[IMAGE]
CZECH REPUBLIC

JUDGMENT
IN THE NAME OF THE REPUBLIC

The Supreme Administrative Court decided in a panel composed of the chairwoman Mgr. Lenka Krupičková and judges JUDr. Jaroslav Vlašín and Mgr. Lukáš Pišvejc in the legal case of the plaintiff: YK, represented by JUDr. Milan Štemberg, attorney-at-law with registered office at Cyrila Bouda 1444, Kladno, against the defendant: The High State Prosecutor's Office in Prague, with registered office at náměstí Hrdinů 1300/11, Prague 4, in proceedings on the defendant's cassation complaint against the judgment of the Municipal Court in Prague of 26. 2. 2025, file no. 18 A 23/2024 56,

as follows:

I. The cassation complaint is dismissed.

II. The defendant is obliged to pay the plaintiff compensation for the costs of the cassation appeal in the amount of CZK 3,340, within 30 days from the entry into force of this judgment to his representative JUDr. Milan Štemberg, attorney.

Justification:

I. Definition of the case and the judgment of the municipal court

[1] The plaintiff requested the defendant by application dated 8 December 2023, specified in the defendant's request dated 5 January 2024, to provide information regarding the processing of his personal data that occurred or is occurring at the Police of the Czech Republic and any of its organizational units, from 8 July 2017 to the date of filing the application, if this was or is occurring based on the consent, permission, instruction or initiative of the defendant, in particular data related to his surveillance. In the application, he referred to Article 14 of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (hereinafter referred to as “Directive 2016/680”), and to Section 28(1) of Act No. 110/2019 Coll., on the processing of personal data (hereinafter referred to as “the GDPR”).

[2] The defendant responded to this application by a communication dated 15 February 2024, file no. 9 SPR 162/2023 25 (hereinafter referred to as “the contested decision”), stating that he did not comply with the application in its entirety. He stated that the request is aimed at the communication of personal data processed in connection with specific acts of criminal proceedings. It thus falls entirely within the category of data processed for the purpose of preventing, searching for and detecting crime, prosecuting crimes, executing sentences and protective measures, ensuring the security of the Czech Republic or ensuring public order and internal security, including searching for persons and things pursuant to Section 28(2)(a) of the General Data Protection Regulation. The law does not allow for the granting of a request so focused. This is the case regardless of whether the defendant processes the plaintiff's personal data, has processed it in the past or has not processed it at all. It is also not possible to specify the legal reason for which the personal data should be processed.

[3] The plaintiff filed an administrative action against the defendant's decision, which the Municipal Court in

Prague (hereinafter referred to as the "municipal court") granted by the judgment specified in the heading, annulled the defendant's decision and returned the case to him for further proceedings. The Municipal Court stated that the written information on the processing of the request for access to personal data provided pursuant to Section 30(4) of the Personal Data Protection Act is in accordance with the judgment of the Supreme Administrative Court of 18 November 2020, file no. 4 Azs 246/2020 27, no. 4113/2021 Coll. The NSS ruled in accordance with Section 65(1) of the Code of Administrative Procedure, while the legal system does not provide for proper remedies within the meaning of Section 5 of the Code of Administrative Procedure. On the merits, it then stated that, in general, the defendant's procedure is supported by the legal regulation, since under certain circumstances it is legitimate not to include any details in the justification of an administrative decision that would endanger the established public interests. However, this procedure represents an exception that cannot be applied in a blanket manner. It cannot therefore be said that personal data processed by criminal authorities automatically fall under the grounds defined in Section 28(2)(a) of the General Data Protection Regulation. The administrative authority should assess the restriction of information on the basis of a specific and individual review of each case. Its procedure is then subject to supervision or judicial review by administrative courts, which must be able to verify and approve the reasons for not providing information, on the basis of the submitted case material, the maintenance of which is envisaged by Section 28(4) of the General Data Protection Regulation. In this regard, the Municipal Court referred to the judgment of the Court of Justice of the European Union (hereinafter also the "CJEU") of 16 November 2023, Ligue des droits humains, case C 333/22 (hereinafter also the "judgment C-333/22"). As regards the case at hand, the plaintiff requested information relating to possible acts of criminal proceedings or legal assistance usually carried out in secret. However, according to the Municipal Court, this does not yet make them a special category. Their blanket non-disclosure cannot therefore stand, even with reference to the non-public nature of criminal proceedings, the general duty of confidentiality of public prosecutors or the very nature of the Central Register of Prosecuted Persons (CESO). The Municipal Court concluded that neither the reasoning of the contested decision nor the content of the submitted file allow it to definitively assess whether the defendant acted in accordance with the legal provisions (Articles 14 and 15 of Directive 2016/680 and Section 28 of the General Administrative Procedure Act), or whether it acted in a reasonable manner (first and second points of complaint). It can only be stated that the defendant applied the procedure pursuant to Section 28(2) of the General Administrative Procedure Act and Article 15(3) of the Directive. However, it must be able to defend this procedure before the court, which has not happened so far.

