No. 6 A 88/2018 - 45 Compliance with the original is confirmed by: M. V. CZECH REPUBLIC JUDGMENT ON BEHALF OF THE REPUBLIC The Municipal Court in Prague decided in a panel composed of the chairman JUDr. Ladislav Hejtmánek and judge JUDr. Naděždy Treschlové and JUDr. Hany Kadaňová, Ph.D., in the case of the plaintiff: Ministry of the Interior, with headquarters in Prague 7, Nad Štolou 3, against the defendant: Office for the Protection of Personal Data, with headquarters in Prague 7, Plk. Sochora 27, on the lawsuit against the decision of the chairwoman of the defendant dated 11/05/2018, no. II. None of the participants is entitled to compensation for the costs of the proceedings. Arguments: [1] The plaintiff, with the lawsuit filed in the local court, demanded the annulment of the decision of the President of the Office for Personal Data Protection mentioned in the header, which rejected the appeal against the decision of the Office for Personal Data Protection dated 20 March 2018, no. UOOU-00148/13-100 (hereinafter referred to as the "first-instance decision"), by which the plaintiff was found guilty of committing an administrative offense pursuant to § 45 paragraph 1 letter e) of Act No. 101/2000 Coll., on the protection of personal data, as amended (hereinafter referred to as the "Act on the Protection of Personal Data"), in connection with the processing of sensitive personal data without a legal title, thereby breaching the controller's obligations set in Section 9 of the Personal Data Protection Act, for which the plaintiff was fined CZK 240,000 in accordance with Section 45, Paragraph 3 of the Personal Data Protection Act, and pursuant to Section 79, Paragraph 5 of Act No. 500/2004 Coll. (hereinafter referred to as "administrative regulations") the obligation to compensate the costs of proceedings in the amount of CZK 1,000. 6 A 88/2018 Conformity with the original is confirmed by: M. V. 2 [2] The plaintiff in the lawsuit primarily states that the illegality of the issued decision is mainly seen in the incorrect interpretation of the concept of necessity and the absence of proper consideration of the specific activity of the police and its needs for the consistent performance of its legal tasks and responsibilities. [3] The DNA profiles in question are certainly sensitive data processed in accordance with § 4 letter b) and e) of the Personal Data Protection Act. According to the wording of § 9 letter i) of the Act on the Protection of Personal Data, it is possible to process sensitive data without the consent of the person to whom this data relates, if the processing is in accordance with special laws in the prevention, search and detection of criminal activity, prosecution of crimes and searches for persons. The provision of a special law according to which the police can process personal data, including sensitive data, without the consent of the person to whom the data relates, if it is necessary for the performance of its tasks, is § 79 of Act No. 273/2008 Coll., on the Czech Police of the Republic, as amended (hereinafter referred to as the "Police Act"). [4] The authorization provided for in Section 65(1) of the Police Act further enables the police to carry out identification procedures, i.e.

also to take biological samples for the purpose of determining DNA profiles, for exhaustively defined categories of persons who, according to criminological research, have an increased likelihood of recidivism. Provision § 65 paragraph 5 of the Police Act then states that the police dispose of the data obtained in accordance with the first paragraph of the cited provision as soon as their processing is not necessary for the purposes of preventing, searching or detecting criminal activity or prosecuting criminal offenses or ensuring the security of the Czech Republic, public order or internal security. [5] As a criterion for the legitimacy of the processing of the personal data in question, with reference in particular to the Act on the Protection of Personal Data and the special Act on the Police referred to by it, the legislator has established both the connection with the tasks of the police and the necessity of such data processing. [6] The decisive criterion for assessing the legality of processing personal data for the purposes of future identification, i.e. the DNA profile, is, in accordance with the Police Act, the given necessity for the purposes of preventing, searching or detecting criminal activity or prosecuting criminal offenses or ensuring the security of the Czech Republic, public order or internal security. The necessity of obtaining a DNA profile and keeping it in the sense of necessity and justification is given unequivocally if the processing of a DNA profile is necessary to establish a connection between a specific person and a particular crime or to identify a future offender. The necessity of preserving the DNA profile is therefore given if the DNA profile is indispensable in the sense of the impossibility of fulfilling the task of the police, e.g. by identifying or convicting the perpetrator of a specific crime, even in the future. Stored DNA profiles are used both for detecting and convicting perpetrators of crimes, while the intervention in the form of storing personal data in connection with the performed identification actions is reasonable in relation to the fulfillment of the goal, i.e. the fulfillment of the tasks of the police in preventing, searching for, detecting criminal activity, prosecuting