No. 14 A 89/2017-47 Conformity with the original is confirmed by M. V. CZECH REPUBLIC JUDGMENT ON BEHALF OF THE REPUBLIC The Municipal Court in Prague decided in a panel composed of President Karla Cháberová and judges Štěpán Výborny and Jan Kratochvíl in the case of the plaintiff: Město Moravský Beroun sídlem nám. 9. května 4, Moravský Beroun represented by lawyer JUDr. Jan Vyjídák with registered office Potoční 494/36, Šternberk against the defendant: Office for the Protection of Personal Data with registered office Pplk. Sochora 27, Prague 7 on a lawsuit against the decision of the Chairperson of the Office for Personal Data Protection dated 5 October 2017, ID UOOU-04002/17-23 as follows: I. The lawsuit is dismissed. II. None of the participants is entitled to compensation for the costs of the proceedings. Reasoning: I. Definition of the matter and the course of the proceedings before the administrative body 1. With the filed lawsuit, the plaintiff seeks the annulment of the decision marked in the header, which rejected his appeal and confirmed the decision of the Office for Personal Data Protection dated 22 June 2017, no. UOOU-04002/17-14, by which a fine of CZK 8,000 was imposed on the plaintiff for committing an administrative offense pursuant to § 45 paragraph 1 letter h) Act No. 101/2000 Coll., on the protection of personal data and the amendment of certain regulations, as amended (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. 2. From the content of the administrative file, the court found the following facts that are essential to the matter. 14 A 89/2017 Conformity with the original is confirmed by M. V. 2 3. The plaintiff is a municipality according to Act No. 128/2000 Coll., on municipalities (municipal establishment), as amended (hereinafter referred to as the "Act on Municipalities"), and based on § 8 of Act No. 561/2004 Coll., on pre-school, primary, secondary, higher vocational and other education (Education Act), as amended (hereinafter referred to as the "Education Act"), is the founder of Moravský Beroun Primary School, with its registered office Opavská 128, Moravský Beroun (hereinafter referred to as "School"). 4. At the school, for a long time, for at least six months from October 2015 to March 2016, serious bullying of one student by four minor boys of the 4th grade took place. 5. On March 1, 2016, the mother of the bullied student filed a complaint addressed to the plaintiff as the founder of the School, as she considered the previous solution to the bullying by the School management to be insufficient. 6. In March of the same year, the director of the School asked the Pedagogical-Psychological Counseling Center and the Special Pedagogical Center of the Olomouc Region to prepare an assessment. This report, entitled "Psychological intervention outputs" (hereinafter also referred to as the "Report") was subsequently sent to the mayor of the plaintiff. In this report, the course of the bullying was described and it was stated that the initial stage of bullying and bad behavior (repeated swearing, taunting, petty blackmail

and provocation, illegal handling of his personal belongings, ridicule and isolation) was demonstrated towards one of the 4th grade boys from by his 4 classmates. The opinion was introduced with a message highlighted in bold: "Important note: The report, including attachments, is intended only for the Moravský Beroun City Council. Contains confidential and sensitive information about pupils. It is not appropriate to present it to the public or the media. Please respect these facts". 7. The plaintiff's council discussed the whole matter on 9/5/2016, when it took note of the information about bullying at the School and instructed to present the Opinion at the meeting of the plaintiff's council to inform the city representatives. 8. For the council meeting on 5/18/2016, for the planned discussion of item no. 28 "Information on the Intervention Program aimed at pupils of the Moravský Beroun Primary School", a Report was made available to the councilors, in which the names of the bullied and the bullies were published and the course of the bullying was also described . 9. The board discussed the issue of bullying at a public meeting on 18 May 2016, when it took note of information about the Intervention Program aimed at School pupils. 10. On May 19, 2016, a complaint was filed against the defendant in the matter of violation of the Personal Data Protection Act. On 26 May 2016, the mother of one of the bullying students, who is also the plaintiff's representative, also filed a similar complaint. 11. The defendant initially did not find both motions justified and with reference to § 29 paragraph 1 letter c) of the Personal Data Protection Act postponed the matter without further measures. In the justification, he stated, among other things, that if the discussion of the matter is within the competence of the city as the school's founder, the disclosure of a document containing the personal data of the school's pupils to representatives is not a violation of the law and such disclosure cannot be considered as the publication of personal data. 12. Subsequently, on the basis of the "request for the provision of information" submitted by the second, above-mentioned person submitting the initiative, which the defendant evaluated as a complaint pursuant to § 175 paragraph 1 of Act No. 500/2004 Coll., Administrative Code, as amended (hereinafter just "administrative order"), the defendant legally reassessed the matter and on 4/21/2017 initiated administrative proceedings for violation of § 13 of the Personal Data Protection Act. 13. By the above-mentioned decision of 22 June 2017, the defendant imposed a fine of CZK 8,000 on the plaintiff for committing an administrative offense pursuant to § 45 paragraph 1 letter h) of the Act on the Protection of Personal Data, because the plaintiff as a personal data administrator pursuant to § 4 letter j) of the cited law did not take sufficient measures to prevent unauthorized access to personal data of pupils related to bullying that took place at primary school (including name, surname, information about the attended school and grade and about the course of the bullying behavior), contained in 14 A 89/2017 The conformity with the original is confirmed by M.V. 3 in the documents that

