

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.-1/23/2900-10

Injunction maker Data Protection Inspectorate lawyer Kirsika Kuutma Time and place of injunction 02.02.2023 in Tallinn

Recipient of injunction - personal data processor XXX address: XXX Pärnu e-mail address: XXX RESOLUTION: Personal Data Protection Act (IKS) § 56 (1) and (2) point 8, § 58 (1) and Article 58 (1) point d and (2) points d and f) of the General Personal Data Protection Regulation (GPR), as well as taking into account Articles 5 and 6 of the GPR, the Data Protection Inspectorate issues a mandatory injunction to comply with XXX: 1. stop filming with all cameras outside your own property (either by dismantling the camera(s) or directing them so that only your own property remains). If the cameras are redirected, send the photos of the camera image to the Data Protection Inspectorate to check the scope of the area; 2. delete existing recordings. Alternatively, with regard to the camera(s) filming the public area, stop filming with the camera until a legitimate interest analysis and data protection conditions have been drawn up regarding the use of the camera(s), they have been forwarded to the Data Protection Inspectorate, and the inspectorate has confirmed their compliance with the requirements. I set the deadline for the fulfillment of the injunction to be 17.02.2023. Report the fulfillment of the injunction to the e-mail address of the Data Protection Inspectorate at info@aki.ee by the given deadline at the latest. REFERENCE FOR DISPUTES: This order can be contested within 30 days by submitting either: - a complaint under the Administrative Procedure Act to the Data Protection Inspectorate or - a complaint under the Administrative Court Procedure Code to the administrative court (in this case, the inspectorate can no longer review the dispute in the same case). Challenging a precept does not stop the obligation to fulfill it or the implementation of measures necessary for fulfillment. PENSION FINE WARNING: If the injunction has not been fulfilled by the specified deadline, the Data Protection Inspectorate will impose a penalty of 800 euros on the addressee of the injunction on the basis of § 60 of the Personal Data Protection Act: 2 (6) For each unfulfilled item. 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 (AKI) received a complaint from the owner of a private house at the address XXX in Pärnu regarding the fact that his neighbor, XXX, has installed a surveillance camera on his house, which is aimed at his property and public space. The applicant believes that the use of the camera violates his rights. The applicant has repeatedly appealed to XXX because the use of the camera violates his rights and has repeatedly asked not to film his property. Pictures are also attached to the complaint, which show the surveillance camera installed on the XXX building and the camera image, which is aimed at the public road and neighboring properties. As a result of the complaint, the inspectorate started the supervision procedure on the basis of IKS § 56 (3) point 8, within the framework of which XXX submitted an inquiry and a proposal in the matter of personal data protection on 20.01.2023. The inspectorate proposed to stop filming neighboring properties and public areas by 06.02.2023 at the latest (either by dismantling the camera(s) or directing it so that only the processor's own property remains) and to send a confirmation to the inspectorate at [info@aki.ee](mailto:info@aki.ee). Among other things, the inspectorate explained in its follow-up inquiry that filming in public space is permitted if the conditions of legitimate interest are met and emphasized that there cannot be any legal basis for filming neighboring properties. **EXPLANATIONS OF THE PROCESSOR OF PERSONAL DATA:** On 20.01.2023, XXX responded to the inspection's proposal and sent photos showing the scope of the camera images (4 cameras in total) and confirmed that he has installed cameras on his property, which partially also film neighboring properties and the public area. The person did not provide a confirmation to the inspectorate that he would stop filming neighboring properties and public spaces or that he would direct the cameras so that only his own property remained. Regarding the complainant's complaint, XXX found that since XXX's house is far from his house, he does not consider it necessary to cover this part. He also did not provide the inspection with an analysis of his legitimate interest in filming a public space, but only pointed out that the cameras were installed to protect his property, property and family, including giving an example of a situation where his car had previously been rear-ended on a public road. **REASONS FOR THE DATA PROTECTION INSPECTION:** 1. Processing of personal data 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 (see IKÜM Article 4, point 1). The use of security cameras will inevitably lead to the processing of personal data if people are within its field of view, because with the help of cameras a person can be identified in any case, and 3 (6) the requirements stipulated in the IKÜM must be followed. The controller of personal data (the owner of the private house that installed the cameras) is obliged to follow the principles set forth in Article 5, paragraph 1 of the