crimes, ensuring security, public order or internal security. [7] The plaintiff still insists that the key criterion in the processing of DNA profiles, or for the application of Section 65 of the Police Act, is the subjective side of the crime, which speaks of the perpetrator's internal relationship to the crime, and the necessity for the purposes of fulfilling the tasks of the police. Thus, the legislator apparently considered it important that the police should be able to obtain personal data for the purposes of future identification for all intentional crimes and exhaustively listed persons, and apparently considered such interference with the constitutionally guaranteed rights of the individual to be justifiable in view of 6 A 88/2018 Compliance with the original confirms: M. V. 3 on the company's interest in protection from criminals. The aforementioned enables the police to use the given authorization depending on their legal needs, and thus to intervene in the privacy of persons really only in cases where it is necessary for the fulfillment of legal tasks, while clearly

taking into account the danger of illegal acts, which are offenses, administrative misdemeanors and criminal acts, when all criminal acts, be they intentional or negligent, are dangerous for society, with the just mentioned distinction in the sense of the subjective side of criminal activity. [8] The plaintiff further stated that for the purposes of carrying out identification acts, crimes cannot be categorized according to their seriousness, as every criminal act committed by a person intentionally must be considered as an interference with the protected interest of individuals and society. The presumption of the seriousness of intentional criminal activity is not entirely appropriate (it is often referred to the most serious crimes, such as crimes against life and health, or violent crimes, which often leave a large number of traces), especially in view of on current knowledge from practice regarding the commission of criminal activity by recidivists, while it is necessary to emphasize that recidivism is very often heterogeneous. In the Czech Republic, it is statistically proven that, for example, property crime, which often turns violent, starts the criminal "career" of later recidivists. One can also talk about the escalation of criminal activity, when the offender "improves" and gradually moves from trivial crimes to criminal behavior (including elements of violence). [9] The defendant objects in his decisions that the nature of the crime is not sufficiently assessed when assessing the necessity, and criteria such as the factual applicability, justification and seriousness of the crime are not taken into account, so that there is no arbitrary and random procedure. The plaintiff objects to the stated opinion that, even if, according to the defendant, these aspects (criteria) are significant from the point of view of assessing the necessity of keeping the personal data of the persons in question, they relate in particular to the provisions of the previous law on the police, which, unlike the current law, allowed in the sense of Section 42e Act No. 283/1991 Coll. carry out identification procedures even for persons accused of committing a crime, i.e. regardless of the form of guilt. In such a case, it can be accepted that the above criteria are significant in terms of assessing the nature of the crime and the necessity of keeping personal data for the performance of police tasks in connection with criminal proceedings. However, in the current legislation, the nature of criminal offenses is defined precisely by the form of culpability (in the form of an intentional crime), and therefore the plaintiff continues to hold the opinion that this criterion (distinction of criminal offenses according to the form of culpability) is a sufficient justification for the necessity and necessity of processing and storing personal data for the performance of legal tasks by the police in the sense of § 65 paragraph 5 and § 79 paragraph 1 of the Police Act. [10] Furthermore, the plaintiff states that it is objected by the defendants that it was not necessary to keep the DNA profile of the person J.P., who committed the criminal offense of obstructing the execution of an official decision and report, because the nature of the offense does not show an increased degree of harm and danger to

society and does not fulfill any from other criteria in favor of preserving his DNA profile. The plaintiff points out that the aforementioned criminal offense of obstructing the execution of an official decision and report is contained in Chapter Ten of Act No. 40/2009 Coll., the Criminal Code, which contains criminal offenses against order in public affairs. This head protects a wide range of social relations, interests and values, which are necessary for a state built on the principle of democracy and legality to be able to flawlessly perform its functions in the interest of the public. The criminal acts listed here threaten the proper functioning of state bodies, territorial self-government, and also order in public affairs. In addition, the mentioned criminal act of obstructing the execution of an official decision and report can only be committed by intentional action, while, as already justified above, it is the relationship of the perpetrator to his own actions that does not guarantee that the perpetrator will not commit another violation of the law by other