3 As 3/2017 - 38 CZECH REPUBLIC DIFFERENT COURTS OF THE M R E P U B L I K Y The Supreme Administrative Court decided in a panel composed of the chairman JUDr. Jaroslav Vlašín and judges Mgr. Radovan Havelce and Mgr. Petra Weissová in the legal matter of the plaintiff: JUDr. V.P., represented by JUDr. Tomáš Sokol, lawyer with registered office at Sokolovská 60, Prague 2, against the defendant: Office for the Protection of Personal Data, with registered office in Plk. Sochora 727/27, Prague 7 - Holešovice, on the review of the decision of the Chairman of the Office for the Protection of Personal Data of 13 January 2014, file no. No. UOOU-07100/13-58, on the plaintiff's cassation appeal against the judgment of the Municipal Court in Prague dated 30 November 2016, No. 2 A 6/2014 - 71, t a k t o : I. Judgment of the Municipal Court in Prague from on 30 November 2016, No. 2 A 6/2014 – 71 is cancelled. II. Decision of the Chairman of the Office for the Protection of Personal Data of 13 January 2014, no. No. UOOU-07100/13-58 is canceled and the matter is returned to the defendant for further proceedings. III. The defendant is obliged to pay the plaintiff compensation for the costs of the proceedings in the amount of CZK 24,456 within 30 days from the legal effect of this judgment to the hands of her representative, attorney JUDr. Tomas Sokol. Reasoning I. Proceedings to date [1] The Office for the Protection of Personal Data, by decision of 29 October 2013, no. UOOU-07000/13-47, found the plaintiff guilty in that, as an accused person against whom criminal proceedings were being conducted at the time, she committed an offense under the provisions of § 44 paragraph 1 letter c) Act No. 101/2000 Coll. on the protection of personal data by publishing on 14 August 2013 copies of the interrogation protocols of 37 witnesses and 2 interrogation protocols of the accused from the file material of the Police of the Czech Republic No. OKFK-321/TČ- 2010-251102, administrator of this personal data in the sense of § 4 letter j) Act No. 101/2000 Coll. on the protection of personal data obtained in connection with her position as an accused in the criminal proceedings in question and which contained the name, surname and the full text of the testimony of the witnesses and the accused and were 3 As 3/2017 made before the law enforcement authorities, whereby the plaintiff violated the obligation of confidentiality imposed by it in accordance with the provisions of § 15 paragraph 1 of the Personal Data Protection Act. For this offence, the plaintiff was fined 16,000 CZK. The chairman of the defendant by decision of 13 January 2014, file no. No. UOOU-07100/13-58, the judgment of the contested decision was slightly changed in terms of wording by adding the plaintiff's initials, and in the rest rejected the plaintiff's decision. [2] The Municipal Court in Prague (hereinafter referred to as the "municipal court") dismissed the action against the defendant's decision. [3] The municipal court noted that the data that the plaintiff published in the protocols contained name, surname, date and place of birth, address of permanent residence (or

delivery address, telephone contact), employment information, marital status, identity card number, social security number and information regarding the content of the statement. Despite the fact that some of the data were blacked out, leaving at least a combination of the name, surname, content of the statement and employment, the municipal court came to the conclusion that even from this data it was possible to accurately determine the given data subject. In addition, the content of the protocol always contains the identification of the person being questioned. The municipal court was of the opinion that the plaintiff came into contact with the personal data of the administrator (police) in the course of fulfilling the rights and obligations established by law. Subsequently, he agreed with the defendant that the plaintiff must therefore be viewed as a person with a duty of confidentiality pursuant to § 15 paragraph 1 of the Personal Data Protection Act. [4] The municipal court also assessed the interrelationship of the provisions of § 8a and § 8b of Act No. 141/1961 Coll. the Criminal Code, which regulate restrictions on the provision of information about criminal proceedings and the persons involved in them, with the Act on the Protection of Personal Data. According to the opinion of the municipal court, the defendant correctly concluded that even the fact that the main trial in the case is ultimately held in public is not a circumstance that would affect the responsibility of the accused for the cited offense under the Personal Data Protection Act. This applies, among other things, also with regard to the fact that it is not certain that the entire criminal proceedings will reach the stage of the main trial. The municipal court certified the defendant that this also corresponds to the provisions of § 5 paragraph 2 letter d) of the Act on the Protection of Personal Data, which allows personal data to be processed without the consent of the data subject in the event that the personal data is lawfully published. In the opinion of the municipal court, until the moment of authorized publication, this exception does not apply and