No. 11 A 164/2018- 48 The agreement with the original is confirmed by T. V. CZECH REPUBLIC JUDGMENT ON BEHALF OF THE REPUBLIC The Municipal Court in Prague decided in a panel composed of the chairman Mgr. Martin Lachmann and judges Mgr. Jan Ferfecký and Mgr. Aleš Sabola in the case of the plaintiff: SOLIDIS s.r.o., ID number: 24224715 registered office Vídeňská 545/76, Prague 4 – Kunratice represented by attorney Mgr. Petr Kůtou with registered office Hellichova 1, Prague 1 against the defendant: Office for the Protection of Personal Data with registered office Pplk. Sochora 27, Prague 7 on the action against the decision of the defendant's chairperson dated 18 April 2018, ID No. UOOU-09774/17-25, as follows: I. The action is dismissed. II. The plaintiff is not entitled to reimbursement of costs. III. The defendant is not awarded compensation for the costs of the proceedings. Reasoning: I. Definition of the matter 1. The plaintiff filed a lawsuit demanding the annulment of the decision indicated in the header (hereinafter referred to as the "contested decision") of the chairman of the defendant (hereinafter referred to as the "defendant"), which rejected the plaintiff's motion and confirmed the decision of the Office for the Protection of Personal Data (hereinafter referred to as "administrative 11 A 164/2018 Conformity with the original will be confirmed by the T.V. 2 authority of the first instance"), dated 1/15/2018, no. UOOU-09774/17-19 (hereinafter referred to as the "first instance decision"). 2. By a first-instance decision, the first-instance administrative body recognized the plaintiff in sentence I. as guilty of committing an offense pursuant to § 45 paragraph 1 letter e) of Act No. 101/2000 Coll., on the protection of personal data, as amended (hereinafter referred to as "ZOOÚ"), because without the consent of the data subjects it processed the personal data of an unspecified number of persons in the order of hundreds of thousands, at least in the scope of first name, surname , address and telephone number, which he obtained on the basis of a license agreement concluded on 5/9/2012 with A.B., a natural person doing business under the Trade Act, with registered office X, ID number: X (hereinafter referred to as "entrepreneur A.B."), license agreement concluded on 19 9. 2013 with the company Vesnalore, s.r.o., with registered office at Roháčova 188/37, Prague 3, ID number: 24739863 (hereinafter referred to as "the company Vesnalore"), and based on an order dated 25.10.2013 from the company Soliditet s.r.o., with registered office Siemensova 2717/4, Prague 13, IČO: 60469641 (hereinafter referred to as the "Soliditet company"), and kept them at least until the beginning of the inspection carried out at the plaintiff's premises from 11/16/2016 to 9/19/2017 by the inspector of the first instance administrative body. In doing so, the plaintiff violated the obligation set forth in § 5 para. 2 ZOOÚ to process data with the consent of the data subject or in the cases set forth in § 5 para. 2 lit. a) to g) ZOOÚ, for which the plaintiffs were charged according to § 35 letter b) of Act No. 250/2016 Coll., on liability for misdemeanors and their proceedings, as amended

(hereinafter referred to as the "Misdemeanor Act"), a fine of CZK 800,000 was imposed. In statement II. of the first-instance decision, the first-instance administrative authority imposed on the plaintiff the obligation to compensate the costs of the proceedings in the amount of CZK 1,000. II. The defendant's decision (contested decision) 3. In the justification of the contested decision, the defendant first recapitulated the previous course of the administrative proceedings, summarized the conclusions stated in the first-instance decision and summarized the objections raised by the plaintiff (pages 1-3 of the contested decision). 4. The defendant first rejected the objection in which the plaintiff questioned that the notice of initiation of the proceedings in the present case did not contain the statutory requirements pursuant to Section 73 of the Offenses Act, in particular the place and time of the commission of the offense and the evidence that led the administrative authority of the first instance to initiate proceedings, when the provision of the misdemeanor law referred to by the plaintiff regulated the procedure of the authorities of the Police of the Czech Republic, the Military Police or another administrative authority when reporting a reasonable suspicion of the commission of an offense to the competent administrative authority in cases where these authorities were not competent to deal with this offence. According to the explanatory report to the misdemeanor law, the provision referred to by the plaintiff was a special provision to § 42 of Act No. 500/2004 Coll., Administrative Code, as amended (hereinafter referred to as the "Administrative Code"), therefore it did not apply to the case under discussion, as it proceedings were initiated ex officio pursuant to Section 78 of the Offenses Act, which reference was expressly made in the notice of initiation of proceedings with the plaintiff in the present case. According to the defendant, among the mandatory elements of such a notice of initiation of proceedings was a description of the deed, which was to be decided in the proceedings, and its preliminary legal qualification, as stipulated in Section 78, Paragraph 3 of the Offenses Act. At the same time, the notice of initiation of proceedings against the plaintiff fulfilled both of these content requirements, i.e. the administrative authority of the first instance determined precisely what the plaintiff's offense should have consisted of, and stated with regard to the preliminary legal qualification that the plaintiff violated the obligation set forth in Section 5(2) of the ZOOÚ. 5. The defendant further addressed the plaintiff's objection that the first-instance decision did not provide any evidence from which the first-instance administrative authority concluded that the personal data had been processed illegally, and called the plaintiff's claim untrue when the first-instance decision properly stated the reasons for his statements and the basis for his edition. The administrative body of the first instance stated in the first instance decision why the processing of personal data by the plaintiff was not carried out in accordance with the ZOOÚ, and part of the administrative file was also a copy of the

database with 2,467,083 records, which the plaintiff handed over to the administrative body of the first instance on August 1, 2016 as part of control and which, according to the plaintiff's statement of 21/04/2017, contained all personal data processed by him for the company Zaplo Finance s.r.o. (hereinafter referred to as "the company Zaplo") on the basis of the license agreement of 9/11/2015. The individual records of the database transferred in this way always they contained the name, surname, telephone number 11 A 164/2018 T.V. 3 confirms the agreement with the original and the address, while the plaintiff did not provide any legal documents for the further processing of this personal data at the request of the administrative body of the first instance. According to the defendant, the plaintiff processed personal data from the position of administrator of this personal data, which he subsequently handed over to Zaplo, because he determined the purpose and means of personal data processing as part of his business activity. The processing of this personal data consisted in its collection, storage and further use for the creation of databases for its clients based on orders for their search and use, thereby fulfilling the definition of personal data processing in the sense of § 4 letter e) ZOOÚ. From the justification of the first-instance decision, the defendant then quoted the conclusion that the plaintiff did not prove legal titles for further processing of personal data in the database after he obtained these personal data on the basis of license agreements from entrepreneur A.B. and the company Vesnalore, respectively. on the basis of an order from Soliditet (hereinafter referred to collectively as the "license agreement"). As the administrative authority of the first instance also explicitly stated in the justification of the first instance decision, the processing of this personal data by the plaintiff could not be subordinated to the processing of personal data according to § 5 paragraph 2 letter d) ZOOÚ, because it was by its nature a general provision, when for the purpose of offering goods and services the plaintiff had to proceed according to the special provision § 5, paragraph 5 ZOOÚ, because he processed personal data in a wider than permitted scope due to telephone numbers, for which he would have had to plaintiff to document consents. For expressing consent in the sense of § 4 letter n) in conjunction with § 5, paragraph 4 of the ZOOÚ, it was not possible to consider the provisions of the license agreements concluded by the plaintiff, i.e. the orders in which such consent to addressing the plaintiff was guaranteed by the providers of this personal data. Consent was thus understood as the free and conscious expression of the will of the data subject with the processing of personal data, when granting which the data subject had to be informed for what purpose and to which personal data, to which administrator and for what period he was giving his consent. The plaintiff had to be able to demonstrate such consent throughout the period of personal data processing. 6. To the further objection of the plaintiff, that the administrative body of the first instance did not present any evidence for its conclusion

