No. 10 A 52/2016 - 49 CZECH REPUBLIC JUDGMENT ON BEHALF OF THE REPUBLIC The Municipal Court in Prague decided in a panel composed of the chairman Mgr. Martin Kříž and judge Mgr. et Mgr. Lenka Bahýľová, Ph.D., and Mgr. Věry Jachurová in the legal matter of the plaintiff: Czech Republic – Ministry of the Interior with registered office at Nad Štolou 936/3, 170 34 Prague 7 against the defendant: Office for the Protection of Personal Data with registered office of Pplk. Sochora 727/27, 170 00 Prague 7 on the lawsuit against the decision of the Chairperson of the Office for the Protection of Personal Data dated 28 January 2016, ID No. UOOU-10090/15-15 as follows: I. The lawsuit is dismissed. II. None of the participants is entitled to compensation for the costs of the proceedings. Reasoning: Definition of the case 1. The plaintiff, with the filed lawsuit, demanded the review and annulment of the decision of the President of the Personal Data Protection Office (hereinafter referred to as the "challenged decision"), as well as the previous decision of the Personal Data Protection Office dated 19 November 2015 , No. UOOU-10090/15-7 (hereinafter referred to as "the decision of the ÚOOÚ"). According to the decision of the ÚOOÚ, the plaintiff committed an administrative offense pursuant to § 45 paragraph 1 letter h) of Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain laws (hereinafter referred to as the "Act on the Protection of Personal Data"), because it did not adopt or implement measures to ensure the security of personal data processing. The plaintiff should have specifically committed this by not ensuring that there was no unauthorized access to the population register by Czech Radio (from June 2013 to October 2014) and Czech Television (from September 2014 to October 2014). For this delict, the plaintiff was fined 700,000 CZK pursuant to Section 45, Paragraph 3 of Act 2 10 A 52/2016 on the Protection of Personal Data, which was subsequently reduced to 500,000 CZK by the contested decision. Content of the claim 2. In the first point of claim, the plaintiff objected that personal data was made available to Czech Television and Czech Radio without a legal reason or without authorization. Czech Radio and Czech Television are in the position of a public authority that performs tasks imposed by law, for which they also need the personal data of persons who are affected by the performance of a legal task - collection of fees according to § 8a paragraph 1 and § 10 paragraph 1 letter a) of Act No. 484/1991 Coll., on Czech Radio (hereinafter referred to as the "Act on Czech Radio", or according to § 8a paragraph 1 and § 10 paragraph 1 letter a) of Act No. 483/1991 Coll. , on Czech Television (hereinafter referred to as the "Act on Czech Television"). The law imposes on these public corporations the obligation to keep records and collect dues. Keeping records of taxpayers, collecting fees and the need to verify the basic personal data of taxpayers is thus the fulfillment of a task established by law (and in the public interest) and the use of personal data, even without the consent of data subjects, is processing necessary to comply

with the legal obligations of the controller and at the same time processing necessary for protection rights and legally protected interests of Czech Radio and Czech Television. 3. The plaintiff, as the administrator of the disclosed personal data, has a general obligation to cooperate in the interests of good administration pursuant to § 8, paragraph 2 of Act No. 500/2004 Coll., Administrative Code (hereinafter referred to as "s. ř."). In the interest of good administration, it is hardly possible to impose such a condition that interrupts or excludes cooperation just because the relevant regulation does not use the explicit wording foreseen by another law, if it is possible to derive the legal basis and restrictions for the communication of personal data from other provisions (especially § 8 of the law on the protection of personal data). In the plaintiff's opinion, it is not excluded that access to personal data is provided both on the basis of formally conceived access (i.e. by a casuistic provision of a special law, where the reason for access is not examined) and on the basis of materially justified access (i.e. on the basis of a title included in the general regulation of the Personal Data Protection Act and cases justifying access, i.e. requests based on a task imposed by law, here Sections 8 and 10 of the Act on Radio and Television Fees, in conjunction with the general rules of the Personal Data Protection Act). The plaintiff has no doubt that even before the formal amendment of Act No. 348/2005 Coll. on Radio and Television Fees (hereinafter referred to as the "Radio and Television Fees Act"), i.e. before the adoption of Act No. 318/2015 Coll., Czech Radio and Czech Television were authorized recipients of disclosed personal data from the population register. 4. Furthermore, the plaintiff stated that if a public institution providing some of the functions of the state is required to keep records of taxpayers and collect fees, it is difficult to imagine without the possibility of verifying the personal data of taxpayers in the population register. State institutions thus have access to the personal data they need for the performance of their functions, already from the essence of the matter. This was also the case in the past, which can be inferred from the judgment of the Supreme Administrative Court of 27/02/2014, No. 4 As 132/2013-25, where, on the basis of the general competence of the Ministry of the Interior in the field of prevention and prevention of crime the right of the Ministry of the Interior to process personal data without the consent of the data subjects was also imported. If a state institution has a certain obligation, for the performance of which it also needs personal data, it has the right to process them, or according to the plaintiff, he is entitled to receive them. 5. According to the plaintiff, the fact that Český rozhlas and Česká televize had and should have authorization to enter the register of residents for the purposes of collecting fees also follows from the fact that they were additionally given formal explicit authorization by a subsequent amendment (Act No. 318/2015 Coll. ). However, the very fact of specifying the legal order does not mean that a certain right or authorization did not already exist here. At the same

time, the taxpayer is obliged to provide his personal data to the register of taxpayers, so Czech Radio and Czech Television already have data on taxpayers, and most entries into the population register serve only to verify the data that the taxpayer has to provide himself. There is no excessive interference with the right to informational self-determination on the part of the taxpayer, in which he himself is obliged to limit his informational self-determination (on the basis of the law). 3 10 A 52/2016 6. The plaintiff believes that the extent of the perpetrator's share in the illegal situation is also important for assessing the seriousness of the alleged crime. It should be pointed out here that the error occurred primarily on the part of other public authorities, which themselves have an obligation to protect personal data, i.e. Czech Radio and Czech Television, which initiated the registration of agendas, even though they did not have explicit legal authorization to enter the population register. and further on the part of the Ministry of Culture, which then registered the agendas, albeit in accordance with Act No. 111/2009 Coll., on Basic Registers (hereinafter referred to as the "Act on Basic Registers"), is responsible for the correctness of the registered data. Thus, the alleged misconduct in the given case did not occur solely due to the plaintiff's misconduct. 7. Regarding the issue of responsibility for the alleged illegal situation, it should be noted that according to § 56 paragraph 3 letter b) of the Basic Registers Act is responsible for applying appropriate measures to prevent unauthorized access to data kept in agenda information systems and to reference data kept in basic registers on the basis of authorization obtained by the public authority that registered the agenda. This results in a special adjustment of the responsibility for handling personal data contained in the population register. The Basic Registers Act is both a lex posterior and a lex specialis to the Personal Data Protection Act; therefore, the responsibility lies primarily with the announcer of the agenda, which was the Ministry of Culture. At the same time, the defendant's conclusion that from the provisions of § 54 paragraph 1 letter j) of the Act on Basic Registers implies the authorization and, at the same time, the obligation of the plaintiff to review the correctness of the registration of the agenda. The obligation to state the number and name of the legal regulation and the designation of its provision, on the basis of which the public authority that executes the agenda is authorized to obtain reference data from the basic registers or to perform their entry, is imposed on the announcer of the agenda, which results from the fact that the entire provision of § 54 of the Act on Basic Registers regulates the obligations of the notifier, not the plaintiff. The plaintiff believes that it cannot be directly concluded from this that she is obliged to verify the information just mentioned. In the given case, the relevant provisions of the Act on Radio and Television Fees, i.e. Section 8 and Section 10, which impose the obligation to keep registers of taxpayers and the obligation to collect outstanding fees, were then stated (or announced). 8. In the second claim,