all processing of personal data is thus unauthorized. [5] The municipal court did not accept the plaintiff's defense, which pointed to the constitutionally guaranteed freedom of expression. In the opinion of the municipal court, the plaintiff interprets the said provision too broadly. It is obvious that even freedom of expression must have its limits. The Charter of Fundamental Rights and Freedoms itself states in Article 17, paragraph 4, that: "freedom of expression and the right to seek and disseminate information may be limited by law if these are measures in a democratic society necessary for the protection of the rights and freedoms of others, state security, public safety, protection of public health and morals. The municipal court pointed out that the restrictive law is precisely the law on the protection of personal data, which is a reflection of the right to privacy, which is also protected by the Charter, namely in Article 10, paragraph 3. Restrictions on freedom of expression cannot be understood as constitutionally guaranteed rights, but as a logical consequence of the clash of two rights that are

protected by the constitutional order. After all, mandatory confidentiality affects other areas as well (e.g. confidentiality of medical personnel in general, lawyer confidentiality, various types of official confidentiality, obligations established in connection with the protection of classified information, etc.) the incorrectness of the defendant's decision and the fact that the defendant did not deal with her objections in the dissolution proceedings. II. Cassation complaint and comments thereon 3 As 3/2017 - 39 continued [6] The plaintiff (hereinafter also "complainant") filed a cassation complaint against the judgment of the municipal court. In it, she applied the reasons according to the provisions of § 103 paragraph 1 letter a) and d) of Act No. 150/2002 Coll. administrative court code. [7] The complainant disagrees with the defendant's claim that she came into contact with the personal data at the personal data administrator (i.e. the police). She objected that she did not receive any other material directly from the police apart from the protocol of her statement. She came into contact with personal data directly at the administrator's office much later after the publication of the materials, specifically when studying the file pursuant to § 160, paragraph 1 of the Criminal Code. In her opinion, the decision suffers from a lack of reasons in this regard. [8] The complainant sees an incorrect assessment of the legal issue in the defendant's conclusion that the action consisting in making the contents of the protocol available on the website was a violation of her obligation arising from the provisions of Section 15, Paragraph 1 of the Act on the Protection of Personal Data, primarily because on the accused cannot be regarded as a person subject to mandatory confidentiality under the Personal Data Protection Act. Furthermore, he is of the opinion that it is questionable whether the protocol of the interrogation of the witness or the accused can be considered as personal data subject to the regime of the Personal Data Protection Act. Finally, she also objected that the municipal court did not address the proportionality of the right to privacy and the right to freedom of expression and dissemination of information. [9] According to the complainant, the primary question in the present case is whether she was subject to the obligation imposed by § 15 of the Personal Data Protection Act and whether she violated this obligation. She stated that she was affected for publishing the materials she obtained, but not for disclosing the information she came into contact with. She emphasized that she obtained the materials in question through a defense attorney in accordance with the provisions of Section 41, Paragraph 6 of the Criminal Code (at the request of the defense attorney, note of the Supreme Administrative Court). After that, materials were published, in which she undoubtedly participated, but not in the manner described in the Personal Data Protection Act. It was for the court to deal with this issue ex officio. However, the municipal court did not at all address the question of whether and, if applicable, what obligations the accused has, who receives copies of the protocols on the questioning of witnesses from his

defense attorney, after having familiarized himself with them. According to the complainant, it is not possible to determine who, according to the provisions of § 15, paragraph 1 of the Act on the Protection of Personal Data, is actually covered by the obligation of confidentiality of other persons who, in the course of fulfilling the authorizations and obligations established by law, come into contact with the personal data of the controller or processor. She pointed out that the provision states that the said obligation continues even "after the end of the employment or relevant works". However, the position of the accused certainly cannot be considered as employment or work, from which it can be concluded that the legislator did not at all consider including the accused as the addressee of this mandatory confidentiality. [10] According to the complainant, this is a complex legal problem, the solution of