only as mitigating circumstances, but according to the party to the proceedings it is a circumstance excluding liability for administrative offense, as the entity cannot be attributed to the fact that the legal system did not provide for certain

processing of personal data, on the other hand, such processing

personal data, the legislator allows this entity, but on the contrary it should be positive

perceived that the party to the proceedings defined the rules of such processing in accordance with internal standards

with the rule of law.

According to the party to the proceedings, the purpose of ND DNA is clearly determined by § 65 and § 79 of Act No. 273/2008 Coll.,

whereas § 65 is a very specific extension of § 79 for the processing of DNA profiles. Interpretation

for this purpose, it does not belong to the Office, as well as the assessment of acts that are to its

fulfillment needed. The Office in its decision ref. PRÁV-6953 / 07-2 of 7 January 2008

stated that it was not for it to assess the need for action to carry out the bodies active

in criminal proceedings and the party to the proceedings is of the opinion that the Office should proceed in the case under consideration

the same, as otherwise there is an interference with the competence of another body.

The criteria stated by the Office for the inclusion of DNA profiles in the national DNA database, resp. their

interpretation, the party also considers it to be an interference with the competence of another body. Office as

The criterion repeatedly states the actual usability of ND DNA to detect the perpetrator

criminal offense, assuming that the person will continue to commit the same criminal offenses

therefore does not take into account the heterogeneous recidivism and the so-called development of the offender.

Furthermore, the party to the proceedings stated that ND DNA is only one of the records operated by the police,

whereas the legal title for the operation of other records was not and is not questioned by the Office.

On the contrary, according to the party to the proceedings, it is necessary to perceive that the legislator in the assessed processing

clearly stated the circle of persons whose data may be processed. Completely

Undoubtedly, the person who commits the crime must assume that the police will

process her personal data, regardless of whether he was, resp. can be pronounced condemning

judgment.

Finally, the party stated that the processing of DNA profiles was clearly necessary for compliance
tasks set out in Section 65, Paragraph 5 of Act No. 273/2008 Coll., which (with the exception of XXXXXX and XXXXXX,
whose data were destroyed) was documented by the police.
After assessing the matter, the appellate administrative body fully agreed with the opinion of the administrative body
first instance and decision no. UOOU-00148 / 13-86 of 2 July 2013 rejected the appeal.
The decision to reject the appeal was delivered to the party on 3 July 2013.
On 12 August 2013, the party filed an action against the decision of the administrative body
to the Municipal Court in Prague (hereinafter referred to as the "Municipal Court"), where he sought judicial review
legality of the decision. Although the lawsuit was directed against the decision of the first instance ref. UOOU-
00148 / 13-79 of 18 April 2013, Municipal Court with reference to the judgment of the Supreme

Administrative Court ref. 1 Afs 88 / 2009-48 did not find this error for non-compliance
proceedings and the merits of the case.
First of all, the municipal court stated that the legal issues that were the subject of the proceedings were already
resolved by the Supreme Administrative Court in the judgment no. 4 As 168 / 2013-40 of 30 April 2014
and is therefore based on the content of that judgment. In that judgment, the Supreme
The Administrative Court also commented on the question of the very authorization of the establishment and operation of ND
DNA: “The highest
the administrative court is aware of the fact that the collection, storage and processing of the DNA profile represents
interference with the rights of the person (cf. the 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,
emphasizes, however, that this intervention is justified by the previous intentional and
wrongdoing of that person, who must be aware that in compliance with the relevant
conditions, she may be the subject of criminal proceedings and a penalty may be imposed on her
will be kept in the Criminal Register and in the relevant records kept by the Police, ie that it must bear

negative consequences associated with committing an infringement. The Supreme Administrative Court
points out that the National Database of DNA Profiles is not publicly accessible;
someone else, outside the law enforcement authorities, used it to identify sensitive ones
information about the data subject, resp. about perpetrators of crimes, ie no other is possible
decontamination of such a person on the basis of maintaining his profile in the National Database of DNA Profiles.
The information given there will only be used when verifying compliance with the tracks
found at the scene of another criminal offense. "
The city court further stated that the police are authorized to take genetic samples and for the purposes
future identification to preserve DNA profiles. This entrusts her with the obligation to keep records
(information system) in which it processes this data. In assessing the need for processing
sensitive personal data without the consent of the data subject, but in the opinion of the municipal court
it is not possible to rely solely on the definition of the category of criminal offenses as set out in the Recommendation.
The recommendation is not a binding piece of legislation and was adopted in 1992
and thus cannot reflect further developments in the given area and commitments in connection with the accession of the
Czech Republic
Republic to the European Union and the Schengen area. Narrowing down to the category of crimes
based on the Recommendation and cannot be considered as corresponding to the current one
legislation, as it authorizes the police to process personal data, including information
on genetic equipment in cases where it is found necessary to fulfill the purpose not only
for persons serving a custodial sentence for committing an intentional criminal offense, but also for persons
accused or suspected in relation to a generally defined category of intentional criminal offenses.
The need for intervention in the private sphere of an individual, which represents the collection of genetic
material, DNA profile processing and storage in the database must therefore be considered in relation
the position of the data subject in the criminal proceedings, including within a broader definition
of this concept.
In the case of XXXXXX and XXXXXX, the party acknowledged its error and in the action the liability for

he did not waive the administrative offense to this extent, therefore the court assessed only the remaining 12 cases.

