

IV. ÚS 1200/16 1 Czech Republic FINDING of the Constitutional Court In the name of the Republic, the Constitutional Court decided in a panel composed of President Jan Musil (rapporteur judge) and judges Jan Filip and Jaromír Jirsa in the matter of the constitutional complaint of the complainant P. M. Dis., represented by JUDr. Ing. Tomáš Matoušek, lawyer with registered office in Hradec Králové, Dukelská 15, against the judgment of the Supreme Administrative Court of 21 January 2016, No. 4 As 216/2015-45, connected with the proposal to cancel the provisions of § 8b, paragraph 1 of Act no. 106/1999 Coll., on free access to information, with the participation of the Supreme Administrative Court, as a party to the proceedings and with the participation of the 1st Regional Court in Hradec Králové, 2. JUDr. V. M., and the 3rd Statutory City of Hradec Králové, with headquarters in Hradec Králové, Czechoslovak Army 408, as intervenors in the proceedings, t a k t o: I. Judgment of the Supreme Administrative Court of 21 January 2016 No. 4 As 216/2015- 45 and the judgment of the Regional Court in Hradec Králové dated 24 August 2015 No. 30 A 65/2014-83 violated the applicant's fundamental right to protection against unauthorized interference in private life guaranteed by Article 10 of the Charter of Fundamental Rights and Freedoms and Article 8 Convention on the Protection of Human Rights and Fundamental Freedoms. II. The judgments of the Supreme Administrative Court and the Regional Court in Hradec Králové referred to in sentence I of this award are annulled. III. The proposal to cancel the provisions of § 8b, paragraph 1 of Act No. 106/1999 Coll., on free access to information, is rejected. Justification I. Proposal 1. In the constitutional complaint dated 13/04/2016 P. M. Dis. (hereinafter referred to as the "complainant") proposed that the Constitutional Court should state in its decision that the fundamental right to judicial protection pursuant to Article 36, paragraph 1, was violated by the above-mentioned decision of the Supreme Administrative Court issued in proceedings on a lawsuit against a decision of a public administration body, and protection against unauthorized collection, disclosure or misuse of personal data pursuant to Article 10, paragraph 3 of the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the "Charter"), and revoked this decision. 2. Together with the constitutional complaint, the complainant proposed to cancel the provisions of § 8b, paragraph 1 of Act No. 106/1999 Coll., on free access to information, as amended (hereinafter referred to as "the Act on free access to information"). IV. ÚS 1200/16 2 II. Factual circumstances From the constitutional complaint and the requested file of the Regional Court in Hradec Králové sp. stamp 30 A 65/2014, the following facts result. 3. By filing dated 2 May 2014, JUDr. V. M., attorney (hereinafter referred to as the "applicant", or the "plaintiff"), in accordance with the Freedom of Information Act, requested the Basic Art School in Hradec Králové, Habrmanova 130 (hereinafter referred to as the "obligatory subject") to provide information on the salary of each of

the teachers of this school, including the complainant, paid to them in 2013. 4. On 6/6/2014, by decision No. 079/2014/ZUS, the obliged entity partially complied with the request, and informed the applicant of the amount of salary in 2013 for three teachers, who agreed to the communication of this information to the plaintiff (statement I). With statement II, the obliged entity rejected the request for the provision of information, stating that salary information is personal data belonging to the privacy of employees. 5. On 2 July 2014 by decision of stamp: SZ MMHK/114738/2014 KT1/Pla, no. MMHK/123452/2014 KT1/Pla, Statutory City of Hradec Králové, Magistrate of the City of Hradec Králové (hereinafter referred to as the "appeal body"), the decision of the obliged entity dated 6.6 2014 No. 079/2014/ZUS changed it only formally, and informed the applicant of the salary amount for only three pedagogues, in relation to the remaining pedagogues, he rejected his request. 6. On August 24, 2015, by judgment No. 30 A 65/2014-83 of the Regional Court in Hradec Králové (hereinafter referred to as the "administrative court"), the decision of the appeal body dated July 2, 2014, file no. stamp No. SZ MMHK/114738/2014 KT1/Pla, no. MMHK/123452/2014 KT1/Pla, and statement II of the decision of the obliged entity dated July 2, 2014, file no. No. SZ MMHK/114738/2014 KT1/Pla, no. 2013 (statement II). In the proceedings on the administrative action, the complainant had the status of a person participating in the proceedings pursuant to § 34 s. s. 7. According to the administrative court, the essence of the dispute consisted in answering the question whether - with regard to the conflict of the right to information with the right to privacy - provides information on the salaries of employees paid from public funds in accordance with Section 8b of the Freedom of Information Act in principle "without further ado" (because the proportionality test regarding the priority of one of the above-mentioned rights was already carried out by the legislator at a general level and resolved in the case of recipients of public funds fundamentally in favor of the right to information), or whether, on the contrary, the provision of said information must be preceded by a test of proportionality, carried out by the entity obliged to provide such information in relation to the recipient of public funds. The Administrative Court stated that in the past the individual panels of the Supreme Administrative Court had also diverged in the answer to this question, and therefore the matter was submitted for consideration by its expanded panel. He decided on the matter by judgment dated 22 October 2014, No. 8 As 55/2012-62. His conclusions were unequivocal, i.e. that information on the salaries of employees paid from public funds is fundamentally provided in accordance with Section 8b of the Act on Free Access to Information. 8. On 21 January 2016, by judgment No. 4 As 216/2015-45, the Supreme Administrative Court (hereinafter referred to as the "Court of Cassation") cassation appeal of the complainant (as a person involved in the proceedings) against the judgment of the Administrative Court of 24 8. 2015 No. 30 A 65/2014-83