actions. Therefore, it cannot be confirmed that this is 6 A 88/2018 The agreement with the original is confirmed by: M. V. 4 trivial criminal activity. xxxx committed an intentional criminal act and was convicted by a court of law for it, for this reason it is necessary to continue to store the obtained personal data for future identification purposes. According to the plaintiff, this is also supported by jurisprudence, e.g. the judgment of the Municipal Court in Prague under No. 9 A 92/2012, in which the legality of processing personal data for the purposes of future identification of perpetrators of intentional criminal activity was assessed. The municipal court expressed, in accordance with the judgment of the Supreme Administrative Court No. 4 As 168/2013, that "..if the plaintiff was legally convicted for intentional criminal activity, the processing of the personal data of the plaintiff is justified by the nature of the criminal activity in its factual element of culpability in the form of intention..” . Furthermore, the court stated, among other things, that it is sufficient that the limits of the authorization to store the personal data in question for the purposes of fulfilling legal tasks are determined by the nature of the criminal activity consisting in a voluntary element, i.e. in the relationship of the perpetrator to the criminal activity. At the same time, the plaintiff does not believe that the stated statements are taken out of context, as the defendant claims. Furthermore, in this context, reference can be made, for example, to the judgments of the Municipal Court in Prague under No. 11A 50/2015-107 and No. 11A 2/2017-69. [11] The second disputed aspect, which is objected to by the defendant, is the necessity of processing personal data in the case of the use of the so-called institute of effective remorse (the person has not been legally recognized as guilty of committing a crime). In the assessed cases, it was about xxxx, xxxx, in whose criminal proceedings the aforementioned institute of effective remorse was used as one of the reasons for the termination of criminality. Effective remorse is only possible "after" the crime has been committed. In order for there to be effective remorse, the act must

first have occurred and must be punishable. In order to successfully invoke the special provision on effective remorse, the person first had to acknowledge that the act had occurred and do so only under the pressure of impending punishment. From the point of view of criminology, it can be summarized that the offender committed an intentional crime (and due to the high number of repeat offenders may commit criminal activity in the future), but with regard to social (or other) interest, his punishment is waived. Although the named persons are not legally convicted perpetrators of intentional criminal activity from the point of view of criminal law, this does not change the fact that they committed intentional criminal activity. [12] Taking into account all the facts declared above, the plaintiff believes that the challenged decision is illegal, which has negatively affected the legal sphere of the plaintiff. The police processes the personal data in question in accordance with the applicable legislation, does not violate its obligations set by the legal order, in accordance with which it processes only those personal data that are necessary for the performance of its legal tasks. [13] In eventum, the plaintiff requests a waiver of the administrative penalty, or its moderation. The plaintiff considers the imposed fine of 240,000 CZK to be clearly unreasonable. It can be repeated that the misconduct occurred only in the two cases indicated above, it was an isolated misconduct, not a systemic one, and it was rectified immediately after its discovery. For this, the processed DNA profiles were kept in non-public records with precisely defined access rights and for a clearly defined purpose, the protection of people's rights was thus ensured by the fact that the DNA database is not publicly accessible. [14] The defendant expressed his opinion on the filed lawsuit by disagreeing with the filed lawsuit and proposing its rejection, referring to the reasons for the challenged decision and stating the same substantive conclusions as in this decision. [15] In the justification of the contested decision, the defendant stated that he was bound by the legal opinion of the Municipal Court in Prague, which had already ruled on the same matter once, namely by the judgment of the Municipal Court in Prague dated 13 April 2016, file no. 3 A 86/2013-99 in connection with the judgment of the Supreme Administrative Court of 24 October 2017, file no. 8 As 134/2016-38. 6 A 88/2018 Conformity with the original is confirmed by: M. V. 5 [16] According to the defendant, the concept of "necessity" is an indefinite legal term in the context of these two judgments and when it is assessed according to 79 paragraph 1 of the Police Act as an additional condition in addition to the connection with the tasks of the police it is necessary to take into account the purpose of each individual processing of personal data by the police, in this case the purpose of the National DNA Database. Due to the fact that the tasks of the police are defined too generally by the Law on Police, each case must be assessed individually, especially with regard to the nature of the crime, before a decision is made to insert and retain a profile in the National DNA Database.

