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**LAW**

**The Czech National Council**

Of 21 June 1991

On the Police of the Czech Republic

Amendment: 26/1993 Coll. Amendment: 67/1993 Coll. Amendment: 163/1993 Coll. Amendment: 326/1993 Coll. Amendment: 82/1995 Coll. Amendment: 152/1995 Coll. Amendment: 18/1997 Coll. Amendment: 186/1997 Coll. Amendment: 168/1999 Coll., 325/1999 Coll., 326/1999 Coll. Amendment: 105/2000 Coll. Amendment: 138/1999 Coll. Amendment: 329/1999 Coll. Amendment: 258/2000 Coll., 361/2000 Coll. Amendment: 60/2001 Coll. Amendment: 120/2001 Coll. Amendment: 265/2001 Coll., Change: 216 / 2002 Coll. Amendment: 436/2003 Coll. Amendment: 119/2004 Coll. Amendment: 288/2005 Coll. Amendment: 413/2005 Coll. Amendment: 321/2006 Coll. Amendment: 342/2006 Coll., Amendment: 362/2003 Coll., 135/2006 Coll. Amendment: 170/2007 Coll. (part), Amended: 170/2007 Coll. Amendment: 379/2007 Coll. Amendment: 380/2007 Coll. Amendment: 296/2007 Coll.

Czech National Council adopted the following Act:

§1...

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§ 42e

(1) The policeman, who in the performance of police tasks cannot obtain personal data, enabling future identification, otherwise, is authorized for persons accused of committing a crime for people in prison for committing a deliberate crime for persons to whom protective treatment was imposed or for persons found, after which it was announced that search and do not have legal capacity in full,

- a) take fingerprints
- b) identify physical characteristics,
- c) to measure body
- d) to capture video, audio, and similar records, or
- e) to take biological samples allows obtaining information with genetic equipment.

(2) Detection of external physical characteristics and body measurements in accordance with paragraph 1, the policeman of the same sex or at the request of professionally qualified health professional, blood sampling or other biological material, which is associated with interference with bodily integrity, at the request of the police only professionally qualified health professional. The same procedure also in the collection, which is not associated with interference with bodily integrity when it overcome the resistance of people. Biological sampling is done in a way that may endanger a person.

(3) If you cannot act under paragraph 1 for resistance to people and unless the taking of blood or other similar transaction associated with the intervention of the bodily integrity, a police officer after previous futile challenge entitled overcome this resistance. The way to overcome the resistance must be proportionate to the intensity of resistance.

## SPECIAL PROVISIONS FOR THE PROCESSING OF PERSONAL DATA POLICE

### § 42 g

The processing of personal data in the performance of police tasks in connection with criminal proceedings

(1) in preventing and detecting crime, detect offenders and conduct investigations of crimes ("the tasks of the police in connection with criminal proceedings") is the police in the processing of personal data required to

- a) state the purpose for which personal data to be processed,
- b) collect personal data only for its intended purpose and to the extent necessary to accomplish the intended purpose,
- c) keep personal data only for as long as is necessary for the purpose of their processing,
- d) process personal data under this provision separately from personal data processed in fulfilling other tasks of the police,
- e) promptly report to the Office for Personal Data Protection 17 c) the creation of any records containing personal data, included in this announcement is the department responsible for processing personal data, the purpose of records, categories of data subjects and data that relate to these subjects, and a description of measures to ensuring the required privacy.

(2) Police are processing personal data pursuant to paragraph 1 shall be entitled to the extent necessary to perform police tasks in connection with criminal proceedings

- a) Bring together personal data were obtained for different purposes,
- b) to prepare false, inaccurate and unverified personal information, such personal information must be marked.

(3) Police are processing personal data pursuant to paragraph 1, to process sensitive data, 17d) where the nature of the offense necessary for the performance of police tasks in connection with criminal proceedings.

(4) Police processing personal data pursuant to paragraph 1 and without the consent of people, yet is obliged to respect the right to protect their private and personal lives. The police are obliged, once it is no longer threatened the performance of police tasks in connection with criminal proceedings, the person to tell her that handles personal information, or to dispose of their personal data.

(5) Police fails to liquidation of personal data in the event that the personal data that are part of the file materials and are not processed automatically.

(6) Under the provisions of this Title, personal data processed by the police also in preventing and detecting crimes, whose characteristics are listed in the Criminal Code 17e) and the perpetrators are criminally responsible for the lack of age or insanity, and in identifying the perpetrators.

## § 42k

### Transfer of personal data

(1) The Police shall transmit personal data to other institutions or persons

- a) determine if this or the special law,
- b) if a person, to whom the personal data relate, and that person has to communicate its consent or approval can be based on the circumstances, reasonable to assume, or
- c) if the transfer of personal data is necessary to eliminate an immediate serious threat to human security or public order.

## § 45a

Information from the records, which leads the police according to § 42d to provide services that operate in the police, the Interior Ministry, the Security Information Service of the Czech Republic, Defense Military Intelligence and Military Police, other state bodies and organizations, and legal executors 17 g) only if necessary for performing their duties under the Act.

