

Registration code 70004235 FOR USE WITHIN THE INSTITUTION Information holder: Data Protection Inspectorate Note

made: 05.12.2022 Access restriction valid until: 05.12.2097; in terms of paragraph 2 until the decision made in the procedure

enters into force Basis: AvTS § 35 paragraph 1 paragraph 2, AvTS § 35 paragraph 1 paragraph 12 PRELIMINARY WARNING

in personal data protection case no. 2.1.-1/22/2689 Issuer of the injunction Data Protection Inspectorate lawyer Alissa

Hmelnitskaja Time and place of issuance of the injunction 05.12.2022 in Tallinn Recipient of the injunction - personal data

processor XXX e-mail address: XXX RESOLUTION: § 56 subsection 1 of the Personal Data Protection Act (IKS) 2 point 8, §

58 paragraph 1, § 4, § 10 and on the basis of Article 58 paragraph 2 p. f and g of the General Regulation on the Protection of

Personal Data (IKÜM), as well as taking into account Article 6 of the General Regulation on the Protection of Personal Data

(IKÜM), I issue a mandatory injunction to comply with: 1. Delete from posts made on Facebook Personal data of XX and XX,

including in the Facebook groups "XXX", "XXX", "XXX", "XXX" I set the deadline for the execution of the injunction to be

12.12.2022. Report compliance with the order to the e-mail address of the Data Protection Inspectorate at info@aki.ee by this

deadline at the latest. REFERENCE FOR DISPUTES: This order can be challenged within 30 days by submitting either: - an

appeal under the Administrative Procedure Act to the Data Protection Inspectorate or - an appeal under the Code of

Administrative Procedure to the Administrative Court (in this case, the appeal in the same matter cannot be reviewed).

Challenging a precept does not stop the obligation to fulfill it or the implementation of measures necessary for fulfillment.

EXERCISE MONEY WARNING: If the injunction has not been complied with by the specified deadline, the Data Protection

Inspectorate will impose a fine of 500 euros on the addressee of the injunction based on § 60 of the Personal Data Protection

Act. A fine may be imposed repeatedly - until the injunction is fulfilled. If the recipient does not pay the penalty, it will be

forwarded to the bailiff to start enforcement proceedings. In this case, the bailiff's fee and other enforcement costs are added to

the enforcement money. MISCONDUCT PUNISHMENT WARNING: Failure to comply with the prescription under Article 58(2)

of the Personal Data Protection General Regulation may result in a misdemeanor proceeding based on § 69 of the Personal

Data Protection Act. For this act, a natural person may be fined up to EUR 20,000,000, and a legal person may be fined up to

EUR 20,000,000 or up to 4 percent of its global annual turnover of the previous financial year, whichever is greater. The

out-of-court procedure for a misdemeanor is the Data Protection Inspectorate. FACTUAL FACTS: The Data Protection

Inspectorate (AKI) has a complaint from X (complainant), according to which XXX has disclosed the personal data of the

complainant and the complainant's husband on social media in various Facebook groups through his personal and company (XXX) accounts. In the posts, the full names of the applicant and her husband, details of the applicant's employment, and in some posts their photo is published. AKI XXX proposed to stop disclosing the applicant's personal data on social media and to send confirmation of this to the inspectorate no later than 23.11.2022. In addition, I pointed out that if XXX does not agree to the proposal, then it must be explained to him by 23.11.2022 at the latest on what legal basis and purpose and reasons he is disclosing the applicant's personal data. On 11/28/2022, I received the following reply from XXX: "I explain that XXX made the post because XX is trying to leave us unpaid through a scam. He sees this post and its content in a bad light. The content of the post was to warn other builders and contractors about the danger of a person ordering work and not paying. I understand that it is inconvenient that now others know it too. Statements have been made to the police, where the procedure was terminated. If necessary, I can also forward this termination decision to you. We did an honest job and we just want to pull the skin over our ears. The information posted about XX is public information and available to everyone, as well as all the references to identify who he is and under what guise he earns his money as well. Together with the husband, they are responsible for our lost wages. The police also established that the work was ordered from XXX, not from XXX. In public, it is worth warning against such crooks. Can someone explain to me in human language how the law requires me to warn others against such acts and violations of the law. The debtor was informed that if the debt is not paid, publicly available pictures of him will be put up to identify the debtors and the debtors. And they share all this information about themselves publicly. What information about them in the post is currently not in accordance with the law. According to the law of debt, he is in debt, and according to the law, he has the obligation to pay the debt according to the agreement. We do not have a written agreement that I cannot share that he is avoiding his duty and he has a duty to his fellow citizens to warn them. If I don't share names, how can I protect my fellow citizens. How do I get paid as an entrepreneur, because for a while I have had to pay the workers from my own pocket what they have earned. I'm not the only company that suffered." GROUND FOR DATA PROTECTION INSPECTION: There must be a legal basis for publishing personal data. According to article 4 point 1 of IKYM, personal data is any information about an identified or identifiable natural person. An identifiable natural person is a person who can be directly or indirectly identified, primarily based on such identification as name, personal identification number, location information; but also based on one or more physical, physiological characteristics of this natural person. According to Article 4, point 2 of the IKÜM, the processing of personal data is an automated or non-automated operation or a set of operations

performed with personal data or their collections, including their distribution or disclosure by making them available in another way. Thus, a person's name and image are also personal data, as it is possible to identify a person based on them. As a result of the above, XXX (the data processor) has disclosed the personal data of the applicant and her husband (full name, image, workplace data) in the sense of Article 4 points 1 and 2 of the IKÜM. The principles of personal data processing are set out in Article 5 of the General Data Protection Regulation, which must be followed by the controller, including the principle of legality. The processing of personal data is legal if it corresponds to one of the legal bases set out in Article 6 of the IKÜM (consent, performance of a contract, legal obligation, protection of vital interests, for the performance of a task in the public interest or for the exercise of public authority, legitimate interest).