which cannot be overlooked even in the European context, namely 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 and on free movement of this data (hereinafter also the "Directive"), but also Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free movement of such data and on the repeal of Directive 95/ 46/EC. When considering the merits of the above-mentioned objection, the Municipal Court should also have taken into account the content of the decision of the Supreme Administrative Court of 25 February 2015, no. stamp 1 As 113/2012. In this context, she objected that the publication of protocols on the questioning of witnesses cannot be understood as the processing of personal data within the meaning of the directive. The interpretation of § 15, paragraph 1 of the Personal Data Protection Act, as carried out by the municipal court, is therefore contrary to this directive. In this, the applicant sees the reason for which the municipal court should have asked a preliminary question to the Court of Justice. He is also of the opinion that the regulation on the protection of information on criminal proceedings according to the provisions of § 8a to § 8d of the Criminal Code contained in Criminal Code 3 As 3/2017 is not aimed at protecting the personal data of witnesses or other participants in criminal proceedings and is not possible in this context to think at all. [11] The complainant further drew attention to the fact that the purpose of obtaining the protocols on the interrogation of other accused or witnesses was the need for her defense, and that the rule is that the accused receives these documents from the defense attorney and then presents them to other persons for the sake of the defense. The result is usually demonstrated by proposals to supplement the evidence, expert opinions and statements, from all of which it is more or less evident that the persons concerned have familiarized themselves with at least part of the relevant documents, including the protocols of the interrogation of witnesses or accused persons. In the case of

expert opinions, it is even quite usual to state that the author of the opinion has familiarized himself with the entire content of the file presented to him by the defense. In this particular case, the insistence on the protection of personal data is also absurd given that the initiation of criminal prosecution required the approval of the Chamber of Deputies. The investigation file was sent to her, albeit without protocols on the questioning of witnesses and the accused, but with a whole range of personal data, for example in the protocols on the presentation of explanations. An unspecified number of people became acquainted with them, in the extreme case all members of the House of Representatives and many other people. She pointed out that the pursued goal of the proceedings was her public defense and there was no other means, as the criminal proceedings had already lasted a long time and she could not yet know the outcome of the court proceedings. It follows from the copies of the protocols that the statements of the witnesses did not relate to anything personal at all, they related to their work activities and it was more about the publication of data that can be obtained in another way. The privacy of those who testified in the case was not affected in any way. If it is necessary for the defense and if there is a trial, then all these people will still have to testify publicly as witnesses. She argued that the court's ruling, however hugely important from a legal point of view, does not have nearly the same effect on public opinion as initial information has. In her opinion, it was not possible to achieve the above-mentioned goal by a means that would not affect the fundamental rights and freedoms of others. [12] In support, the applicant pointed to the protection of the anonymity of journalistic sources. In her view, the Internet environment is much fairer when it leaves it to each person to individually consider whether their exercise of free speech and the right to disseminate ideas and information may not conflict with someone else's rights in a given particular case. He is of the opinion that the Personal Data Protection Act was constructed as a defense against the handling of personal data in a manner or under circumstances in which either the individual defense of the person concerned was not possible at all, or was possible with great difficulty. What the complainant is guilty of, even in the worst case, could only be an invasion of privacy, which, even in the most unfavorable interpretation for the complainant, can only have the appearance of a violation of the Personal Data Protection Act. In reality, however, it could only be an invasion of privacy, similar to if information was claimed about a natural person capable of reducing his honor and dignity. It could therefore be a civil tort at most. Rather, the complainant questions the correctness of the defendant's procedure. [13] The defendant stated in his statement to the cassation complaint that he respects the opinion of the municipal court. He pointed out that the proceedings had not yet considered whether the provisions of § 4 letter of the Personal Data Protection Act should be applied instead of § 15 o) of the same law, i.e. that the complainant