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### 7.2. Legislation

The establishment of national databases of DNA was on the political level decided in 1997 and everything was enshrined in the Resolution No. 193/1997 of the Council of Europe. The legal basis for the National DNA database in the Czech Republic currently provides only the provisions of § 42e paragraph 1 point. e), paragraph 2 of the Act PolČR (imprisonment amendment made by Act No. 60/2001 Coll.). Furthermore, the provisions of § 42 g, § § 42k and 45a PolČR. Applies here as well as § 114 paragraph 1 and 2 of the TRR. Although these provisions is never used or defined the term national DNA database, or they do not determine where the database occurs, what is it and who fills and runs, we can clearly see in them the legal basis for the National DNA database. Modification of these problems is contained in a binding instruction of the Police President No. 88/2002 on the implementation, operation and use of the National DNA database, which was released in late May 2002.

This mandatory instruction is intended only "for internal use" and therefore is known in the Interior Ministry, the prosecutor and the courts. Does it available to the Prison Service, the BIS, the General Customs Directorate and the Office for Personal Data Protection.

Essential for the implementation, operation and use of the National DNA database is Article 1, paragraph 2 of Mandatory Police President Instruction No. 88/2002. According to him, expert (expert) police department performs forensic genetic expertise to determine the DNA profile only in the examination according to § 158 paragraph 3 TRR or investigation under § 161 et seq. TRR.

In the future it would be possible to consider separately and keep DNA profiles from such soldiers to serve cházejících of IFOR, SFOR, volunteers - rescuers, eventually. private individuals for their interest. It would mean, however, separation of such a database (no tr. Procedure) and interference with the software, which would have to be subject to further negotiations.

The screening and investigation of crime will also collect biological samples to others (eg the local people), which will serve only for comparison in the CODIS system will not become part of the ND DNA, if it does not arise for another reason.

Transmission of the information collected based on DNA analysis will be conducted in accordance with § 45a PolČR.

Remains controversial passage about Uschi acclamation period. ZP PP No. 88/2002 Article 8 stipulates that the DNA profiles of convicted defendants, and finally will be kept at the National Theatre of DNA until 80 years of age. If you die before then even 20 years after their death with respect to any previously undetected noutrestnou activity, regular 3-year examination of these data need to be blown topo provisions of § 42i PolČR.

The investigative records and collections would be no long-term storage of samples completely contradicted by identifying their meaning and purpose. For activity of expert police departments, had pokudby fall under the regime of this statutory provision, it would mean an obvious nonsense komplikace especially in personnel and system feedbacks.

Because it would have to be earmarked for other people who would keep checking whether it is necessary to continue in her genetic profiles to keep or discard the information. It is also a speed test, according to what criteria should proceed. The need to preserve information on these records osobáchv really lasts until at least 80 years of age when little can be expected to commit another crime.

If no traces of the crime scene to compare with what, he loses the building of the National DNA database completely and your sense of § 42e PolČR, which for purposes of future identification authorizes a police officer accused nodebrat biological sample, in relation to the activity of expert police work counterproductive - not to mention the still unsolved feedback system, ie the connection to others, such as the police database, which would "no longer necessary" further processing (suspension of criminal prosecution under § 172 TRR, etc.) can be derived.

### 7.3. New Legislation

As mentioned above, the president of 7 6th 2006 signed an amendment to the Penal Code and Police Act. Some changes take place in the legislation of the National DNA database. The amendment in § 42e odst. 1, introductory part of the provisions inserted after the words "for persons accused of committing a crime," the following postscript: for people in prison for committing a deliberate crime for persons to whom protective treatment was imposed. "This is a newly obtained allowed katúdaje DNA of convicted offenders and persons who were sentenced to protective treatment.

But the question remains, how much is appropriate that all offenders who are sentenced for an intentional crime, were subjected to DNA sampling. It is true that not all prisoners due to any offense committed is not sensible to sample DNA. But on the other hand, I believe that in future it may happen that such an offender commits such an offense, where leaving a trace, and where biological sampling will be needed. This would remove the difficulties which arose with the identification of these persons. So I think that the jet really reasonable to assume that because this amendment will better explain the crimes that occur.

## 7.2. Právní úprava

O zřizování národních databází DNA bylo na politické úrovni rozhodnuto v roce 1997 a vše bylo zakotveno v Rezoluci Rady Evropy č. 193/1997. Právní základ Národní databáze DNA v České republice zatím poskytuje jen ustanovení § 42e odst. 1 písm. e), odst. 2 zákona PolČR (veznění novely provedené zákonem č. 60/2001 Sb.). Dále také ustanovení § 42g, § 42k a § 45a PolČR. Platí tu i § 114 odst. 1 a 2 TrŘ. Přestože v těchto ustanoveních není nikde použit případně definován pojem Národní databáze DNA, ani v nich není určeno, kde se tato databáze vyskytuje, k čemu slouží a kdo ji naplňuje a provozuje, můžeme v nich nepochybně vidět právní základ Národní databáze DNA. Úprava těchto problémů je obsažena v Závazném pokynu policejního prezidenta č. 88/2002 k naplňování, provozování a využívání Národní databáze DNA, který byl vydán koncem května roku 2002.