rejected (sentence I). IV. ÚS 1200/16 3 9. The Court of Cassation stated in the justification of its judgment that it had already commented on the issue of the provision of salaries to public sector employees in the above-mentioned judgment of its extended senate dated 22 October 2014 No. 8 As 55/2012 – 62, whose conclusions directly affect the present case. IV. Argumentation of the complainant 10. The complainant claimed that the contested judgment of the Court of Cassation of 21 January 2016 No. 4 As 216/2015-45 violated fundamental rights under Article 36, paragraph 1 and Article 10, paragraph 3 of the Charter of Fundamental Rights rights and freedoms (hereinafter referred to as the "Charter"). 11. According to the complainant, the basic right to a fair trial according to Article 36, paragraph 1 of the Charter was violated by the incorrect application of the conclusions of the judgment of the extended panel of 22 October 2014, No. 8 As 55/2012 – 62, to the complainant's case by the Court of Cassation, which is factually different according to his belief. The complainant is of the opinion that, due to this factual difference, the panel of the Court of Cassation should have submitted his case to the extended panel for a decision, and not just take over the argumentation of the cited judgment. 12. The basic right to protection against unauthorized collection, publication or other misuse of personal data pursuant to Article 10, paragraph 3 of the Charter was violated (which the complainant already claimed in the cassation complaint) by disproportionately prioritizing the basic right of the intervener to information pursuant to Article 17, paragraph 1 of the Charter, by not applying the proportionality test when both fundamental rights clash. 13. The applicant justified the proposal to cancel the provisions of § 8b, paragraph 1 of Act No. 106/1999 Coll., on free access to information, by referring to the cited judgment of the extended senate dated 22 October 2014, No. 8 As 55/2012 – 62, from which, in his opinion, it essentially follows that a conformal interpretation of the cited provision is not possible. V. Statements of the party to the proceedings and intervening parties to the proceedings 14. The Supreme Administrative Court, as a party to the proceedings, stated in its statement of 7 December 2017 regarding the constitutional complaint that it continues to stand by the conclusions it explained in the justification of the contested judgment of 21. 1. 2016 No. 4 As 216/2015-45, and suggested that the Constitutional Court reject the constitutional complaint as clearly unfounded, or that it be dismissed. In the event that the Constitutional Court finds the constitutional complaint to be well-founded, the party to the proceedings proposed to annul the judgment of the Court of Appeal dated 24 August 2015, No. J. 30 A 65/2014-83, and to return the matter to this court for further proceedings. 15. Since the statement of the party to the constitutional complaint did not contain new and substantial facts, it was not sent to the complainant for a possible reply. 16. The statement of the Regional Court in Hradec Králové on the constitutional complaint was not required due to redundancy