the plaintiff stated that her potential liability cannot be absolute. The measures taken by the plaintiff were described in detail and recorded in the file material of the Office for the Protection of Personal Data. However, their improvement could only happen after gaining experience with the system, not before. The plaintiff therefore considers that, within the limits of possibilities, she took all measures corresponding to the then existing level of knowledge and technology. The measures taken were proven in the proceedings. To the data controller according to § 4 letter j) of the Act on the Protection of Personal Data cannot be made absolute requirements, the essential thing is that it does not neglect means of protection (taking measures to ensure security) and that it reacts immediately if new risks are discovered (which happened). A certain error in itself does not mean that the administrator has not fulfilled the obligation to accept or take measures to ensure the security of personal data processing within the limits of his objectively given possibilities. The plaintiff, after all, like all state authorities, is limited by legal regulations, where the legal regulations have determined exactly what the plaintiff should and should not do. Furthermore, the plaintiff was also limited by the budget and personnel. The above also applies with regard to the fact that the agenda announced by the Ministry of Culture was announced late, as all processes are set up in the same way for all cases, and it cannot be predicted that an agenda announced (just) in a different interval will require a higher level of attention than any other. As mentioned above, at the time in question, a system that had not yet been tested was launched, which has no analogues in the Czech Republic, and it was not possible to predict in advance what risks its launch would bring. 9. The plaintiff also disagrees with the defendant's argument regarding the general reference to the imposition of a penalty "in the lower half" of the rate, especially if mitigating circumstances were supposed to be taken into account and the rate of the penalty is set in millions. The sensitivity of the impact of the sanction does not depend on the upper limit of the rate, but on the effect of the fine in its real amount, taking into account the circumstances and the position of the delinquent (i.e. here, a body of state power, bound by law, objective circumstances and without the possibility of generating its own income to remediate the consequences of the sanction). . If the desired state, especially 4 10 A 52/2016 correction and prevention of violations of the law, can be achieved by other means, these should be used and punishment should only be imposed if the correction cannot be achieved otherwise. Here, it is necessary to point out the inspection, the conclusions of which in themselves should, according to the plaintiff, be sufficient to restore the legal status. 10. If the result of the inspection, or control, there was not even the imposition of corrective measures, the question is whether the application of administrative punishment is necessary at all. The identified shortcomings were subsequently eliminated, the plaintiff took measures to strengthen the protection of

personal data and is sufficiently motivated to continue doing so. The application of the punishment thus appears to the plaintiff to be redundant and, in the light of the principle of subsidiarity of criminal repression, also contradictory to the principles of public punishment. The defendant does not even explain for what reasons he considers it necessary to use the means of administrative criminal law, moreover in such force. Moreover, it is counterproductive for a public authority to take away funds for the provision of tasks of public interest for a certain mistake, as if, after reducing its budget, they should be performed better. At the same time, the plaintiff considers it important to point out, also with regard to her special position, that it is in her interest to fulfill her legal obligations as best as possible. After all, the plaintiff also proved this by her quick reaction to the detected deficiencies, as well as by her maximum cooperation with the Office for the Protection of Personal Data. It is not so obvious what such a high fine is supposed to motivate the plaintiff, when considering the purely punitive function of the punishment, this method of motivation is questionable and even counterproductive. 11. When determining the amount of the sanction, the defendant also did not take into account the time that has passed since the end of the possible illegal state, although the time since the commission of the offense is an important criterion for imposing a lighter sentence. All the more so if it is an area of administrative punishment, where even shorter periods for the termination of liability for a tort apply. It should also be taken into account that a similar situation has not recurred since the detected misconduct, and it is also desirable to take into account the maximum cooperation of the plaintiff during the inspection by the Office for Personal Data Protection. Another aspect that speaks for a diametrically lower sanction, if not any, is also the fact that this is the first action of this kind that the plaintiff had as a data controller in the sense of § 4 letter j) of the Act on the Protection of Personal Data, and compared to the number of agendas that were registered (about half a million), this is a completely unique misconduct. It is a general practice that in the case of a first offense, a small fine is imposed, so that the offender is primarily alerted to an undesirable behavior or condition, not that a penalty of hundreds of thousands of crowns is imposed for the first time. In addition, the plaintiff states in the conclusion that even if the court accepts the conclusion that access to personal data was allowed by the plaintiff without authorization, the fine imposed is still completely disproportionately high, and a substantially lower fine is completely sufficient to achieve the sanctioning effect (the plaintiff proposes to reduce the finally imposed fine to 10,000 CZK), or none. 12. In the third point of claim, the plaintiff objected that the identity of the deed was not maintained during the subject administrative proceedings, or the subject of the proceedings, because the subject of the proceedings, as it was defined at the time of the initiation of the proceedings, differs substantially from the definition of the actions for which the

plaintiff was charged in the decision of the ÚOOÚ, or penalty imposed in the contested decision. In the decision of the ÚOOÚ, or in the contested decision, the deed for which the fine was imposed is partly defined by other circumstances, without the plaintiff being informed of the change in the subject of the proceedings. The plaintiff learned about the new subject of the proceedings, as well as the changed classification of the deed, only after the final decision. She could not familiarize herself with the change in the subject of the proceedings and the classification of the act before the decision was issued, among other things for the effective exercise of the right to defence. In the decision of the administrative body of the first instance, in contrast to the notice of the initiation of proceedings, there is also information about the manner in which the obligation was breached, without the plaintiff being informed of this specification before the decision was issued. Furthermore, a new list of data appears in the decision, the unauthorized disclosure of which should have occurred without it being the subject of proceedings. Also, in contrast to the subject matter of the proceedings defined by the notice of initiation of the proceedings, the time period during which the offense was to be committed was extended by about a month both in the case of Czech Radio and Czech Television, without any justification whatsoever (originally the time period was defined by precise dates, then in decision 5 10 A 52/2016 months, which is an extension of the time period, if the month starts on its first day and ends on its last day, the time period was thus extended). The plaintiff only became aware of the aforementioned changes when the decision was announced, which is inadmissible. 13. Furthermore, the plaintiff objected to the indefinite legal qualification of the actions for which she was affected, as the notice of initiation of proceedings only refers to the numbers of the provisions of the Act on the Protection of Personal Data, without specifying the specific facts, and the contested decision does indeed quote the entire provisions of the Act, which are intended to affect the matter, but without specifying which factual basis was fulfilled. In this way, the relevant statement of both the ÚOOÚ decision and the contested decision is indefinite, while it is necessary to point out that the specification cannot be made until the justification of the decision. In this context, the plaintiff referred to the judgment of the extended panel of the Supreme Administrative Court dated 15.1.2008, file no. 2 As 34/2006-73, publ. under No. 1546/2008 Coll.NSS). Statement of the defendant 14. The defendant proposed that the action be dismissed. Regarding the first claim, he stated that the plaintiff allowed access to the register to entities that had no legal authorization for such access. The standards cited by the plaintiff in the Act on Czech Radio and the Act on Czech Television regulate only the general obligation of Czech Television and Czech Radio to use financial resources expediently and economically, and further state that the income of the mentioned institutions is television, or radio fees. Issue these provisions as a clear, unambiguous