would be the recipient to whom personal data was made available. As a recipient, she would have no obligation, let alone an obligation under the provisions of Section 15 of the Personal Data Protection Act. Any restrictions on the handling of personal data obtained from the criminal file would have to be established by the criminal code. According to the defendant, it appears to be questionable whether the complainant, by publishing her testimony and that of the witnesses once, got into the position of an administrator with obligations primarily according to the provisions of Section 5 of the Personal Data Protection Act. If she were in the position of an administrator, it will be necessary to answer the question of whether she could publish witness statements without their consent, which is only possible under the conditions of § 5 paragraph 1 letter e) of the Act on the Protection of Personal Data, which foresees the implementation of a proportionality test in terms of the fulfillment of the condition of necessity. III. Assessment of the case by the Supreme Administrative Court [14] The factual situation in the present case is not disputed. Briefly summarized - as part of the criminal proceedings pursuant to § 41, paragraph 6 of the Criminal Code, the applicant, through her lawyer, obtained the protocols of the statements of persons from the police and published them on the X website. in the opinion that these protocols should be considered as documents containing the personal data of the persons testifying. This is because the persons are identified in an unmistakable way in the protocols, both by name, surname and functional classification, as found by the defendant and the municipal court. However, the Supreme Administrative Court is of the opinion that personal data is also the person's statement itself. [16] The Supreme Administrative Court already in the judgment of 25 February 2015, no. 1 As 113/2012-133 explained that "personal data is therefore any data that must relate to a natural person (data subject) and this natural person is or can be directly (indirectly) identified from the collected data or based on them in another way ". He also pointed to point 26 of the rationale of Directive 95/46/EC, according to which "the principles of protection must apply to all information relating to an identified or identifiable person; [...] to determine whether a person is identifiable, all means that can reasonably be used both by the controller and by any other person to identify the person must be taken into account. Therefore, it will not be personal data if, taking into account all the means that can reasonably be used, the possibility of identifying the person does not exist or is negligible. " [17] In a relatively recent judgment, the Court of Justice of the European Union in case C-434/16, Nowak v. Data Protection Commissioner, also evaluated the content of the exam as personal data. Here, he was based on the fact that the exam is aimed at verifying the highly personal and individual performance of the examinee, its purpose is to find out and document the performance of a certain person. According to the Court of Justice, the content of the exam thus provides information about the

examinee. In the view of the Supreme Administrative Court, the aforementioned starting points are more likely to be applied in the case of a statement of a person in criminal proceedings. Such a person here, generally speaking, provides information about his relationship to the matter that is the subject of criminal proceedings. This testimony is then a source of information about the person giving the testimony, it has a certain value also in terms of credibility and has its position in the system of evidence. The statement is finally recorded in the form of a protocol and can be processed in this form. Documented statements in criminal proceedings, i.e. not only the identification data of persons, but also the content itself, are undoubtedly personal data in the sense of the provisions of § 4 letter a) of the Personal Data Protection Act. [18] In its judgment, even though it did so briefly, the municipal court also evaluated the protocols as documents containing personal data. At the same time, he pointed out the informational value of the content of a person's statement and concluded that it is possible to determine the data subject from this content. This reasoning is clear from the judgment of the municipal court, the Supreme Administrative Court therefore did not convince the complainant that this part of the judgment suffers from the defect of non-reviewability according to the provisions of § 103 paragraph 1 letter d) s. ř. s. This cassation objection is unfounded. [19] The essence of the offense according to the provisions of § 44 paragraph 1 letter c) of the Act on the Protection of Personal Data, of which the defendant found the complainant guilty, consists in the violation of the obligation of confidentiality, which, in the opinion of the defendant, should have been imposed on the complainant by the provisions of § 15, paragraph 1 of the Act on the Protection of Personal Data. The dispute between the parties is then whether the complainant could even be in the position of a subject who would be obliged to