that the plaintiff processed the personal data of an unknown number of people in the order of hundreds of thousands, the defendant countered with the factual impossibility of accurately quantifying the personal data processed by the plaintiff due to their extensive amount in the order of hundreds of thousands , as evidenced by the database attached to the file. According to the defendant, it was not necessary to individualize and specify each individual subject of personal data and it was sufficient to simply determine the number of affected subjects of personal data. At the same time, according to the defendant, the extent of the personal data processed by the plaintiff was evidenced by the database of personal data that was part of the file material. At least to its extent, the plaintiff stored personal data and subsequently used them for the purpose of his earning activity to offer business and services. 7. If the plaintiff claimed in the summary that the administrative body of the first instance did not allow the plaintiff to comment on the basis for the issuance of the first instance decision, even though he twice invited him to do so, however only formally, without the administrative file containing specific documents on the basis of which he intended to make a decision in the present case, the defendant objected in the challenged decision by saying that the administrative body of the first instance properly instructed the plaintiff during the proceedings about the possibility of exercising the right to comment on the basis of the decision, namely by letter dated 6 December 2017. Subsequently, it took place on 15 December .2017 inspection of the file by the plaintiff, which was recorded in the administrative file. Finally, on December 21, 2017, the plaintiff sent his statement to the administrative body of the first instance regarding these documents, which he subsequently dealt with in the justification of the first-instance decision. 8. If the plaintiff stated in his objections that the first-instance decision was not sufficiently justified and therefore not reviewable, including because the first-instance administrative body did not deal with her claim that she had made all necessary efforts to prevent the offense, the defendant in addition, he noted that the first-instance decision met all requirements as required by Section 93 of the Offenses Act and Section 68 of the Administrative Code. According to the defendant, responsibility for the offense consisting in the processing of personal data could not be exonerated in the sense of Section 21, paragraph 1 of the Misdemeanor Act by the subsequent adoption of measures to ensure the security of processed personal data, as the administrative authority of the first instance also mentioned. 11 A 164/2018 The agreement with the original is confirmed by T.V. 4 9. If the plaintiff contradicted the further objection that he was the data controller in the case under discussion, which was reached by the administrative authority of the first instance, the defendant stated that the administrative authority of the first instance stated for what reasons it reached to the opinion that the plaintiff was the data controller in the present case when the plaintiff determined the purpose and means of personal data

processing, as he further used the personal data to create databases for his clients based on orders. With this qualification, the plaintiff could not change the facts claimed by the plaintiff, i.e. that the personal data that he provided for payment to his clients was structured according to the requirements of individual clients, or that their source was other entities. If the plaintiff referred to himself as a partial processor, the defendant stated that he was not familiar with the term ZOOÚ, therefore he called this argumentation of the plaintiff irrelevant. 10. Regarding the breakdown of the disputed liquidation amount of the fine awarded to the plaintiff, the defendant concluded that the sanction was duly justified in the first-instance decision in the present case. As a circumstance increasing the seriousness of the plaintiff's actions, the administrative authority of the first instance identified the time during which the plaintiff processed personal data without authorization, and at the same time emphasized the fact that the plaintiff was a professional in a field in which extensive processing of personal data took place, thereby increasing the degree of harmfulness of the offense committed . On the contrary, as a circumstance reducing the seriousness of the plaintiff's actions, the administrative authority of the first instance cited the fact that the plaintiff complied with the remedial measures imposed on her, although the adoption of the remedial measures in itself did not mean a release from liability for the offense consisting in the processing of personal data without a proper legal title. III. Content of the claim 11. In the filed claim, the plaintiff first briefly summarized the course of the administrative proceedings to date and mentioned the conclusions of both the first-instance decision and the contested decision, in order to subsequently state in a general way that his rights were fundamentally abridged as a result of the incorrectness and unreviewability of the contested decision due to lack of comprehensibility also for lack of reasons, as well as for substantial procedural defects of the previous administrative procedure. According to the plaintiff, not only the matter itself, but also the amount of the fine was assessed incorrectly. 12. As regards his own objections, the plaintiff stated first of all that the contested decision was unreviewable when it was not properly justified and the reasoning was not comprehensible. The plaintiff repeated his objection from the dissolution against the first-instance decision, which he defended against the fact that it did not include all the elements of an administrative decision in the sense of Section 93 of the Offenses Act. Now, however, he extended it to the contested decision, with the fact that the administrative decisions in question did not contain a description of the deed with an indication of the place, time and manner of its commission. According to the plaintiff, the statement was formulated too generally, i.e. unreviewable. 13. On this occasion, the plaintiff repeatedly objected, as if in an argument, that even the notification of the initiation of proceedings in the present case did not meet the requirements defined by law according to Section 73 of the Offenses Act, when the description

of the act lacked, on the one hand, a specific description of the proceedings, i.e. what was specifically understood by the processing of personal data from on the part of the plaintiff, whether the storage of personal data in the computer, handling or other operations with personal data, on the one hand, the plaintiff in the description of the act lacked the determination of the time of its commission. In other words, the description of the act expressed in this way could not be that the plaintiff "processed personal data on the basis of license agreements without the data's consent". However, the defendant did not comment on the plaintiff's original objection, only bluntly referring to the legislation contained in Section 78 of the Offenses Act. As a result of this fundamental flaw in the proceedings, however, in the plaintiff's opinion, it was not possible to assess for which act the plaintiff was actually penalized in the proceedings. The plaintiff subsequently supported his argumentation with the conclusions of the established decision-making practice of the Supreme Administrative Court; in this context, the plaintiff stated that the delimitation of the act had to have a certain degree of concretization in order to make it clear what conduct would be assessed, and this was to guarantee the right to a defense in the given proceedings. 14. The plaintiff also saw the unreviewability of the contested decision due to a lack of reasons in the fact that the defendant in the contested decision did not deal with the claim of the plaintiff that he had taken all the necessary measures to prevent the offense, introduced the necessary internal regulations regarding the organizational 11 A 164/2018 Compliance with the original, confirmed by T.V. 5 and technical security of personal data and trained its employees. According to the plaintiff in the present case, there were reasons for which the plaintiff would be relieved of his responsibility for the misdemeanor in the sense of Section 21(1) of the Misdemeanor Act. Thus, in accordance with the established decision-making practice of higher courts (e.g. in accordance with the decision of the Constitutional Court of 27/02/2014, file no. III. ÚS 1836/13), the defendant did not resolve the objection of the party to the proceedings, thereby burdening the contested decision with the defect of non-reviewability for lack of reasons. 15. In relation to the alleged non-reviewability of the contested decision, the plaintiff further objected that the contested decision was issued in violation of § 68, paragraphs 1 and 3 of the Administrative Code, when it did not contain the basis for its issuance, considerations by which the administrative body was guided in its evaluation and information about how the administrative body dealt with the suggestions and objections of the participants. According to the plaintiff, the contested decision mainly contained only a description of the plaintiff's claims and very brief reasons for rejecting the appeal against the first-instance decision. The defendant cited the plaintiff's statement as the only basis for the contested decision. The reasoning of the challenged decision was also internally contradictory, when the defendant did not justify why he did not agree with the legal