and predictable legal authorization to intervene in the privacy of the persons concerned, consisting of access to the register of residents, which would correspond to both the requirements of Article 2, paragraph 3 of the Constitution of the Czech Republic, and the requirements of § 5, paragraph 2 letter a) of the Personal Data Protection Act is, in the defendant's opinion, unreasonable and unacceptable. 15. In the proceedings before the administrative body of the first instance, it was established that Czech Radio and Czech Television do not have authorization to access the basic register of residents based on the Act on Radio and Television Fees, and their access to the register of residents was thus stopped by the plaintiff, although the plaintiff now claims , that the designated institutions still had the legal title to this approach. Subsequently, the result of the plaintiff's negotiations with the Ministry of Culture was the Ministry's proposal applied in the comment procedure to the draft amendment to Act No. 133/2000 Coll., on the Register of Residents (hereinafter referred to as the "Act on Register of Residents"), which enabled the access of designated institutions to the register of residents. The aforementioned amendment, i.e. Act No. 318/2015 Coll., on the basis of which Czech Radio and Czech Television now have legal authorization to access the population register, did not become effective until 1 January 2016. 16. Furthermore, the defendant stated that in the Act the expressed task of a public authority or any other entity, for the achievement of which a certain processing of personal data is necessary, generally establishes the legal title to the processing of personal data. However, if the law clearly defines what data, to what extent and in what manner are to be processed to achieve the given goal, this statutory authorization cannot be exceeded. The plaintiff's reference to the provision of Section 8 of the Act on Radio and Television Fees cannot be accepted, as this provision only imposes on the broadcaster the obligation to keep records of taxpayers and establishes the taxpayer's obligation to provide the required personal data. The fact that the authorization of public law institutions to access personal data managed by a different entity must have a clear and explicit form in the law also follows from § 8, paragraph 10 of the Act on Radio and Television Fees, in which the legislator modified the obligation of electricity suppliers at the request of broadcasters from the law to transfer the personal data of subscribers and also defines the scope of data processed in this way. If it was the legislator's intention that the administrator of the population register would also be obliged to hand over some personal data to Czech Radio and Czech Television, he would certainly have adjusted it in a similar way, which he did not do. 6 10 A 52/2016 17. To the referenced judgment of the Supreme Administrative Court of 27 February 2014, file no. 4 As 132/2013-25 the defendant stated that it refers to the processing of data that is not personal data in the sense of the Personal Data Protection Act and is therefore not relevant for the assessment of this matter. He further drew attention to the fact that by

not securing access to the register of residents, i.e. by not carrying out an appropriate control of authorization for that access, the plaintiff had created an illegal and high-risk situation, as this access was allowed to unauthorized entities, and as a result of insufficient security measures on the part of of the plaintiff, access to the register of residents could also be granted to other entities that do not have the legal title for such access. According to the defendant, this is not a matter of whether the data subjects listed in the register of residents suffered tangible material damage, but of the fact that the plaintiff's failure allowed unauthorized subjects to have access to the register of residents. The seriousness of the offense is therefore seen in the creation of a risky situation, the consequence of which was unauthorized access to the register of residents. 18. From the point of view of the specific legislation, it can be stated that the plaintiff did not fulfill one of the basic obligations of the data controller, namely the obligation to secure personal data as required by § 13 paragraph 1 of the Personal Data Protection Act. Although measures were taken by the plaintiff to protect personal data, these measures were not sufficient; it was not only an administrative or formal error, because as a result of the actions of the plaintiff, a risk situation was created and access to the register of residents was granted to two unauthorized entities. 19. Regarding the contested fact that the error occurred primarily on the part of other public authorities, which themselves have an obligation to protect personal data, the defendant stated that from the provisions of § 54 paragraph 1 letter j) of the Basic Registers Act implies the obligation to state the legal authorization for access to a specific register when announcing agendas. The tasks of the plaintiff in the process of announcing agendas are defined in Section 54, paragraphs 3 to 7 of this Act. It clearly follows from the third and fourth paragraphs of this provision that the plaintiff is obliged to assess the announcement of the agenda as a whole. In the event that she does not find deficiencies in it, the plaintiff will register the agenda, if she finds deficiencies in the announcement of the agenda, she will invite the notifier to remove them, including a reference to the specific provisions of the Act on Basic Registers, with which the notification is in conflict. In the defendant's opinion, when using any of the existing methods of interpretation of the law, the conclusion reached by the plaintiff cannot be reached, namely that it follows from these provisions of the Act on Basic Registers that the plaintiff does not examine the announcement of the agenda and the legal authorization for its execution stated therein. 20. If the control of the announcement of agendas was consistently carried out to the extent foreseen by the Act on Basic Registers, it would not be possible for access to be granted on the basis of an agenda incorrectly registered by the Ministry of Culture. The administrator is obliged not only to take appropriate measures, but also to implement these measures in practice. This clearly did not happen in the present case. After all, the plaintiff herself admits, for example in

the report dated 3 December 2015, that the situation in question, i.e. allowing Czech Radio and Czech Television to access the population register, was illegal, and that she discovered this fact on the basis of her own control mechanisms and stopped the access, unfortunately only after she gave them access to the registry. 21. Regarding the second claim, the defendant stated that the reference to the untested method of the newly introduced procedure is a frequent and recurring argument of personal data controllers in violation of the provisions of § 13 of the Personal Data Protection Act. Here, the defendant refers to the already stated statement in the dissolution decision that the measures taken by the plaintiff turned out to be insufficient also for the reason that a test program was not launched, when it would be possible to evaluate potential risks and take adequate measures to eliminate them. 22. Regarding the amount of the imposed sanction, the defendant stated that already when deciding on the dissolution, the remediation by the plaintiff was taken into account and the amount of the sanction was assessed with regard to the current practice of the Office for the Protection of Personal Data. The risk in the event of unauthorized 7 10 A 52/2016 access by Czech Radio and Czech Television to the population register was reassessed, the purpose of collecting fees was evaluated, when this purpose can generally be considered legitimate. On the basis of the above, the sanction assessed by the administrative body of the first instance was reduced to the amount of CZK 500,000, which, in the defendant's opinion, is more in line with the practice of the Office for the Protection of Personal Data and takes into account the initiative of the plaintiff in removing the illegal situation. In addition, the time that had passed since the termination of the illegal situation was already taken into account when the decision of the first-instance authority was made, when this fact was taken into account in connection with the quick correction of the illegal situation when determining the amount of the sanction. The defendant added that the law on the protection of personal data, according to which the sanction was imposed in this case, does not contain any distinction between the responsible entities, the data controllers; the defendant is therefore obliged to equally prosecute and punish the torts of both private and public law persons. 23. Regarding the third claim, the alleged failure to preserve the identity of the deed, the defendant stated that he considers this claim to be purely purposeful. The argument of the alleged different definition of the deed or the subject of the proceedings was only used by the plaintiff in the administrative action, she did not point out or substantiate it in any way about the procedural errors and curtailment of her rights during the proceedings, especially in the dissolution. It is not true that there was a change in the classification of the deed, the entire administrative proceeding was conducted on an administrative offense pursuant to § 45 paragraph 1 letter h) of the Personal Data Protection Act. In the decision of the ÚOOÚ as well as in the challenged decision, a