IKÜM. The responsible processor himself is responsible for the fulfillment of these principles and must be able to prove their fulfillment (see IKÜM Article 5 paragraph 2). To the extent that data processing does not fully comply with the principles set forth in Article 5, paragraph 1 of the IKÜM, data processing is prohibited. The use of cameras must be based on, among other things, the following principles of personal data processing: 1. Legality, fairness and transparency (Article 5 paragraph 1 point a) of the General Data Protection Regulation. Any processing of personal data must be fair and legal, i.e. fully in accordance with all valid legislation (including IKÜM and IKS). Data processing must also be transparent. The principle of transparency requires that all information related to the processing of personal data is easily accessible, understandable and clearly formulated for the data subject. This primarily concerns the notification of data subjects in order to ensure fair and transparent processing. Informing people is more precisely regulated by articles 12 - 14 of the IKÜM. Articles 13 and 14 of the IKÜM outline what information given to a person must contain as a minimum. The use of cameras must be based on the requirements of Article 13 of IKÜM. 2. Purpose and Storage Limitation. Collecting as little data as possible (ICYM article 5 paragraph 1 points b, c and e). In order to assess whether the use of cameras complies with the principle of purpose limitation and the collection of as little data as possible, it is necessary to: - list all specific purposes; - to assess whether the use of cameras is necessary for the fulfillment of the stated objectives or whether there are other measures that are less intrusive to the data subject. 3. Personal data is processed in a way that ensures the appropriate security of personal data, including protection against unauthorized or illegal processing (Article 5(1)(f) of the GDPR). The processing of personal data must be stopped and the data deleted or transferred to a non-personalized form if there is no legal basis for processing personal data and/or the purposes for which they were collected have been fulfilled. Based on the principles of purposefulness and collecting as little data as possible, the camera(s) must be directed to specific security risks. 2. Preparing a legitimate interest analysis

The processing of personal data is legal only if at least one of the conditions set forth in paragraph 1 of Article 6 of the IKÜM is met. Thus, personal data may be processed if there is a legal basis for this arising from points a - f of Article 6 (1) of the IKÜM. Regarding the use of security cameras, natural persons are subject to an exception for personal purposes, which only applies when filming an area they own (e.g. the yard of their own private house). In the 2014 decision C-212/131 of the European Court of Justice, it was found that the use of a camera system installed by a natural person on a private house for the protection of property and persons does not take place only for personal purposes, if such a system also monitors a public space (e.g. a public street) or someone else's property. In this case, according to the court's decision, it is no longer

considered as filming for personal purposes, and there is no basis for filming outside the property area. For example, if a person films his private road, but it has been given to public use or an easement has been set up for the benefit of someone else, then the exception for personal use can no longer be relied upon. According to the judgment of the European Court, a stationary camera contains the risk of profiling people (the camera may repeatedly monitor the activity of a specific person who remains in view)<sup>2</sup>. Therefore, there is no legal basis for filming properties belonging to other persons that would allow them to infringe on their right to privacy, and neighboring properties have the right to demand the termination of personal data processing (IKÜM art. 17 paragraph 1 point d). In connection with the filming of a public space in the field of view of cameras, it is possible to use as a legal basis Article 6(1)(f) of IKÜM (legitimate interest). On 20.01.2023, in the response to the inspection's proposal, XXX justified that the filming of public space is necessary for the protection of his property, property and family. As an example, he mentioned an incident that happened earlier, where his car was reversed on a public road. Article 6 paragraph 1 point f of IKÜM stipulates three conditions, all of which must be met at the same time in order for the processing of personal data to be permitted on the basis of a legitimate interest: - the controller or third parties have a legitimate interest in data processing; - the processing of personal data is necessary for the exercise of a legitimate interest; - the legitimate interests of the controller and/or third party outweigh the interests, fundamental rights and freedoms of the protected data subject. The possibility of using the said legal basis and its assessment can be graphically divided into three stages, i.e. firstly, the legitimate interests of the personal data processor or third parties and their importance, secondly, the rights and interests of the data subject and their importance, and thirdly, the weighing of conflicting interests, including a preliminary assessment + additional protective measures, if necessary, and a final assessment. 4 Based on the above, the owner of the private house who installed the cameras has the obligation to compare his legitimate interests with the interests and fundamental rights of persons (or data subjects) moving in public space, as a result of which it becomes clear whether it is possible to rely on IKÜ Article 6(1)(f) as the legal basis for processing. The fact that the owner of a private house has a legitimate interest in processing personal data does not automatically mean that he can rely on the legitimate interest as a legal basis for filming. The justification of the interest of the owner of a detached house is only a starting point, i.e. one of the elements that must be analyzed, and whether the legitimate interest can be relied upon depends on the result of the balancing. It is the responsibility of the owner to make sure whether the provision of legitimate interest can be relied on, who must carry out the consideration in a transparent manner and be able to justify (prove) it. Therefore, in order to understand whether it is possible to use a camera