maintain confidentiality according to 3 As 3/2017 provisions of § 15 paragraph 1 of the Personal Data Protection Act. At the same time, the defendant himself admitted in his statement to the cassation complaint that the complainant could only be viewed as a beneficiary according to the provisions of § 4 letter o) of the Personal Data Protection Act. [20] The scope of the Act on the Protection of Personal Data is defined by its provision § 3. According to paragraph 1, this Act applies to personal data processed by state authorities, local self-government authorities, other public authorities, as well as natural and legal persons. According to paragraph 2, this law applies to all processing of personal data, whether it occurs automatically or by other means. Exceptions to which the regulation of the Act on the Protection of Personal Data does not apply are listed in the provisions of Section 3, Paragraphs 3, 4 and 6 of the Act on the Protection of Personal Data. According to paragraph 3, "this law does not apply to the processing of personal data carried out by a natural person exclusively for personal use.", according to the provisions of § 3, paragraph 4 of the Act on the Protection of Personal Data,

this law does not apply to "accidental collection of personal data data, if these data are not further processed". From the provisions of Section 3, paragraph 6 of the Act on the Protection of Personal Data, the inapplicability of some provisions of the Act in the performance of public order and security tasks follows, which was clearly not the case of the complainant. [21] The regulation according to the Personal Data Protection Act with all the rights and obligations arising from it should therefore generally be applied to all cases where personal data is processed for the persons listed in § 3, paragraph 1. The very definition of processing follows from the provisions of § 4 letter e) of the Personal Data Protection Act. According to this provision, personal data processing means any operation or set of operations that the controller or processor systematically performs with personal data, either automatically or by other means. The processing of personal data means, in particular, the collection, storage on information carriers, making available, editing or changing, searching, using, forwarding, spreading, publishing, storing, exchanging, sorting or combining, blocking and disposal. [22] In the present case, the complainant is accused of publishing the obtained data. Disclosure as one of the forms of personal data processing is defined in § 4 letter l) of the Personal Data Protection Act. According to him, published personal data is personal data made available in particular through mass media, other public communication or as part of a public list. [23] The relatively general and broad definition of the scope of the Act on the Protection of Personal Data also corresponds to the intention of the legislator, who defined the processing of personal data according to the provisions of § 4 letter e) stated in the explanatory report that "the proposed wording fully covers all activities carried out with personal data.... The concept of processing must include any manipulation of data" (cf. explanatory report to Act No. 101/2000 Coll., on the protection of personal data, available at www.psp.cz as parliamentary publication 374/0) [24] From above of the above is therefore an obvious basic starting point, that if the actions of the complainant could be qualified as processing of personal data within the meaning of the provisions of § 4 letter e) of the Personal Data Protection Act, the complainant would be in the position of administrator and processor of personal data, including the rights and obligations related thereto. Only if the answer to this question were negative, it would be appropriate to deal with what other obligations for the complainant resulted from the law. [25] Processing according to the provisions of § 4 letter e) of the Personal Data Protection Act assumes the systematicity of this activity. After that, the law does not specify the term "systematicity" in any detail. Through linguistic interpretation, the Supreme Administrative Court came to the conclusion that this systematicity undoubtedly 3 As 3/2017 - 41 continued consists of repeated, refined and unifying activity. The Supreme Administrative Court reached the same conclusion even when using a systematic and teleological interpretation. Given that the

scope of the Act on the Protection of Personal Data, as explained above, does not apply to the processing of personal data purely for personal use and for random collection of data (cf. provisions of Section 3, Paragraphs 3 and 4 of the cited Act), it is obvious that only regular and refined handling of personal data (i.e. systematic) is subject to regulation under the Personal Data Protection Act. [26] After all, the concept of personal data processing consisting in the systematicity of the listed activities corresponds to a recent and at the same time effective regulation of EU law. Indeed, the legislator formulated the very provision § 4 letter e) of the Act on the Protection of Personal Data was taken almost verbatim from Directive No. 95/46/EC of the European Parliament and the Council from 1995 on the protection