violation of the obligation according to § 13, paragraph 1 of the Act on the Protection of Personal Data is noted, as the said Act formulates this obligation. 24. The definition of the period of time during which the plaintiff committed an illegal act, although different from the definition in the notice of initiation of administrative proceedings, cannot, according to the defendant, have an effect on the fact that the plaintiff violated the law by the same act for which the administrative procedure was initiated, occurred. The act was described identically and absolutely clearly in the decision of the first and second instance. The plaintiff's reply to the defendant's statement 25. In the reply to the defendant's statement, the plaintiff stated, beyond the scope of the plaintiff's arguments, that the defendant only argues hypothetical risks and ignores that the personal data were provided only for verification purposes to entities to which citizens voluntarily entrust the same personal data on the basis of the law and to the processing and verification of which these entities are authorized. The defendant therefore prioritizes the formal protection of personal data over its material meaning. 26. The plaintiff cannot identify with the rejection of reservations about the meaningfulness of financial sanctioning of state bodies, because in reality there are a number of differences between public and private entities, which can also be reflected in the sanction. At the same time, the defendant states, on the one hand, that he does not distinguish between the perpetrators of the crime, on the other hand, he emphasizes the role and position of the plaintiff, rejects her argument of launching a new system precisely because of her position, and at the same time suggests that she should be a kind of exemplary example, which certainly does not indicate an indiscriminate approach in comparison with private entities, but rather the opposite, to the detriment of the plaintiff. 27. Regarding the controversy with the argument that the identity of the deed was not preserved, the plaintiff states that the correction cannot be made until the statement of claim. The plaintiff is of the opinion that a participant in administrative proceedings cannot learn about a change in the description of the act or its classification only from the decision, nor is an "explanation" in the justification sufficient. Adherence to procedural rules is as important as the substantive assessment of the case, and procedural misconduct cannot simply be dismissed as "purposive" simply because it stands in the way of punishing the alleged perpetrator. The fact of when or by whom this notice was issued does not change the relevance of the notice of driving defects. 28. Regarding the interpretation of the judgment of the Supreme Administrative Court of 27 February 2014, No. 4 As 132/2013-25, the plaintiff stated that it is being interpreted in a misleading manner. Here, the NSS denied that it would be possible to identify a specific person on the basis of anonymized information without additional data, additionally obtained from other sources. At the same time, however, the NSS stated that the plaintiff originally handled personal data 8 10 A 52/2016, but the anonymized subjects

of personal data were not identifiable on the basis of information originating from the plaintiff. The NSS then emphasized that even if it was personal data, the actions of the plaintiff fall under the general headings of information processing, due to the fact that the Competence Act enshrines the relevant authorizations in the given area. The plaintiff believes that a situation similar to the one in the subject matter is approved here, namely that the body performing the task of the state is entrusted with a certain competence for which it needs to process personal data. He is authorized to do so already by virtue of the assignment of the given competence, he does not need a special casuistic authorization. The plaintiff further stated in her punishment that she was limited by a number of circumstances beyond her control, and her punishment is thus similar to the situation dealt with in the above-mentioned judgment of the National Court of Justice, when the plaintiff was also obliged to implement a certain project, for the implementation of which she was then, despite all caution on the part of Office for Personal Data Protection punished. Assessment of the matter by the court 29. The Municipal Court in Prague first considered whether the plaintiff, who was represented by the Ministry of the Interior in the proceedings before the administrative authorities, could be granted judicial protection in the sense of § 2 of Act No. 150/2002 Coll., Administrative Code of Court (hereinafter only "s. ř. s."), according to which, in the administrative judiciary, courts provide protection to the public subjective rights of natural and legal persons in the manner established by this law and under the conditions established by this or a special law and decide in other matters in which this law so provides . When assessing this issue, the court relied on the legal opinion of the Supreme Administrative Court in the judgment dated 11.11.2004, file no. 2 As 36/2004-46, according to which the state (through its organs) acts either in a superior position or in a position completely comparable to other participants in legal relations. The practical criterion for distinguishing this position is the nature of the specific legal relationship. 30. In the referenced judgment, the NSS proceeded from the thesis that the state is a legal entity under public law (a public corporation) sui generis and where it does not act in a superior position, it can be the bearer of public subjective rights and obligations, the protection of which can also be sought in an administrative court. "This is not hindered by the fact that the state as a legal entity is not defined in this way in positive law. Individual administrative bodies are then mere organs of the state that act on its behalf in the relevant public law relationship." (judgment of the Supreme Administrative Court of 12 August 2015, no. 3 As 182/2014-34). 31. When assessing the issue of possible interference by the state on public subjective rights, the NSS in the judgment dated 11.11.2004, file no. 2 As 36/2004-46, stated that "when it comes to managing the state budget, the state is obliged to accept the basic attribute of the rule of law, which is the binding of state power by law (Article 2, paragraph 3 of the Constitution of the

Czech Republic). Thus, the state can only do what the law expressly stipulates. That is why the state also manages within the framework of the legal regulation, defined by the annually approved law on the state budget. The construction of this law is based on the idea of dividing the budget into individual budget chapters, while these chapters express the scope of competence and responsibility of the central state administration bodies and other organizational units of the state (see § 10 of Act No. 218/2000 Coll., on budget rules). It is in this direction that the Supreme Administrative Court sees the infringement of property rights in the sense of the right to use and deal with the object of ownership". 32. The Municipal Court in Prague therefore concluded, in accordance with the aforementioned jurisprudence, that the plaintiff (here the Czech Republic, acting through the Ministry of the Interior) is a legal entity within the meaning of § 2 of the Civil Code, while the contested decision in conjunction with the decision of the ÚOOÚ was affected by her public subjective right (to dispose of the object of her ownership), and is therefore legitimized to file a lawsuit in the sense of § 65 paragraph 1 of the Civil Code The court could therefore proceed to the assessment of the matter itself. He reviewed the contested decision and the proceedings preceding it before the administrative authorities of both levels from the point of view of objections to the claim pursuant to the provisions of Section 75 of the Civil Code. He based this on the factual and legal situation that existed at the time the contested decision was issued and assessed the matter as follows. 33. Pursuant to Section 13(1) of the Act on the Protection of Personal Data, the administrator and the processor are obliged to take measures to prevent unauthorized or accidental access to personal data, their alteration, destruction or loss, unauthorized transmission , to their other unauthorized processing, as well as to other misuse of personal data. This obligation applies even after the end of personal data processing. 34. According to § 45 paragraph 1 letter h) of the Act on the Protection of Personal Data, a legal entity or a natural person running a business, as an administrator or processor, commits an offense by failing to adopt or implement measures to ensure the security of personal data processing during the processing of personal data (Section 13). 35. Pursuant to § 45 paragraph 3 of the Personal Data Protection Act, a fine of up to CZK 5,000,000 can be imposed for an offense under paragraph 1. 36. In the first claim, the plaintiff referred to § 8a paragraph 1 and § 10 paragraph 1 letter a) of the Act on Czech Radio and § 8a paragraph 1 and § 10 paragraph 1 letter a) of the Act on Czech Television, with the fact that even before the amendment to the Act on Radio and Television Fees (Act No. 318/2015 Coll.), Czech Radio and Czech Television were authorized recipients of personal data made available from the population register. However, these provisions (as already stated by the defendant) regulate only the general obligation of both institutions to use financial resources expediently and economically (Section 8a(1) of the Act on

Czech Television, respectively Section 8a(1) of the Act on Czech Radio) with the provision that television and radio fees are their income [§ 10 para. 1 letter a) of the Act on Czech Television, or § 10 paragraph 1 letter a) of the Act on Czech Radio]. These institutions do not derive any, even general, authority to inspect the population register from the aforementioned laws. 37. According to § 5 paragraph 2 letter a) of the Personal Data Protection Act, the controller may process personal data only with the consent of the data subject. It may process them without this consent, if the processing is necessary for the performance of a contract to which the data subject is a contracting party, or for negotiations on the conclusion or amendment of a contract carried out at the suggestion of the data subject. The title for the processing of personal data without the consent of their holder according to this provision is probably the most used in practice, namely in the field of public administration. As the professional literature also confirms, it "mainly implements the legal regulation of the conditions for the exchange of information within the framework of the integration of basic information systems according to Act No. 111/2009 Coll., on basic registers." Reference data on the rights and obligations of persons are in the context of § 52 paragraph 2 letter a) of the Act on Basic Registers, data about a certain right or obligation of a person, if another legal regulation stipulates that data about them is kept in the register according to this Act; in this case, the reference data is information about a certain right or obligation defined by reference to the relevant provision of another legal regulation and specified in such a way that it is completely clear what the right or obligation is and to what extent." (cited by Kučerová, A. and col. Personal Data Protection Act. 1st edition. Prague: C. H. Beck, 2012, p. 99. comment on § 5). In other words, in order for the entity (in this case, Czech Television and Czech Radio) to be able to, according to § 5 paragraph 2 letter a) of the Act on the Protection of Personal Data to use the register for data processing, it must proceed in accordance with the constitutional principle that state power can be exercised only in the cases, within the limits and in the manner established by law (Article 2, Paragraph 3 of the Constitution of the Czech Republic, Article 2 paragraph 2 of the Charter of Fundamental Rights and Freedoms). 38. When assessing exceptions that allow data to be provided even without the consent of the data subject, the obliged entity must also take into account § 5 paragraph 3 and § 10 of the Personal Data Protection Act. It is therefore absolutely necessary that, in fulfilling the above-mentioned principle, the condition of a sufficiently certain legal authorization is met, when the relevant special law expressly states the authorization to process the data, or provides the administrator with such an obligation or authorization, the fulfillment of which is not possible without the processing of personal data. In this case, although § 10 of the Act on Radio and Television Fees provides for the authority of the broadcaster to collect outstanding fees and surcharges, the same law