under the given circumstances, as its position on the issue of publishing employees' salaries is clear from its decision. 17. JUDr. V. M., as an intervening party to the proceedings, stated in his statement of 12/03/2018 to the constitutional complaint that the contested judgment of the Court of Cassation of 21/01/2016 No. 4 As 216/2015- IV. ÚS 1200/16 4 45 considers it correct and agrees with its reasoning, and that the extensive polemical conclusions of the complainant have no basis in law. In conclusion, he suggested that the Constitutional Court reject the constitutional complaint. 18. The statutory city of Hradec Králové, as a party to the proceedings, did not comment on the constitutional complaint. VI. Assessment of the conditions of the proceedings 19. The Constitutional Court assessed the fulfillment of the conditions of the proceedings and came to the conclusion that the constitutional complaint was filed in time by the authorized complainant, who was a person participating in the proceedings in which the decision challenged by the constitutional complaint was issued and the Constitutional Court is competent to consider it. The complainant is legally represented in accordance with the requirements of § 29 to 31 of Act No. 182/1993 Coll., on the Constitutional Court, as amended (hereinafter referred to as the "Act on the Constitutional Court") and has exhausted legal procedural means to protect his right. VII. Waiver of the oral hearing 20. The Constitutional Court did not expect further clarification of the matter from the oral hearing, which is why it waived it in accordance with the provisions of Section 44, first sentence of the Act on the Constitutional Court. XIII. Assessment by the Constitutional Court On the proposal to cancel provision 8a of the Act on Free Access to Information 21. On the question of the constitutionally compliant interpretation of provision 8a of the Act on Free Access to Information, or on the proposal for its cancellation, the Constitutional Court has already expressed itself in its judgment of 17 October 2017 file no. stamp IV. ÚS 1378/16, where in point 119 he stated that the provisions of § 8b of the Act on Free Access to Information can be constitutionally interpreted and applied in such a way as to ensure a fair balance between the observance of the fundamental right to freedom of expression and, within its framework, the right to information in the public interest, on the one hand, and respecting the right to privacy, on the other. The applicant's accessory proposal to cancel the cited provision of the Act on Free Access to Information was therefore rejected as manifestly unfounded according to the provisions of Section 43 paragraph 2 letter a) and b) of the Act on the Constitutional Court. Alleged violation of the fundamental right to a fair trial according to Article 36, paragraph 1 of the Charter 22. According to the complainant, the violation of the fundamental right to a fair trial according to Article 36, paragraph 1 of the Charter should have occurred due to the incorrect application of the conclusions of the judgment of the extended panel of 22.10. . j. 8 As 55/2012 – 62 and cited them extensively in the justification. 23. The Constitutional Court recalls that already in

its judgment of 27 December 2011, no. stamp IV. ÚS 415/11 (N 220/63 SbNU 539, point 23) stated that "[t]he requirements of a fair trial are not inconsistent with IV. ÚS 1200/16 5 such a practice of the appellate court, which simply adopts the reasons of the contested decision of the finding court in whole or in part and only refers to them in its decision, provided, of course, that the superior court actually reviewed the contested decision on the basis of the arguments presented in the appeal ." (cf. also Bohumil Repík: European Convention on Human Rights and Criminal Law, Orac 2002, p. 152). Similarly, the European Court of Human Rights in its judgment of 19/12/1997 in the Helle v. Finland case (complaint no. 20772/92, para. 60, <http://www.echr.coe.int>) emphasized, among other things, that "the concept of a fair trial requires that a national court, which has justified its decision either by referring to the reasons of a lower instance or in some other way, actually reviews the decisive questions put to it and is not content to simply adopt the conclusions of a lower court . ". In the judgment of 9/12/1994 in the case of Hiro Balani v. Spain (Complaint No. 18064/91, para. 27, <http://www.echr.coe.int>) the European Court of Human Rights recalled that Article 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "Convention") obliges courts to state the reasons for their judgments, but cannot be interpreted as requiring a detailed response to each argument. The extent of the court's duty to justify its decisions may vary according to the nature of the decision; therefore, the question of whether the court violated its obligation to justify the decision arising from Article 6, paragraph 1 of the Convention, can only be assessed in the light of the circumstances of the given case. 24. The Constitutional Court is of the opinion that the Court of Cassation respected the above-mentioned requirements of a fair trial in the contested judgment, and therefore did not find the alleged violation of Article 36, Paragraph 1 of the Charter by the complainant to be an insufficient justification of its decision. Regarding the allegation of a violation of a fundamental right according to Article 10, paragraph 3 of Charter 25. The Constitutional Court concluded that the constitutional complaint must be upheld in its entirety, because the decisions of the Supreme Administrative Court and the Regional Court in Hradec Králové violated the complainant's fundamental right to protection from unauthorized interference with private life. 26. Article 10 of the Charter guarantees the right to protection against unauthorized interference with private life and against the collection, publication or other misuse of personal data. Article 8 of the Convention, guaranteeing the right to respect for private life, corresponds to this article. 27. In the circumstances of the given case, the aforementioned articles of the Charter and the Convention must be applied simultaneously with Article 17 of the Charter, guaranteeing freedom of expression and the right to information, and the corresponding Article 10 of the Convention, guaranteeing freedom of expression, and within it also the