II. Content of the cassation complaint and the plaintiff's statement

[4] The defendant (hereinafter referred to as the “complainant”) filed a cassation appeal against the judgment of the Municipal Court on grounds pursuant to Section 103(1)(a) and (d) of Act No. 150/2002 Coll., the Code of Administrative Procedure (hereinafter referred to as the “C.R.P.”). He accuses the Municipal Court of having incorrectly identified, on the basis of a completely inappropriate interpretation of European law, the application of a directive that does not have direct effect, and without taking into account the relevant national legislation, what can be understood as a “blanket” restriction of the rights of the data subject. According to the complainant, the data pursuant to Section 28(2)(a) of the Personal Data Protection Act as a whole are legitimately excluded from the general right of access to personal data, due to their nature. Data related to the criminal jurisdiction of the complainant cannot in principle be provided due to their qualified nature, without the complainant having to examine whether and how their specific processing took place. The protection of this information must also be ensured by limiting the handling of it to the strictly necessary extent, so as not to risk indirect disclosure, for example in the form of excessive justification of the relevant procedural procedures. It is therefore entirely acceptable that the complainant, when handling requests for access to data that clearly fall under Section 28(2)(a) of the General Data Protection Regulation, does not have to submit any additional documents to the file in addition to the application itself. This would be pointless bureaucracy. Judicial review by administrative courts is naturally limited by the special nature of the complainant's activities and criminal proceedings (in particular, the principle of non-publicity). However, the Municipal Court, in its effort to ensure effective judicial review, de facto concluded that it should review the criminal aspects of the activities of the authorities involved in criminal proceedings. In doing so, it based its decision on an incorrect interpretation of the judgment C 333/22, since the case in question did not involve a blanket refusal to disclose data. The complainant pointed out the difference in the principles of administrative and criminal law, the absence of professional and procedural equipment of administrative courts and the legal impossibility of accessing the CESO database for the purposes of the public prosecutor's office's administration, i.e. administrative proceedings. The complainant is not at all clear on how such a judicial review should and could actually take place in practice. According to him, the procedure of the municipal court is therefore also defective from the point of view of the requirements for a clear formulation of a binding legal opinion within the meaning of Section 78(5) of the Code of Civil Procedure, according to which the complainant is to "primarily" supplement the case file with "relevant documents", on the basis of which the court will be able to "properly review" its procedure, without, however, the municipal court

specifying these completely vague guidelines. It is not clear what documents the complainant should include in the case file so that the "judicial review" announced by the municipal court can take place "properly". Judicial review of the activities of the complainant in administrative justice should, given its criminal law jurisdiction, be regulated by clear, detailed and logically consistent rules, which would be linked to rules relevant to the field of criminal law and which could not be used (or abused) to circumvent clear and established rules of criminal procedure.For the above reasons, he proposes to annul the judgment of the municipal court and return the case to it for further proceedings.

[5] The plaintiff filed a lengthy and difficult-to-grasp statement in response to the cassation complaint, in which the Supreme Administrative Court identified the following response to the cassation objections. According to the plaintiff, the plaintiff incorrectly confuses the direct effect of the directives with a Euro-conform interpretation of national law and creates a false dichotomy between criminal and administrative law in a situation of unity of the legal order (these two systems complement and integrate each other). He also disregards the principles of necessity and proportionality. The legal order excludes a blanket exemption from subjects' rights to information. Restricting public access to certain information does not in itself mean restricting the plaintiff's access to information about him. International cooperation cannot be an obstacle either, since the plaintiff is the primary controller of the data exchange. By his approach, the plaintiff seeks to exclude judicial review of his procedure and thus the possibility of correcting errors in the criminal investigation. The plaintiff is obliged to carry out a proportionality test in a situation where he weighs the protection of personal data and the public interest. In each individual case, it is necessary to establish the facts of the case, which are the basis for an individual assessment. The Municipal Court also correctly pointed out that the protection of the interests of the authorities involved in criminal proceedings weakens with the passage of time. The complainant completely ignored the test of the least time-consuming means (cf. also Section 88(8) of Act No. 141/1961 Coll., the Code of Criminal Procedure) and the time limit for the confidentiality of information. European law also affects the authorities of the Member States, which are bound by the principle of loyalty and should follow EU principles. The Municipal Court correctly only required documentation of the reasons for the complainant's decision, which is not unnecessary bureaucracy, but a very minimal requirement for the protection of rights that also respects security interests. Administrative courts do not interfere with the jurisdiction of criminal courts; on the contrary, the processing of personal data falls within the scope of administrative justice. For the above reasons, the plaintiff proposed to dismiss the cassation complaint and requested that the costs of the proceedings be awarded.

[6] In response to the plaintiff's statement, the plaintiff sent the court a submission marked as a supplement to the cassation complaint. First of all, he pointed out the misleading nature of a number of the plaintiff's claims. He further objected to the review of procedures under Act No. 283/1993 Coll., on the Public Prosecutor's Office, by administrative courts. Deciding whether a certain act would endanger the performance of tasks in the field of preventing, searching for and detecting crime, and prosecuting criminal offences, is the exclusive responsibility of the authorities involved in criminal proceedings. The provision of the information in question is therefore one of the activities that cannot be sufficiently "individualized". In this regard, he referred to the judgment of the Supreme Administrative Court of 29 April 2025, ref. no. 21 As 29/2025 32. He added that it is necessary to apply the fundamental principles of criminal law in this specific administrative proceeding. In the event of the need to individualize the response, the applicant may have an idea of what information about him is being processed, which in itself violates the interest protected in Section 28(2)(a) of the General Data Protection Regulation. The contested judgment essentially overturned the procedural sequence of effective judicial review. The Municipal Court, in a Solomonic manner, demands that the defendant supplement the file with “relevant documents on the basis of which the court will be able to properly review his actions”, without, however, at the same time at least outlining the basic principles of that “proper review” and clearly expressing its opinion on relevant and at the same time hardly overlooked criminal law issues. The complainant therefore insists that the Municipal Court’s judgment is unreviewable.