also regulates the keeping of registers of taxpayers, when according to § 8, paragraph 1 of the Act on Radio and Television Fees By law, the administrator of the records of radio or television fee payers is the broadcaster. By law, the broadcasting operator keeps records of taxpayers, unless he authorizes an authorized person to do so, who in such a case is the processor of taxpayer records, and when, on the contrary, the obligation of the taxpayer to notify the broadcasting operator (or a person authorized by law) that he has become a taxpayer is established. 39. Only in the event that the taxpayer fails to comply with this obligation, the operator is entitled, for the purpose of checking compliance with this Act, to obtain data on unregistered taxpayers, when for this purpose, pursuant to Section 8, Paragraph 10 of the Act on Radio and Television Fees, the supplier ensuring the supply of electricity to customers is obliged, upon request, to inform the broadcasting operator by law with which customers he has concluded a contract for the supply of electricity. The supplier ensuring the supply of electricity to customers shall, within 30 days from the date of delivery of the request, provide the following data in addition to the address of the point of consumption: name, first and last name, date of birth and address of permanent residence, for foreigners or long-term residence of the customer who is a natural person, first name, last name, where appropriate, a business company, place of business and identification number of a customer who is a natural person who is an entrepreneur, a business company or the name, legal form, seat and identification number of a customer who is a legal person, name, seat and identification number of a customer who is an organization component of the state or territorial self-governing unit. The supplier ensuring the supply of electricity to customers is entitled to demand from the broadcasting operator, by law, the reimbursement of purposefully incurred costs incurred in direct connection with the fulfillment of his request. By law, the broadcasting operator can use the data obtained in this way only for the purpose and in the manner specified in paragraph 9. 40. The Act on Radio and Television Fees in the relevant wording, which was applied in the given case, thus authorized both providers to obtain specified data about taxpayers, precisely for the purpose of managing taxpayer records and collecting outstanding fees, but only from electricity suppliers, but not by accessing data through the population register. It is clear from the diction of Section 8, paragraphs 9 and 10 of the Act on Radio and Television Fees, how the legislator defined the authority of the broadcaster to find out information about the payers, respectively. unregistered participants. No other authorization (including the authorization to view the population register) follows from the law, nor can it be inferred or interpreted from the general provisions that broadcasters had the authorization to view the population register in 2013 and 2014. Such authorizations cannot be further extended, especially with regard to the constitutionally guaranteed protection of personal data. 41. If the

plaintiff, referring to the judgment of the Supreme Administrative Court of 27.2.2014, file no. 4 As 132/2013-25 stated that, based on the general competence of the Ministry of the Interior, the right of this ministry to process personal data without the consent of the data subjects is also imported, the court did not agree with this opinion. The decision in question deals with processing, or by collecting data that is not considered personal data within the meaning of the Personal Data Act, and the conclusions presented here cannot be directly applied to the situation at hand. One cannot even agree with the plaintiff's conclusions that if the body carrying out the task of the state is entrusted with a certain competence for which it needs to process data, for which it is already entitled by virtue of being entrusted with the given competence, then it does not need a special casuistic authorization. In the case dealt with by the referenced decision, the Ministry had, among other things, information on the criminal activity of the entities concerned, but this information, after the separation of the social security numbers, did not allow for retrospective identification or contact of the concerned persons in any way. However, even if it were personal data, according to the aforementioned NSS judgment, the actions of the Ministry would fall "under the exception according to the provisions of § 3 paragraph 6 letter d) of the Personal Data Protection Act, or § 9 letter i) of the Act on the Protection of Personal Data", as it was an "authorization in the field of youth crime prevention. From the conclusions of the referenced NSS judgment, it is not possible to infer the authorization of Czech Television and Czech Radio to access and inspect the register of persons, or to process personal data without special legal authorization, i.e. not even on the basis of the application of any of the exceptions listed in Section 3, Paragraph 6 of the Personal Data Protection Act. 42. The court therefore did not confirm the claim of the plaintiff that broadcasters were and should be authorized to enter the register of residents for the purpose of collecting fees, even before the amendment to the Act on Radio and Television Fees. Such authorization cannot be derived even from the legal obligation of taxpayers regulated in Section 8, paragraphs 2, 3 of the Act on Radio and Television Fees, when the taxpayer is obliged to notify the broadcaster by law that he has become a taxpayer, or to state defined personal data in this notice. 43. The Act on the Protection of Personal Data in Section 5, Paragraph 2 exhaustively stipulates the conditions under which the controller may process personal data without the consent of the data subject. As already stated above, in the area of public reporting, state power can only be exercised in the cases, within the limits and in the ways that 11 10 A 52/2016 are established by law, where the fulfillment of this principle is a condition that the legal authorization is always sufficiently certain. The administrator of personal data can process such data only if a special law either expressly imposes it, or if it establishes such an obligation or authority, the fulfillment of which is not possible without

processing this data. Although the law provided the administrator of personal data with authorization (recovery of outstanding fees), which is not possible without the processing of this data, however (before the amendment No. 318/2015 Coll. came into effect) the legislator listed institutes on the basis of which Czech Radio and Czech Television had and they could ensure the recovery of outstanding fees without having to consult the register of persons (Section 8, paragraph 2, 3, 9, 10 of the Act on Radio and Television Fees). The court considers that the authorization of Czech Radio and Czech Television to request data on (potential) payers of the radio or television fee from suppliers ensuring the supply of electricity, which was clearly defined by law, cannot be further extended beyond this legal framework. 44. Already in the explanatory report to the Act on Radio and Television Fees, it is stated that "the draft law strictly subordinates the registration of taxpayers, as well as the detection of unregistered taxpayers, to the Act on Personal Data Protection." The fact that the legislator did not originally intend that access to the population register be made available within the framework of the general authorizations and tasks of Czech Television and Czech Radio listed in the Act on Radio and Television Fees can also be inferred from the next part of the explanatory report, where it is stated that "if is looking for an optimal and effective model of control of compliance with the law, there is no more up-to-date and dynamic overview of the location of households or entrepreneurs than that provided by the list of electricity consumption points". Thus, within the framework of the law, the legislator clearly established the way in which Czech Television and Czech Radio could obtain the personal data of taxpayers needed to recover the due fees, while until amendment No. 318/2015 Coll., it did not provide these institutions with any authorization that would allow them to use data from the register of persons. 45. With regard to the contested amount of the plaintiff's share in the committed delict, the court reached the following conclusions. Pursuant to Section 20(1) of the Act on Basic Registers, the administrator of the population register is the Ministry of the Interior. Pursuant to Section 13(1) of the Act on the Protection of Personal Data, the controller and the processor are obliged to take measures to prevent unauthorized or accidental access to personal data, their alteration, destruction or loss, unauthorized transmission, other unauthorized processing, as well as also to other misuse of personal data. This obligation applies even after the end of personal data processing. Simply put, it is an obligation to take the most appropriate security measures in view of the purpose and means of personal data processing, and this obligation applies even after the personal data processing in question has ended. 46. An equally essential part of the obligation under Section 13, Paragraph 1 of the Act on Personal Data is the consistent control of the fulfillment of the measures taken and the obligations of the responsible persons. The best technical security and organizational arrangement cannot be considered sufficient from the