Although section 79 paragraph 1 of the Police Act no longer uses the nature of the crime as a limiting criterion for the processing of sensitive data, as did section 42g paragraph 3 of Act no. 282/1991 Coll., on the Police of the Czech Republic, this criterion is an increasingly important aspect, on the basis of which it is possible to define the circle of persons whose profile will be included in the National DNA Database, so that it is not a completely arbitrary and random procedure. In this respect, the nature of the crime is determined mainly by the importance of the protected interest, the circumstances under which the crime was committed, and the actual usefulness of the DNA profile for detecting the perpetrator of the given type of crime. The Municipal Court in the judgment of 13 April 2016, file no. 3 A 86/2013-99 emphasized that an important criterion for assessing the necessity of processed sensitive data in the National DNA Database is also the seriousness of the crime consisting mainly of the typical degree of social harmfulness of the crime, the way the crime was committed and the associated probability of leaving a biological trace at the scene of the crime , repetition of the attack, or recidivism of intentional criminal activity. [17] In view of the above, we cannot accept the argument that the police sufficiently take into account the principle of proportionality if, on the basis of criminological statistics, they comprehensively process the data of all persons for whom they exclusively assess the subjective side of the crime, as this leads to a significant reduction of the criteria that must be assessed. In addition, it should be emphasized that the Supreme Administrative Court in judgment no. 8 As 134/2016-38 indirectly expressed the opinion that the intention to commit a crime is in itself a relevant criterion only from the point of view of the legality of the collection of personal or sensitive data according to section 65 paragraph 1 of the Police Act, while in the context of assessing the necessity of further processing the assessment of the nature of the committed crime is also important. [18] In the matter itself, the Municipal Court in Prague decided without ordering the hearing, as the participants agreed to it (Article 51(1) of Act No. 150/2002 Coll., Administrative Code of Court, as amended, hereinafter referred to as " s. r. s. "). [19] The court reviewed the contested decision, including the proceedings that preceded its issuance, to the extent of the claims by which it is bound (section 75, paragraph 2, first sentence of the Civil Procedure Code), while according to section 75, paragraph 1 s. ř. s. was based on the factual and legal situation that existed at the time of the administrative body's decision. [20] Pursuant to § 65 paragraph 1 letter a) of the Police Act as amended for the relevant periods: The police may, in the performance of 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, [21] Pursuant to § 65, paragraph 5 of the Police Act, as amended for the relevant periods: 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 or detecting criminal activity or prosecuting criminal offenses or ensuring the security of the Czech Republic, public order or internal security. 6 A 88/2018 Conformity with the original is confirmed by: M. V. 6 [22] Pursuant to Section 79, Paragraph 1 of the Police Act, as amended for the relevant periods: The Police may process personal data, including sensitive data, without the consent of the person to whom these data relate (hereinafter referred to as "data subject") if it is necessary for the performance of its tasks. [23] Pursuant to § 9 letter i) of the Act on the Protection of Personal Data as amended for the relevant periods: Sensitive data can only be processed if it is processed in accordance with special laws for the prevention, search, detection of criminal activity, prosecution of crimes and searches for persons. [24] Pursuant to § 45 paragraph 1 letter e) of the Act on the Protection of Personal Data as amended for the relevant periods: A legal or entrepreneurial natural person commits an offense as a controller or processor by processing personal data without the consent of the data subject outside of the cases specified in the Act (Section 5 par. 2 and § 9). [25] The plaintiff's first fundamental objection was that the key criterion in the processing of DNA profiles, or for the application of § 65 of Act No. 273/2008 Coll., is the subjective side of the crime, i.e. that every crime committed by a person on purpose must be considered an interference with the protected interest of individuals and society, and therefore it is legitimate to process data these persons. [26] The parties to the dispute generally agree that the information contained in the DNA profile is sensitive data within the meaning of § 9 of the Act on the Protection of Personal Data, and their storage (as a method of processing) in the National DNA Database may constitute an interference with the rights to private life within the meaning of Article 8, paragraph 1 of the Convention, which is justifiable provided that the conditions laid down in Article 8, paragraph 2 of the Convention are fulfilled (in particular, compliance with the law, necessity in a democratic society). [27] In this context, the court forwards that in the case currently under discussion, the administrative authorities assessed whether the sensitive data of persons already included in the National Database of DNA Profiles were processed in accordance with the law or whether they should have been removed from this database. The question of when the police can proceed to take a genetic sample from a specific person is regulated in Section 65 of the Police Act, and it is here that in the cases referred to in paragraph 1 letter a) assesses the legitimacy of collection based on whether the person in question has committed an intentional crime. However, the issue of when the police can further process the obtained sensitive data without the consent of the person to whom the data relates is regulated by § 79 of the Police Act, from which it follows that the police can only do so if it is necessary to fulfill their tasks [28] The basic question for inferring a penalty against the plaintiff in the given administrative procedure was,