right to information in the public interest. General principles 28. The Constitutional Court has already dealt with the constitutional aspects of publishing information about salaries of natural persons from the point of view of the above-mentioned articles of the Charter and the Convention in the ruling dated 17 October 2017, file no. stamp IV. ÚS 1378/16 (available, as well as other decisions of the Constitutional Court, at <http://nalus.usoud.cz>), by whose basic reasons he is bound in the present case and from which he found no reason to deviate. The reasons that led to the cited finding are contained in detail in its justification, to which the Constitutional Court refers, as it considers it redundant to repeat them in the justification of this finding (among other things because of their extensiveness). IV. ÚS 1200/16 6 29. However, the Constitutional Court reiterates and reminds that information about employees' salary conditions is personal data, falling under the protection of Articles 10 of the Charter and 8 of the Convention, guaranteeing the right to protection against unauthorized interference in private life, and the right to informational self-determination, allowing individuals to rely on their right on privacy in terms of data that is collected, processed and disseminated. 30. The fundamental rights in question are not absolute, which means that their exercise can be interfered with under the conditions primarily set by the quoted articles of the Charter and the Convention, but the requirement expressed in Article 4, paragraph 4 of the Charter to respect the limits of fundamental rights, and to investigate their essence and meaning. 31. It is therefore necessary, in each individual case of providing information on the salaries of natural persons, to weigh the rights protected by Article 10 of the Charter and Article 8 of the Convention with the right to freedom of expression and the right to seek and disseminate information guaranteed by Article 17 of the Charter and Article 10 of the Convention, and to ensure a fair balance between them balance. 32. According to the established jurisprudence of the Constitutional Court, the conflict of fundamental rights must be resolved using the principle of proportionality [opinion of stamp PI. ÚS 8/06 of 1 March 2007, point 28 (N 39/44 Coll. 479; 94/2007 Coll.)]. In the decision of 20 June 2006, file no. stamp PI. ÚS 38/04 (N 125/41 Coll. 551; 409/2006 Coll.), as well as in the decision of 13 August 2002 stamp PI. ÚS 3/02 (N 105/27 Coll. 177; 405/2002 Coll.), the Constitutional Court noted that in cases of conflicts between fundamental rights or freedoms and the public interest, or other fundamental rights or freedoms, the purpose (goal) of such intervention must be assessed in relation to the means used, while the criterion for this assessment is the principle of proportionality (adequacy in a broader sense), which can also be called the prohibition of excessive interference with rights and freedoms. 33. Before providing information on an employee's salary and remuneration, requested by the applicant on the basis of the provisions of § 8b of the Freedom of Information Act, it is necessary to carry out a proportionality test and assess in particular whether the provision of information is key to the exercise

of the applicant's right to freedom of expression, where it is particularly necessary to examine whether a) the purpose of requesting information is to contribute to the discussion of matters of public interest, b) the information itself relates to public interest, c) the information requester fulfills the tasks or mission of public supervision or the role of a so-called "social watchdog" , d) the information exists and is available. 34. When fundamental rights clash, it is necessary to proceed from the principle that all fundamental rights are equal. The authorities applying the relevant legislation – i.e. in the case under review, the liable person, administrative authorities and courts in the administrative justice system – must in each individual case compare the conflicting fundamental rights concerned with the proportionality test and ensure that a fair balance is maintained between them. Application of general principles to the present case 35. In the present case, the applicant for information was a lawyer. From the requested file of the administrative court sp. No. 30 A 65/2014 there is no mention of the purpose for which the personal data requested by the applicant were to be used, let alone whether they were to be used in the public interest, and what this public interest should consist of. Therefore, it could not be assessed whether a fair balance was observed between the conflicting fundamental rights. IV. ÚS 1200/16 7 36. It is clear from the collected documents that the obliged person was – under the pressure of final decisions issued by the administrative judiciary – forced to provide the applicant with the salary data of the complainant (and other employees) without further ado. 37. In the circumstances of the case under consideration, the Constitutional Court is of the opinion that the imposition of an obligation by the administrative court and the court of cassation on the person obliged to provide the plaintiff with information about the amount of the complainant's salary, as one of the teachers at the Basic Art School in Hradec Králové, was a clear interference with the complainant's constitutionally guaranteed basic right for protection against interference with private life and the right to protection against unauthorized disclosure of personal data. 38. For the explained reasons, the Constitutional Court upheld the constitutional complaint in accordance with the provisions of § 82 of the Act on the Constitutional Court, and states that in the case under consideration, both the administrative court and the court of cassation, with their decisions requiring the obliged person to provide personal information about the complainant's (and other employees') salaries and wages , without assessing whether the applicant actually has a right corresponding to this obligation, violated the applicant's right to protection against unauthorized interference with private life, the right to protection against unauthorized disclosure of personal data and the right to respect for private life, guaranteed by Article 10 paragraph 2, paragraph 3 of the Charter and Article 8 paragraph 1 of the Convention. 39. The Constitutional Court annulled both the decision of the Court of Cassation contested by the constitutional

complaint and the previous judgment of the Administrative Court of 24 August 2015, No. 30 A 65/2014-83, as both of these decisions suffer from the same unconstitutional defects and must be removed. Lesson: You cannot appeal against the decision of the Constitutional Court. In Brno on April 3, 2018 Jan Musil President of the Senate For the correctness of the copy: Iveta Dvořáková