Tento závazný pokyn je určen pouze "pro vnitřní potřebu", a proto je znám v resortu vnitra, nastátních zastupitelstvích a na soudech. Má jej k dispozici také Vězeňská služba, BIS, Generální ředitelství cel a Úřad na ochranu osobních údajů.

Podstatný pro naplňování, provozování a využívání Národní databáze DNA je článek 1 odst. 2 Závazného pokynu policejního prezidenta č. 88/2002. Dle něj znalecká (expertizní) pracoviště policie provádí kriminalistickou genetickou expertizu ke zjištění profilu DNA pouze v rámci prověřování dle § 158 odst. 3 TrŘ nebo vyšetřování dle § 161 an. TrŘ.

Do budoucna by bylo možné zvážit, zda vést separátně i profily DNA např. vojáků odcházejících sloužit do jednotek IFOR, SFOR, dobrovolníků - záchranářů, event. soukromých osob v případě jejich zájmu. Znamenalo by to ovšem oddělené vedení takové databáze (nejde o tr. řízení) a zásah do softwaru, což by muselo být předmětem dalších jednání.

V rámci prověřování a objasňování trestné činnosti se budou odebírat i biologické vzorky dalších osob (např. tzv. domácích osob), které budou sloužit pouze k porovnání v systému CODIS a nestanou se součástí ND DNA, pokud pro to nevznikne jiný důvod (např. trestního stíhání této osoby).

Předávání zjištěných informací na základě analýzy DNA bude prováděno v souladu s ustanovením § 45a PolČR.

Sporná zůstává pasáž o uschovacích lhůtách. ZP PP č. 88/2002 v čl. 8 stanoví, že profily DNA obviněných a pravomocně odsouzených budou ponechány v ND DNA do doby 80 let jejich věku. Pokud zemřou dříve, pak ještě 20 let po jejich smrti s ohledem na případnou dosud neodhalenou trestnou činnost, bez pravidelného 3letého prověřování potřebnosti těchto údajů, jak topožaduje ust. § 42i PolČR.

U kriminalistických evidencí a sbírek by byl bez dlouhodobého uchovávání identifikačních vzorků zcela popřen jejich význam a účel. Pro činnost znaleckých pracovišť Policie ČR, pokud by měla spadnout pod režim tohoto zákonného ustanovení, by to znamenalo zjevný nesmysl a komplikace zejména v oblasti personální a systému zpětných vazeb.

Kvůli tomu by museli být vyčleněni další lidé, kteří by neustále prověřovali, zda je nutné nadále v ní genetické profily ponechat, případně získané informace zlikvidovat. Je také otázkou, podle jakých kritérií by postupovali. Nutnost uchování informací o uvedených osobách v evidenci trvá skutečně až do nejméně 80 let jejich věku, kdy už se dá málo předpokládat, že by páchaly další trestnou činnost.

Pokud nebudou stopy z místa činu s čím porovnat, ztrácí budování Národní databáze DNA zcela svůj smysl a ustanovení § 42e PolČR, kdy pro účely budoucí identifikace je policista oprávněn odebrat obviněné osobě biologický

vzorek, je ve vztahu k náplni činnosti znaleckého pracoviště policie kontraproduktivní - nehledě na stále nevyřešený systém zpětných vazeb, tj. napojení najině, např. policejní databáze, z nichž by "nepotřebnost" dalšího zpracování (zastavení trestního stíhání podle § 172 TrŘ apod.) bylo možné odvodit.

### 7.3. Nová právní úprava

Jak již bylo výše uvedeno, prezident dne 7. 6. 2006 podepsal novelu trestního řádu a zákona o policii. K některým změnám dochází tak i v právní úpravě Národní databáze DNA. Novela v § 42e odst. 1 úvodní části ustanovení vložila za slova: "u osob obviněných ze spáchání trestného činu," následující dovětek: ", u osob ve výkonu trestu odnětí svobody za spáchání úmyslného trestného činu, u osob, jimž bylo uloženo ochranné léčení". Tímto je nově umožněno získat údaje o DNA odsouzených pachatelů a u osob, kterým bylo uloženo ochranné léčení.

Zůstává ovšem otázkou, jak moc je účelné, aby všichni odsouzení, kteří jsou ve výkonu trestu za úmyslný trestný čin, byli podrobena odběru DNA. Je pravdou, že ne u všech odsouzených, vzhledem k trestnému činu, který spáchali, není smysluplné odebírat vzorek DNA. Ovšem nadruhou stranu se domnívám, že v budoucnu se může stát, že takovýto pachatel se dopustí takového trestného činu, kde zanechá po sobě biologickou stopu a kde odběr bude zapotřebí. Tímby se odstranily potíže, který by vznikly s identifikací těchto osob. Proto si myslím, že je to opravdu důvodný předpoklad, že se budou díky této novele lépe objasňovat trestné činy, ke kterým dojde.