were made available to the representatives for the meeting of the city council, which took place on 18 May 2016. He thus violated the obligation set out in § 13 paragraph 1 of the Personal Data Protection Act, i.e. the obligation to take such measures 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. 14. In the justification of the first-instance decision, the defendant stated that the resolution of bullying complaints falls within the purview of the plaintiff as the founder of the school, and the council cannot discuss this matter in terms of a decision on the merits. The matter is presented to him only "for information", and therefore the scope of personal data must be limited to what is absolutely necessary. In the given case, it was not necessary to inform about the personal data of the pupils who were affected by the bullying, especially if it was not decided on the merits, but the matter was only taken into account. Regarding the principle of proportionality, he added that in this case it was inappropriate to prioritize the right to information over the right to protect personal data. 15. Regarding the dissolution of the plaintiff, the president of the defendant confirmed the first-instance decision. In the justification, it stated that the right to information according to § 82 letter c) of the Act on Municipalities is limited to matters that belong to the performance of the function of representatives. Pursuant to § 84, paragraph 1 of this Act, the municipal council decides on matters belonging to the independent competence of the municipality referred to in paragraph 2. In contrast, according to § 99, paragraph 1 of the same Act, the municipal council is the executive body of the municipality, whose competence is determined by § 102, paragraph 2 of the Act and among them is "to fulfill the tasks of the founder or founder according to special regulations in relation to legal entities and organizational components founded or established by the municipal council, with the exception of the municipal police, if they are not reserved for the municipal council". The resolution of complaints about bullying therefore falls within the reserved jurisdiction of the council, and the council cannot discuss this matter in the sense of a decision on the merits. Therefore, if the matter is presented to the council only "for information", as happened in this case, the scope of personal data must be limited to that which is absolutely necessary to discuss the matter. At the same time, knowledge of such detailed information as the personal data of pupils who are directly affected by bullying is undoubtedly not required for discussion at the municipal council. The opinion of the Ministry of the Interior No. 1/2016, which the plaintiff refers to, is also formulated in this sense, which, however, does not have the nature of a generally binding regulation and also largely deals with issues unrelated to this case. The fact that the circle of persons to whom personal data were made unlawfully accessible was limited to the representative of the plaintiff was accepted as a

mitigating circumstance, although one can have certain reservations about the warning contained in the introduction of the document in question, which sounds more like a mere moral appeal. Regarding the communication in the case before the start of the administrative proceedings, the chairperson of the defendant stated that the Office always proceeded with regard to the amount of information provided in the process of dealing with initiatives in this matter. She concluded that she did not find any reason for the illegality of the decision in any respect, especially that she considered the imposed fine to be reasonable. II. Content of the action 16. The plaintiff primarily objects that he has a positive obligation enshrined in international law to take all reasonable steps to prevent and prevent bullying. Therefore, in connection with the fight against bullying and in order to protect the victims of bullying in the schools it has established, it not only has the right, but in the context of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "Convention") and the decision of O'Keeffe vs Ireland and the obligation to transparently inform their representatives about serious cases of bullying. In this and similar cases, the protection of victims of bullying takes clear precedence over a bullying procedure, in which the attacker and/or his legal representatives try to prevent the representatives from being informed by abusing the right to privacy and the Personal Data Protection Act. 17. Neither the attacker nor his legal representative is entitled to abuse the protection provided by the Personal Data Protection Act at the expense of private and public rights aimed at preventing and preventing bullying. It is necessary to respect the fact that even the representatives' mere awareness of the problem of bullying and 14 A 89/2017 Conformity with the original is confirmed by M.V. 4 the identity of attackers can be a significant part of avoiding and preventing bullying - in this particular case, for example, the attacker's mother, who is also a member of the council , knows that all members of the council, without exception, are informed about the bullying committed by her son. In addition, the plaintiff took all reasonable measures so that the identity of the attackers or the victim would not be disclosed at the meeting, so that their identity would remain known only to the representatives who received the protected data message. No other unauthorized person has access to the published document. 18. By virtue of the performance of their duties, every representative has the right to learn all information about bullying in a contributory organization established by the municipality, including the identity of the persons who committed it, even in the event that the municipal council decides on the merits of the related complaint. This is the case, among other things, due to the possibility of each representative to consider filing or directly file a criminal report or notification of a misdemeanor against a specific suspected offender, the possibility of each representative to submit a proposal to the municipal council for specific measures against specific persons in order to prevent bullying in the future, the