according to the defendant, the assessment of the legitimacy or the necessity of processing, consisting in the inclusion and storage of the DNA profile of 6 data subjects in the National DNA Database, without their consent. In the case of 2 data subjects (xxxx), the plaintiff acknowledges the misconduct and in the lawsuit does not disclaim responsibility for the administrative offense to this extent, therefore the court remains to assess the remaining 4 cases. [29] The plaintiff justifies the necessity of including and keeping the DNA profile of 4 data subjects in the Database by the need to identify perpetrators of criminal activity in the future, he considers this activity to be generally legitimate and legal, from the point of view of the intensity of the interference with the rights protected by the Personal Data Protection Act as an interference in democratic society, reasonable in relation to the fulfillment of the goal, i.e. the fulfillment of the tasks of the police in preventing, searching, detecting criminal activity, prosecuting crimes and searching for persons. [30] The court therefore had to deal with the question of whether the processing of the DNA profile in the National Database of DNA Profiles also met the condition of necessity in individual cases. 6 A 88/2018 Conformity with the original is confirmed by: M. V. 7 [31] He then took the following position on individual cases: [32] In the case of xxxx, it follows from the content of the administrative file that he was prosecuted on suspicion of committing the crime of non-payment of tax, insurance premiums on social security, health insurance and contribution to the state employment policy according to § 147 paragraph 1 of Act No. 140/1961 Coll. By the judgment of stamp 3T 18/2010 of the District Court for Prague 1 dated was acquitted in full pursuant to § 226 letter e) Act No. 141/1961 Coll. The defendant argued against this person that the defendant used § 242 of Act No. 40/2009 Coll. (special provision on effective remorse), i.e. he fulfilled his obligation before the court of first instance started pronouncing the sentence, which does not change the fact that he committed the crime in question. [33] xxxx was prosecuted on suspicion of committing the crime of non-payment of tax, social security premiums and similar mandatory payments pursuant to § 241 paragraph 1 of Act No. 40/2009 Coll.; by the judgment of the District Court for Prague 7 No. 25T 28/2011, the named person was acquitted of the charges due to effective remorse according to § 242 of Act No. 40/2009 Coll. [34] xxxxx legally convicted by criminal order of the District Court in Mladá Boleslav sp. stamp 3T 167/2007 for the criminal offense of obstructing the execution of an official decision pursuant to § 171 paragraph 1 letter c) Act No. 140/1961 Coll. [35]. in Cheb, No. 3 ZT 274/2007-25, the criminal prosecution was stopped according to § 172 paragraph 1 letter f) Act No. 141/1961 Coll. due to the termination of the criminality of the offense in the sense of § 147a of Act No. 140/1961 Coll., i.e. the special provision on effective remorse. [36] The court agreed with the defendant's conclusion that the police exceeded the legal framework, and that the storage of

sensitive data without the consent of the data subjects for the purposes of future identification was a violation of the Personal Data Protection Act in all the mentioned cases, as xxxx xxxx were acquitted of the charges (or the prosecution was stopped), so they are innocent of the crime and therefore, from the perspective of the principle of proportionality, it is illegal to keep their DNA profile in the database. The same applies from the point of view of the principle of proportionality to xxxxx, who 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. [37] In this context, the local court must conclude that it fully accepted the legal opinion expressed by the local court, but by another panel, which has already ruled on this matter once in a judgment dated 13 April 2016, file no. 3 A 86/2013, against which the plaintiff filed a cassation complaint, which was decided by the Supreme Administrative Court so that the cassation complaint by judgment of 24 October 2017, file no. 8 As 134/2016 rejected. In the justification of this judgment, the Supreme Administrative Court stated that: "When reviewing the contested decision, the Municipal Court was primarily based on Section 79 of the Police Act, while in the individual assessed disputed cases, it considered whether the condition of necessity was also fulfilled for the processing of the DNA profile in the National Database of DNA Profiles (see pages 7 and 8 of the contested judgment). He thus proceeded in accordance with the relevant legislation, and it is therefore not possible to convince the complainant that the municipal court indirectly expressed the insufficiency of the distinguishing criteria for the inclusion of personal data, including sensitive data, in the National Database of DNA Profiles (i.e. the criteria for committing an intentional or negligent crime) according to § 65 (1) of the Police Act by also dealing with the nature of the crime committed. In the case under consideration, the municipal court examined the legality of further processing as early as 6 A 88/2018 The agreement with the original is confirmed by: M. V. 8 of the obtained sensitive data in this database, and in that case, according to § 79 of the Police Act, it is also necessary to consider the requirement for the necessity of storing this data for performance of other tasks of the police" (see point [26] of the cited judgment). [38] In other words – in this decision, the Supreme Administrative Court identified itself with the legal assessment of the local court and explicitly stated that it proceeded in accordance with the relevant legislation, i.e. that it correctly considered whether the condition of necessity, which it assessed closely, was fulfilled, while The Supreme Administrative Court did not correct the conclusions of the local court regarding the assessment of necessity in these cases. The court, or rather this panel, therefore has no reason to deviate from the

