

Tatari tn 39 / 10134 Tallinn / 627 4135 / info@aki.ee / www.aki.ee Registry code 70004235 PRELIMINARY WARNING in personal data protection case no. 2.1.-1/21/3684 Injunction maker Data Protection Inspectorate lawyer Kirsika Berit Reino

Time and place of injunction 15.11.2021 Tallinn Recipient of injunction - personal data processor XXX XXX XXX

RESOLUTION: Section 56 subsection 1, subsection 2 clause 8 of the Personal Data Protection Act (IKS) , § 58 paragraph 1 and Article 58 paragraph 1 point d and paragraph 2 points e and f of the General Personal Data Protection Regulation (IPPR), as well as taking into account IKS §§ 4 and 11 and Article 6 of the IPR, the Data Protection Inspectorate issues a mandatory injunction to comply with XXX: 1. XXX must either: 1.1.stop disclosing video XXX on your personal Facebook account; or 1.2. not limited in point 1.1. the disclosure of the said video until the legality of the disclosure of the video has been proven to the inspection and the inspection has given a corresponding confirmation. The video must be restricted in such a way that only you can see the video on Facebook in the future (i.e. mark it as private). 2. Send confirmation to the inspection whether: 2.1. video disclosure and further data processing has ended or 2.2. video disclosure is temporarily limited (for the purpose of proving the legality of video disclosure). I set the deadline for the execution of the order to be 23.11.2021. 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 Administrative Court Procedure Code to the administrative court (in this case, the appeal in the same matter cannot be reviewed). 2 (5) Challenging a precept does not stop the obligation to fulfill it or the implementation of measures necessary for fulfillment. WARNING: If the injunction has not been complied with by the specified deadline, the Data Protection Inspectorate will impose a penalty of 3,000 euros on the addressee of the injunction based on § 60 of the Personal Data Protection Act: a penalty of 3,000 euros for each item of the unfulfilled injunction. 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. FACTUAL CIRCUMSTANCES: The Data Protection Inspectorate received a complaint from XXX (complainant), according to which you, XXX, have published video 1 about the complainant on your Facebook account.

According to the complaint, you were asked to submit a document certifying vaccination or medical history in order to participate in the public event "Election Debate" at the Paide Music and Theater House (hereinafter PAMT) on 15.10.2021, but you refused to submit the certificate. As a result, you filmed the further conversation with the employees of the house and

posted the video on 15.10.2021 at 19:30 on your personal Facebook page. The inspectorate has started a monitoring procedure on the basis of § 56 (3) point 8 of the Personal Data Protection Act (hereinafter IKS). In order to fulfill its tasks, the inspection has the right to demand explanations necessary for conducting the supervision procedure in accordance with § 57 of the IKS and § 30 (1) of the Law on Law Enforcement. The inspectorate also has the right to request the deletion of personal data or restriction of processing arising from clauses 3 and 4 of § 56 (3) of the IKS.

GROUND OF THE DATA PROTECTION INSPECTION: As can be seen from the video, the complainant repeatedly said that he had not given his consent to be filmed. There must be a legal basis for the disclosure of personal data. According to article 4 point 1 of the General Regulation on the Protection of Personal Data (GPR), 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 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. As a result of the above, you have disclosed the applicant's personal data in the sense of clauses 1 and 2 of article 4 of the IKÜM. According to Article 6 of the IKÜM, the processing of personal data is legal if it meets one of the conditions set out in points a to f of paragraph 1. The inspection is of the opinion that in this case, the disclosure of the video is not legal on the basis of any point specified in Article 6, paragraph 1 of the IKÜM.

1. **Journalistic purpose** XXX 3 (5) The inspectorate admits that the corona-related topics on personal Facebook pages have been published for journalistic purposes. The purpose of journalism is to provide information and promote debate on a topical and necessary topic in society². At the same time, the journalistic goal is not fulfilled if the personal data of third parties is disclosed, because a social debate can be held without involving third parties, which would not limit the journalist's freedom of expression and freedom of expression. Pursuant to § 4 of the Personal Data Protection Act (IKS), personal data may be processed for journalistic purposes without the consent of the data subject, in particular disclosed in the media, if this is (i) in the public interest and (ii) in accordance with the principles of journalistic ethics, and (iii) the disclosure of personal data must not excessively harm the rights of the data subject. If one of the conditions is not met, the processing of personal data for journalistic purposes is not permitted.

Public interest towards the applicant The disclosure of personal data must not excessively harm the rights of the data subject. In addition to what is stipulated in the legal act, the practice of the European

Court of Human Rights (ECHR) results in the obligation to distinguish between public interest in the subject and specific individuals. Public interest in the corona crisis does not mean that the data of all those persons who are obliged to follow the orders of the Government of the Republic could be made public automatically. The Supreme Court has explained in the administrative case No. 3-3-1-85-15 that the predominance of the public interest must be determined based on the circumstances of a specific case, comparing the circumstances in favor of publishing the data with the consequences that are caused to the person. The publication of personal data is not justified by mere private interest or thirst for sensation. According to the practice of the European Court of Justice and the Supreme Court, the degree of justified public interest in a person's private life varies and depends on what a person does (official, politician, businessman) or how much he himself has placed himself in the orbit of public interest (opinion leader, pop star). In order to disclose personal data, there must be a public interest in the person and the case related to him. In the orbit of public interest are primarily figures of public life and people who have entered the public sphere due to some of their activities. Members of the government and parliament are at the head of public figures, followed by other politicians³. In addition to politicians, a figure in public life can also be a person who 1) possesses economic power and important information for the public, 2) can influence politics, economic and social choices, 3) earns a living by exhibiting his or her person or creation. In all other cases where it is not a public figure, it must be assessed in each specific case whether the publication of the personal data of the affected person in a personalized form is unavoidably necessary for reporting the case, or whether the journalistic goal can be achieved without it. In the present case, it must be assessed whether the fact that the person is XXX has caused such public interest in the person that it is always justified to disclose his personal data in order to fulfill a journalistic goal. We admit that the public interest in the activities of institution XXX is clearly greater than that of the institution's employees² RKHKo 23.03.2016 administrative case no. 3-3-1-85-15, p 23.