possibility of each representative to accept all reasonable measures to ensure that all School employees and parents of all children who attend the School can contribute to the prevention of further bullying, including, for example, increased attention to the actions of attackers, or the possibility for each representative to propose a resolution at a meeting of the council with a proposal to adopt measures binding the council cities to take measures to prevent or prevent bullying. The plaintiff considers the interpretation put forward by the defendant to be an unconstitutional interference by a state authority in the plaintiff's right to self-government. 19. The plaintiff further objects that the action consisting in the fact that "the village council sends a letter addressed to them by a third party and delivered to the mayor of the village to the protected personal data boxes of the representatives", is not and cannot be "processing of personal data" in the sense of the Personal Data Protection Act, because § 4 letter e) of the Personal Data Protection Act envisages "systematic implementation". This distinguishes the given matter from the routine systematic solution of a certain agenda entrusted to the municipality by law. In addition, the defendant has not explained on what basis he concludes that the element of "systematicity" has been fulfilled, and the contested decision is not reviewable in this regard. In the plaintiff's opinion, the defendant is not entitled to arbitrarily import, without further ado, what information the plaintiff can or cannot share with members of the council when solving a serious problem, such as bullying without any doubt. No public administration body has a recipe for solving the serious societal problem of bullying, and it is therefore undesirable for it to indirectly offer protection to attackers through unjustified interventions. III. Statement of the defendant 20. In his statement, the defendant rejected the plaintiff's objections and referred to the justification of the contested decision. 21. The defendant stated that the plaintiff is undoubtedly the administrator of personal data within the meaning of § 4 letter j) of the Act on the Protection of Personal Data and in the given case processed the data of pupils who participated in bullying (as bullying victims and actors), including first and last name, information about the school attended, including year and all information related to the course bullying contained in the Opinion. These data relate to clearly identifiable entities and are therefore undoubtedly personal data within the meaning of § 4 letter a) of the cited law. It is undoubtedly the processing of personal data, as the party to the proceedings registers the documents required for the deliberations of the council, which contain personal data, stores them, sends them out and further deals with them (evaluates them, etc.). Therefore, the element of systematicity is undoubtedly fulfilled in this case. 22. The defendant further pointed out that the coordinating role in the field of organization and performance of public administration is performed by the Ministry of the Interior, which in its opinion no. on municipalities explicitly states that the resolution of complaints about bullying falls under the exclusive jurisdiction of the

municipal council. The council should have been informed about the fact that the bullying of the pupil of the school in question is being dealt with and that certain procedures have been developed. The scope of information on the output of psychological intervention for the purpose of informing the council should have been limited 14 A 89/2017 Conformity with the original is confirmed by M. V. 5 only to the basic parameters of solving the problem of bullying, regardless of the mentioned recommendation. In addition, information about the method of bullying and the names and surnames of the primary school pupils concerned are data whose dissemination has a particularly heavy impact on the private lives of these pupils, and which the council does not need to know for the purposes of informing about the measures taken and outputs. 23. The defendant emphasized that in the given case, with regard to the principle of proportionality, the protection of the personal data of elementary school students and the prevention of unauthorized interference in their privacy in such a sensitive matter took precedence over the right to information. Likewise, it cannot be an unauthorized intervention in self-government. In addition, disclosing the personal data of bullies beyond what is absolutely necessary undoubtedly has undesirable effects, especially for the victim of bullying. The judgment in O'Keeffe v. Ireland concerned an entirely different form of abuse. IV. Argumentation of the participants at the meeting on 11/03/2019 24. The plaintiff did not participate in the meeting; the decision-making panel did not have at its disposal the request of the plaintiff's representative to postpone the hearing from 10 March 2019, and therefore did not consider it in any way. 25. During the hearing, the defendant maintained his previous argumentation and proposed to dismiss the claim. V. Assessment of the claim by the Municipal Court in Prague 26. Pursuant to § 75 s. of the Code of Civil Procedure, the court reviewed the contested decision, as well as the proceedings that preceded its issuance, to the extent of the points of illegality alleged by the claim, by which it is bound, according to the factual and legal situation on the date of issue of the contested decision, and came to the conclusion that the action is unfounded. 27. According to § 4 letter e) of the Personal Data Protection Act, for the purposes of this Act, 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. 28. 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, or other unauthorized processing , as well as to other misuse of personal data. This obligation

