

FOR PRIVACY PROTECTION AND STATE TRANSPARENCY Tatari tn 39 / 10134 Tallinn / 627 4135 / info@aki.ee /

www.aki.ee Registration code 70004235 PRELIMINARY WARNING in personal data protection case no. 2.1.-4/22/2585

Injunction maker Data Protection Inspectorate lawyer Geili Keppi Time and place of injunction 06.12.2022 in Tallinn Addressee of injunction - personal data processor OÜ Laidoneri KV registry code 12955595 Viljandi county, Viljandi city, J. Laidoneri plats 8, 71020 e-mail address: park@parkhotelviljandi.ee Responsible official of the personal data processor Board member

RESOLUTION: Based on § 56 subsection 1, subsection 2 point 8, § 58 subsection 1 of the Personal Data Protection Act and article 58 subsection 2 point d of the General Regulation on the Protection of Personal Data (IKÜM), taking into account the articles of the Personal Data Protection Act 5, 6 and 12-14, I issue a mandatory injunction for compliance: Stop the use of cameras on the territory of OÜ Laidoneri KV until the following points are fulfilled: 1. a legitimate interest analysis has been prepared regarding the use of cameras in accordance with the instructions prepared by the Inspectorate and which meets the requirements of the IKÜM Approved by the Data Protection Inspectorate; 2. data protection conditions have been drawn up, the compliance with the requirements of IKÜM has been confirmed by the Data Protection Inspectorate. I set the deadline for the fulfillment of the injunction as 20.12.2022. Report compliance with the order to the Data Protection Inspectorate by this deadline at the latest. REFERENCE FOR DISPUTES: This order can be disputed within 30 days by submitting either: - a complaint according to the Administrative Procedure Act to the Data Protection Inspectorate or - a complaint according to the Code of Administrative Court Procedure to the Tallinn Administrative Court (in this case, the complaint in the same case can no longer be reviewed). Challenging a precept does not stop the obligation to fulfill it or the implementation of measures necessary for fulfillment. PENSION MONEY WARNING: If the injunction has not been fulfilled by the set deadline, the Data Protection Inspectorate will impose a monetary penalty in the amount of 2,000 euros on the basis of § 40 (2) of the Personal Data Protection Act to the addressee of the injunction for non-fulfillment of each obligation in points 1-2. 2 (4) 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: On 28.10.2022, AKI initiated a self-initiated monitoring procedure, the purpose of which was to find out on what legal basis and for what purpose the legal entity OÜ Laidoneri KV, with registration code 12955595, uses cameras. OÜ Laidoneri KV explained in a letter sent on 02.11.2022 that Park Hotell Viljandi's cameras are visibly installed in the three outer corners of the building (the farm yard, the front door and the other side of the building), in the public rooms on