assessment of the plaintiff, who believed that it was possible to process a certain amount of data on the basis of a statutory exception according to § 5 paragraph 2 of the ZOOÚ. If the defendant believed that the plaintiff's offense was a wider range of personal data (including the telephone number), according to the plaintiff, this was a completely different legal assessment than that stated in the justification. 16. In the next claim, the plaintiff objected more specifically that the defendant in the contested decision did not at all detail the evidence from which he concluded that the plaintiff carried out illegal processing of personal data, when the conclusion of license agreements itself could not be considered as evidence of the processing carried out. The defendant also imported this fact from the database provided by the plaintiff, however, this was obtained in proceedings conducted against another person, when the plaintiff no longer kept it with him at the time of the proceedings. In addition to sending the e-mail to Mrs. M., the defendant did not prove in the proceedings that the plaintiff processed the personal data of an unspecified number of people in the hundreds of thousands. This statement also, in the plaintiff's opinion, testified that the defendant had no proof of either the number of persons involved or the plaintiff's act. The plaintiff further stated in another part of the lawsuit that nothing in the proceedings showed, nor was it established, that the structure of the personal data processed by the plaintiff was in the format and scope claimed by the administrative authorities deciding the case at hand. Thus, the administrative authorities deduced this fact only from the concluded license agreements. Even the claim on page 5 of the first-instance decision, that the plaintiff continued to use the created databases for his own purposes, was not substantiated by them in any way, just as in the case of other unspecified claims of the defendant by the plaintiff, which lacked the indication of specific evidence from which they were derived. 17. The plaintiff repeatedly, both in the appeal and in the lawsuit, also argued against the violation of Section 36, paragraph 3 of the Administrative Code, when the administrative body of the first instance did not give the plaintiff the opportunity to comment on the basis of the decision. Subsequently, the plaintiff stated that although he was given the opportunity to comment on the basis of the decision twice, this was done "only formally". The administrative file did not contain specific documents on the basis of which the administrative body of the first instance intended to make a decision. After all, these documents were not clear to the plaintiff even from the first-instance decision. Thus, the plaintiff was prevented from defending himself against the first-instance decision by the first-instance administrative body. 18. Other objections aimed at an incorrect legal assessment of the case, as the defendant did not at all deal with the fact of who determined the purpose and means of processing the subject personal data and who was the administrator of the personal data. At the same time, the plaintiff claimed throughout the proceedings that the

administrator of this personal data was precisely the plaintiff's client, who determined the purpose and means of using the personal data in his order. The plaintiff was thus a mere processor, while he used a sub-processor for the processing of personal data within the meaning of § 14 ZOOÚ, precisely on the basis of the license agreements that were presented in the proceedings. The plaintiff's task was to process personal data into a database for the administrator in question. 19. Finally, in the last claim, the plaintiff objected to the incorrect determination of the amount of the fine, which was set disproportionately harshly and liquidating for the plaintiff. At the same time, the administrative authorities in the 11 A 164/2018 Compliance with the original certificate confirmed by T.V. 6 case did not even substantiate objective facts regarding the scope and number of personal data. According to the jurisprudential conclusions cited by the plaintiff, the fine should have been individualized and proportionate, and also differentiated according to the financial circumstances of the person punished, in order to effectively act as both a punishment and a deterrent. For these purposes, he has now submitted as evidence a tax return and a profit and loss account, from which it should be clear that the plaintiff's activity was already financed from external sources and the plaintiff's economic result was negative after paying the tax. IV. Statement of the defendant 20. The defendant stated in his statement to the lawsuit that the plaintiff repeated the same arguments in the lawsuit that he had already stated in the appeal against the first-instance decision and before that in the ongoing proceedings, therefore the defendant primarily referred to the settlement of objections to the appeal in the contested decision. 21. The defendant again rejected the objection that the contested decision was not reviewable, stating that the contested decision met the requirements contained in Section 93 of the Offenses Act. The defendant further cited the description of the plaintiff's act for which he found him guilty from the judgment of the first-instance decision, and noted that the first-instance administrative authority described the act in a completely unambiguous manner, stating that none of the other legal titles described in § 5 paragraph 2 letter a) to g) ZOOÚ. Both administrative decisions in the present case also properly dealt with the possible release of the plaintiff in the sense of Section 21, Paragraph 1 of the Misdemeanor Act. The above could be taken into account only in case of consideration of a misdemeanor pursuant to § 45 paragraph 1 letter h) ZOOÚ. 22. The defendant responded to the objection regarding the proper definition of the act in the notice of initiation of proceedings by stating that the plaintiff repeatedly mistakenly referred to the application of Section 73 of the Offenses Act in relation to the requirements of the notice of initiation of proceedings. Therefore, the defendant once again referred to the need to apply Section 78, paragraph 3 of the Offenses Act, where only two elements of the content of the notice of initiation of proceedings were listed, namely the description of the act that was to be

decided in the proceedings, and its preliminary legal qualification, which was in the present case things accomplished. The conclusion of the license agreements itself could not be considered a violation of the law, however, in the present case, the violation in question was seen in the fact that the plaintiff included the contractually obtained personal data in his processing regime without having any authorization to dispose of them, i.e. to process them. The defendant also denied that he would not allow the plaintiff to familiarize himself with the documents for the decision and comment on them. 23. Regarding the objection aimed at an incorrect legal assessment of the case, the defendant stated that the plaintiff argued with the concept of partial processor, which, however, ZOOÚ did not know, when in § 14 it only anchored the obligation of employees of the administrator or processor of personal data and other persons who processed personal data on the basis of a contract with by the controller or processor, under the conditions and to the extent set by the controller or processor, without the controller or processor being released from liability. In the present case, it was clear that the plaintiff determined the purpose and means of processing personal data when it was previously obtained on the basis of license agreements and then used to create other databases. The subsequent handing over of the databases created by the plaintiff to his clients was therefore completely irrelevant to the matter now being tried. At the same time, the defendant did not rule out that the plaintiff could not be a processor of personal data in some cases, but the essence of such processing was the formalized authorization of the processor for certain activities in the processing of personal data by the administrator. However, such authorization of the plaintiff was not proven in the proceedings. For the sake of completeness, the defendant referred to the fact that the offense according to § 45 paragraph 1 letter e) ZOOÚ affected not only the administrator, but also the processor. 24. To argue about the amount of the fine, the defendant only pointed to the fact that the amount of the sanction was sufficiently justified in the present case and the plaintiff did not prove in any way that it should have a liquidation character. However, the defendant objected to the plaintiff's conclusion that he would not have reliably ascertained the number of affected data subjects in the procedure within the standard scope. 11 A 164/2018 Conformity with the original is confirmed by T. V. 7 V. Assessment of the case by the Municipal Court in Prague 25. The Municipal Court in Prague verified that the claim was filed in time, by a person authorized to do so, after exhausting the proper remedies and meets all the formal requirements for it laid. The contested decision of the defendant was reviewed by the court on the basis of the factual and legal situation at the time the decision was issued and within the limits of the claims [§ 75 paragraphs 1 and 2 of Act No. 150/2002 Coll., Administrative Code of Court, as amended (hereinafter referred to as " s. ř. s.")], as well as from the point of view of defects, which he is obliged to take into account as a matter of

official duty, and came to the conclusion that the lawsuit is not justified. The court decided on the merits without ordering a hearing, because the parties to the proceedings agreed to such a procedure (§ 51 para. 1 s. ř. s.) and the court itself did not find it necessary to conduct evidence in this direction (see details below). 26. As regards the relevant legal regulation, according to § 4 letter e) sentence one of the Personal Data Protection Act means any operation or set of operations that the controller or processor systematically performs with personal data, either automatically or by other means. According to the second sentence of the cited provision, "(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". By storing personal data, in the sense of § 4 letter g) ZOOÚ means maintaining data in such a form that allows them to be further processed. 27. Pursuant to § 4 letter j) sentence one of the ZOOÚ applies that the controller is understood as "...every entity that determines the purpose and means of personal data processing, carries out the processing and is responsible for it. " 28. Section 5, paragraph 2 of the ZOOÚ provides that "(the) controller may process personal data only with the consent of the data subject. " Only in the cases listed in the second sentence subsequently in letter a) to g) of the cited provision, the controller may process personal data without such consent. 29. According to § 45 paragraph 1 letter e) ZOOÚ as administrator or processor commits an offense by processing personal data without the data subject's consent outside of the cases specified in the law (Section 5 paragraph 2 and § 9 ZOOÚ). In accordance with paragraph 4 of the cited provision, a fine of up to CZK 5,000,000 can be imposed for an offense according to § 45, paragraph 1 of the ZOOÚ. V.A On the reviewability of the contested decision 30. However, before the actual legal assessment of the matter, the court first had to proceed with the settlement of the objection of the non-reviewability of the contested decision, primarily because of the lack of reasons and lack of comprehensibility alleged by the plaintiff. Given that only a reviewable administrative decision is eligible for subsequent judicial review, the court would have to deal with this issue itself ex officio. 31. In general, such a decision whose statement is internally contradictory or from which it is not possible to determine how the administrative body decided, a decision from which it is impossible to determine what the statement is and what is the justification, as well as a decision from which it is not clear which persons are its addressee, decisions with inappropriate wording of the statement, which has the effect that the decision does not bind anyone, etc. (cf. e.g. the judgment of the Supreme Administrative Court of 4 December 2003, no. 2 Azs 47/2003 - 130) . 32. It is then necessary to consider as unreviewable for lack of reasons a decision that has no justification or from which it is not clear what state of facts the