filming a public area based on IKÜM Article 6(1)(f), XXX must prove whether and what his legitimate interest is and that it outweighs the rights of data subjects. This also requires reviewing the camera's field of view (e.g. only the possible area where he parks his car should remain), the recording time must be kept to a minimum, etc. The legitimate interest must be formulated clearly enough. This requires a real and present interest – something related to an activity currently taking place or a benefit expected to be received in the near future. In other words, interests that are too vague or speculative are not enough. If the legitimate interest is not formulated clearly enough, it is not possible to balance said interests with the fundamental rights of third parties. Therefore, it is important that the legitimate interest is in accordance with the current legislation, formulated clearly enough (i.e. 2 Request for a preliminary ruling from the European Court of Justice of 11 December 2014 in the case of František Ryneš v Úřad pro ochranu osobních údajů, application no. C-212/13; 3 IKÜM Article 6 According to paragraph 1 point f, the processing of personal data is legal if the processing of personal data is necessary due to the legitimate interest of the data controller or a third party, unless such interest is outweighed by the interests of the data subject or the fundamental rights and freedoms for which personal data must be protected. 4 Data protection Guide to the legitimate interest of the Inspectorate: [https://www.aki.ee/sites/default/files/dokumendid/oigudustu\\_huvi\\_juhend\\_aki\\_26.05.2020.pdf](https://www.aki.ee/sites/default/files/dokumendid/oigudustu_huvi_juhend_aki_26.05.2020.pdf) 5 (6) sufficiently specific) and real and currently occurring (i.e. not speculative). Secondly, it is necessary to analyze the possible interests or fundamental rights and freedoms of data subjects (moving in public space) that may be harmed by the processing of personal data. Third, the legitimate interest of XXX must be balanced with the interests and fundamental rights of data subjects. In doing so, the possible impact on the data subject from the processing (collection, use, storage) of personal data is compared with the legitimate interests of the owner of the private house, and it is assessed whether and to what extent the legitimate interest of the owner outweighs the interests of the data subjects. We emphasize that the legitimate interest of the owner of a private house does not automatically outweigh the interests related to the fundamental rights and freedoms of the protected data subjects. In the event that the data processor (owner of a private house) fails to perform one of the previous steps correctly, data processing is not permitted on the basis of Article 6(1)(f) of the IKÜM, and the inspectorate has the right to prohibit further processing of personal data. It must also be taken into account that the analysis of legitimate interest must be documented and it must be possible for anyone to consult it at any time (see article 13 paragraph 1 point d of the IKÜM), and the analysis of legitimate interest must be prepared separately for each camera filming a public space (including the so-called door eye camera, if a public space is within its line of sight). Also, the preparation of a correct legitimate interest analysis and the