point of view of the Personal Data Protection Act if these measures are not consistently applied in practice and their fulfillment is controlled and enforced. 47. Pursuant to Section 53(1) of the Act on Basic Registers, the central administrative authority or another administrative authority with nationwide jurisdiction shall report the agenda within its jurisdiction to the Ministry of the Interior. According to § 54 paragraph 1 letter j) of the Basic Registers Act effective until 31 December 2016, the announcement of the agenda according to § 53 contains the number and name of the legal regulation and the designation of its provisions, on the basis of which the public authority implementing the agenda is authorized to obtain reference data from the basic registers or to carry out their registration. 48. Pursuant to Section 54(3) of the Act on Basic Registers effective until 31/12/2016, if the Ministry of the Interior does not find deficiencies in the notification of the agenda, it shall register the agenda, assign an agenda code and include the data on the agenda in the index of agendas pursuant to Section 51(1)(a) . and). 49. Pursuant to Section 54, Paragraph 4 of the Act on Basic Registers effective until 31 December 2016, if the Ministry of the Interior finds deficiencies in the announcement of the agenda, it will call on the announcer of the agenda to remove them, giving him a reasonable period of time to do so. In the invitation to the notifier, the Ministry of the Interior will inform what deficiencies it has found in the announcement of the agenda, with a reference to specific provisions of this law. 12 10 A 52/2016 50. Pursuant to § 54 paragraph 5 of the Act on Basic Registers effective until 31 December 2016, the Ministry of the Interior shall notify the agenda announcer that the agenda has been registered and shall state the agenda code. At the same time, the Ministry of the Interior will send the subjects according to paragraph 1 letter d) notification that the relevant agenda has been registered, and will publish the forms in accordance with paragraph 1 letter on the public administration portal. n) together with data on the agenda to the extent stipulated by the Act on Free Access to Information. 51. Pursuant to § 54 paragraph 6 of the Act on Basic Registers effective until 31 December 2016, if after the registration of the agenda there is a change in the data or other documents that were included in the announcement of the agenda in accordance with paragraph 1, the same procedure is followed as during the registration of the agenda. 52. According to § 56 paragraph 3 letter b) of the Act on Basic Registers effective until 31 December 2016, a public authority that has been registered for the execution of the agenda is responsible for applying appropriate measures to prevent unauthorized access to data kept in agenda information systems and to reference data kept in basic registers based on the authorization he obtained. 53. The aforementioned provisions of the Act on Basic Registers show how the Ministry of the Interior should proceed when announcing the agenda within the competence of the central administrative office (in this case it was the Ministry of Culture). The plaintiff, however, with reference to § 56 paragraph

3 letter b) of the Act on Basic Registers claims that it creates a special adjustment of the responsibility for handling personal data that is the content of the population register, when this responsibility is now only borne by the public authority that registered the agenda. However, the court could not agree with this interpretation. Although the Ministry of Culture also committed misconduct, which provided the plaintiff with incorrect information pursuant to § 54 para. 1 lit. j) of the Act on Basic Registers, effective until 31 December 2016, it was the plaintiff who, by setting up the system incorrectly, enabled the reporter to register an agenda that allowed Czech Television and Czech Radio to access the population register without legal authorization. 54. Such an interpretation of the basic registers, which would allow the administrative office to announce the agenda (§ 53), which must contain the requirements according to § 54, and further would no longer have to examine this announcement, is contrary to the meaning and purpose of the legal adjustments. The interpretation advocated by the plaintiff could, ad absurdum, lead to the fact that the central authority could state almost anything in the announcement of the agenda, i.e. even completely obvious inaccuracies, which the plaintiff would subsequently approve without further ado. However, such a procedure runs counter to the purpose of Section 13(1) of the Personal Data Protection Act and would be in clear conflict with the public interest in the protection of personal data. 55. The obligation specified in § 13 of the Act on the Protection of Personal Data (i.e. the obligation of the controller and the processor to take such measures as to prevent unauthorized or accidental access to personal data, their alteration, destruction or loss, unauthorized transfers, their other unauthorized processing, as well as other misuse of personal data, even after the termination of personal data processing) is based on Article 17, paragraph 1 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of natural persons in connection with the processing of personal data data and on the free movement of such data (hereinafter also referred to as "Directive 95/46/EC"; court note - this Directive was replaced with effect from 25/05/2018 by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27/04/2016) , where EU member states are required, among other things, to ensure that each personal data administrator is obliged to take such appropriate measures for the protection of personal data that would be sufficiently effective against unauthorized disclosure or access, especially if the protection includes transmission of data over the network as well as against any other form of unauthorized processing. 56. The purpose of these measures is to ensure, taking into account the state of the art and the costs of implementing these measures, an adequate level of security corresponding to the risks arising from data processing and the nature of the data to be protected. With regard to the variety of practice in the processing of personal data and the constant development in the

area of data processing means and the possibilities of their protection (especially in the field of computer technology), it is logical that § 13 of the Act on the Protection of Personal Data cannot contain a detailed or directly exhaustive list of the measures needed to ensure security of processed data. The fulfillment of the obligation set out in Section 13, paragraph 1 of the Act on the Protection of Personal Data 13 10 A 52/2016 depends on many factors, which may vary greatly among individual administrators and, possibly, among individual processors of personal data. One of the measures according to that provision can certainly be checking the correctness of the information given in the announcement of the agenda, on the basis of which other institutions also gain access to the register of residents. 57. It follows from the above, given the importance and importance of personal data protection, that based on § 54 para. 1 letter j) of the Act on Basic Registers effective until 31 December 2016 in conjunction with Section 13(1) of the Personal Data Protection Act, it is not possible to infer, by any interpretation, that the administrator would fulfill the purpose of this provision by not having the obligation to check the correctness registration of the agenda and only relied on the fact that the correctness of the agenda is guaranteed by its announcer. Therefore, one of the possible security measures is checking the correctness of the content of the announcement of the agenda according to § 53, or Section 54 of Act No. 1 on the Protection of Personal Data effective until 31 December 2016, which, however, the plaintiff neglected. The defendant thus correctly concluded that the measures taken by the plaintiff proved to be insufficient due to the failure to carry out a rigorous control of the legitimacy of access by the given public authorities to the register of residents. If this control were to be carried out, it would not be possible to register the agenda on the basis of non-existent legal authorization. 58. It must be emphasized that with regard to the content of § 13, paragraph 1 of the Act on the Protection of Personal Data, which is the obligation to adopt and implement security measures, this obligation will be violated by the fact that a situation arises where the processed personal data is in a certain way threatened as a result of the absence of appropriate measures or the inconsistent implementation of these measures in practice. Therefore, the occurrence of a certain risk is sufficient to fulfill the relevant factual basis of the administrative offence, even though the loss, destruction or misuse of data has not yet occurred or will never occur. 59. In the second point of claim, the plaintiff objected that the responsibility for the breached obligation according to § 13, paragraph 1 of the Act on the Protection of Personal Data cannot be absolute, because perfection can never be achieved from the essence of the matter and everything that may occur can never be predicted. In this regard, the court considers it necessary to take into account the adequacy of the measures taken by the plaintiff, which, however, the administrative body did in the contested decision. When looking for a basic approach