³ D.Voorhoof, Freedom of Expression under the European Human Rights System , 2010. ⁴ (5) against. However, this is only if this activity is also in the orbit of public interest. In this case, XXX did not place himself in the orbit of public interest with his actions - he checked the evidence in accordance with the order of the Government of the Republic. The situation would be different if he had ignored the legislation and allowed people to a public event without checking the evidence. In this case, it could be said that he would have placed himself in the orbit of public interest due to his activities and position, and his coverage in the media would be justified. We note that recently there has been an unfortunate trend to film, publicize and ridicule on social media the servants doing their daily work - security guards and shop assistants who are simply fulfilling the

obligations imposed on them by legislation (and by their employer). The shop assistant, the security guard, and also the employee of the cultural center do not make the rules themselves, and they are in no way responsible for what the government decides. In the same way that the policemen are not responsible for the fact that there is a speed limit on the road that many people do not like. In this way, the waiter cannot be blamed for not selling vodka and smokes to a minor or requiring him to wear a mask. Therefore, the circumstance, XXX's obligation to follow the orders of the Government of the Republic, is not related to whether you think the orders are legal or not. The publication of the applicant's personal data does not add value to the social debate regarding the corona crisis, because the purpose of the debate is to point out whether the orders issued by the government are legal. In the event that You find that the Government's orders are not lawful and should be changed, XXX is not competent to do so.

II. Journalistic ethics Article 1.2 of the Estonian Code of Journalistic Ethics. according to which the press serves the public's right to receive true, honest and comprehensive information about what is happening in society. The principles of journalistic ethics include, among other things, journalist independence, impartiality, balance, verifiability of material and information, and the ability to object. Section 4.9 of the Code of Ethics. According to this, materials that violate a person's privacy are published only if the public's interests outweigh the person's right to privacy. There are no connections between the person of the applicant and the Government's orders, as a result of which the inspection has identified a contradiction with the code of journalistic ethics.

III Excessive damage to the applicant's rights The processor of personal data for journalistic purposes must analyze whether the processing does not involve excessive damage to the rights and freedoms of the data subject. If there is damage to the rights and freedoms of the data subject, but it is not excessive, it is allowed to process personal data. According to the complaint, XXX has received threatening letters as a result of the video you published. In addition, the comments on the post are also offensive, insulting and mocking, so the publication of the post has also resulted in the violation of rights through the comment. The inspection also adds that, according to case law, the posters are to a certain extent also responsible for the comments on the post. To the extent that the life and health of the applicant are threatened, the disclosure of the video involves excessive damage to the rights of the data subject. Based on the above, in the opinion of the inspectorate, the controversial Facebook post does not have a journalistic purpose in the sense of Section 4 of the IKS.

2. Paide Music and Theater House is a public place 5 (5) Paide Music and Theater House is a public place. According to § 11 of the IKS, unless the law provides otherwise, in the case of recording as sound or image material in a public place for the purpose of disclosure, the consent of the data subject is replaced by his notification in such a form that allows him to

understand the fact of the recording of sound or image material and to avoid his own recording if he wishes. The applicant stated repeatedly during the video that he had not given his consent to be filmed, despite which you continued to film the applicant, so the applicant was unable to avoid being filmed. Accordingly, the fact that the video was filmed in a public place is not a legal basis for the disclosure of the video, as the applicant was unable to avoid being recorded. Summary If there is no legal basis for personal data processing, personal data processing is impermissible. As long as you have not proven to the inspectorate that you have a legal basis for disclosing the video, and the inspectorate has not accepted such a basis, the processing of personal data must be restricted based on article 18 paragraph 1 point d of IKÜM until it is checked whether the legitimate reasons of the data controller outweigh the reasons of the data subject . The inspection considers that as long as there is no legal basis for disclosing the video, you must mark the video as private on Facebook (ie limit the video's availability and viewing to only yourself). If the processing of personal data does not comply with the conditions provided by law or the controller cannot prove it, the processing of personal data is prohibited. Therefore, XXX must either: 1) stop the disclosure of the video or 2) limit the disclosure of the video until the legality of the disclosure of the video has been proven to the inspection and the inspection has confirmed the legality of the disclosure of the video. The video must be restricted in such a way that only you can see the video on Facebook in the future. According to § 58(1) of the Personal Data Protection Act and Article 58(2)(f) of the General Regulation on Personal Data Protection, the inspectorate has the right to establish a temporary or permanent limitation of personal data processing, including a processing ban. Therefore, the inspectorate has the right to impose either a temporary or permanent processing restriction, including a processing ban, for the disclosure of the video. The facts are that XXX has published the video on Facebook and it has been seen by almost 40,000 people, the video has 1,300 comments and almost 1,000 shares. However, as long as XXX has not proven to the inspectorate that the requirements of IKS (§§ 4 or 11) or IKÜM (Article 6) have been met, the inspectorate considers that issuing a mandatory injunction to stop or limit the disclosure of the video is necessary in this case in order to stop the offense as soon as possible. /digitally signed/ Kirsika Berit Reino lawyer under the authority of the Director General