applies even after the end of personal data processing. 29. Pursuant to § 45 paragraph 1 letter h) of the Personal Data Protection Act, a legal entity or a natural person conducting business under special regulations as an administrator or processor commits an administrative offense by failing to adopt or implement measures to ensure the security of personal data processing during the processing of personal data (§ 13). 30. According to § 82 letter c) of the Act on Municipalities, a member of the municipal council has the right to request information on matters related to the performance of their duties from the employees of the municipality assigned to the municipal office, as well as from the employees of legal entities founded or established by the municipality; the information must be provided within 30 days at the latest. 31. Pursuant to § 84, paragraph 1 of the Act on Municipalities, the municipal council decides on matters belonging to the municipality's independent jurisdiction (§ 35, paragraph 1). 32. According to § 102 paragraph 2 letter b) of the Act on Municipalities, the municipal council is entitled to fulfill the tasks of the founder or founder in accordance with special regulations in relation to legal entities and organizational units founded or established by the municipal council, with the exception of the municipal police, if they are not reserved for the municipal council (§ 84, paragraph 2). 33. At the outset, the court emphasizes that the purpose of the Personal Data Protection Act is the protection of privacy, which is primarily based on Article 7, paragraph 1 and Article 10 of the Charter of Fundamental Rights and Freedoms. Rationale 14 A 89/2017 Conformity with the original is confirmed by M. V. 6 interference with this right must be weighed in relation to each entity that became the subject of published information, including the importance of the information for the public life of the person to whom the information relates and the degree of impact on their rights (see judgment of the Supreme Administrative Court of 3 May 2018, No. 2 As 304/2017-42, No. 3748/2018 Coll. NSS). 34. In the evaluated case, the privacy of 4th grade pupils, i.e. minors who enjoy increased protection of their privacy, was violated (through the publication of their identification). In this regard, the Constitutional Court emphasizes that the protection of privacy and dignity is given to an increased extent precisely when informing about minor children or similarly vulnerable persons, from which it follows that general courts and other public authorities (including the Office for Personal Data Protection) are obliged to pay increased attention to this information compared to other personal data and provide them with much stronger protection (see ruling dated 20 December 2016, file stamp Pl.ÚS 3/14). The court fully agrees with this, because it is minors (due to their limited mental and moral development) who can be more sensitively affected when their privacy is breached, or may find it more difficult to deal with a situation where their identification data is disclosed beyond what is absolutely necessary. 35. The above applies especially when information is published from a very sensitive area, which is undoubtedly bullying. First of all, it

is very sensitively and negatively perceived by its victim, but also its perpetrators can perceive its causes and consequences in a limited way with regard to their age, and therefore it is necessary to have an appropriate professional effect on them, not to targetfully ostracize them (especially if it is pupils of the first grade of primary school). In this context, the court emphasizes that bullying, as a very negative phenomenon, represents a complex problem, the solution of which belongs to suitably educated experts who can consistently recognize all its causes and prevent its further continuation. Its solution is due care with the victim, the bullies and the school team (here the class), while a successful result can often only be reached with the use of the services of pedagogical and psychological counseling (as was the case in this case). However, to a very limited extent, it can be resolved by the plaintiff's representatives (see also below). 36. It is true that publishing the identity of children affected by bullying can, on the one hand, increase the trauma of the victim and also make it difficult for the attackers to understand the situation (including identifying mistakes and learning from them). The court does not agree with the plaintiff's opinion that the attackers would be "protected" in any way, but the emphasis is placed on their correction in the sense of understanding the negative consequences of bullying for the bullied, for the school team and for themselves. It is hard to imagine that a certain stigmatization of 4th graders, whose identification would be published, could help this solution, or would contribute to further positive psychological and social development of attackers, including understanding mistakes and learning from them. According to the court, the publication (albeit to a very limited circle of people) of the names of the victim or the attackers cannot contribute to preventing the continuation of bullying. After all, the court also adequately refers to the Juvenile Justice Act, which enshrines the specific rights of children under fifteen years of age and juveniles to be protected against interference with their personal privacy in order to minimize the possible stigmatizing consequences of proceedings and their results in cases of cases heard by youth courts. Here, where it is not a criminal process at all, possible stigmatization must be prevented even more significantly. 