administrative authority considered to be decisive, what considerations it was guided by in the legal assessment of the matter and how it considered the facts essential to the matter and the applied objections of the party to the proceedings, or how he proceeded in assessing these facts (cf. judgment of the Supreme Administrative Court of 16 April 2015, no. 7 As 55/2015 - 29). 33. In relation to the issue of the unreviewability of administrative decisions due to lack of reasons, the Supreme Administrative Court has repeatedly ruled in the past that if the administrative body does not deal with all objections raised by the plaintiff in the decision, this causes the decision to be unreviewable based on 11 A 164/2018 Compliance with the original is confirmed by T.V. 8 in the absence of his reasons. It follows from the settled jurisprudence of the administrative courts that the reasons for the decision must show why the administrative body considers the objections of the participant to be odd, erroneous or refuted, which facts it took as the basis of its decision, why it considers the facts presented by the participant to be inconclusive, incorrect or other properly conducted evidence refuted, according to which legal standards he decided and what considerations he was guided by when evaluating the evidence. In this regard, for the sake of brevity, the Municipal Court in Prague refers to the conclusions expressed, among other things, in the judgments of the Supreme Administrative Court of 4 December 2003, no. 2 Ads 58/2003 - 75, of 29 July 2004, no. j. 4 As 5/2003 - 52, dated 18 October 2005, no. 1 Afs 135/2004 - 73, no. 787/2006 Coll. NSS, dated 14 July 2005, No. 2 Afs 24/2005 - 44, No. 689/2005 Coll. NSS, dated 25/05/2006, no. 2 Afs 154/2005 - 245, or dated 04/08/2004, no. 4 Azs 27/2004 - 74). 34. If the court takes into account the pre-set judicial barriers, it comes to the conclusion that the challenged decision (and the first-instance decision preceding it) in the basic parameters of the statement and its justification meets the reviewability criteria laid down by it. If the plaintiff objected to the absence of a verifiable description of the deed, including the lack of determination of the time, place and manner of its commission, the court here, taking into account the decision-making practice of the Supreme Administrative Court just noted by the court, did not come to the conclusion that the contested decision for the lamented absence of an accurate description of the deed in the sentence of the first-instance decision , which was also approved by the statement of the contested decision, suffered from the defect of being unreviewable, either from the point of view of a lack of reasons, or due to lack of comprehensibility. From the sentence part of the contested decision, it was absolutely clear what act the plaintiff was found guilty of, i.e. the definition of the act did not suffer from the generality lamented by the plaintiff in a polemical and abbreviated manner (the court then comments on the description of the act in more detail below, as the proper definition of the act is not a question of the reviewability of the administrative decision) . The court did not find any contradictions between the statement and the reasoning of the contested

decision, taking into account the strong connection to the statement confirmed by the contested decision and the reasoning of the first-instance decision. At this point, the court only particularly emphasizes that the incomprehensibility of the statement could not be caused by the simple fact that the administrative authority of the first instance, in the statement of the first instance decision, in addition to the primarily used legal term for the processing of personal data, expressed the concrete handling of personal data by the plaintiff through the expressions " took over" from third parties and "kept" personal data, since already § 4 letter e) ZOOÚ was formulated by the legislator using the so-called demonstrative, i.e. open-ended, list of activities which, among other activities (for example), were considered such processing of personal data. 35. If the plaintiff objected that the defendant issued the contested decision in violation of § 68, paragraph 1 and 3 of the Administrative Code, the court states that the contested decision contained all its mandatory parts according to § 68, paragraph 1 of the Administrative Code. In the justification of the contested decision, the court did not even identify the defendant's misconduct from the point of view of Section 68, Paragraph 3 of the Administrative Code. The defendant based the contested decision on the grounds that he explicitly stated in the settlement of the plaintiff's objections in connection with the justification of the first-instance decision, as well as referring to the documents on the basis of which he made the decision (for this, cf. pages 3 to 4 of the contested decision). Within the same circle of objections, the plaintiff accused the defendant that in the contested decision he did not justify why he did not agree with the legal assessment of the plaintiff, who believed that it was possible to process a certain amount of personal data on the basis of a statutory exception in the sense of § 5, paragraph 2 of the ZOOÚ. Even in this case, the court did not enter into the plaintiff's arguments, since it was quite clear from the reasoning of the contested decision (see p. 4 of the contested decision) that the defendant was purposefully dealing with this objection of the plaintiff. Thus, the defendant stated in a direct session and with reference to the text of the justification of the first-instance decision that the processing of personal data by the plaintiff could not be subordinated to the exception of the processing of personal data according to § 5 paragraph 2 letter d) ZOOÚ, for which the consent of the concerned data subjects would not be required. 36. It is also clear from the contested decision how the defendant dealt with the plaintiff's further objections and how he considered the matter under discussion. At the same time, according to the court, the defendant dealt in an acceptable manner with the objection of dissolution, according to which the plaintiff took 11 A 164/2018 Compliance with the original T.V. 9 all necessary measures to prevent the offense, introduced the necessary internal regulations regarding the organizational and technical security of personal data and trained his employees, thanks to which he could be exonerated by the administrative body of the

first instance from liability according to Section 21, paragraph 1 of the Misdemeanor Act (or by objecting that the plaintiff's claim was not properly dealt with by the administrative authority of the first instance). The court is based on the fact that both the administrative body of the first instance and the defendant reflected the subject objection of liberation according to Section 21, paragraph 1 of the Misdemeanor Act in the justification of their decisions and commented on the possibility of exonerating the plaintiff from responsibility for the offense, although they did so explicitly only in relation to , that the plaintiff subsequently complied with the remedial measures imposed (i.e. in relation to the measures that only related to the subsequent procedure of the plaintiff after the identification of the criminal act by the administrative body of the first instance). In this context, however, it is necessary to emphasize that the plaintiff applied the objection in question throughout the administrative procedure (basically in an unchanged form) precisely in connection with the fact that he properly fulfilled the imposed corrective measures (such as the liquidation of specific personal data). In the case of the alleged preventive measures in the form of the adoption of internal regulations or employee training, the plaintiff remained the entire time in a completely vague level of assertion, without elaborating on this objection in any way, specifying the measures taken, and even less documenting them, even though it was he who in this case direction had the burden of proof; the plaintiff did not state anything further about the alleged preventive measures in the lawsuit either. For this reason, according to the court here, it is not appropriate to criticize the defendant for not explicitly dealing with this vague and unsubstantiated argument, and moreover in a situation where it is clear that he was dealing with the issue of the plaintiff's possible release from liability and refused his release. In addition, the court reminds that the quality and scope of the decision's reasoning are undoubtedly determined to a large extent by the quality of the party's own argumentation. 37. In this regard, it is also necessary to emphasize the constant jurisprudence of the Supreme Administrative Court, according to which the obligation of public authorities to properly justify their decisions cannot be interpreted as a requirement for a detailed answer to every objection. The absence of an answer to this or that argument in the justification does not automatically cause the decision to be illegal or even unreviewable. It is essential that the public authority deal with all the basic objections of the party to the proceedings (cf. e.g. judgments of the Supreme Administrative Court of 28 May 2009, No. 9 Afs 70/2008 - 13, of 28 May 2009, No. 9 Afs 70/2008 - 13, and dated 21 December 2011, No. 4 Ads 58/2011 - 72). This undoubtedly happened in the case under discussion, which is why it is necessary to reject the broadly conceived objection of unreviewability as unfounded. V.B On the definition of the deed 38. Subsequently, the court therefore proceeded to its own settlement of the objections regarding the insufficient definition of the deed in the statement of the first-instance decision, as