1. IKS § 4 In certain cases, the disclosure of some people's data may be justified for journalistic purposes. According to § 4 of the IKS, personal data may be processed without the consent of the data subject for journalistic purposes, in particular disclosed in the media, if this is of public interest and is in accordance with the principles of journalistic ethics. The disclosure of personal data must not excessively harm the rights of the data subject. In order to disclose personal data based on § 4 of the IKS, three conditions must be met: 1. there is a public interest in the disclosure of personal data; 2. the disclosure is in accordance with the rules of journalistic ethics; 3. the disclosure of personal data must not excessively harm the rights of the data subject. According to AKI, the criterion of public interest is not met in this case. The existence of public interest can be confirmed if the topic raised and personal data disclosed contribute to the debate in a democratic society. Reflecting on the different causes of arrears can promote public debate, but not the individual arrears of a particular natural person. Since one criterion for the application of IKS § 4, i.e. the existence of public interest, is not met, AKI does not analyze the fulfillment of the following criteria, because personal data cannot be made public based on the absence of one of the criteria already on the basis of IKS § 4.

2. In order to process personal data on the basis of article 6 paragraph 1 point f of Article 6 paragraph 1 point f of IKÜM, or legitimate interest, the data processor must be convinced that the purpose of personal data processing is more important than the rights and freedoms of the data subject and articles 21 (right to object) and 17 (right on the basis of data deletion) the processing of personal data must be stopped if the data processor cannot prove that the processing is for a compelling legitimate reason that outweighs the interests, rights and freedoms of the data subject. AKI is of the opinion that the processing of personal data for the sole purpose of public warning¹ is not lawful on the basis of legitimate interest. The processing of personal data on the basis of a legitimate interest must be preceded by an analysis carried out by the data processor in terms of the legitimate interest and importance of the data

processor and third parties, an analysis of the rights and interests of the data subject and their importance, and then a weighing between the interests of the data processor and the data subject.^{2 3.} IKS § 10 The response to the proposal by XXX may interpret as his wish was to publish the debtors' data. Therefore, I explain that in addition to the legal grounds given in Article 6 of the IKÜM mentioned above, it is possible to rely on IKS § 10 for the disclosure of debtors' data, which stipulates that the disclosure of personal data related to the violation of a debt relationship to a third party and 1 XXX's 28.11.2022 response to the proposal, 11. sentence. 2 AKI Legitimate interest guide, page 6. Available online: https://www.aki.ee/sites/default/files/dokumendid/oigustut_huvi_juhend_aki_26.05.2020.pdf processing of transmitted data by a third party is permitted for the purpose of assessing the creditworthiness of the data subject or for other similar purposes and only if all three conditions are met: 1. the data processor has verified that there is a legal basis for data transfer; 2. the data processor has checked the correctness of the data; 3. the data transfer is recorded (keeping information about who and what was transferred). AKI takes the position that in this case the composition of personal data disclosed about X and XX is too broad, i.e. it exceeds the composition of personal data disclosure permitted under § 10 of the IKS. In addition to the name, the picture and workplace information about the persons has been disclosed. Also, in this case, in AKI's opinion, the assumption that the controller would have checked the legal basis for transferring personal data has not been met. However, XXX has made the debt data publicly visible to the unlimited public, which means that XXX cannot control who sees the data and therefore cannot control whether the recipient of the data has a legal basis. Therefore, on the basis of IKS § 10, the prerequisites for disclosure of personal data are not met. Taking into account the above, the inspection is of the opinion that in this case, none of the legal bases specified in Article 6, subsection 1 of IKÜ for the disclosure of personal data of X and XX exists, and the data processor has not proven to the inspection that the legal basis for data disclosure derives from § 10 of IKS. Personal data has been processed without legal baseless, which is why XXX must stop publishing posts containing X and XX's personal data on social media. Debt relationships between people, including rights and obligations arising from loan agreements, are regulated by the Law of Obligations Act (VÕS), which provides legal remedies in case of breach of contract - VÕS § 101. However, none of the legal remedies prescribed by law provide for the right to disclose the debtor's personal data. In accordance with IKS § 58 (1) and IKÜ Article 58 (2) p and g, the inspectorate has the right to issue an order to limit the processing of personal data. Taking into account that in this particular case the personal data of natural persons is disclosed illegally and that XXX did not agree to comply with the Data Protection Inspectorate's proposal of 16.11.2022, the inspectorate

considers that issuing a mandatory injunction in this matter is necessary to stop the offense as soon as possible. XXX needs to stop all such practice on social media where it wants to inform the unlimited public about the debtors. It is not possible to fulfill the requirements of IKS § 10 by disclosing on social media. (digitally signed) Alissa Khmel'nitskaja lawyer under the authority of the Director General