37. The court then again emphasizes the fundamental fact that the published Opinion did not only mention the names of the attackers, but also the name of the victim. However, his identity should always be protected to the maximum extent, because as a minor victim of inappropriate behavior on the part of his classmates, he enjoys the highest privacy protection. Here it is necessary to take into account that the publication of the victim's identity can have a negative consequence on his ability to cope with the situation, which must be one of the main goals of any anti-bullying measures. Here, the court also adequately refers to the protection of privacy, which is provided to victims of crimes by the Act on Victims (see § 15 and § 16), when according to § 8a, paragraph 2 of the Criminal Code, when providing information, law enforcement

authorities pay particular attention to the protection of personal data and privacy of persons under 18 years of age. Disclosure of identity 14 A 89/2017 The agreement with the original is confirmed by M.V. 7 minor victims of bullying cannot, a priori, enjoy legal protection (in the absence of decisively fundamental reasons for their benefit). 38. It follows from the above that with regard to the nature of the persons whose identities were published (children in the 4th grade of primary school), as well as with regard to the nature of the given information (a detailed description of bullying at school) and their possible impact on the development of these children, the necessity of protecting the right to privacy of the persons concerned was intensified in the given case. In this situation, the right to privacy would have to give way to another, conflicting right or public interest only in the event that the presence of other enormously important interests would be found, which would exceed the right to privacy and would support the necessity of protecting that conflicting right. 39. In this sense, the court dealt primarily with whether the representatives had to be informed in detail about the bullying at the School, the founder of which is the plaintiff, in the performance of their duties. Indeed, if they were to make binding decisions on the issues in question in the exercise of their functions, the importance of being thoroughly familiar with the circumstances of the problem that has arisen would be highlighted, as only a duly informed representative is able to properly assess the matter and subsequently express his will during the vote, with which he can influence operation and proceedings of the municipality or its contribution organization. 40. The powers of the council as one of the authorities of the municipality are exhaustively defined in the above-cited § 84 of the Act on Municipalities, and these are matters that are in the interest of the municipality and its citizens, unless they are entrusted by law to the regions or if it is not the exercise of delegated authority, and furthermore, matters that are entrusted to the separate jurisdiction of the municipality by a special law. The powers of the city council are exhaustively enumerated in § 102 of the Act on Municipalities, and they represent a range of tasks and activities which, with the exception of explicitly stated exceptions, cannot be performed by any other body in the municipalities in which the municipal council is established (elected), so that neither the village council itself cannot possibly decide to delegate the exercise of any of the listed powers to another village body. And the law in § 84 paragraph 4 expressly forbids the municipal council to attract some of its powers mentioned in the cited provision during the existence of the municipal council. 41. The above-cited § 102 para. 2 lit. b) of the Act on Municipalities, according to which the municipal council is entitled to fulfill the tasks of the founder or founder in relation to legal entities and organizational components founded or established by the municipal council, if they are not reserved for the municipal council. The school, as a contributory organization established by the plaintiff, represents just such a legal entity,

which is why it is submitted that the resolution of their affairs is reserved only to the village council and not to the council. And since the Act on Municipalities in Section 84, paragraph 4, expressly prohibits the council from making final decisions on these matters, it can only be concluded that the representatives of the plaintiff could not in any way bindingly decide on the problem of bullying at the School. A certain exception would only be a situation where the problems concerned would be of such a serious nature that a decision would be made to abolish the School as a contributory organization (see § 84 paragraph 2 letter d) of the Act on Municipalities); however, this extreme condition did not occur in the given case. 42. In this situation, the court must convince the defendant that the intensity of the necessity to inform the representatives in detail about the problems that have arisen, including the provision of the Opinion without any anonymizing interventions, has been reduced, because if the representatives did not make a final decision on the matter, there was no fundamental reason for which they had to be detailed (including the names of the attackers and the victim) became familiar with the problems that arose in the 4th grade of the School. 