[7] To supplement the cassation complaint, the plaintiff filed a statement marked as a reply. Here, he pointed out the contradictory claims of the complainant, who on the one hand admits judicial administrative review, but on the other hand infers its practical impossibility. Furthermore, according to the plaintiff, the complainant draws incorrect conclusions from the judgment No. 21 As 29/2025 32 and unfoundedly criticizes the contested judgment, because the Municipal Court gave him specific instructions on further action. The plaintiff supplemented this submission with a description of the complainant's actions after the annulling judgment of the Municipal Court and the failure to grant the cassation complaint suspensive effect. He believes that the complainant circumvents the court's conclusions and undermines its review authority and demands an adequate response from the Court of Cassation.

III. Assessment of the case by the Supreme Administrative Court

[8] The Supreme Administrative Court assessed the cassation complaint within the limits of its scope and the reasons stated, examining in the process whether the contested decision does not suffer from defects that it would have had to take into account ex officio (Section 109, paragraphs 3 and 4 of the Code of Civil Procedure).

[9] The cassation complaint is not well-founded.

[10] The subject of the dispute is the issue of (non)provision of personal data pursuant to Section 28(2) of the Administrative Procedure Code. The Municipal Court correctly stated that, in accordance with case law, the communication issued by the complainant must be considered, from the point of view of the procedural regime of judicial protection, as a decision pursuant to Section 65(1) of the Administrative Procedure Code. However, although the judicial review itself takes place pursuant to Section 65 et seq. of the Administrative Procedure Code, this does not change the fact that information on the processing of a request for access to personal data is not the result of administrative proceedings and, by its nature, is still an act pursuant to Part Four of the Administrative Procedure Code. This must then be respected when assessing the case. The partial conclusions of the Municipal Court must therefore be corrected or specified in this regard.

[11] It should also be emphasized that the task of the Supreme Administrative Court (or another administrative court) is not to provide detailed, comprehensive instructions to the complainant or other administrative authorities on how to generally proceed in the agenda concerning the (non)provision of personal data pursuant to Section 28(2) of the General Data Protection Regulation, but rather to assess the legality of the complainant's specific action in the case currently under consideration and, if necessary, to explain to him why his previous action was defective with regard to the applicable legal provisions and what he should do next so that he does not make any more mistakes in his further action.

[12] The decisive question in this case is therefore primarily whether the legal opinion of the complainant, who based the refusal to provide the requested information to the plaintiff on the conclusion that this type of information cannot generally be provided due to its nature, without addressing the specific factual aspects of the case, is valid. The municipal court did not consider this legal opinion and criticized the complainant for not having individualized his statement regarding the plaintiff's request and for not having documented it in accordance with Section 28(4) of the Civil Procedure Code (the municipal court spoke somewhat imprecisely about the case file) to provide sufficient evidence for the court to assess whether the complainant acted correctly in handling the plaintiff's request. The court then ordered the complainant to supplement the reasoning of the statement in relation to the plaintiff, or – if it is not possible to provide more specific information – to supplement the evidence necessary for the court's subsequent review, i.e. the documentation maintained in accordance with Section 28(4) of the Civil Procedure Code.

[13] The Supreme Administrative Court dealt with the issue of (non)provision of personal data in similar circumstances in a recent judgment of 23 June 2025, case no. 1 As 45/2025 41 (in the case of the same plaintiff), where it presented general principles that are also crucial for the case under consideration, as they provide an answer to the above-mentioned decisive question.

[14] The legislation in this area is based on EU Directive 2016/680, and was reflected in national law in Title III of the General Data Protection Regulation. Although the law borrows (by reference) some definitions from the GDPR (Section 24(2) of the General Data Protection Regulation) for its own needs for legislative and technical reasons, the legislation contained in Title III is otherwise completely independent. With the exception of some definitions, the GDPR does not apply to the matter regulated in Title III of the General Data Protection Regulation.

[15] According to Article 14 of Directive 2016/680: Subject to Article 15, Member States shall provide that the data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed and, where that is the case, the right of access to those personal data and to the following information: (
a) the purposes and legal basis for the processing; (
b) the categories of personal data concerned; (
c) the recipients or categories of recipients to whom the personal data have been disclosed, in particular recipients in third countries or international organisations; (
d) where possible, the foreseeable period for which the personal data will be stored or, where that period cannot be determined, the criteria used to determine that period; (
e) the existence of the right to obtain from the controller the rectification or erasure of personal data concerning him or her or the restriction of processing; (
f) the right to lodge a complaint with a supervisory authority and the contact details of that authority; (

g) communication of the personal data which are the subject of the processing and any available information on their origin.