above-mentioned conclusions and thus considers it superfluous to deal with the plaintiff's controversy regarding whether and for what reasons it is necessary to process personal data in the case of the use of the so-called institute of effective remorse, and further also whether it is also necessary in case of committing the crime of obstructing the execution of an official decision. [39] Finally, the plaintiff asked the court to waive the administrative penalty, or its moderation. The plaintiff considers the imposed fine of 240,000 CZK to be clearly unreasonable. [40] At the same time, the court states that the decision on the amount of the fine within a certain range reserved by law takes place exclusively in the sphere of administrative discretion (discretionary right of the administrative body), i.e. the law allows the freedom of the administrative body to decide within the defined limits, or to choose one of several possible solutions allowed by law (see by analogy the judgment of the Supreme Administrative Court of 26/02/2010, no. 4 Ads 123/2009-99, further the judgment of the Supreme Administrative Court of 22/12/2005, No. 4 As 47/2004-87, judgment of the Supreme Administrative Court of 15/10/2003, No. 5 A 149/2002-24, judgment of the Supreme Administrative Court of 18/12/2003, no. j. 5 A 139/2002-46). [41] Free administrative discretion can be subject to judicial review only in accordance with Section 78, paragraph 1 of the Civil Code. only to the extent that the administrative body exceeded the limits of this discretion set by law (in the first place, however, it concerns the limits resulting from the constitutional principles of the prohibition of arbitrariness, the principle of equality, the prohibition of discrimination, the order to preserve human dignity, the principle of proportionality, etc.) or the administrative body abused free discretion . The court therefore assesses whether the decisions of the administrative authorities did not deviate from the limits established by law. [42] At the same time, the court considers the justification of the amount of the fine in the first-instance decision and supplemented in the contested decision to be sufficiently clear, logical and comprehensible. In both decisions, it is evident what considerations the administrative body was guided by in its decision-making, what criteria were taken into account and how they increase or decrease the significance of the offense. The first-instance decision correctly took into account the nature and seriousness of the offense, the nature of the accused's activities, as well as mitigating circumstances (see page 16 of the first-instance decision). Therefore, the court has no reason to point out any shortcomings in the use of administrative discretion, since the administrative authorities used their discretion according to the legal order and also did not deviate from the limits set by the law in any way. [43] Furthermore, the court adds that in the case under consideration, the plaintiff was fined CZK 240,000, while according to § 45, paragraph 3 of the Act on the Protection of Personal Data, for an offense according to § 45, paragraph 1 letter e) of the Personal Data Protection Act impose a fine of up to CZK 5,000,000. The

established fine therefore represents 4.8% of the total margin. Therefore, the court cannot consider the amount of such a fine to be disproportionate, regardless of the fact that even the plaintiff, although he claims that the fine is disproportionate, did not justify this disagreement with anything, he did not state the reasons for which he considers such a fine to be disproportionate, and that in view of his financial circumstances ; and is rather limited to the emotionally perceived amount of the imposed fine. However, such a statement is insufficient in itself – in the case of administrative punishment, the public administration authorities impose penalties in their own 6 A 88/2018 Conformity with the original is confirmed by: M. V. 9 legal competence and they are the ones who are responsible for the imposed penalties. The task of the court is not to intervene in this process in the sense that the court itself would reassess the imposed punishment, but to protect public subjective rights in the sense that there is no disproportionate use of legal competence by the public administration. The court found nothing of the sort in this case, therefore there is no reason to moderate the imposed sentence in any way. [44] In the matter in question, the court thus concludes that it does not consider the filed lawsuit to be well-founded and therefore dismissed it (section 78, paragraph 7 of the Civil Procedure Code). [45] The decision on reimbursement of legal costs is justified by Section 60, paragraph 1 of the Civil Procedure Code, according to which a party who was successful in the case has the right to reimbursement of legal costs before the court. Given that the defendant state did not have these, the court ruled as stated in the judgment. LESSON: A cassation complaint can be filed against this decision within two (2) weeks from the date of its delivery. The cassation complaint is submitted in two (more) 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 on May 16, 2019 JUDr. Ladislav Hejtmánek former President of the Senate