well as in the initial notification of the initiation of proceedings. 39. The court here came to the conclusion that the first-instance decision defined the act so precisely that the court did not have any doubts about its parametric anchoring, when the first-instance administrative body had already defined it in terms of time and method in such a way that the plaintiff processed personal data without the consent of the data subjects the data of an unknown number of people in the order of hundreds of thousands, at least in the scope of first name, surname, address and telephone number, which he obtained on the basis of license agreements concluded on the relevant dates, i.e. on 5 September 2012 with entrepreneur A.B., on 19 September 2013 by Vesnalore, respectively on 25/10/2012 with the company Soliditet, and kept them at least until the start of the inspection with the plaintiff on 16/11/2016 to 19/9/2017. From the first-instance decision, which confirmed the challenged decision, it was clear that the plaintiff was committing the processing of personal data of the data subjects without their consent, which the administrative authority of the first instance, i.e. the defendant, had already seen both in their actual acquisition on the basis of license agreements concluded by the plaintiff, and in their storage, at least until the end of the control carried out at the plaintiff . Delimitation of the parameters of the deed, i.e. the action of the plaintiff in the present case in relation to the unauthorized handling of personal data, at the same time, according to the conviction of the court, the defendant did not necessarily or always have to use legal terminology, when a deed such as 11 A 164/2018 was absolutely sufficient. Compliance with the original is confirmed by T.V. 10 to describe such using commonly used predicates, i.e. verbs that by their essence describe the plot line that the plaintiff has relevantly carried out. In other words, in the case under discussion, the claimant's taking over of personal data without the data's consent on the basis of concluded contracts and their subsequent storage, which lasted until the end of the control carried out at the claimant's place, were completely sufficient factual determinations. 40. If, on this occasion, the plaintiff repeatedly objected to the lack of content of the notice of initiation of proceedings delivered to him by the administrative body of the first instance, as in an appeal against the first-instance decision, the court did not find it necessary to repeat the argument of the defendant in the justification of the contested decision, by which the defendant rejected this objection, because the plaintiff's reference to Section 73 of the Criminal Code in the present case was entirely incidental. Therefore, the court here considers the contested decision to be absolutely obvious precisely in relation to the settlement of this plaintiff's objection, while it also identifies with it in terms of substance and law. In the present case, no procedural reasons were actually given for the administrative body of the first instance to refer the case, for which it was competent to discuss and decide, to another administrative body. Thus, the plaintiff repeatedly referred in the lawsuit to the matter of an inapplicable

provision of the misdemeanor law, specifically one that is delivered between administrative bodies within the public administration, and not between an administrative body and a person suspected of committing a misdemeanor. In addition, in the challenged decision, the plaintiff duly drew attention to the fact that in the present case it was appropriate for the notification of initiation of proceedings delivered to the plaintiff to fill in the content requirements set out in Section 78, paragraph 3 of the Offenses Act, i.e. a description of the act that was to be decided in the proceedings , and his preliminary legal qualification. 41. At the same time, the court verified from the administrative file (item 4) that both the description of the deed, which was to be decided in the proceedings, and its preliminary legal qualification by the administrative authority of the first instance in the notice of initiation of the proceedings dated 26 October 2017 , No. UOOU-09774/17-3, stated. From the description of the act by the administrative authority of the first instance, it was quite clear that the administrative authority of the first instance suspected the plaintiff of processing personal data from databases obtained on the basis of specific license agreements, without the consent of the data subjects kept in the relevant databases. At the same time, the court verified that the administrative proceedings were additionally preceded by an inspection carried out by the administrative body of the first instance regarding numerous complaints by the data subjects against the plaintiff's handling of their personal data without their consent, which ended with the settlement of the plaintiff's objections to the inspection findings stated in the inspection report dated 20/07/2017 , ID No. UOOU-11233/16-46, and that the plaintiff was ordered by the administrative authority of the first instance to impose corrective measures dated 9 October 2017, ID No. UOOU-11233/16-67, in which he was among other things, under point 1, an obligation is imposed not to process personal data obtained on the basis of a license agreement with Vesnalore without the demonstrable consent of the data subjects. Even for the subjective context described in this way, it was not clear to the court why the definition of the act committed by the plaintiff, i.e. that he processed the defined subject personal data obtained precisely and only as a result of the conclusion of license agreements, without the consent of the data subject, was ambiguous, or however dubious, possibly interchangeable with another act, which the plaintiff himself, however, neither stated nor hinted at. For the same deed, however, further specified in terms of the way it was committed (unauthorized acquisition of personal data and their subsequent storage), the administrative body of the first instance subsequently found the plaintiff guilty of committing the first-instance decision marked as a misdemeanor. 42. If the plaintiff referred to the conclusions of the decision-making practice of the Supreme Administrative Court in this context, the court here first states that the part of the judgment of the Supreme Administrative Court of 19 January 2011, No. 1 Afs 94/2010 - 68 referred to by the plaintiff ,

corresponded to the legal situation before the misdemeanor law came into effect, when there was no explicit legal regulation of the content of the notification of the initiation of proceedings on a misdemeanor for the referred legal matter. However, this difference was absolutely essential for the case under consideration now, since Section 78, paragraph 3 of the Offenses Act already includes the issue of the content of the notification of initiation of an offense - the conclusions of the referred judgment cannot be applied without further ado. Above all, however, it is true that the referenced 11 A 164/2018 Agreement with the original T. V. 11 judgment of the Supreme Administrative Court dealt with a factually different case, in which the notice of initiation of proceedings did not contain, with the exception of a clear definition of the subject of the proceedings, nor a specific indication of the act for which the proceedings are being initiated, respectively in which procedural position the plaintiff appeared in the proceedings. Even for these factual differences in relation to the case under discussion, the court concluded that the judgment thus referred to by the plaintiff was not applicable to the case under discussion. 43. With regard to the plaintiff's reference to the conclusions of the judgment of the Supreme Administrative Court of 23 January 2014, No. 6 As 9/2013 - 43, the court basically reiterates that even in the case of its conclusions, it was primarily a situation legally different in relation to the assessment of the mandatory content of the notification of the initiation of proceedings on a misdemeanor. For the case under discussion, the court here considers relevant the conclusions of the Supreme Administrative Court, which related to the description of the act as a verbal description of those actions or factual circumstances that could be qualified, i.e. subordinated to the formal signs of the offense specified in the law. However, this was the case in the present case, according to the court's verification. Indeed, in the notice of initiation of the proceedings, the administrative authority of the first instance described the plaintiff's actions (ie the processing of personal data determined by their taking over on the basis of license agreements concluded by him with other persons) as a manifestation of his will in the external the world, the result of which, i.e. unauthorized handling of personal data of data subjects who did not agree with it, was a sign of a specific offense. One can only add to this that at the beginning of the misdemeanor proceedings, of course, it is not possible to demand from the administrative body a completely specific or perhaps even final definition of the act, because from that there is a subsequent proceeding, the result of which is then a decision by which the perpetrator of the misdemeanor is recognized as guilty. The obligation to preserve the identity of the deed certainly does not mean that the administrative authority must make a decision on the basis of the identical description of the deed that was given in the notice of initiation of proceedings. The proceedings serve precisely to ensure that the specific circumstances characterizing the act in question are established and verified (cf. e.g.