installation of a sign informing about the camera also require the preparation of data protection conditions. 3. Drafting of data protection conditions Data processing must be transparent. The principle of transparency requires that all information and messages related to the processing of personal data are easily accessible, understandable and clearly worded. In other words, data protection conditions must be drawn up. The content of the data protection conditions is regulated by articles 12 - 14 of the IKÜM. Hereby, we emphasize that all information provided in articles 13 -14 of the IKÜM must be regulated in the data protection conditions. If any of the provisions of the aforementioned articles remain unclear, we recommend that you also familiarize yourself with the guidelines of the Article 29 working group on transparency<sup>5</sup>, where the content of the points stipulated in Articles 13 - 14 of IKÜM is explained in more detail on pages 35 - 40. Here we explain that every processor of personal data must have data protection conditions that regulate the activities of a specific personal data processor. At the same time, the conditions for the use of cameras must also be regulated. In a situation where cameras are used, the data protection conditions or cameras must be based on Article 13 of the IKÜ, i.e. the conditions must reflect, among other things, the following: - the purposes and legal basis of personal data processing; - legitimate interest analysis or information on how it is possible to consult the legitimate interest analysis; - recipients of personal data (e.g. name of the owner of a private house); - period of storage of personal data (term of storage of camera recordings); - information on the right to request access to personal data and their correction or deletion or restriction of processing of personal data and to object to the processing of such personal data, as well as information on the rights to transfer personal data; - information on the right to file a complaint with the supervisory authority. Article 13 of the IKÜM stipulates that the data controller shall inform the person 5 [https://www.aki.ee/sites/default/files/inspektsioon/rahvusvaheline/juhised/suunised\\_maaruse\\_2016679\\_kohase\\_labipaistvuse\\_kohta.pdf](https://www.aki.ee/sites/default/files/inspektsioon/rahvusvaheline/juhised/suunised_maaruse_2016679_kohase_labipaistvuse_kohta.pdf) 6 (6) of all the information prescribed in Article 13 when receiving personal data. In the case of video surveillance, the most important information should be presented on the notification label: the purpose of the processing, the legal basis, the name and contact details of the data controller, and information where the data protection conditions can be found.<sup>6</sup> 4. The retention period of the camera recording, the European Data Protection Board has outlined the following in its guidelines 3/2019 on the processing of personal data in video devices: 7"Taking into account the principles set out in Article 5(1)(c) and (e) of the General Data Protection Regulation, namely the collection of as little data as possible and the limitation of storage, personal data should in most cases (e.g. to detect vandalism) be deleted - ideally automatically - after a few days. The longer the prescribed retention period (especially if it is longer than 72 hours), the more the legitimacy of the purpose and the

necessity of retention must be justified. If the controller uses video surveillance not only to monitor its premises, but also intends to store the data, the controller must ensure that the storage is actually necessary to achieve the purpose. If storage is necessary, the storage period must be clearly defined and established separately for each specific purpose. The controller is responsible for determining the retention period in accordance with the principle of necessity and proportionality and for proving compliance with the provisions of the General Regulation on the Protection of Personal Data. Therefore, in a situation where a longer retention period does not arise from the special law, the retention period of 72 hours should generally be used. We also emphasize here that the longer the recordings are stored, the greater the impact is on the persons who were left on the recordings. Summary: 1. XXX must stop filming outside his property (either by dismantling the camera(s) or directing it so that only his own property remains) and send a confirmation of this to the inspection and photos from the camera image of all cameras to check the scope of the field of view; 2. If XXX wants to leave a camera filming in a public area, then the filming must be stopped until a correct legitimate interest analysis has been prepared that meets the conditions set forth in Article 6(1)(f) of IKÜM (see point 2 of the inspection's reasons) and data protection conditions that meet Article 12 of IKÜM and 13 requirements (see points 3 of the inspection's reasons), and the inspection has confirmed their legality. We emphasize that the analysis of the legitimate interest must be so clear that it is possible to understand why the processor actually uses the cameras and what he has done so that the rights of other persons are not excessively harmed; 3. XXX existing recordings must be deleted and confirmation of this sent to the inspection. (digitally signed) Kirsika Kuutma lawyer under the authority of the general director 6 You can find information about the camera notification label here:

<https://www.aki.ee/et/teavitus-juhised/videovalve-korraldajele/kas-teie-videovalve-nouab-teavitussilti> 7 [https://](https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_201903_video_devices_et.pdf)

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