

Tatari tn 39/10134 Tallinn / 627 4135 / info@aki.ee / www.aki.ee Registry code 70004235 PRECAUTIONS-WARNING in personal data protection matter no. 2.1.-1/21/2225 Preceptor Lawyer of the Data Protection Inspectorate Kirsika Berit Reino

Time and place of precept Tallinn Recipient of precept - processor of personal data XXX address: XXX e-mail address: XXX

RESOLUTION: Protection of Personal Data (KorS) § 28 (1) pursuant to § 56 (1), (2) (8) of the Personal Data Protection Act and Article 58 (2) (c) of the General Regulation on the Protection of Personal Data : XXX Stop publishing XXX personal information to your Facebook account. I set the deadline for compliance with the precept on 06.09.2021. Notify the Data Protection Inspectorate of the e-mail address info@aki.ee about the fulfillment of the precept by the deadline. CONTEST

REFERENCE: This precept can be challenged within 30 days by submitting either: - a challenge under the Administrative Procedure Act to the Data Protection Inspectorate, or - an appeal under the Code of Administrative Court Procedure to the Tallinn Administrative Court (in which case the challenge can no longer be heard). Contestation of a precept does not suspend the obligation to comply with the precept or the application of the measures necessary for compliance. PENALTY OF

WARRANTY: If the precept is not complied with by the specified term, the Data Protection Inspectorate shall impose a penalty payment of 500 euros on the addressee of the precept on the basis of § 60 of the Personal Data Protection Act. The penalty payment may be imposed repeatedly - until the precept is complied with. If the addressee does not pay the penalty payment, it is forwarded to the bailiff to start enforcement proceedings. In this case, the bailiff's fee and other enforcement costs are added to the penalty payment. FACTUAL FACTS: The Data Protection Inspectorate (AKI) received a complaint from XXX (hereinafter also the complainant) according to which XXX (hereinafter also the poster) had disclosed the personal data of the complainant in the comments 2 (7) of his post on 19.05.2021 on his Facebook account. AKI checked the information provided in the complaint and found that on 19.05.2021 XXX has made a public post on his Facebook account regarding his experience with food ordered from Selver. In the comments to the post, XXX has disclosed XXX's personal information on behalf of Selver's customer support (name and information about the person's social media accounts and what is published on them). On 29.07.2021, the Data Protection Inspectorate proposed to the poster to delete the personal data of the complainant from the comments of the post on 19.05.2021. Alternatively, if AKI disagreed with the proposal, AKI asked the poster to submit his objections. XXX replied to AKI by e-mail on 04.08.2021. EXPLANATION OF THE PERSONAL DATA PROCESSOR: The legal basis for the publication of personal data is journalistic activity. There is clearly a public interest in Selver's food safety. As part of their job, a specific Selver employee, XXX, decides which complaints to handle and how. He may not be Selver's "legal

representative" in the sense that he is not a member of the board, but he is clearly in a key position to address food safety issues, so there is a clear public interest in his work activities, decisions and possible backgrounds. Similarly, if we compare, for example, the recent case of the Health Board's vaccine warming up, there is clearly a public interest in the decisions and decision-makers whose actions led to the error. Food safety and pharmacovigilance are both issues of strong public interest, as they directly affect the lives and health of hundreds of thousands of people. The role of the press in a democratic society is to publicly analyze the decisions that led to such mistakes and their background, not to hide the culprits and cover up the root causes of the problem. Journalistic activity in such matters inevitably includes an analysis of the privacy of problematic decisions and decision-makers, where such privacy may have had a significant impact on the decisions made. Of course, facts about a person's private life that have no contact with the background to decisions that are in the public interest must not be disclosed here. I haven't done that either. I have not disclosed any personal information about XXX that does not relate to a subject of clear public interest. Analyzing XXX's answers, I got the strong impression that there is no empathy in his answers and that the person is deeply indifferent to food safety issues. I got severe food poisoning, but XXX responded to me with stamp answers that they were fine with food safety and listed a number of unrealistic actions I would have to take when receiving goods in order for them to handle any of my complaints at all. Following his instructions would mean that each incoming product would have to be inspected next to the van in the presence of a courier and the texture, taste and possible spoilage of each product analyzed. Any problematic product must be photographed, a written description of the problem must be included, the product must be patiently returned to the courier waiting next door, and they will not accept any subsequent complaints. As the later correspondence with Selver revealed, the information provided by XXX was incorrect, the courier's time does not have to be wasted with ridiculous actions, and Selver is ready to accept later complaints if they get the goods in their possession to analyze it. As a person who was responsible for food safety for me (and other Estonians), whose answers gave me a reasonable impression that he was an empathetic person and indifferent to his duties, I began to investigate his background in the framework of journalistic activities based on public sources. In addition to the information published, I also found a wealth of information that would be embarrassing to disclose to a person, but which was not of any relevance to his or her food safety decisions 3 (7). In the present case, in the context of my journalistic activities, I have only disclosed public data relating to XXX which substantiates and explains my impression that he is a non-empathetic person who is inadequate to deal with food safety issues. As the lack of empathy for the client and the lack of empathy for the job can be caused by deep