the judgment of the Supreme Administrative Court of 9 November 2016, no. 1 As 46/2016 - 24). V.C Regarding the sufficiency of the documents 44. Regarding this range of objections, the court primarily emphasizes that it is not true that the defendant based the contested decision on the only basis claimed by the plaintiff, namely on the statement of the plaintiff himself, when the defendant identified as part of the administrative file primarily a copy of the database that he handed over the defendant himself on 1 August 2016 to the administrative body of the first instance as part of the inspection carried out and which, according to the plaintiff, contained all personal data processed by him for the Zaplo company on the basis of the license agreement which the plaintiff concluded with it on 9 December 2015. This database, according to of the contested decision contained 2,467,083 records, each of which contained a name, surname, telephone number and address. At the same time, however, the plaintiff did not submit legal documents for the processing of this personal data to the request of the administrative body of the first instance. The court further verified that the defendant in the challenged decision properly and logically following the first-instance decision elaborated his considerations regarding the evaluation of the documents obtained in the proceedings, when he stated that the plaintiff admitted the processing of personal data to this extent in his statement. At the same time, the defendant explained to the plaintiff in the justification of the contested decision that the processing of personal data by the plaintiff "consisted mainly in their collection, storage and further use for the creation of databases for ... (his) clients based on orders, in their search and use". According to the defendant, the plaintiff did not provide legal title to the further processing of personal data previously obtained by him on the basis of license agreements. The court here did not agree with this argument of the plaintiff. 45. If the plaintiff stated in other objections that the defendant did not detail the evidence in the contested decision, from which he concluded that the plaintiff carried out illegal processing of personal data, when the conclusion of license agreements itself could not be considered as evidence of the processing carried out, the court considered the plaintiff's assessment as unfounded and which does not correspond to the real text of the reasons for the contested decision, rejects and refers to the settlement of the previous objection, from which it is clear that the defendant properly considered the matter under discussion, while it did not appear from anything that he based his conclusions about the processing of personal data by the plaintiff on the simple conclusion of license agreements 11 A 164/2018 Compliance with the original will be confirmed by T.V. 12 plaintiff. On the other hand, in the justification of the contested decision, the defendant dealt very directly with the plaintiff's actual handling of the personal data in question, the origin of which could be found precisely in the concluded license agreements. The plaintiff was thus convicted by the administrative authorities of their receipt

and further storage, which was also matched by the documents mentioned above by the court for issuing the contested decision, in particular the database itself with personal data in the amount of almost two and a half million completed records including name, surname, address and telephone number number of specific data subjects (see No. l. 24 of the administrative file with the attached CD carrier containing the database in question handed over by the plaintiff himself). In contradiction to the state of the administrative file, as well as to the defendant's assertions in the justification of the contested decision, other arguments and assertions put forward by the plaintiff within the same claim point are also inconsistent. From the administrative file after verification by the court, it emerged, among other things, that in addition to Mrs. M., there were several complainants of the plaintiff's illegal actions in the handling of their personal data in the case under discussion (e.g. Mr. G., Mr. K., Mr. Mgr. P ., Mr. Ch.). In addition to only arguing that the administrative authorities obtained the subject database with personal data in a different way than by handing it over to the plaintiff, the plaintiff concluded without further ado that the defendant had no proof of either the number of affected persons or the act of the plaintiff. However, these plaintiff's deductions were clearly at odds with the reasoning of the contested decision, from which no such conclusions emerged, according to the court's verification, and were thus raised by the plaintiff only on purpose. In the contested decision, contrary to the subjective opinion of the plaintiff, shown in the objections in question, the defendant stated the evidence on which it was based, properly evaluated it and, given the considerable number of affected data subjects, in the judgment of the first-instance decision, called their number "in the order of hundreds of thousands". At the same time, the court found the sentence composed in this way by the administrative authorities to be sufficient for specifying the act for which the plaintiff was found guilty. The requirements of sufficient specificity of the statement of the first-instance decision, confirmed by the contested decision, were fulfilled by the contested decision in relation to the numerical parameter to the extent that it was not necessary, or however beneficial in the matter, to individualize and specify each individual subject of personal data individually, when it was sufficient in the present case to state only orderly determination of the number of data subjects affected by the plaintiff's unlawful conduct. Also, in relation to the consideration of the seriousness of the plaintiff's unlawful conduct, the court does not consider it necessary that the number of personal data subjects affected by the plaintiff's actions be calculated exactly, so to speak, "to one", when the very orderly determination that there were hundreds of thousands of data subjects was for consideration of the seriousness and scope of the plaintiff's unlawful conduct in the opinion of the pivotal court. 46. The court also verified that the extent of the data in question was evident from the evidence presented in the present case in the proceedings. In the contested decision,

the defendant described it in detail and on the basis of an explicitly referenced database, available on a CD carrier (and not only on the basis of license agreements, as claimed by the plaintiff), including the name, surname, address and telephone number of the data subjects. It was not an unsubstantiated conclusion of the defendant about the facts of the case at hand, but a completely carefully evaluated piece of evidence. At the same time, it was not clear to the court why evidence obtained by the administrative authorities other than from the plaintiff should not be admissible in the case now being tried, when the administrative authorities were obliged to proceed in the case in accordance with the principle of discovery, and thus not to rely on the possible procedural activity of the plaintiff, which was additionally protected by the prohibition against self-incrimination, or protection against coercion to confess. However, the plaintiff did not elaborate in any relevant way on this argument, which was also contrary to the facts recorded in the administrative file (cf. Art. 23 of the administrative file), so the court cannot react more specifically to the argument formulated in this way. According to the conclusion of the local court, the administrative authorities in the present case proved both the acquisition of the personal data in question by the plaintiff and their retention by the plaintiff, which they also substantiated with arguments in the justification of both relevant administrative decisions in the present case. 47. If the plaintiff repeatedly, both in the summary judgment and in the lawsuit, in this context also objected to the fact that § 36, paragraph 3 of the Administrative Code was violated by the administrative body of the first instance in that the plaintiff was not given the opportunity to comment on the basis for the first-instance decision , while in the same breath he countered by stating that he was allowed to state the basis of the first-instance decision 11 A 164/2018 Concordance with the original confirmed by T.V. 13 even twice, then the court has no choice but to conclude that such an argument must be evaluated only as expedient. The plaintiff's polemic about the fact that the administrative body of the first instance fulfilled its obligation according to the administrative regulations "only formally", namely, according to the verification of the file documents, does not correspond to the facts. The plaintiff substantiated this judgment only with a general reference to the fact that the administrative file did not contain specific documents on the basis of which the administrative body of the first instance intended to make a decision. However, the plaintiff himself did not specify such absent documentary evidence in the lawsuit. According to the verification by the court, the administrative body of the first instance actually, in accordance with the claim, allowed the plaintiff to comment in accordance with § 36, paragraph 3 of the Administrative Code before issuing the first-instance decision on the basis of the decision, while the plaintiff used this right on 15 December 2017. In addition the court adds that in his subsequent statement of 21/12/2017, the plaintiff himself did not point out the deficiency now cited in the