of individuals in relation to the processing of personal data and on the free movement of such data (cf. the introduction to the general part of the explanatory report to the Personal Data Protection Act). This directive, as the complainant already stated in the cassation complaint, was the starting point and legal framework of the Personal Data Protection Act (see also the general part of the explanatory memorandum to the Personal Data Protection Act). [27] Thus, the cited directive in Article 2 letter b) contains a definition according to which the processing of personal data is "any act or set of acts with personal data that is carried out with or without the help of automated procedures, such as collection, recording, arrangement, storage, adaptation or modification, search, consultation, use , communication through transmission, dissemination or any other disclosure, comparison or combination, as well as blocking, erasure or disposal. Article 3 point 1 of the directive further states that "this directive applies to the fully or partially automated processing of personal data, as well as to the non-automated processing of personal data that is included in the register or is to be included in it". After all, a similar construction was chosen by the European Parliament and the Council in Regulation EU/2016/679 on the protection of natural persons in connection with the processing of personal data and on the free movement of such data and on the repeal of Directive 95/46/EC, where Article 4 point 2 defines processing as "any an operation or set of operations with personal data or sets of personal data that is carried out with or without the aid of automated processes such as collection, recording, arrangement, structuring, storage, adaptation or alteration, retrieval, inspection, use, disclosure by transmission, dissemination or any otherwise making available, sorting or combining, limiting, erasing or destroying”. Similar to Directive 95/46/EC, the Regulation stipulates in Article 2 point 1 that "this Regulation applies to fully or partially automated processing of personal data and to non-automated processing of those personal data that are included in the register or are to be included in it . [28] It is therefore obvious that if the publication of the interrogation protocols is to be considered as processing, it must be a systematic activity of the complainant. Community jurisprudence, however, has

already found an answer to this question, whose interpretation, for the reasons explained above, is highly relevant in relation to the case under discussion. Indeed, the Court of Justice of the European Union in the case of criminal proceedings C – 101/01 Lindqvist interpreted that the publication of personal data is their processing. Based on the relevant provisions of Directive 95/46/EC (specifically from Article 2 letter b and Article 3 paragraph 1) in points 26 and 27 of his reasoning, he explained that "presenting information on the website means according to the currently used technical and computer the procedures for storing this page on the server and the necessary actions to make this page available to people who have connected to the Internet. These actions are at least partially automated. … The act of making a reference on a website to different persons who are identified either by name or by other means, for example by telephone number or details of employment and hobbies, is fully or partially automated processing of personal data". [29] Therefore, if the complainant placed the personal data of the persons testifying on the website that she operated and which was subject to her control and thus was able to influence its content (by the way, the web domain X fully testifies to the close connection of the complainant with the operation of this website), she published them and 3 Since 3/2017 she kept these personal data as published, in the opinion of the Supreme Administrative Court, this behavior of the complainant can rather be evaluated as systematic. This fulfills all the features of personal data processing in the sense of the provisions of § 4 letter e) of the Personal Data Protection Act. [30] In this situation, the Supreme Administrative Court also assessed whether the actions of the complainant could be excluded from the scope of the Act on the Protection of Personal Data according to the provisions of Section 3, Paragraph 3 of this Act, according to which "this Act (…) does not apply to the processing of personal data data carried out by a natural person exclusively for personal use. At the same time, according to the opinion of the Supreme Administrative Court, the need of only one person - in this case the complainant - must be understood as personal. However, in the opinion of the Supreme Administrative Court, the proceedings in which the complainant made the personal data of other persons available to the public for an undetermined number of people cannot be interpreted as data processing for personal use. After all, the same conclusion was also reached by the Court of Justice in the aforementioned judgment C – 101/01 Lindqvist (cf. points 47 and 48) when interpreting the provisions of the second indent of Article 3 (2) (relating to an exception identical in content from the scope of the Directive), according to which for example, the processing of data for the performance of personal or domestic activities, correspondence or directory management should be interpreted as activities related to the family and private life of individuals, not publication on the Internet in such a way that it is made available to an unlimited number of people. This approach, which emphasizes that