to determine adequate security measures, reference can be made to Recital 46 of Directive 95/46/EC, where the requirement to adopt appropriate technical and organizational measures is expressed, both in the preparation of the processing of personal data and in its course itself, with in order to ensure data security and prevent any unauthorized processing. At the same time, the measures taken must show an appropriate professional level reflecting the risks associated with specific operations with personal data and the nature of the processed data. It is also important to emphasize that both Directive 95/46/EC and § 13 of the Personal Data Protection Act assume that administrators and processors of personal data will have to incur certain costs in order to take appropriate measures. The administrator of personal data cannot therefore argue that he did not adopt security measures with reference to their financial, personnel or time costs, as argued by the plaintiff in the lawsuit. 60. The court also did not confirm the claim of the plaintiff that at the time when the registry was accessed by Czech Television and Czech Radio, a system that had not yet been tested was being launched and it was not possible to predict in advance what risks its launch would bring. In this regard, the court fully agreed with the defendant's conclusions that although the plaintiff had taken a number of measures to ensure the protection of personal data, these measures proved to be insufficient when the plaintiff did not launch a test program in which she would have had the opportunity to evaluate the possible risks of operating the given system and take adequate measures to remove them, as envisaged by Section 13 of the Personal Data Protection Act; these obligations, even with regard to the above-cited Directive 95/46/EC, also affect the creation of new databases and personal data. 61. When assessing the objection pointing to the subsidiarity of criminal repression and the inadequacy of the fine, the court relied on § 46, paragraph 2 of the Act on the Protection of Personal Data effective until 30 June 2017, according to which when deciding on the amount of the fine, the seriousness, manner , the duration and consequences of the illegal act and the circumstances under which the illegal act was committed. 14 10 A 52/2016 62. The contested decision meets the above requirements. A fine of CZK 500,000 is within the legal range for imposing a fine according to Section 45, Paragraph 3 of the Personal Data Protection Act, which is in the range from CZK 0 to CZK 5,000,000. The sanction imposed on the plaintiff is therefore at the level of ten percent of the legal range, when strictly speaking it is imposed at the lower limit of the legal range. 63. The statutory range of fines, which is wide, should allow the punishment of both trivial and extremely serious offenses according to Section 45, paragraph 1 of the Act on the Protection of Personal Information, and the consideration of the administrative body when imposing a fine must correspond to this. In agreement with the administrative authorities of both levels, the Municipal Court in Prague considers that the action of the plaintiff, which allowed unauthorized access to data in the

register of persons of Czech Radio (in approx. 70,000 cases) and Czech Television (in approx. 250 cases), resulted in a very serious damage to the legally protected interest in the protection of personal data. On the other hand, the administrative authorities took into account the plaintiff's initiative in correcting the illegal situation, the initiative in amending the Act on Basic Registers, thanks to which both entities were granted access to the population register, as well as the legitimate purpose of access to the population register, which both entities pursued (i.e. successful enforcement of concessionaire fees). Last but not least, in its decision on dissolution, the defendant also took into account the fact that, based on the discovery of unauthorized access to the register, the plaintiff immediately blocked the access of both entities to this register and subsequently took such measures that every submitted application was subjected to a legal review before registration was allowed, and thus, the given situation could not be repeated. The administrative authorities therefore chose an adequate amount of the fine at the lower limit of its rate. An orderly higher fine should then be awarded only in cases of repeated violation of the obligation according to § 13, paragraph 1 of the Act on the Protection of Personal Information, or for a violation far more serious in scope, especially in terms of allowing access to information to other unauthorized entities. 64. The administrative bodies of both levels cannot be faulted for other considerations regarding the actions of the plaintiff either. On the one hand, when determining the amount of the fine, they took into account the fact that the plaintiff had committed the offense in question for the first time and provided cooperation to the administrative body in the investigation of the matter, but on the other hand, they took into account as a fundamental aggravating circumstance that the plaintiff allowed unauthorized access to the register of persons containing constitutionally protected personal information , by not examining the legality of the agenda announced by the central administrative body. 65. The plaintiff's objection that the defendant did not take into account the time that has passed since the termination of the illegal situation is also not justified. The decision of ÚOOÚ already took into account the time that has passed since the termination of the illegal situation, as well as the extraordinary situation consisting in a significant increase in the agenda and the newly introduced comprehensive information system of public administration. In the contested decision, the defendant also took into account the plaintiff's initiative, which led to a change in the legislation and, in accordance with the principle of legitimate expectations, compared the amount of the sanction imposed with the sanctions imposed by the administrative authority of the first instance for the same or similar violation of the Personal Data Protection Act, and when based on the aforementioned extenuating circumstances, he found the amount of the sanction to be disproportionately high and reduced it to the amount of CZK 500,000. 66. The administrative authorities of both

levels convincingly explained why the sanction was imposed on the spot in the case of the plaintiff. In addition to the punitive function of the sanction aimed individually at the plaintiff, the reason for imposing such a sanction is also the general preventive function. The sanction should be imposed in such an amount that it has a deterrent effect, so that there are no future cases of access to personal data of persons without legal authorization. After all, who else but the plaintiff, who is the central authority of the state administration for the field of public administration information systems, should be a role model and an example for others and should properly ensure sufficient security measures so that unauthorized or accidental access to personal data cannot occur. 67. The stated meaning and purpose of the sanction also justifies the fact that the plaintiff may feel the fine in her property sphere, but not so much that, as a public authority that is not a business entity, she can continue to fulfill the tasks of the state and should sufficient funds to ensure tasks of public interest. Such damage is, in the opinion of the Municipal Court in Prague, completely reasonable given the nature and consequences of the plaintiff's actions. 68. In the third claim, the plaintiff objected that the identity of the deed was not preserved, or the subject of the proceedings. Pursuant to § 46 paragraph 1 of the Civil Code the notification of the initiation of proceedings ex officio must contain the name of the administrative body, the subject of the proceedings, the name, surname, function or service number and the signature of the authorized official. The subject of the proceedings is to decide on the rights and obligations of the parties to the proceedings based on the established facts. If the subject of the proceedings is defined, it is particularly necessary to state what constitutes the factual situation, which is to be further examined in detail and legally qualified in the proceedings, and it should also be defined what rights or obligations are to be decided in the proceedings. The identity of the subject of the proceedings defined in this way is important when assessing the impediment to the proceedings pursuant to § 48 s. 69. In the case of the facts, when formulating the notice of initiation of the proceedings, it can be assumed that the administrative authority has only limited information, which is usually sufficient only to to justify the initiation of proceedings. Therefore, in the notice of the initiation of proceedings, the administrative authority shall define the subject of the proceedings only by a simple description of the deed which is the subject of the proceedings and should not be changed in any fundamental way. From the logic of the matter, it is clear that the administrative body cannot have all the documents and information from the beginning of the administrative procedure that it could take into account in the notification of the initiation of the administrative procedure, in which case the administrative body cannot be expected to precisely and accurately formulate the legal qualification in the notification of initiation of administrative proceedings. (see also Jemelka, L., Pondělíčková, K., Bohadlo, D. Administrative Code. 5th edition.