[16] According to Article 15(1) of the same Directive: Member States may adopt legislative measures restricting data subjects' access to information, in whole or in part, to such an extent and for such a period as is necessary and proportionate in a democratic society with due regard to the fundamental rights and legitimate interests of the natural person concerned, in order to: (
a) prevent the obstruction of official or legal inquiries, investigations or procedures; (
b) prevent the preven- tion, detection, investigation or prosecution of criminal offences or the execution of criminal penalties from being adversely affected;
(c) protect public security;
(d) protect national security;
(e) protect the rights and freedoms of others.

[17] Art. Article 15(2) then provides that Member States may adopt legislative measures to determine the categories of processing to which the exceptions referred to in paragraph 1 may apply in whole or in part.

[18] According to Article 15(3) and (4): In the cases referred to in paragraphs 1 and 2, Member States shall ensure that the controller informs the data subject in writing without undue delay of any refusal or restriction of access and of the reasons for such refusal or restriction. This information need not be provided where the provision of such information would jeopardise one of the purposes referred to in paragraph 1. Member States shall provide that the controller informs data subjects of the possibility of lodging a complaint with a supervisory authority or seeking judicial redress. Member States shall provide that the controller shall document the factual or legal grounds on which the decision is based. This information shall be made available to the supervisory authorities.

[19] According to Section 28(1) GDPR: The controller shall, upon request from the data subject, communicate to the data subject whether or not it is processing personal data relating to him or her. If the managing authority processes such data, it shall transfer it to the data subject and provide him with information about
a) the purpose of processing personal data,
b) legal regulations on the basis of which it mainly processes these data,
c) recipients, or categories of recipients,
d) the expected retention period or the method of determining it,
e) the right to request correction, restriction of processing or deletion of personal data and
f) the source of these data.

[20] According to paragraph 2 of the same provision: The managing authority shall not comply with the request under paragraph 1, or shall comply only partially, if compliance would endanger
a) the performance of the task in the field of prevention, search and detection of criminal activity, prosecution of criminal offences, execution of sentences and protective measures, ensuring the security of the Czech Republic or ensuring public order and internal security, including the search for persons and things,
b) the course of proceedings on an offence, disciplinary offence or conduct that has the characteristics of an offence,
c) the protection of classified information, or
d) the legitimate interests of a third party.

[21] According to paragraphs 3 and 4 of the same provision: If the granting of a request or the notification of the non-grant of a request, including the justification, would result in a threat pursuant to paragraph 2, the administrative authority shall inform the data subject in the same way as those applicants whose personal data it does not process. The administrative authority shall keep documentation on the reasons for the procedure pursuant to paragraphs 2 and 3, which it shall keep for at least 3 years.

[22] It is clear from the cited legal regulation that the data subject has the right to information about the data that the competent authorities collect and process about him. However, the said right is not unlimited and the law expressly stipulates situations in which the administrative authority shall not grant a request for the provision of data, and even, if the legally prescribed conditions are met, may react in such a way as if it were not processing the data about the applicant, i.e. it shall provide the applicant with a negative answer, which, however, does not correspond to reality (is false). Although it is undeniable that the aforementioned legal regulation (modelled on Article 15 of Directive 2016/680) pursues a legitimate aim, it poses many difficulties from the perspective of subsequent judicial review of the legality of the administrative authority's action. This is especially true since this authority will usually not even be able to indicate whether it is using the

exceptions under Section 28(3) of the General Data Protection Regulation. Such a reference alone could defeat the purpose pursued by the law, as the applicant could conclude from it that the administrative authority is processing his personal data to an extent that it cannot disclose to him (and therefore that, for example, the authorities involved in criminal proceedings are interested in him).

[23] In the event of a negative response from the administrative authority to a request under Section 28 of the General Data Protection Regulation (i.e. a claim that the requested authority does not process the applicant's data), two situations may arise in principle. The administrative authority does not actually collect the applicant's data, or it collects it but believes that granting the request would endanger the interests specified in Section 28(2) of the same Act, which is why it applies the statutory exception to the provision of information and usually responds intentionally falsely (or in another way that does not endanger the public interest). However, in any case, the applicant only has the negative response from the administrative authority and is not able to find out which of the above options is involved. It would not be of any benefit to him to view the supporting documentation accompanying the request, as it will usually not contain any relevant data. Although the law in Section 28(4) requires the administrative authority to keep documentation on the reasons for its action, this could not be made available to the claimant for understandable reasons and there would be no mention of them in any accessible part of the documentation. It is this (non-public, classified) documentation under Section 28(4) of the General Data Protection Regulation that is then used for possible judicial review.

[24] The applicant will therefore not learn anything about the reasons that led to the application being rejected from the administrative authority's communication or from any accessible part of the application documentation. It should be added that it is immaterial whether this is a completely negative response or whether the authority being questioned allows the processing of certain basic information. In any case, the applicant cannot be sure that the administrative authority is not processing other information for which it applies the exception under Section 28(3) of the General Data Protection Regulation. If he suspects that the response of the administrative authority is false or incomplete, or that the conditions for applying the statutory exception are not met, he has no possibility of proving his claim due to the prevailing information vacuum.