depression and conflicts with the employer, I limited myself to disclosing personal information that justified the impression. For example: - The fact that XXX reads and fans depressive literature illustrates and explains the impression in the correspondence that he is a person with little empathy, because depression is often accompanied by anhedonia, or an inability to experience emotions. - The fact that XXX still presents himself on LinkedIn as Selver's "XXX" (his previous job, which he said was not suitable and where he was fired) shows that a person may be angry with his employer because he does not agree with Selver's assessment that he is not eligible for "XXX" and is still hiding his change from the public. - The fact that XXX has created and published a presentation clearly stating that he does not like his job and that his salary is too low illustrates and explains the impression in his correspondence that he is indifferent to his job and food safety. - The fact that XXX has created and published a short film, the plot of which can be summed up with the words "if you have eaten real food, you don't even want Selver's food for free" once again illustrates and explains the impression in the correspondence that he is reluctantly and indifferently. I also received an open oral confession from one of the Selver couriers who later delivered the goods to me that problems with refrigeration equipment are quite common in Selver and food safety officials at Selver are so indifferent that he once had to write an evil letter to the board. times because no automatic system was in place to detect such problems. I forwarded the hint I received to the Food and Agriculture Authority, which is still processing this hint. As for the need to justify to AKI that my disclosure of personal information is not unduly harmful to a person, I would point out that my public post cannot be found by Google's search engine, even using a restricted search in the "site: facebook.com XXX XXX" style. or search for "" XXX "" XXX "", which should find all content that contains both me and his name. A post (which did not contain XXX personal information) and subsequent comments (which contained personal information and correspondence) cannot be retrieved in any reasonable way, even by someone who wants to do a thorough background check on XXX.

Realistically, about a dozen people on my friends list have read all the correspondence published in the comments, including XXX personal information. Just in case, I'm referring to a specific post here, because it's really hard to find afterwards: XXX.

GROUNDS FOR THE DATA PROTECTION INSPECTORATE: As can be seen from the complaint, the complainant has applied to the poster on 13.06.2021 and 15.06.2021 for the deletion of personal data in XXX posts and comments. The poster has responded to XXX's request on 18.06.2021, refusing to delete the personal data and also indicating that the personal data has been disclosed pursuant to the exception for journalistic activities. Pursuant to § 4 of the IKS, personal data may be processed for journalistic purposes without the consent of the data subject, in particular in the media, if this is in the public

interest and in accordance with the principles of journalistic ethics. Disclosure of personal data must not unduly prejudice the rights of the 4 (7) data subject. This means that the disclosure of personal data must meet the following three conditions cumulatively: - there is a public interest in the disclosure of personal data; - disclosure is in accordance with the rules of journalistic ethics; - the disclosure of personal data must not unduly prejudice the rights of the data subject. Journalistic purpose The poster stated in his reply to the AKI that the legal basis for the disclosure of personal data is journalistic activity. The Inspectorate admits that Selver's food safety issue on the poster's personal Facebook page has been published for journalistic purposes. The aim of the press is to provide information and promote debate on a topical and necessary topic in society<sup>1</sup>. The publication of Selver's replies is permitted and would not have required the intervention of the executive. At the same time, the purpose of journalism is not fulfilled if the details of someone's private life are published, which in no way contributes to the public debate (the so-called yellow press). Selver's focus on food safety is a journalistic goal, but it is not necessary to create a public debate in society about the person who responded on behalf of the company, because the debate on Selver's food quality and safety can be held without naming the person's press. I. Public interest Disclosure of personal data must not unduly prejudice the rights of the data subject. In addition to the legislation, the case law of the European Court of Human Rights (ECtHR) imposes an obligation to distinguish between public interest issues (currently food safety) and specific individuals. The public interest in food safety does not mean that the personal data of all persons involved in Selver's food safety can automatically be disclosed. The Supreme Court has clarified in the above-mentioned decision in administrative matter no. Disclosure of personal data is not justified by mere private interest or thirst for sensation. According to the case law of the Court of Justice and the Supreme Court, the degree of public interest in a person's private life varies and depends on what the person is doing (official, politician, businessman) or how much he or she has placed himself or herself in the 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 or her. The public interest in orbit is primarily public figures and people who have entered the public sphere due to some of their activities. Public figures are headed by members of government and parliament, followed by other politicians<sup>2</sup>. In addition to politicians, a public figure can also be a person who 1) possesses economic power and information important to the public, 2) can influence politics, economic and social choices, 3) earns a living by exhibiting his or her person or work. 1 RKHKo 23.03.2016 in Administrative Case No. 3-3-1-85-15, p. 23. 2 D.Voorhoof, Freedom of Expression under the European Human Rights System, 2010. 5 (7) In all other cases where there is no public life character, it must be assessed in

