

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

made: 23.12.2022 Access restriction valid until: 23.12.2097; 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.-1/22/2682 Issuer of the injunction Data Protection Inspectorate lawyer Alissa

Hmelnitskaja Time and place of issuing the injunction 23.12.2022 in Tallinn Recipient of the injunction - personal data

processor XXX address: XXX e-mail address: XXX RESOLUTION: Paragraph 56 of the Personal Data Protection Act (IKS) 1,

paragraph 2 point 8, § 58 paragraph 1 and on the basis of Article 58 paragraph 2 points f and g of the General Regulation on

the Protection of Personal Data (IGPR), as well as in accordance with Article 6 of the General Regulation on Personal Data

Protection, I issue a mandatory order for compliance: 1. Delete the personal data of YYY in the posts made by XXX on

Facebook, including in Facebook groups "XX" and "XX". I set the deadline for the execution of the injunction as 09.01.2023.

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 set deadline, the Data Protection Inspectorate will impose an

extortion fee 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 CIRCUMSTANCES: The Data Protection Inspectorate has a

complaint from YYY (complainant) regarding the fact that you have published his personal data through your Facebook

account in various groups. In the posts made, the applicant's full name is published along with a photo of him. In addition, screenshots with the full name of the complainant have been added to the posts. On XXX 29.11.2022, AKI made proposal No. 2.1.-1/22/2682 to stop disclosing the applicant's personal data on social media and to send a confirmation of this to the inspectorate no later than 06.12.2022. In addition, the proposal stated that if XXX does not agree to the proposal, then it must be explained to him by 06.12.2022 at the latest, on what legal basis and purpose and reasons he is disclosing the applicant's personal data. Due to the fact that AKI has not received a response by the set deadline, AKI made a repeated proposal on 12.12.2022, the deadline for which was 20.12.2022. XXX has not completed proposal No. 2.1.-1/22/2682 by the set deadline. As of 12/23/2022, the posts that are the basis of the dispute are up on social media.

FOUNDATIONS 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 applicant's personal data (full name, image) 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. IKÜM article 6 paragraph 1 p f IKÜM article 6 paragraph 1 point f i.e. in order to process personal data on the basis of 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 IKÜM 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. 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.¹ In the current case, it does not appear that the data processor can rely on a legitimate interest legal basis, as he has not submitted a legitimate interest analysis to the inspection.

2. 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. However, disputes arising in human relationships are in no way related to public interest, and the disclosure of personal information of a specific person contributes to the social debate.

3. § 10 of IKS § 10 of IKS can be used to disclose debtors' data, which stipulates that the disclosure of personal data related to a breach of debt relationship to a third party and the 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 fulfilled 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). Information on who has an overdue debt against whom, how much it is (including ancillary claims), when it occurred and what type of transaction is considered to be payment default data. In the current case, it does not appear that the posts are disclosing the debt of a specific person with the aim of protecting other persons from making bad deals. Even if it is assumed that the purpose of the posts corresponds to § 10 of the IKS, the assumption that the controller would have checked the legal basis for the transfer of personal data remains unfulfilled. 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. At the moment, it does not appear that there is a legal basis for the disclosure of the applicant's personal data. Therefore, it must be recognized that personal data has been processed without a legal basis, therefore XXX must stop publishing posts containing YYY's personal data on

social media. 1 AKI's Legitimate Interest Guide, page 6. Available online:

https://www.aki.ee/sites/default/files/dokumendid/oigustuat_huvi_juhend_aki_26.05.2020.pdf According to IKS § 58, paragraph

1 and IKÜ, art. 58, paragraph 2 p f and g, the inspectorate has the right to issue an order to limit the processing of personal

data. Taking into account that in a specific case, the personal data of a natural person is disclosed illegally and that XXX has

not complied with the proposal of the Data Protection Inspectorate dated 29.11.2022, the inspectorate considers that issuing a

mandatory injunction in this case is necessary in order to stop the offense as soon as possible. (digitally signed) Alissa

Khmelnitskaja lawyer under the authority of the Director General