[25] The Supreme Administrative Court thus summarises that in the case of the review of a communication by which the administrative authority informs the applicant, upon request pursuant to Section 28(1) of the Personal Data Protection Act, that it does not process his or her personal data, a somewhat non-standard situation arises. Administrative courts find themselves in a position where they review the legality of an act which, for the purposes of judicial review, is considered a decision within the meaning of Section 65(1) of the Personal Data Protection Act, but whose issuance is not preceded by administrative proceedings and the content of the "decision" itself can theoretically only be a "statement" on the non-provision of information (or more precisely, a statement that the entity being questioned does not process any information of the applicant) without any justification, all this in a situation where this information may be untrue in accordance with the law. The "decision" itself on the non-provision of information is then subject to judicial review, against which, due to its nature, a proper remedy is not and cannot be admissible. The plaintiff himself is also in a specific position, forced to "shoot blindly" because he does not know whether there is no information being processed, or whether the requested authority is simply refusing to provide it, or for what reason. This "procedural blindness" protects the public interest and balances the information asymmetry, in which the law enforcement authorities are the ones who do not know what (criminally relevant) the information applicant has committed or intended to commit. The applicant must therefore first be aware that if he has committed something, the law enforcement authorities may have processed his data in connection with it.

[26] The situation can be compared in many ways to the review of decisions whose content depends on the content of classified information. In their case, the Supreme Administrative Court concluded that "a party to the proceedings cannot effectively object to the illegality of certain findings if he does not even know what their content is. In this specific situation, on the contrary, it must be the court that 'replaces' the activity of the party to the proceedings and examines the relevance of classified information from all aspects that appear important given the nature of the matter" (see the judgment of 25 November 2011, file no. 7 As 31/2011 101; from the relevant case law of the Constitutional Court, see, for example, the findings of 28 January 2004, file no. Pl. ÚS 41/02, or of 6 September 2007, file no. II. ÚS 377/04). In relation to information that is not made available to the party to the proceedings, the Court of Cassation consistently proceeds from the premise that the contested decision is reviewed by the courts in the administrative judiciary even beyond the scope of the charges. As a result of adhering to the application of Section 75(2) of the Code of Administrative Procedure, judicial protection would be effectively denied.

[27] The Supreme Administrative Court believes that it is necessary to approach the case under review in a

similar manner. Compared to other cases in which the administrative authority relies on classified information, this case is unique in that the administrative authority cannot even state the essence of the reasons that led it to a certain answer in its communication to the applicant (cf. the judgment of the Supreme Administrative Court of 7 February 2022, file no. 10 Azs 438/2021 47). All the more so here, it must be true that a balance must be found between two conflicting interests – the interest in ensuring a fair trial consisting in a proper and full review of the contested administrative decision and the protection of classified information, or in the case under review, the interests listed in Section 28(2) of the Administrative Procedure Act. However, this balance cannot be achieved otherwise than for the court to assume responsibility for reviewing the legality of the administrative authority's procedure, without imposing on the applicant for information an unreasonable, if not downright unfulfillable, requirement consisting in carrying the burden of proof and the burden of assertion. Only the court can, on the basis of the documentation kept by the administrative authority (this obligation is imposed on it by Section 28(4) of the General Data Protection Regulation), verify the legality of its procedure and distinguish between two possible options (without, of course, informing the applicant which one it is) – i.e. whether the authority in question does not actually process the applicant's personal data, or whether it processes them but the conditions for applying the exception under Section 28(3) of the General Data Protection Regulation have been met.

[28] The Supreme Administrative Court perceives the importance of protecting the public interest in the effective investigation of criminal activity, as emphasized by the applicant. In justified cases, this may also involve the refusal to provide data, or the use of the exception under Section 28(3) of the GDPR. However, if the GDPR (as part of the transposition of Directive 2016/680) regulates such a specific procedure that significantly limits the right to information about processed data, the relevant legal regulation must be interpreted restrictively in such a way that this does not result in the complete and de facto emptying of the said right. This primarily means that the use of the exception must be approached with restraint and applied only if and only if it is absolutely necessary at that time for the purpose of protecting the interests referred to in Section 28(2) of the GDPR. For example, it cannot be stated in a blanket manner that it would never be possible to provide information about data collected by law enforcement authorities, but each case must always be assessed individually. However, if the administrative authority already proceeds to withhold information, it is necessary to properly document the reasons for its action (see Section 28(4) of the Administrative Procedure Act) and provide this documentation (even if it will not be accessible to the applicant himself and he will not even know about its existence) to the administrative court in the event of a subsequent judicial review in order to verify the legality of its action.

[29] Unlike the complainant, the Supreme Administrative Court finds support for these considerations in the same way as the Municipal Court in the pivotal judgment C-333/22. Although the CJEU in this decision primarily dealt with the interpretation of Article 17 of Directive 2016/680, which concerns the issue of the exercise of data subjects' rights by the supervisory authority, the conclusions arising from it are in many respects transferable to the case now being considered by the Supreme Administrative Court [cf. also the judgment of the CJEU of 26 January 2023, Ministerstvo na vatrešnite raboti (Registration of biometric and genetic data by the police), C 205/21, EU:C:2023:49, paragraph 87 and the case law cited].