each individual case whether the disclosure of the personal data of the data subject in a personalized form is indispensable to cover the case, or whether the journalistic purpose can be achieved without it. In the present case, it must be assessed whether the fact that the person replied to the sender's e-mail has aroused such a public interest in the person that his or her personal data must be disclosed in order to fulfill a journalistic purpose. It must therefore be assessed whether the disclosure of the personal data of the company's customer support staff outweighs the applicant's interest in privacy, given that the customer support staff did not put herself in the public interest. In the comments on the post, the poster has disclosed the following personal data about the complainant: 1) the Goodreads account of the books read by the complainant; 2) a presentation about Selver AS made on the person's Prezi account; 3) video in the Youtube video environment; 4) A person's account on the LinkedIn platform. The publication of the above data and the drawing of conclusions from them do not add value to the public debate on Selver's food quality, as the purpose of the debate was to point out whether Selver sells substandard fish. The kind of literature a customer service representative reads cannot be related to the quality of food Selver sells. Even if it had been unprofessional customer service, the disclosure of such information is not justified, as the customer service representative has a right to privacy.

II Ethics of Journalism Clause 1.2 of the Estonian Code of Ethics for Journalists. According to the press, the press serves the public's right to receive truthful, honest and comprehensive information about what is happening in society. The principles of journalistic ethics include, but are not limited to, the independence, impartiality, balance, controllability of material and information, and the ability to object. Based on the reading preferences of the other person or the ratings recorded in the books, no decision can be made about his or her health data (depression and anhedonia on the basis of the books read in the poster's diagnosis). Moreover, a person's health data is a special type of personal data (according to the previous wording, it is treated as sensitive personal data in Estonia), the processing of which is prohibited on the basis of Article 9 (1) of the CISA. Clause 4.6 of the Code of Ethics published on the website of the Estonian Association of Media Companies. Data and opinions on the state of health (both mental and physical) of specific individuals shall not be disclosed unless the individual consents to the disclosure of the information or the disclosure of such information is required by the public interest. Section 4.9 of the Code of Ethics. According to the Commission, material that violates a person's privacy is disclosed only if the public interest outweighs the person's right to privacy. There are no links between the health condition diagnosed by the sender and the quality of the food sold by Selver AS, as a result of which the Inspectorate has identified a conflict with the Code of Ethics for Journalists.

III. Excessive infringement of the complainant's rights For the purposes of

journalism, the controller must analyze whether the processing does not involve an excessive infringement of the data subject's rights and freedoms. If the rights and freedoms of the data subject are violated, but it is not excessive, the processing of personal data is allowed. The Supreme Court has clarified in its decision 3-3-1-3-12 that the mere fact that data has previously been disclosed in some form with the consent or without the consent of a person does not lead to the conclusion that additional disclosure may not have significant consequences for the data subject. The initial and repeated disclosure of data can take very different forms and intensities, depending on the identity of the data subject, the information channel, the context, the audience, etc. 6 (7) New disclosure of information may significantly expand the circle of persons to be notified and the applicant may not have prescribed all the methods of repeated disclosure at the time of making the decision. The necessary information about Selver's food safety could have been provided without mentioning the applicant's identity. Consequently, AKI is of the opinion that the applicant's social media accounts published in the comments on the post and the conclusions drawn from them were excessively intrusive and violated his rights. The poster replied, inter alia, to AKI that the post and subsequent comments could not be retrieved in any reasonable way. According to the poster, about a dozen people on his friend list have read the correspondence and XXX's personal information published in the comments. Despite this view of the number of readers, the post and its comments are public, so the poster does not have a complete overview of who has seen and read the post, along with subsequent comments. What's more, it doesn't matter how many people have read the post at this time, because disclosure is an ongoing activity and the post can continue to be read because the post is still available to an unlimited number of people. XXX replied to AKI in his e-mail of 04.08.2021, agreeing that XXX is neither Selver's legal representative nor a member of the Management Board, but he is clearly in a key position in resolving food safety issues, thus affecting his professional activities, decisions and their possible background. there is a clear public interest in this. Analyzing the correspondence between the poster and XXX, it can be seen that XXX has sent a letter to the poster as "Selver Customer Support". The company's customer support team is not responsible for food safety in the company's stores, but the former fulfills its contractual obligation to respond to inquiries and complaints addressed to Selver as a company. Due to the above, there is no reason to hold XXX personally responsible for Selver's food safety, so there is no press interest in his personal data. In AKI's opinion, the criteria for a journalistic purpose arising from § 4 of the IKS have not been met in this case. The existence of a public interest can be affirmed if the issue raised and the personal data disclosed contribute to the debate in a democratic society. It cannot be ruled out that there may be a public interest in Selver's food safety and food handling and

compliance with the requirements. However, it is certainly not acceptable for the debate to be facilitated by the disclosure of the details of specific employees who have responded to a complaint addressed to Selver. Pursuant to Article 17 (1) (d) of the ECHR, the data subject has the right to request that the controller delete personal data concerning him or her without undue delay and the controller is obliged to delete personal data without undue delay if the personal data have been processed unlawfully. As a result, XXX has the right to request the termination of the processing of its personal data. Considering the facts and the fact that the Selver customer support team is not responsible for the entire food safety of Selver, there is no legal reason to disclose the personal data of XXX working in the comments of the Facebook post. 7 (7) / digitally signed / Kirsika Berit Reino, lawyer, authorized by the Director - General