lawsuit, and thus remained procedurally passive at a time when he could have more fundamentally influenced the first-instance decision in the direction complained of. However, it was quite clear to the court from the plaintiff's further argumentation that he was aiming for the subsequent unreviewability of the first-instance decision's statement about his guilt, when at the same time he claimed that the basis for the first-instance decision was not apparent to him even from the first-instance decision itself. When taking into account the argument constructed by the plaintiff in this way, the court recognized even more intensively that the plaintiff's retrospective intrusion into the older stages of the administrative process in the present case was carried out on his part only for purpose, moreover, secondary to the fact that he simultaneously (primarily) objected to the unreviewability of the first-instance decision. Therefore, even this range of objections was not justified. V.D Legal assessment of the actions of the plaintiff /fulfillment of the facts/ 48. Finally, if the plaintiff defended against an incorrect assessment of the case, because according to him, the defendant did not at all deal with the fact of who determined the means and purpose of the processing of the personal data in question in the contested decision, or who was the administrator of this personal data. The plaintiff claimed throughout the proceedings that the personal data administrator was the plaintiff's client, and the plaintiff himself was thus only a "partial processor" of personal data. 49. However, the court here must resolutely oppose this prosecution claim and reject the objection in this spirit as completely unfounded. On page 4 of the contested decision, the defendant, with particular regard to the issue of the plaintiff's legal status, explicitly stated that "(the) defendant was in the position of administrator of these personal data, as she determined the purpose and means of personal data processing as part of her business activity. The structuring of personal data according to the requirements of the clients for which the databases (by the accused) were created does not change the position of the accused as a personal data administrator. The same issue was then addressed by the defendant again on page 5 of the contested decision, when he approved the conclusion cited by the administrative body of the first instance that the plaintiff was in the position of a personal data administrator in relation to the personal data processed by him without authorization. The court unreservedly agrees with the thus presented assessment of the defendant in the contested decision, while considering the legal assessment of the position of the plaintiff as a personal data controller to be logical and internally coherent. In the case under discussion, it was thus evident that the plaintiff could not be a processor of personal data at the same time, even though, as he claimed in the lawsuit, he was processing personal data into a database for the given personal data manager (i.e. the client). However, this was the case entirely within the scope of the plaintiff's business activity, when his clients did not transfer personal data to him for processing, on the contrary, the plaintiff himself

initially processed it for them into the subsequently transferred database. 50. The unsustainability of this procedural defense of the plaintiff is also evident to the court from its internal logical incoherence. If it were true, as the plaintiff claims, that his clients, to whom he transferred the personal data in question on the basis of license agreements (orders), were the administrators of the transferred personal data, the plaintiff would have to be the administrator of the personal data, since he himself was previously in the position the client took over personal data from third parties on the basis of previously concluded license agreements. In this claim argumentation, which, however, is completely absurd in terms of its outcome, because the providers of personal data did not make any further decisions about their fate, and the disposition of them 11 A 164/2018 Agreement with the original is confirmed by T.V. 14 was thus entirely under the direction of the person in question took over the personal data, i.e. the plaintiff, the court therefore did not intervene and, on the contrary, found the legal assessment made by the defendant to be completely correct. Regardless of the fact that, as the administrative authorities have repeatedly confirmed to the plaintiffs, the ZOOÚ did not expressly count on the term "partial processor" itself. The court only adds to the thus presented conclusion of the administrative authorities, with which it agrees, that the legal regulation referred to by the plaintiff contained in Section 14 of the ZOOÚ was aimed, according to the conclusions of legal doctrine, at the employees of the administrator or processor of personal data (cf. for more details, e.g. NOVÁK, D. Protection Act of personal data and related regulations. Comment. Wolters Kluwer, Prague 2014, comment on § 14 ZOOÚ), which is why it is clear that the plaintiff, as an entrepreneur, simply could not be in such a position vis-à-vis his clients in the case under discussion. V.E Regarding the amount of the fine 51. Subsequently, the court was able to proceed with the assessment of the last claim point, i.e. the objections regarding the disproportionateness of the fine and its liquidation amount. Regarding these objections, the court here first emphasizes in general terms that the imposition of sanctions for administrative offenses is a manifestation of the discretion of the administrative authorities, and its judicial review is therefore fundamentally limited by the nature of the matter. The Supreme Administrative Court in the judgment of 3 April 2012, No. 1 Afs 1/2012 - 36, No. 2671/2012 Coll. NSS stated: "the imposition of fines for administrative offenses takes place in the sphere of free administrative discretion (discretionary right) of the administrative body, i.e. the law allows the freedom of the administrative body to decide within defined limits, or choose some of the several possible solutions that the law allows. In contrast to the assessment of questions of legality, which the court must deal with when assessing an administrative case for a claim, the area of administrative discretion is practically closed to judicial review. Free administrative discretion can be subject to judicial review when assessing the legality of a

decision only if the administrative body exceeded the limits of this discretion established by law, deviated from them or abused free discretion. According to the cited judgment, it is not within the court's authority to step into the role of an administrative body and decide on its own what fine should be imposed. 52. The jurisprudence of the Supreme Administrative Court also shows that when assessing the legality of an imposed sanction, the administrative court will only review the claim objection whether the administrative authority took into account all the criteria established by law when determining the amount of the sanction, whether its considerations on the amount of the fine are rational, comprehensive, coherent and in accordance with the principles of logic, whether the administrative body did not depart from the limits of administrative discretion or did not abuse it, and also whether the imposed fine is not liquidating (cf. e.g. resolution of the extended senate of 20 April 2010, no. 1 As 9/2008 -133, No. 2092/2010 Coll. NSS, or the rulings of the Constitutional Court file No. ÚS 3/02 dated 13 August 2002 or file No ÚS 38/02 dated 9 March. 2004). As concluded by the Supreme Administrative Court in the above-cited judgment no. 1 Afs 1/2012 - 36: "When assessing the legality of a sanction imposed by administrative courts, the court is not given room to change and replace administrative discretion with judicial discretion, i.e. no room for evaluating the simple reasonableness of the sanction imposed. Proportionality would be relevant in assessing the legality of the sanction imposed only if the administrative authority committed some of the illegality described above, as a result of which the sanction imposed above would not stand and would be, so to speak, disproportionate to the circumstances of the case under consideration. "The court is entitled to examine the adequacy of the sanction only within the scope of the right of moderation according to Section 78, paragraph 2 of the Civil Code, if it concludes that the fine was imposed by the administrative body in an obviously disproportionate amount, however, the plaintiff did not make a moderation proposal. 53. If the court applied these basic principles to the present case, it must state that the fine of CZK 800,000 was imposed within the legal range, even in the lower quarter of the legal rate, when the limit of the fine in this case is CZK 5,000,000 (§ 45 paragraph 3 ZOOÚ); according to the currently effective legislation, a fine of up to EUR 20,000,000 can even be imposed for the same conduct, as provided for in Article 83(5)(a). a) Regulation (EU) 2016/679 of the European Parliament and of the Council (later legislation is therefore not more favorable to the plaintiff in this regard). 54. According to the court, the amount of the imposed fine was also sufficiently justified from the point of view of proper individualization of the punishment. The considerations of both administrative authorities were sufficiently supported, they do not show any excess or elements of arbitrariness. For the sake of order, the court states in more detail that when determining the amount of the fine, the administrative body of the first degree was based

on the criteria specified in § 37 et seq. of the Act on Liability for Misdemeanors, took into account the nature and seriousness of the conduct, in particular the scope and amount of processed data, as well as the time for which the processing took place. He also clearly reasoned that the seriousness of the plaintiff's actions 11 A 164/2018 Compliance with the original is confirmed by T.V. 15 is increased by the fact that his actions, which involved the transfer of personal data in the form of processed databases and the subsequent addressing of data subjects, resulted in a significant intrusion into their privacy . As a circumstance reducing the seriousness of the crime, the administrative body of the first degree took into account the fact that the plaintiff fulfilled the imposed remedial measures. The defendant then approved these conclusions in a reviewable manner. The court fully agrees with their reasoning and adds that it itself did not find any significant mitigating circumstances that would call into question the reasoning of the administrative authorities. 55. The defendant also commented on the contested liquidation impact of the imposed fine, and the court agrees with his reasoning as well. In this regard, however, he first points out that the property status of the offender stricto sensu is not among the legal criteria for imposing fines for administrative offenses (misdemeanors). The adoption of the Act on Liability for Misdemeanors, according to which § 37 letter g) in the case of legal and entrepreneurial natural persons, it is necessary to take into account the nature of their activity - the administrative authorities explicitly took this into account when they approached the plaintiff as a professional in a field in which extensive processing of personal data takes place. However, the administrative authorities were not obliged to accurately measure the fine imposed by the plaintiff's property conditions and management, but only that the imposed fine did not have a liquidation character, as the extended panel of the Supreme Administrative Court concluded in the resolution of 20 April 2010 cited by the plaintiff, no. 1 As 9/2008-133, No. 2092/2010 Coll. NSS. The administrative authorities received this obligation. In this respect, the defendant emphasized that during the previous proceedings, the plaintiff did not prove the liquidation effects of the fine himself, therefore the defendant could rely mainly on the data contained in the Collection of Commercial Register documents. Specifically, he pointed to the plaintiff's current balance sheet as of 31 December 2016, from which he deduced that the plaintiff's assets amounted to CZK 12,399,000 (net) and liabilities as well, of which equity amounted to CZK 6,012,000 (in 2015, then 3 786,000 CZK). From the above, it follows that the defendant was at least to a certain extent concerned with the plaintiff's economic status - his ability to pay the fine - and pointed out the scope of the plaintiff's equity, which many times exceeds the amount of the imposed fine. The court adds that even though this data is only one of the possible indicators of the business entity's economic situation, the defendant's reaction can be considered sufficient. 56. At the same time, the plaintiff