[30] In judgment C-333/22, the CJEU highlighted the need to verify the existence of a legitimate purpose for withholding information and to ensure effective judicial protection in this regard (Article 47 of the Charter of Fundamental Rights of the EU). In that context, it stated, inter alia, that it was for ‘Member States, within the framework of their procedural autonomy, to take the measures necessary to ensure, in accordance with Article 53(1) of that directive, effective judicial review of both the existence and merits of the reasons justifying the restriction of that information and the proper performance of the supervisory authority’s role of verifying the lawfulness of the processing. In that regard, the concept of “effective judicial protection” referred to in the latter provision must be interpreted in the light of recital 86 of that directive, according to which the courts seised of an action against a supervisory authority “should exercise their full jurisdiction, which should include jurisdiction to rule on all points of fact and law relevant to the dispute before them”.’ At the same time, the CJEU emphasised the obligation of the Member States to ensure that “the competent court has at its disposal techniques and procedural rules which enable it to reconcile, on the one hand, legitimate considerations relating to the objectives of public interest referred to in Articles 13(3), 15(3) and 16(4) of Directive 2016/680, which have been taken into account by national law in order to limit the information provided to the data subject, and, on the other hand, the need to give individuals sufficient opportunity to exercise procedural rights, such as the right to be heard or the adversarial principle.” In order for judicial review to be considered effective, Member States must then “lay down rules enabling the competent court to be informed of all the reasoning and the supporting evidence on which that authority based its assessment of the lawfulness of the data processing in question, as well as the conclusions it drew from it.”

[31] The Supreme Administrative Court reiterates that the above conclusions must necessarily be applied also in the case of direct judicial review of the communication of the administrative authority (all the more so since the General Administrative Procedure Act does not establish a proper remedy against the communication under Section 28 of this Act). In practice, this means that the administrative court cannot adhere to the general principles applicable in administrative justice when reviewing the communication of the administrative authority (review only within the scope of the allegations, burden of proof being borne by the plaintiff, etc.), but must largely replace the procedural activity of the plaintiff. It will assess the legality of the administrative authority's action from all aspects on the basis of the documentation kept by the administrative authority within the meaning of Section 28(4) of the General Administrative Procedure Act, which this authority (unlike the plaintiff) can, or rather is obliged to, provide to the court. Although the above solution is unsystematic and contradictory to the basic principles on which administrative justice is built, it is the only way in which administrative courts are able, under the current legal regulations, to guarantee the right to effective judicial protection against a negative decision of an administrative authority, and thus to meet the requirements arising from European law and the cited judgment C-333/22. If the legislator has entrusted the review of the procedure in the above cases to the competence of administrative courts, it is impossible to adhere to strict adherence to the principles applicable in standard cases if such a procedure would result in the denial of the very right to effective judicial review, and therefore to a fair trial.

[32] Therefore, an unfulfillable requirement cannot be imposed on an applicant for information on processed data within the meaning of Section 28 of the General Data Protection Regulation to present arguments in proceedings for an action against a decision of the administrative authority that are capable of questioning the correctness and veracity of the said decision. He is no longer able to do so, as there is an absolute information disproportion between the applicant and the administrative authority. If the applicant receives a response that the administrative authority does not process his data, it is precisely this authority that is aware of whether his response is truthful or whether he is using the exceptions under Section 28(3) of the General Data Protection Regulation. The applicant is at a loss in this regard, he cannot find the answer in the justification of the communication (which will be very general at best, and none at all at worst), nor is he able to inspect the documentation kept by the administrative authority. For this reason, it is the task of the court to verify for the plaintiff whether the administrative authority acted in accordance with the law. However, in order to do so, it must have access to all the documents on which the administrative authority relied (i.e. the documentation kept pursuant to Section 28(4) of the General Data Protection Regulation) and from which it is evident whether the applicant's data were processed by the administrative authority or not, or in what context, or in what way these data are relevant from the point of view of the protected interests on which the administrative authority bases the refusal or restriction of information. If the court were to accept the defendant's unfounded claim without further ado, it would not be able to fulfill its legal mission (protection of public subjective rights) and would become a mere "hostage" of the administrative authority. With its authority, it would certify something that it would have no possibility of verifying in any way; ultimately, the decision of the administrative court would therefore become a mere illusion. In a given area of law in which fundamental rights are interfered with, even the most fundamental of rights, the right to judicial protection (fair trial), would be excluded. This guarantee cannot be provided by the defendant in any case, if only because of the nature of the matter, that it is on the side of the public prosecution or is an administrative authority, and no one can be a judge in their own case.