the first floor (the interior atrium and the restaurant) and in the kitchen located on the basement floor. Since AKI was not provided with the legitimate interest analysis carried out before the use of cameras, on 18.11.2022 AKI made a proposal to Laidoneri KV OÜ regarding the protection of personal data, including explaining that in its response to us, it was understood that Article 6, paragraph of the General Regulation on Personal Data Protection (hereinafter IKÜM) was based 1 point a, according to which the legal basis for the processing of personal data (use of video cameras) is the consent of individuals. As a result, the Data Protection Inspectorate proposed to OÜ Laidoneri KV to stop using video surveillance and to delete the existing recordings, since KV Laidoneri OÜ does not have a verified legal basis for using video surveillance, and to send a confirmation of this to the inspection no later than 24.11.2022. In the proposal, AKI explained, among other things, why consent given in employment relationships is not considered voluntary consent and why this legal basis cannot be relied upon when using cameras. OÜ Laidoneri KV responded to the proposal made by AKI on 21.11.2022 and continued to confirm that the use of cameras is still based on the consent of the employees; As it became clear during the supervision procedure that the signs informing about the cameras do not meet the requirements, the inspection, in the proposal made on 18.11.2022, asked to also create notification signs that meet the requirements, in case KV Laidoneri OÜ still wants to use video surveillance. The inspection was provided with pictures of notification labels, but these labels did not contain any reference to the purpose of the video surveillance, the legal basis and the controller. There was also no indication of where and how the customer/employee can find the data protection conditions. OÜ Laidoneri KV explained in the response to the inspection's proposal submitted on 21.11.2022 that in their opinion the existing notification signs are sufficient, as they are installed on the walls of the house and it is clear that they refer to the cameras in this house. However, on 29.11.2022, KV Laidoneri OÜ transmitted pictures of notification labels, which were created with the video surveillance label generator developed by the Data Protection Inspectorate. PERSONAL DATA PROCESSOR'S EXPLANATION: In the response to AKI's proposal submitted on 21.11.2022, KV Laidoneri OÜ explained, among other things, the following: "As I have repeatedly explained, the people working in our building have given verbal consent (you may be surprised, but completely voluntarily) that they understand the purposes for which our surveillance cameras in the house. The aim is to ensure the safety of the people staying in the territory and the house. Notification signs have been installed and photos have been sent to you. Notification signs are installed on the walls of the house (referring to video surveillance) and it can be read from there that they refer to this house, as they are installed on the walls, doors, fence and 3 (4) interior rooms of the house. In the previous answers, there

was never any indication that the notification signs should have the additional information mentioned in your last letter, and I also have not come across any video surveillance signs in the cityscape of Viljandi with additional information: the purpose of the processing, the legal basis, the name and contact details of the data controller, and information where you can familiarize yourself with the data protection conditions

FOUNDATIONS FOR THE DATA PROTECTION INSPECTION:

1. According to Article 5 of the General Regulation on Personal Data Protection (GPR), data processing must be legal. The processing of personal data is legal only if there is one of the legal grounds listed in Article 6 of the TOU.
2. According to article 6 paragraph 1 of IKÜM, the processing of personal data is legal only if there is a legal basis provided for in the said article. In an employment relationship, as a rule, the processing of personal data can be legal if it is related to the fulfillment of contractual obligations or obligations arising from the law for the employer, or if it is a legitimate interest of the employer or a third party. Hereby, we note that the fulfillment of contractual obligations can be relied upon only in the case of processing operations that are actually necessary for the employer to fulfill the employment contract, which the use of cameras certainly cannot be. There is also no obligation arising from the law that would oblige KV Laidoneri OÜ to use camera surveillance in this case. Therefore, in this case, the use of cameras is possible only in the case of legitimate interest (IKÜM art. 6 paragraph 1 p f). However, when relying on a legitimate interest, a legitimate interest assessment regarding the use of cameras must have been carried out. Information about this was sent by AKI in its proposal No. 2.1.-4/22/2585 made on 18.11.2022. In addition, in the mentioned proposal, AKI also explained why the use of cameras cannot be based on the consent of employees.
3. Since the monitoring of persons by means of a camera infringes on privacy to a significant extent and their use is only possible if there is a legitimate interest, it is important that a legitimate interest assessment has been carried out, which shows that the interest of the data processor outweighs the interests or fundamental rights and freedoms of the data subject. In a situation where this is not the case, the use of cameras is also not allowed. According to article 5 paragraph 2 of the GDPR, the data processor must prove the legality of data processing. We have explained how to assess the legitimate interest in the guide.
4. The assessment of legitimate interest is not just for filling out forms. Its purpose is to explain why it is necessary to use so many cameras and in such locations in a way that everyone can understand. What purpose do cameras serve and why no other measure is sufficient. The objectives must be stated precisely, e.g. an abstract reference to "monitoring processes" or "ensuring security" is not appropriate. If the camera is used to protect property, it must be described exactly what the threat to the property is and why this threat is realistic (references to previous incidents). Cameras cannot be used due to a hypothetical threat. All the