The City Court agreed with the Office that the police had exceeded the legal framework and that

the storage of sensitive data without the consent of the data subjects for future identification purposes has been

violation of the Personal Data Protection Act in cases XXXXXX, XXXXXX, XXXXXX and XXXXXX.

In addition, the municipal court stated that XXXXXX, XXXXXX and XXXXXX had been acquitted (or

prosecution is stopped), therefore, persons who are innocent in terms of crime are

and therefore, from the point of view of the principle of proportionality, keeping their DNA profile in a database is illegal.

The same applies, in terms of proportionality, to XXXXXX, which has committed the offense of obstructing performance

official decision, which by its nature is not generally an offense in its intensity

severe enough to maintain a DNA profile.

In the remaining cases, however, the City Court did not agree with the Office when it stated that

"These were primarily not only accused persons but already legally sentenced to imprisonment for

intentional crime. It is considered justified to preserve the DNA profile of people who have repeatedly

committed intentional offenses (recidivism); repeated intentional

the court considers the criminal offense to be a sufficient reason for the principle of proportionality

preservation of the DNA profile. This follows only from the fact that recidivism, albeit general, intentional criminal

social harm is increasing. "

The Municipal Court assessed the individual cases specifically and stated that:

- in cases XXXXXX and XXXXXX, is considered a sufficiently compelling reason for retention

DNA profile in the database of convictions for the crime of sexual abuse, because criminal

acts against human dignity, against life and health and against freedom can be considered

the most serious crimes ever,

- in the case of XXXXXX, considers the conviction to be an attempt to commit counterfeiting and alteration of money

considered sufficient to keep a DNA profile in the database, especially in terms of potential

recidivism, as this is a type of crime whose detection is often complicated and

at the same time, it can be assumed that traces of DNA may be formed during its commission,

- in the case of XXXXXX, where the conviction itself is a criminal offense under the influence of

considers addictive substances to be a sufficiently compelling reason to maintain a DNA profile, as

it is a crime with a high degree of harmfulness to society (it is by its nature also

one of the most serious crimping offenses),

- XXXXXX is an offender convicted of an intentional criminal offense

fraud, which caused large-scale damage to other people's property, quantified by the court

a total of CZK 12,000,000, which is a highly socially harmful crime,

- XXXXXX was a violent crime, which is one of the most serious

forms of crime and the nature of this type of crime sufficiently justifies it

keeping the DNA profile of their offenders in a database,

in the case of XXXXXX, it was a criminal offense of forgery and alteration of an authentic instrument, ie

keeping a DNA profile in a database is desirable in terms of potential recurrence as it is

type of crime with a high latency and can be assumed when committing it

traces of DNA may be formed,

- XXXXXX was a criminal offense under the influence of an addictive substance, which is

crime with a high degree of social harm.

The city court thus concluded that the police used the law in 8 out of 12 cases

authorization to fulfill its obligations in the prevention, detection and investigation of criminal offenses

acts and prosecutions of the perpetrators and that the intervention against the data subjects was justifiable and proportionate

having regard to the objective of protecting the rights and freedoms of others, as a general task of the police.

With regard to the partial merits of the lawsuit, the municipal court ruled in the judgment no. 3A

86 / 2013-99 of 13 April 2016 on the annulment of the decision of the Chairman of the Office Ref. UOOU-00148 / 13-86

of 2 July 2013 and remanded the case for further proceedings.

The Office challenged the judgment of the Municipal Court no. 3A 86 / 2013-99 of 13 April 2016 by a cassation complaint,

based on grounds of error of law and internal inconsistencies,

resp. unreviewable, and proposed that the judgment be set aside and that the case be referred back to the municipal court management. The Supreme Administrative Court by judgment no. 8 As 134 / 2016-38 of 24 October 2017, cassation he rejected the complaint as unfounded.

The Office is thus bound by the provisions of Section 78, Paragraph 5 of Act No. 150/2002 Coll., The Code of Administrative Procedure the legal opinion of the Municipal Court and the Supreme Administrative Court expressed above judgments.

Given that the municipal court found the action against the administrative decision only in part justified and in the case of 4 data subjects stated a violation of Act No. 101/2000 Coll. and further to the fact that the party to the proceedings itself acknowledged the violation of Act No. 101/2000 Coll. in the case of 2 subjects data, the decision was made as set out in the operative part of the decision.

Lessons learned:

Pursuant to the provisions of Section 91 (1) of the Act, this decision shall be challenged No. 500/2004 Coll., Administrative Procedure Code, cannot be revoked.

Prague, February 9, 2018

official stamp imprint

JUDr. Ivana Janů

President of the Office