the processing of personal data for personal use cannot be understood as a situation where the public is confronted with such processing, was also reflected by the Court of Justice in a later judgment in case C-212/13 František Ryneš v. Office for the Protection of Personal Data and the Supreme administrative court in the subsequent judgment of 25 February 2015, No. 1 As 113/2012 – 133. [31] Based on the above, the Supreme Administrative Court is of the opinion that the applicant, after the protocols - personal data acquired, was, during subsequent processing and publication, the controller in accordance with the provisions of § 4 letter j) of the Personal Data Protection Act. The obligations that apply to personal data controllers (in particular according to the provisions of § 5 - § 13, § 16 et seq. of the Personal Data Protection Act) applied to her. [32] In contrast, the provisions of § 15 of the Personal Data Protection Act impose a duty of confidentiality on employees of the controller or processor, other natural persons who process personal data on the basis of a contract with the controller or processor, and other persons who, within the framework of fulfilling the authorizations and obligations established by law they come into contact with personal data of the controller or processor. What is common to all of these persons is that they are different persons from the administrator or processor. If the complainant was directly the administrator of personal data, it is clear that the obligation of confidentiality according to § 15, paragraph 1 of the Personal Data Protection Act did not apply to her, as § 13, paragraph 1 of the Personal Data Protection Act imposes a similar obligation directly on the administrator . [33] The Supreme Administrative Court therefore concludes that the defendant incorrectly qualified the complainant's actions. This incorrect legal opinion was also confirmed by the municipal court; the reason for the cassation complaint is therefore satisfied here according to the provisions of § 103 paragraph 1 letter a) s. ř. s., consisting in an incorrect legal assessment of the matter. The Supreme Administrative Court therefore found the cassation complaints to be well-founded and, in accordance with the provisions of Section 110, paragraph 1 of the Civil Code, annulled this judgment as illegal. Given that the challenged decision also suffers from the same defect, the Supreme Administrative Court annulled pursuant to § 110 paragraph 2 letter a) s. r. s. also the defendant's decision and returned the case to him for further proceedings. [34] In it, the defendant is bound by the legal opinion of the Supreme Administrative Court [cf. provisions of § 110 paragraph 2 letter a) in connection with the provision of § 78, paragraph 5, s. ř. s.]. Specifically, the defendant is bound by the opinion that the complainant was the administrator of personal data, and therefore her actions are subject to the rights and obligations that arise for the administrator from effective regulations for the protection of personal data. 3 As 3/2017 - 42 continued [35] It will also be up to the defendant to carry out a proportionality test, if necessary, and to consider whether the complainant's right to process

personal data by publishing it outweighed the protection of the privacy of persons whose personal data were published [cf. provisions of § 5 paragraph 1 letter e) of the Personal Data Protection Act]. Moreover, according to the opinion of the Supreme Administrative Court, the regulation of EU law does not prevent such a procedure. Already in relation to the Directive, the Court of Justice of the European Union in case C 101/01 Lindqvist (cf. paragraph 90) explained that this Directive does not in itself contain restrictions that would be in conflict with the general principle of freedom of expression or with other rights and freedoms valid in the European Union, which correspond in particular to Article 10 of the ECHR. It thus ordered the national authorities and courts whose task it is to apply the national legislation implementing Directive 95/46 to ensure a fair balance between the rights and interests concerned, including the fundamental rights protected by Community law. Just for the sake of completeness, the Supreme Administrative Court recalls that it already carried out such a test in a similar case in the aforementioned judgment of 25 February 2015, No. 1 As 113/2012 – 133 in the Ryneš case, and recently also the Municipal Court in Prague in the judgment of 2 October 2017, No. 5 A 138/2014 – 38-45, published under No. 3697/2018 Coll. NSS, in which the interest in providing information about criminal proceedings was measured against the protection of the suspect's privacy - cf. provisions of § 8d paragraph 1 of the Criminal Code. In the proportionality test, the defendant will in particular consider whether it was necessary for the intended purpose