43. Of course, the court completely agrees with the plaintiff that it is necessary to make maximum efforts to effectively address the issue of bullying and to prevent it as much as possible. However, according to the court, for this purpose it was not necessary to inform the municipal representative about the identity of the attackers and the victim when dealing with bullying at the School, as this in itself was not significant for the assessment and evaluation of the problems that arose at the School within the council meeting. Any preventive steps that the plaintiff is talking about could be taken by the representatives even if the incriminated names were blacked out in the Opinion, or when deputies would not be able to identify the attackers or the victim. In addition, it is submitted that even from the Opinion itself it follows that the given problem was 14 A 89/2017 Conformity with the original is confirmed by M.V. 8 in the subject class of the School solved by relevant and professionally educated subjects (by the way, the council took note of this fact and was with it the bullied mother is also identified), which is why they have the greatest competence in dealing with bullying in schools and have the most suitable prerequisites for successfully resolving the situation. Certainly more appropriate than individual deputies using information about the identity of the attackers and the victim, as the plaintiff suggests in the lawsuit. 44. For the sake of completeness, the court states that the possibility to publish the identity of pupils could not be given even by § 82 letter c) of the Act on Municipalities. Above all, the court emphasizes that in the case in question the information was published at the will of the plaintiff and not at the request of the representative, while the content of the provision in question is the member's interpellative authorization, i.e. the right to demand from municipal employees included in the municipal office, as well as from employees of legal entities that the

municipality founded or established, information in matters related to the performance of his function (i.e. the function of a member of the council). However, it did not appear from the administrative file that any representative requested the communication of this information, and therefore the reference to the said provision is not appropriate. In addition, even in the case of § 82 letter c) of the Act on Municipalities applies that information does not always have to be provided, i.e. even if its provision is prevented by other laws. And this way (as follows from the above) the Act on the Protection of Personal Data even in the case of the procedure according to § 82 letter c) of the Act on Municipalities (i.e. at the request of a representative) protected the identity of both the victim and the attackers, and therefore this specific information could not be provided (unless the applicant presented such fundamental arguments for the disclosure of the identity of the persons concerned that the right to their privacy would have to be set aside). 45. In view of the above, the plaintiff's objection that only a narrow group of people were informed of the identity of the persons in question, who were also informed of the necessity to maintain confidentiality about the facts established, cannot be justified either, because in a situation where the council with this sensitive information was not necessary to specifically communicate in this way, there was an interference with the right to privacy of the persons concerned and a violation of the Personal Data Protection Act. This fact was correctly assessed by the defendant only when considering the amount of the imposed penalty, as it is submitted that the limited number of persons who became familiar with the protected information has an impact on the seriousness of the action in question. 46. The court therefore concludes that in a situation where the privacy of minor children was affected and both the names of the attackers and the name of the victim of bullying were published, while it was data related to a matter that certainly had an impact primarily on the life of the bullied, the law prevails on privacy over the right of representatives, who have the task of monitoring the interests of the municipality and supervising them, to be informed in detail about this matter. According to the court, the parameter of necessity and necessity was not fulfilled in order to breach the privacy of the persons concerned, and therefore the action of the plaintiff interfered with these rights and was contrary to the law on the protection of personal data. 47. With regard to the above, there could be no violation of the right to self-government, since self-government powers in the given case are primarily vested in the municipal council, whose activities were not affected by the contested decision. The representatives were properly informed about the problem at the meeting of the council, and with regard to their powers, it would be sufficient if only an anonymized version of the Opinion was provided to them so that they could properly supervise the events in the municipality, including the organizations established by this municipality. 48. Finally, the court must reject the plaintiff's