[33] It is therefore possible to conclude that the provision of data cannot be refused in a blanket manner solely with reference to the possible nature of the information (its formal classification). If someone requests data about their person that potentially falls under the exemption from provision under the General Data Protection Regulation, the administrative authority is obliged to assess this request individually. Moreover, the complainant himself agrees with this in his not very coherent cassation complaint. On the one hand, he generally refuses to provide the data, but on the other hand, specifically on page 9 of the cassation complaint, he himself states that “of course, one can hypothetically imagine a request concerning, for example, the defendant’s criminal jurisdiction, in which case the justification for non-compliance should be more specifically individualized or which could even be complied with, e.g. if it concerned data that the defendant himself had officially published on the grounds that they could no longer influence or threaten anything”. In other words, the complainant denies his own starting point and admits a kind of ad hoc approach. However, in order to use this approach, it is logically necessary to assess each request individually in order to be able to conclude whether the data will affect or endanger the public interest (as he states). Otherwise, the complainant would be committing arbitrariness (treating the same cases diametrically different without a proper reason for this procedure). Arbitrariness certainly cannot be included under the criminal law principles emphasized by the complainant, the observance of which he repeatedly invokes. The only possible procedure is therefore a procedure in which each request is assessed individually. It can be noted that the complainant can also lie about the data (fabricate) if the public interest in their "confidentiality" prevails. The complainant, and the administrative authorities in general, therefore have a wide range of answers to choose

from. From the disclosure of very specific data, through fabrications about them (deliberate disclosure of only basic data and concealment of others), to intentional deception (for example, by simply answering that they do not have any data on the applicant and do not record any). The legality of this procedure will then be examined in administrative court proceedings, in which the courts are of course aware of the existence of the principles of criminal law and the need to comply with them across the legal system (including in administrative justice). The complainant therefore has no reasonable concern that the aim of the criminal proceedings or the violation of criminal principles in general could be thwarted precisely in the context of court proceedings.

[34] In relation to the complainant's further considerations, it should be noted that both the EU and the Czech legislation resulting from it were not intended as a means by which perpetrators of criminal activity would receive information about "everything that is known about them", but as a guarantee that their personal data are processed lawfully. The Directive sets out at least a minimum standard of protection of such data across the EU. Within the framework of exceptions, it enshrines essential public interests, which ultimately lead to the fact that processors can deceive about the processing of personal data in order to protect these interests.

[35] In the present case, the complainant refused to comply with the plaintiff's request for information on the personal data processed by him, referring to Section 28(2)(a) of the General Data Protection Regulation, while only referring to this exception in a general manner. The task of the administrative court (if an action has been filed, because the applicant usually believes that his data is processed and does not fall under the exception) is to verify the legality of the processor's (here the complainant's) action, and must, where necessary, ensure that the protection of public interests for which the processor has used the exception under Section 28(2)(a) of the General Data Protection Regulation is maintained.

[36] The task of the municipal court is therefore to verify whether the complainant is not actually processing any of the plaintiff's personal data, or whether he is using the aforementioned exceptions, or whether the legal requirements for such action are met. In the case at hand, however, the municipal court could not make this conclusion, as it completely lacked any documentation of the complainant's procedure in relation to the plaintiff's application. The complainant flatly refused to "deal" with the processing of data, which by their nature may fall under the exception under Section 28(2)(a) of the General Data Protection Regulation. However, such a procedure runs counter to the impossibility of excluding judicial review. The administrative court cannot proceed solely from his unsubstantiated claim and simply believe the administrative authority (even if it is an authority involved in criminal proceedings). In order for the administrative authority's communication to withstand judicial review, the reasons for the decision must be supported by the accompanying documentation.

[37] The Court further notes that in order to prevent the abuse of the institution of the request under Section 28(1) of the Personal Data Protection Act by persons from the criminal environment (who could thus simply learn that the authorities involved in criminal proceedings are interested in their activities), it seems appropriate for the administrative authorities to react in exactly the same way in the event that they do not process the applicant's data, as well as in the event that they process it but use the statutory exceptions (including the creation of documentation within the meaning of Section 28(4) of the Personal Data Protection Act that is inaccessible to the applicant, which would contain supporting documents or information on the reasons for not providing information in the event that the exception is used, or in the opposite situation only brief supporting documents proving that the administrative authority does not register personal data, e.g. a printout from the information system indicating that a lustration was carried out with a negative result). On the basis of this documentation, the legality of the administrative authority's action can then be assessed by the supervisory authority and, if necessary, by the administrative court. Only the complainant and, where applicable, the administrative court will therefore know whether the documentation inaccessible to the plaintiff is devoid of content or, on the contrary, contains incriminating information, the existence of which cannot even be indicated to the applicant by submitting it to the administrative court. Although this is a solution that is not entirely ideal, as it may lead to an increase in litigation in similar cases, it is probably the only possible one in the current situation. It is undoubtedly impossible for the administrative court to base itself solely on the defendant's unfounded claim that the case in question involves the use of a statutory exception. In this context, the Court of Cassation can then assure the complainant that the administrative court does not carry out any supervision over the criminal proceedings of the complainant. From the point of view of assessing the legality of the complainant's proceedings, information about their existence in relation to the applicant is sufficient. In addition to the complainant's concerns about the courts' insufficient professional and procedural equipment, it must be added that administrative courts also belong to the judicial system, in which the old maxim that the court knows the law (iura novit curia) is practiced.