purposes for which the cameras are actually used must be written down. 5. Then it is necessary to specifically justify why the cameras are installed in such places and which cameras are used. To reduce the interference caused by camera tracking, they need to be directed only at a specific problem area. Unnecessary part of the camera's field of view must be blurred or covered. 6. Once the above is done, it is necessary to explain what effect the cameras have on the employees. How long the recordings are kept and who has access to them also affects the extent of the encroachment on employees' rights. Among other things, the stress caused by being under constant surveillance must also be taken into account. 7. AKI explained in the proposal, among other things, that the legal basis of consent cannot be relied upon in an employment relationship, as it is a subordinate relationship, and in such a case it is unlikely that the person gave consent voluntarily. The European 4 (4) Data Protection Board has also reached the same conclusion in its guideline, which deals with the processing of personal data through video devices ("Guidelines 3/2019 on processing of personal data through video devices"), and the Data Protection Inspectorate is based on the guidelines of the European Data Protection Board. In addition, we also explained that if a situation were to arise (in the example of OÜ KV Laidoner) where an employee does not give his consent to the processing of his data or withdraws it later (this right derives from Article 7 paragraph 3 of the IKÜM), then theoretically he should not be in the field of view of the camera either. get caught, which is why the employer has the obligation to close the camera every time the employee gets in front of the camera (which is impossible in reality). In addition, the use of consent in the case of cameras is also problematic because persons who are not employees are also in the field of view of the cameras and it is vitally implausible that KV Laidoneri OÜ, as a data processor, obtains consent from these persons every time. In the current case, the use of cameras is therefore without a legal basis - illegally. 8. In the case of using cameras, proper notification signs must also be installed, with a more precise reference to the data protection conditions of the data processor. KV Laidoneri OÜ explained in the initial response to AKI that, in their opinion, the notification signs were suitable because they were installed on the wall of the house and therefore it was clear that they were about this house. In addition, according to KV Laidoneri OÜ, AKI has not referred to the information that must be on the information signs before making the proposal. Here we note that AKI already referred to the video surveillance label generator developed by AKI in the first inquiry. The notification label must contain information about who is the responsible processor, what is the purpose of personal data processing and its legal basis, as well as the contact details of the responsible processor. On 29.11.2022, KV Laidoneri OÜ provided the inspection with pictures of the new installed signs, which show that the necessary information is available on the signs. However, it is

confusing that the labels refer to a legitimate interest basis as a legal basis. At the same time, KV Laidoneri OÜ has repeatedly indicated during the proceedings that the use of video surveillance is based on the consent of individuals. 9. Taking into account the above, at this moment the processing (filming) of personal data by OÜ KV Laidoner is illegal, as it does not meet the requirements of 5, 6, 12 and 13 of IKÜM. 10. According to IKS § 58 paragraph 1 and IKÜM article 58 paragraph 2 points d and f, the inspectorate has the right to order that the data processor bring personal data processing operations into compliance with the provisions of IKÜM in a certain way and within a certain period of time, the right to establish a temporary or permanent limitation of personal data processing, incl. processing ban. 11. At the end of the proposal, AKI drew attention to the fact that the Data Protection Inspectorate has the right, in accordance with IKS § 56 (2) point 8, § 58 (1) and on the basis of Article 58 (2) of the General Regulation on Personal Data Protection, to issue an injunction to the personal data processor if the personal data processor has violated the personal data protection processing requirements. 12. Taking into account the circumstances that personal data is currently being processed illegally and OÜ KV Laidoneri has not shown a willingness to bring the data processing into line with the requirements set out in the IKÜM, the inspection considers that issuing a mandatory injunction in this case is necessary in order to end the infringement as soon as possible and to ensure the privacy of individuals protection. Therefore, the inspection makes a mandatory order to stop the use of surveillance cameras on the territory of OÜ KV Laidoner until the company fulfills the obligations imposed by the IKÜM to perform such data processing. (digitally signed) Geili Kepp's lawyer under the authority of the Director General