Prague: C.H. Beck, 2016, commentary on § 46, p. 248). 70. According to the judgment of the Supreme Administrative Court of 31.3.2010, file no. 1 Afs 58/2009-541, the subject of the proceedings must be identified with sufficient certainty in the notice of initiation of the proceedings so that it is clear to the party to the proceedings what his actions will be assessed and his right to effectively defend himself in the given proceedings is guaranteed. "The administrative body may specify its subject in the course of proceedings initiated ex officio, if this action does not result in any procedural harm on the part of the parties to the proceedings. Specifying the subject of the proceedings must not lead to its fundamental expansion or change compared to its definition in the notice of initiation of administrative proceedings. The administrative body must properly inform the participants of the proceedings with the clarification of the subject matter of the proceedings and must give them the opportunity to comment on it. " 71. From the notification on the initiation of administrative proceedings dated 21/09/2015, in the sense of the aforementioned legal provisions and case law, it is clear which administrative body makes the decision (Office for the Protection of Personal Data), the act which is the reason for the initiation is described here proceedings (the plaintiff did not ensure that there was no unauthorized access to the register of residents), including the time frame, as well as the reason why the proceedings are being initiated (suspicion of committing an administrative offense pursuant to Section 45(1)(h) of the Personal Data Protection Act, which there should have been a violation of the obligation set out in § 13 paragraph 1 of the Personal Data Protection Act). For this administrative offense mentioned in the notice of initiation of administrative proceedings, a fine was also imposed on the plaintiff in the given case by decision of the ÚOOÚ. 72. It is therefore not possible to identify with the plaintiff that the subject of the proceedings, as regards the definition of the conduct in the notice of initiation of the proceedings, differed in a significant way from the subject for which the sanction was imposed on her, and that it would not be clear during the entire proceedings what facts substance and what actions the plaintiff committed. In the same way, one cannot agree with the plaintiff's objection that the classification of the deed has been changed. On the other hand, it is quite clear from the notification of the initiation of administrative proceedings and from the decision of the ÚOOÚ that throughout the entire period the administrative offense was qualified according to § 45 paragraph 1 letter h) of the Act on the Protection of Personal Data, which should have resulted in a violation of the obligation set forth in Section 13, Paragraph 1 of the Act on the Protection of Personal Data. 73. To the plaintiff's objection that, in contrast to the notification of the initiation of administrative proceedings, the decision of the ÚOOÚ additionally contains information about the manner in which her obligation was violated, and that she could not comment on this specification in the proceedings, as she only became aware of it from the

decision in the matter, 16 10 A 52/2016, the court states that the manner in which the plaintiff's duty was violated was already stated in the notice of initiation of proceedings, but it was formulated in such a way that "... [the plaintiff] in connection with the processing of personal data in basic registers, by not ensuring that there is no unauthorized access to the register of residents, which contains reference data of natural persons, ... ". The court agrees with the plaintiff, that in the decision of the first-instance authority, the manner in which the plaintiff's duty was violated is formulated in more detail, namely that "[the plaintiff] in connection with the processing of personal data in basic registers, as a personal data administrator according to § 4 letter j) of Act No. 101/2000 Coll., by enabling the public institutions Czech Radio and Czech Television through incorrect setting of their scope in the register of rights and obligations beyond the scope of Act No. 348/2005 Coll., on radio and television fees and on the amendment of certain laws, access to the register of residents, which contains reference data of natural persons..." However, the court is of the opinion that the manner in which the plaintiff erred was obvious from the beginning, as the plaintiff herself stated in her statement of 22 October 2015 , that both institutions had access to data from the population register for a certain period of time without express legal authorization. Also, given the follow-up measures to ensure security, which the plaintiff implemented almost immediately, it is clear beyond any doubt that the plaintiff was aware of the violation of her specific obligation under the Personal Data Protection Act (Section 13 of the Personal Data Protection Act), and thus, her procedural rights were not abridged in any way. 74. It is possible to confirm to the plaintiff that, for unknown reasons, the administrative body of the first instance omitted from the statement of the decision a specific period of time during which unauthorized access to the register of residents was to occur by both entities, after which it stated only the period of time during which the breach of duty was supposed to occur, and that in units of months, although in the justification of the decision he already worked with specific periods of time. Nevertheless, the court considers that this did not lead to an impermissible expansion of the subject of the proceedings and it was not attributed to the plaintiff in any way. In a similar way, the fact that the ÚOOÚ decision, in contrast to the announcement of the initiation of administrative proceedings, also specified the scope of unauthorized access by Czech Television, i.e. Czech Radio, which was defined on the basis of the results of the administrative proceedings, should also be considered. In contrast to the notification of the initiation of administrative proceedings, in the decision of the ÚOOÚ, only part of the statement was partially reformulated, without, however, any change in the subject matter of the proceedings or the manner and scope of the delict that the plaintiff was supposed to have committed. The court therefore came to the conclusion that the alleged deed was described clearly and identically in the decision of the

administrative body, in terms of the same content as in the notice of initiation of administrative proceedings, during the administrative proceedings the subject of the proceedings was preserved, the identity of the deed was preserved, the subject of the proceedings was not expanded or specified in any way so that, according to the above-cited NSS decision, it is necessary to separately notify the plaintiff of such a clarification. 75. It can be stated that the decision of the ÚOOÚ contains all the legal requirements, when the statement of the decision contains an appropriate description of the act by indicating the place, time and manner of commission as well as other facts that are necessary to ensure that it cannot be confused with another, and that completely in the sense of the judgment of the extended panel of the Supreme Administrative Court dated 15.1.2008, file no. 2 As 34/2006-73, to which the plaintiff referred, because the plaintiff's conduct subordinated to the factual nature of the administrative offense cannot be confused with another. Conclusion and costs of the proceedings 76. Since the court did not find that the contested decision was issued in violation of the law, it rejected the claim as unfounded according to Section 78, paragraph 7 of the Criminal Procedure Code. He did so without negotiations, as the parties to the proceedings agreed to this procedure (§ 51 para. 1 s. ř. s.). 77. Regarding the plaintiff's proposal for moderation of the sanction imposed pursuant to § 78 paragraph 2 of the Civil Code the court states that the scope for taking into account the reasonableness of the sanction imposed would only be given if the alleged disproportionality had the quality of illegality, i.e. in the event that the administrative body strayed from the legal limits when imposing a fine, its assessment of the criteria for imposing a fine would lack logic , the administrative authority would not take into account all legal criteria, the fine imposed would be liquidation, etc. (see, for example, the NSS judgment of 3 April 2012, reference no. 1 Afs 1/2012-36). Given that the court 17 10 A 52/2016, taking into account all the circumstances of the case, did not find that the administrative authority imposed a clearly disproportionate fine on the plaintiff for the tortious conduct, it did not comply with the plaintiff's proposal to moderate the imposed fine. 78. The decision on the reimbursement of the costs of the proceedings is justified by § 60, paragraph 1 of the Civil Procedure Code, as the defendant was successful in the case, but he did not incur any costs beyond the scope of normal official activity in the proceedings. Instruction: A cassation complaint can be filed against this decision within two weeks from the date of its delivery. The cassation complaint is submitted in two copies to the Supreme Administrative Court, with its seat at Moravské náměstí 6, Brno. The Supreme Administrative Court decides on cassation appeals. The time limit for filing a cassation complaint ends with the expiration of the day which, with its designation, coincides with the day that determined the beginning of the time limit (the day of delivery of the decision). If the last day of the deadline falls on a Saturday, Sunday or

holiday, the last day of the deadline is the closest following business day. Missing the deadline for filing a cassation complaint cannot be excused. A cassation complaint can only be filed for the reasons listed in § 103, paragraph 1, s. s. s., and in addition to the general requirements of the filing, it must contain an indication of the decision against which it is directed, to what extent and for what reasons the complainant is challenging it, and an indication of when the decision was delivered to him. In cassation appeal proceedings, the complainant must be represented by a lawyer; this does not apply if the complainant, his employee or a member acting for him or representing him has a university degree in law which is required by special laws for the practice of law. The court fee for a cassation appeal is collected by the Supreme Administrative Court. The variable symbol for paying the court fee to the account of the Supreme Administrative Court can be obtained on its website: www.nssoud.cz. Prague, March 5, 2019 Mgr. Martin Kříž, former chairman of the senate