[38] Nor can the complainant's objection be accepted, that the Municipal Court failed to fulfil its obligation

to deal with the matter in a reviewable manner. The Municipal Court provided a very exhaustive and detailed interpretation of the key EU framework and Czech law, after which it correctly concluded that it could not decide on the matter without submitting the documentation. Its binding instruction consisting in the request to supplement the "file material" with "relevant supporting documents" and the conclusion to return the matter "for further proceedings" must be understood in the sense stated above. The complainant will therefore view the matter in its further proceedings as if it had not yet responded to the plaintiff's request, since the currently reviewed communication of 15 February 2024 is based on reasons that did not withstand judicial review. It will therefore issue a new communication, while respecting the interpretation of the legal regulation provided above when issuing it. This means that it will assess the plaintiff's request individually and, if it finds reasons for non-compliance [either because the plaintiff did not process and does not process any data, or because the plaintiff cannot be provided with information about the data processed by him with regard to the public interest defined in Section 28(2)(a) of the General Data Protection Regulation], it will explain its procedure in the documentation pursuant to Section 28(4) of the General Data Protection Regulation, which will also include all the documents on which it based its communication.

[39] In conclusion, it is worth recalling that the Municipal Court worked with the wording of the Czech legal regulation, therefore the question of the application of the direct effect of the Directive is eliminated (an indirect - Euro-conform interpretation will suffice). In the case in question, there was no gap in the law; on the contrary, the participants and the court worked with a specific provision of the General Data Protection Regulation. The emphasized principles of criminal law do not change the essence of the dispute, which concerns the review of a decision within the meaning of Section 65(1) of the Code of Civil Procedure. In such a situation, it is necessary to know the reasons for issuing a specific decision, which, in the case of the application of Section 28(2)(a) of the Code of Civil Procedure, are contained in the documentation kept “in secret” according to the following paragraphs. It is precisely that documentation that effectively replaces the reasons for the decision.

IV. Conclusion and costs of proceedings

[40] The complainant’s cassation appeal is not well-founded, therefore the Supreme Administrative Court dismissed it pursuant to Section 110(1) of the Code of Civil Procedure.

[41] The complainant was unsuccessful in the matter, and therefore is not entitled to reimbursement of the costs of the cassation appeal (Section 60(1) in conjunction with Section 120 of the Code of Civil Procedure). On the contrary, the plaintiff was fully successful in the matter, and therefore has the right to reimbursement of the reasonably incurred costs of the proceedings before the Supreme Administrative Court. The plaintiff was represented by a lawyer, therefore he is entitled to compensation for the costs associated with this representation. To determine its amount, the Decree No. 177/1996 Coll., on lawyers' fees and compensation for the provision of legal services (lawyer's tariff), shall be applied in accordance with Section 35(2) of the Code of Civil Procedure.

[42] According to Section 9(5) in conjunction with Section 7(5) of the Bar Fees, the fee for one act of legal service in this case is CZK 4,620. In the cassation appeal proceedings, the plaintiff's representative performed one act of legal service pursuant to Section 11(2)(a) in conjunction with Section 11(3) of the Bar Fees (statement on the motion to grant suspensive effect), for which he is entitled to half the fee, i.e. CZK 2,310. For this act, he is also entitled to reimbursement of out-of-pocket expenses in the amount of CZK 450 (Section 13(4) of the Bar Fees) and an amount corresponding to 21% VAT. In total, the plaintiff is therefore obliged to pay the plaintiff the amount of CZK 3,340 in reimbursement of the costs of the proceedings, to the attention of his representative JUDr. Milan Štemberg, within 30 days of the entry into force of this judgment.

[43] The court did not overlook the fact that the plaintiff had also submitted extensive statements to the cassation complaint and its supplement. However, when considering whether to award compensation for the costs of these submissions, it could not ignore the fact that the plaintiff's statements were very difficult to understand, as they largely missed the point of the statement to the cassation complaint. Instead of substantive and specific responses to the cassation objections, the plaintiff (through his representative) developed his own, very extensive, general and, to a significant extent, completely extraneous argumentation. Instead of making the proceedings before the court more efficient and faster, this led to their prolongation, the position of the opposing party becoming unclear and the need to exclude a number of arguments, whether because of their absolute irrelevance to the case (the specific cassation objection) or simply because they were untrue. For example, in the statement on the cassation complaint, the plaintiff directly quotes excerpts from the decisions of the Court of Cassation (file no. 6 As 227/2022 43, file no. 1 As 78/2020 34, file no. 9 As 264/2020 29, file no. 9 As 264/2020 51, file no. 5 As 340/2021 24, file no. 6 As 65/2012 86, file no. 6 As 65/2012 161, file no. 5 As 85/2015 29, file no. 5 As 85/2015 36) and the Constitutional Court (file no. III. ÚS

3844/13, file no. Pl. ÚS 8/02, file no. case no. IV. ÚS 1378/16, case no. III. ÚS 30/16), which are intended to form the legal framework for the analysis of the cassation complaint and are referred to in the text of the statement itself. The court verified all these citations and came to the unequivocal conclusion that none of them are found in the referenced decisions. The “cited” decisions case no. 7 As 172/2019, case no. 1 As 125/2019, case no. 1 As 76/2020 and case no. II. ÚS 1516/14 do not even exist at all. Regardless of who or what wrote the given statements, the court did not consider them in their entirety to be in any way beneficial to the given case, and therefore could not assess the costs of their creation as reasonably incurred.

Lesson: No appeals are admissible against this judgment.

In Brno on October 15, 2025

Mgr. Lenka Krupičková
Chairwoman of the Senate