did not elaborate on his claims even in the lawsuit, in which he generally inferred the liquidation impact of the fine only from the fact that his activity is financed from external sources and the economic result is negative, to which he submitted a tax return, a balance sheet and a profit and loss statement for 2017. To this argument, the court states that the payment of the fine certainly affected the plaintiff, but this is related to the very essence of the punishment. It is necessary to take into account that the administrative sanction must fulfill not only a preventive function, but also a punitive one, which means that the imposed sanction must be felt by the perpetrator of the administrative offense as a non-negligible harm - in this case, as a negative interference in his property sphere. At the same time, even the plaintiff's low profitability or even loss-making does not automatically authorize the administrative body not to impose a fine or to impose a fine in the minimum amount, as this would completely negate the meaning of administrative punishment (see also the judgment of the Supreme Administrative Court of 9 April 2020, no. j. 5 As 47/2019 - 36). As the Supreme Administrative Court also stated in the judgment of 14 August 2014, No. 10 Ads 140/2014 - 58: "(in) the case of imposing a sanction and assessing its liquidation nature on a business company (here a natural person doing business) cannot be based only and only on the profit itself, but also on other facts, such as e.g. the turnover of the company and its business activity, which help to form a closer idea of the economic strength of the entity." (order of the same court dated 18/06/2015, No. 4 As 53/2015 - 26). Therefore, if the plaintiff argued in general through loss-making management or financing from external sources (here he was apparently following up on the statement of the plaintiff's executive of 9/4/2018 contained in the administrative file, to which the defendant did not explicitly comment), these facts in themselves do not prove the liquidating nature of the fine. For this reason, the court did not even provide evidence with the submitted tax returns and accounting documents for the year 2017, which are also in the administrative file. 57. Regarding these documents, the court states that one of the main indicators of an entrepreneur's economic strength is his turnover. In this case, the turnover of the plaintiff in 2017 exceeded 7.5 million crowns. Although the plaintiff can be described as a small businessman, the turnover of 7.5 million crowns is not downright low, and from this point of view the imposed fine cannot be perceived as excessive. Other indicators of the plaintiff's ability to pay 11 A 164/2018 Compliance with the original will be confirmed by T. V. 16 can be the amount of available funds, which reached the amount of 1.228 million crowns, or the undistributed profit from previous years in the amount of 5.812 million crowns, which thus significantly exceeded the amount of the imposed fine. According to the court, it cannot be considered that the imposed fine should have a truly liquidating nature for the plaintiff. 58. As regards the objection of violation of the principle of legitimate expectation, it is first necessary to point out

that, according to the established jurisprudence of the Supreme Administrative Court, administrative practice in itself does not constitute a legal framework for imposing fines (criterion for imposing punishment), but serves as a reference point of view in relation to comply with the principles of equal treatment and prohibition of arbitrariness. Its importance thus lies in the fact that it represents a guideline preventing unjustified excesses in administrative punishment, not an obstacle for any changes and differences in determining the amount of fines in individual cases (cf. judgments of 31 March 2010, no. 1 Afs 58/ 2009 - 541, No. 2119/2010 Coll. NSS, dated 4/7/2012, No. 6 Ads 129/2011 - 119, dated 30/10/2014, No. 10 As 155/2014 - 33 or dated 15 July 2016, No. 9 As 60/2016 - 156). In the present case, the court considers that the fine imposed in the amount of CZK 800,000 does not constitute such an exceptional excess. Despite the non-negligible absolute amount of the fine, it must be said that the fine was only approximately one-sixth of the upper limit of the legal rate, which was 5 million crowns, while the court did not find that this fine deviated excessively from the fines imposed by the defendant in other cases. 59. The essence of the plaintiff's argument here consisted in a reference to summary data on the total amount of fines imposed by the defendant in 2016, as well as in a general list of several cases in which fines in the amount of CZK 10,000 - CZK 300,000 were imposed on the defendant, which were supposed to result from publicly available websites of the defendant. However, the presented information did not reveal any concrete facts about the circumstances of these cases, from which it would be possible to infer a certain established administrative practice of the defendant even in relation to the case under discussion. The court emphasizes that each imposed sanction is strictly individualized and imposed based on the specific factual circumstances of the given case. It also follows that summary data on the amount of fines imposed in a certain period cannot testify to any administrative practice in relation to a specific matter, or about excessive deviation from it in the case of the plaintiff. It is also true that the disproportionateness of the imposed sanction cannot be justified without further reference to fines in factually different cases - comparisons can only be made in cases that are factually identical, or very similar cases (obd. already cited judgment of the Supreme Administrative Court No. 9 As 60/2016 - 156). At the same time, it does not follow from the list of imposed fines presented by the plaintiff that these should be really comparable cases (e.g. in terms of the scope of the processed data); therefore, the court also did not prove the defendant's website. 60. According to the court, the plaintiff did not provide any specific information about comparable cases decided by the defendant, from which it would be possible to infer excess from the current administrative practice in the present case. In addition, the court points out that the existence of established administrative practice is a question of fact that needs to be proven before administrative courts (resolution of the

extended senate of the Supreme Administrative Court of 21 July 2009, no. 6 Ads 88/2016 - 132, no. 1915/2009 Coll. NSS, point 80) and which places "greater demands on the argumentation of the parties to the proceedings, who must bear the relevant factual allegations to the court" and of course also prove these allegations (Kühn, Z., Administrative practice in Czech law. In Bulletin, Chamber of Tax Advisors, year 2015, No. 2, p. 28), which the plaintiff failed to do by presenting a simple list of several decisions of the defendant, from which there is no obvious factual similarity to the plaintiff's case. 61. With regard to the above, the court thus concludes that the fine of CZK 800,000 was imposed in accordance with the law. This fine fulfilled its purpose both from the point of view of legibility for the plaintiff and from the point of view of individual and general prevention, and it did not even represent an excess of the defendant's administrative practice. VI. Conclusion and costs of the proceedings 62. Taking into account all the above-mentioned facts, the Municipal Court in Prague found the claim unfounded and therefore rejected it in accordance with Section 78, Paragraph 7 of the Civil Procedure Code. 11 A 164/2018 The agreement with the original is confirmed by T.V. 17 63. The court decided on reimbursement of the costs of the proceedings in accordance with § 60 paragraph 1 of the Code of Criminal Procedure, according to which, unless this law provides otherwise, the party who was fully successful in the case has , the right to compensation for the costs of the proceedings before the court, which he reasonably incurred against the participant who was not successful in the matter. The plaintiff was not successful in the case (the lawsuit was dismissed as unfounded) and therefore has no right to compensation for the costs of the proceedings. The court did not grant reimbursement of costs to the defendant, who would otherwise have the right to reimbursement of the costs of the proceedings as a successful party to the proceedings, as he did not incur any costs beyond the scope of his normal administrative agenda. 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, September 17, 2020 Mgr. Martin Lachmann, former chairman of the senate