for the complainant to publish personal data to the extent that she did. The Supreme Administrative Court also did not forget that, since the act took place, the above-mentioned General Regulation of the European Parliament and the Council of the European Union on the Protection of Personal Data entered into force on 25 May 2018. It will therefore be necessary for the defendant, if he comes to the conclusion that the complainant acted in violation of his obligations, to assess the criminality of her actions either according to the Personal Data Protection Act effective at the time of the commission of the act, or according to the Regulation, if this later legislation more favorable. IV. Costs of the proceedings [36] Since the Supreme Administrative Court annulled the judgment of the regional court and at the same time the decision of the administrative body, it is obliged to decide, in addition to the costs of the cassation appeal, the costs of the proceedings that preceded the annulled decision of the regional court (§ 110, paragraph 3, second sentence with . In this case, the costs of the lawsuit and the costs of the cassation complaint form a single entity, and the Supreme Administrative Court will decide on their compensation in a single judgment based on the provisions of Section 60 of the Civil Code. The Supreme Administrative Court notes that in accordance with the provisions of Section 60 1 s. of the Code of Civil Procedure is obliged to decide only on the costs of the proceedings before the court, therefore it did not decide on the costs of

the proceedings before the defendant, as suggested by the complainant in the submission dated 20 February 2017. [37] When deciding on the reimbursement of the costs of the proceedings, the court administrative order from the overall success in the case, as the Supreme Administrative Court annulled the contested decision of the defendant. The complainant was fully successful in the matter, and therefore the court awarded her compensation for the costs of the proceedings against the defendant pursuant to Section 60(1) of the Civil Code in conjunction with Section 120 of the Civil Code. [38] The applicant paid a total of CZK 8,000 in court fees (CZK 3,000 for the lawsuit and CZK 5,000 for the cassation complaint). [39] In the proceedings before the regional court, the lawyer performed a total of three acts of legal service, which are: taking over and preparing representation [§ 11 para. 1 letter a) Decree No. 177/1996 Coll., on attorneys' fees and attorneys' compensation for the provision of legal services (attorney's tariff), as amended (hereinafter referred to as "attorney's tariff")], written submission on the merits (lawsuit dated 26 2. 2014). In addition to the complainant's statement of 11/10/2016, the Supreme Court 3 As 3/2017 subordinated the administrative court to the act of participation in the proceedings before the court on 11/30/2016 in the sense of § 11 paragraph 1 letter g) of the lawyer's tariff, as the content of this statement was not a submission on the matter itself, but rather a pretext for an argument that could be used at the hearing at the Municipal Court in Prague. In the proceedings before the Supreme Administrative Court, the representative filed a cassation complaint on January 2, 2017, thus he performed the only act of legal service pursuant to § 11 paragraph 1 letter d) lawyer's tariff. The Supreme Administrative Court took into account the fact that the lawyer had already represented the complainant in the proceedings on the lawsuit, is familiar with the matter, and therefore did not recognize the act of preparation and acceptance for the proceedings on the cassation complaint. [40] In total, the representative performed four acts of legal service. He is entitled to non-contractual remuneration in the amount of 3 x 3,100 CZK for taking over the case, suing and participating in the meeting [§ 9 paragraph 3 letter f) in connection with § 7 point 5 of the lawyer's tariff as amended, a non-contractual fee of CZK 3,100 is also due for a cassation complaint [§ 9 para. 4 letter d) in connection with § 7 point 5 of the attorney's tariff]. A 300 CZK flat-rate reimbursement of out-of-pocket expenses must be added to each act of legal service according to § 13, paragraph 3 of the lawyer's tariff. All this adds up to (4 x 3,100 + 4 x 300) the amount of CZK 13,600. The representative is a value added tax payer, therefore the total amount of the compensation is increased by the amount of CZK 2,856 corresponding to the tax at the rate of 21%, which the representative is obliged to deduct from the remuneration for representation and from reimbursement of out-of-pocket expenses. Therefore, the complainant is entitled to compensation in the amount of CZK 16,456 for these actions.

[41] The total amount of compensation for the costs of the proceedings before the regional court and the Supreme Administrative Court, including paid court fees, is therefore CZK 24,456. The defendant is obliged to pay this amount into the hands of the complainant's representative within 30 days from the effective date of this judgment. Lesson learned: Appeals against this judgment are not admissible (§ 53 paragraph 3 s. ř. s.). In Brno on July 17, 2018, JUDr. Jaroslav Vlašín, chairman of the senate