

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.-1/2023-496-7

Injunction maker Alissa Hmelnitskaja, lawyer of the Data Protection Inspectorate Time and place of injunction 17.04.2023 in

Tallinn Addressee of injunction - personal data processor XXX e-mail address: XXX RESOLUTION: § 56 subsection 1 of the

Personal Data Protection Act (IKS) , paragraph 2 point 8, § 58 paragraph 1, § 4 and on the basis of Article 58 paragraph 2 p. f

and g of the General Regulation on the Protection of Personal Data (GPA), as well as taking into account Article 6 of the GPA,

I make a mandatory order for execution: Terminate the Facebook account XXX managed by XXX Disclosure of YYY's personal

data. I set the deadline for the execution of the injunction to be 02.05.2023. 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 300 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 injunction according to Article 58, paragraph 2 of the Criminal Procedure Code may result in a

misdemeanor proceeding based on § 69 of the Criminal Procedure Code. 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 FACTS: In the proceedings of the Data Protection Inspectorate (AKI), there is a complaint by YYY

(complainant) regarding the fact that XXX (data processor or responsible processor) has disclosed the personal data of the

complainant on his Facebook account. According to the complaint, photographs and audio recordings of the complainant, in

which the complainant's voice can be heard, were made public. I started the supervision procedure on the basis of IKS § 56,

paragraph 3, point 8, within the framework of which a proposal was made for better compliance with the requirements for

personal data protection No. 2.1.-1/23/1496-3. The content of the proposal was as follows: "stop disclosing the applicant's personal data on your personal Facebook account and send a confirmation to the inspectorate about this no later than 04.04.2023 to the e-mail address info@aki.ee." In the proposal, AKI drew attention, among other things, to the possibility of making an injunction and imposing a penalty payment, and the right to submit one's opinion and objections to the matter in accordance with § 40 (1) of the Administrative Procedure Act before issuing an administrative act. The data processor has replied to AKI on 04.04.2023. According to the response, the data processor agreed to delete the audio recordings, but not the publicized photos of the applicant. AKI has checked the implementation of the proposal, and it turned out that the audio recordings had been deleted, but the disclosure of photos taken of the applicant continues. Therefore, the data controller has not fulfilled AKI's proposal in full. GROUND FOR THE DATA PROTECTION INSPECTION: Personal data is information about a person, i.e. a natural person (data subject), by which he can be directly or indirectly identified: name, personal identification number, location information, as well as physical, genetic, mental, economic, cultural and any other identifying characteristics and their combinations (IKYM article 4 p. 1). Disclosure of personal data on the Internet is processing of personal data (Article 4(2) of the General Data Protection Regulation). The data processor has published photos of the applicant on his Facebook account. As a result, the applicant's personal data is processed on this Facebook account. Article 4 point 7 of IKÜM states that the responsible processor is a natural or legal person, public sector institution, office or other body, which alone or together with others determines the purposes and means of personal data processing. Due to the fact that XXX is the owner of the Facebook account in question, he is responsible for the processing of personal data on this account. In addition, the responsible processor has the responsibility to prove that the principles of personal data processing are followed when processing personal data, including the principle of legality (Article 5(2) of the General Data Protection Regulation). The processing of personal data, including disclosure, must have a legal basis arising from legislation. According to article 6 of the IKÜM, the processing of personal data is legal if it meets one of the conditions in points a to f of paragraph 1, and in certain cases, the disclosure of some people's data may be justified for journalistic purposes (ICS § 4). AKI explains that it does not matter whether the data controller has taken the disputed photos himself or found them, for example, on the Internet, but there must be a legal basis for the processing of personal data (or, for example, re-disclosure). 1. IKÜM Article 6(1)(a) of IKÜM Article 6(1)(a) states that the processing of personal data is legal only if the data subject has given consent to process his/her personal data for one or more specific purposes. The duty to prove the existence of consent in the event of a dispute rests with

the controller. In this case, AKI does not identify whether consent has been taken for the disclosure of data on the part of the complainant and assumes that the person has withdrawn his consent by filing a complaint and wishes to stop the disclosure of his personal data.

2. In order to process personal data on the basis of article 6 paragraph 1 point f of Article 6 paragraph 1 point f of IKÜM, or 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 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 by the data processor regarding 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. In the current case, it does not appear that the data processor can rely on the legal basis of legitimate interest, and he has not himself submitted a legitimate interest analysis to AKI to check the basis.

3. 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. But at this point, it does not appear that a photograph of a natural person can contribute to the debate in a democratic society. Since one of the criteria for the application of § 4 of the IKS is unfulfilled, AKI does not analyze the remaining criteria, since personal data cannot be disclosed on the basis of § 4 of the IKS due to one unfulfilled criterion alone. Due to the fact that in this situation there are no other possible legal bases for the disclosure of the applicant's personal data, the AKI limits itself to the analysis of the application of the aforementioned legal bases. Taking into account the above, AKI is of the opinion that in this case none of the legal bases specified in Article 6, subsection 1 of the IKÜM exist for the disclosure of the applicant's personal data, and the data processor has not proven to AKI that the legal basis for data disclosure derives

from § 4 of the IKS. The personal data has been processed without legal baseless, which is why the data controller must stop disclosing the applicant's personal data on the Facebook account. According to IKS § 58 paragraph 1 and IKÜM article 58 paragraph 2 points f and g, AKI 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 the data controller has not fulfilled the proposal of AKI 21.03.2023 in full, AKI considers that issuing a mandatory injunction in this matter is necessary to end the offense as soon as possible. (digitally signed) Alissa Khmelnitskaja lawyer under the authority of the Director General