reference to the decision of the European Court of Human Rights of 28/01/2014 in the case of O'Keeffe v. Ireland, complaint No. 35810/09, as it related to a fundamentally different matter (deterrence of serious crimes in the sexual area and the effectiveness of the system of criminal law, or the responsibility of the state if the system of effective protection of victims of abuse of minors does not work) and did not in any way address the possibility of encroaching on the privacy of minors by publishing their identification data. Therefore, according to the court, the conclusions of the said decision cannot be used in any way in the case under consideration, while the court refers to what has already been said above, that it does not in any way intend to trivialize the necessity of an effective fight against school bullying; however, this objective cannot support unlawful intrusions into the privacy of minors. 14 A 89/2017 Conformity with the original is confirmed by M.V. 9 49. In conclusion, the court must reject the plaintiff's objection that in his case it was not a matter of processing personal data at all, as the parameter of "systematicity" according to § 4 letter e) of the Personal Data Protection Act. 50. The Supreme Administrative Court commented on the condition of systematicity in the judgment of 22 January 2013, No. 9 Aps 5/2012-56 (No. 2811/2013 Coll. NSS), that the Personal Data Protection Act does not apply to random collection of personal data that is not further systematically processed. Therefore, in order for personal data to be processed within the meaning of the Personal Data Protection Act, it must be a systematic activity carried out directly with personal data. In the judgment of 7/17/2018, No. 3 As 3/2017 – 38, the Supreme Administrative Court, through linguistic interpretation, came to the conclusion that this systematicity undoubtedly consists of repeated, refined and unifying activity. The Supreme Administrative Court reached the same conclusion even when using a systematic and teleological interpretation. Thus, only regular and refined handling of personal data (i.e. systematic) is subject to regulation according to the Personal Data Protection Act. The concept of personal data processing consisting of the systematicity of the listed activities corresponds to a recent and simultaneously effective regulation of EU law, as 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 in Art. 2 letters 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 . " 51. Although the court does not in any way deny that in the case under consideration the publication of personal data was only a one-off and it was not a long-term systematic handling of personal data as in the case of other agendas administered by municipalities, the condition of systematicity was fulfilled. The court agrees with the defendant that the processing of personal data was involved, as the plaintiff collected and stored the given data (as part of the discussion of the complaint in question), evaluated it (at the meeting of the council or during the draft resolution of the council) and also made it available by providing it to the representatives municipalities. The element of systematicity was therefore fulfilled in this particular case and the plaintiff cannot plead non-fulfilment of the definition contained in § 4 letter e) of the Personal Data Protection Act. As part of this objection, the court did not find the challenged decision unreviewable either. In the first-instance decision, the defendant addressed whether it was "personal data processing" in the sense of the Personal Data Protection Act and justified his conclusions (see p. 5 of the decision in question). Although the chairperson of the defendant did not explicitly assess the circumstance in question within the framework of the settlement of objections to the dissolution, the reason was that the plaintiff did not raise this objection as part of the submitted dissolution. Therefore, in this regard, the plaintiff cannot invoke the non-reviewability of her decision, as she was not obliged to comply with the now alleged non-fulfilment of the conditions of Section 4 letter e) of the Personal Data Protection Act to express. 14 A 89/2017 Conformity with the original is confirmed by M. V. 10 VI. Conclusion 52. The plaintiff therefore failed with his objections; since no defects came to light in the proceedings on the claim, which must be taken into account as a matter of official duty, the municipal court dismissed the claim as unfounded. 53. The court decided on reimbursement of the costs of the proceedings in accordance with § 60, paragraph 1 of the Civil Procedure Code. The plaintiff was not successful in

the matter, and therefore has no right to reimbursement of the costs of the proceedings; the defendant did not incur any costs in the proceedings on the claim beyond the scope of normal official activity. 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 (more) copies to the Supreme Administrative Court, with its seat at Moravské náměstí 6, Brno. The Supreme Administrative Court decides on cassation appeals. The time limit for filing a cassation complaint ends with the expiration of the day which, with its designation, coincides with the day that determined the beginning of the time limit (the day of delivery of the decision). If the last day of the deadline falls on a Saturday, Sunday or holiday, the last day of the deadline is the closest following business day. Missing the deadline for filing a cassation complaint cannot be excused. A cassation complaint can only be filed for the reasons listed in § 103, paragraph 1, s. s. s., and in addition to the general requirements of the filing, it must contain an indication of the decision against which it is directed, to what extent and for what reasons the complainant is challenging it, and an indication of when the decision was delivered to him. In cassation appeal proceedings, the complainant must be represented by a lawyer; this does not apply if the complainant, his employee or a member acting for him or representing him has a university degree in law which is required by special laws for the practice of law. The court fee for a cassation appeal is collected by the Supreme Administrative Court. The variable symbol for paying the court fee to the account of the Supreme Administrative Court can be obtained on its website: www.nssoud.cz. Prague, March 11, 2019 JUDr. Karla Cháberová former president of the Senate