

PUBLICATION OF PERSONAL DATA IN THE MEDIA: INTERVENTION CRITERIA OF THE DATA PROTECTION

INSPECTION Updated: February 2022 2 This document explains in which cases it makes sense to file a complaint with the Data Protection Inspectorate about the disclosure of personal data in the media. As media, this document considers both professional media (daily and weekly newspapers, TV and radio channels) as well as blogs, online forums and social networks. Both can contain articles with a journalistic purpose and a purely entertaining part. Unlike entertainment, it is allowed to disclose personal data for journalistic purposes even without the person's consent. Legal norms According to § 4 of the Personal Data Protection Act, personal data may be disclosed in the media without the person's own consent if the following conditions are simultaneously met: 1) personal data is disclosed for journalistic purposes, 2) there is a public interest in disclosing the identity of a specific person, 3) it is done in accordance with the principles of journalistic ethics, and 4) disclosure of data does not unduly harm that person's rights. According to the practice of the European Court of Human Rights, the journalistic purpose means the dissemination of ideas and information that help promote debate in a democratic society. These are topics that are in the orbit of public interest. Mere curiosity is not public interest. The extensive protection of freedom of the press does not extend to satisfying the public's curiosity about the details of someone's private life, which is not related to the performance of public duties and which is only driven by the financial interests of the media; to malicious rumors and sinister sensational news, the sole purpose of which is to excite and amuse readers; published with the sole purpose of offending. According to Articles 17 and 21 of the General Regulation on the Protection of Personal Data (GPR), a person has the right to object to the disclosure of data at any time and to demand that the disclosure of their data be stopped. In this case, the publisher of the data must once again assess whether he has the right to publish the data and respond to the data subject within 30 days. According to case law, the portal operator is also responsible for content created by users (e.g. comments on a news portal).¹ Also, according to case law, a media outlet can be forced to contact the owner of a search engine on the basis of the Law of Obligations Act, in order to remove the same information from the internet search results in addition to the termination of disclosure in the media outlet.² According to the IKÜM, a person has the right to contact also with a complaint to the Data Protection Inspectorate, if he finds that his rights are being violated in the processing of personal data. However, this does not mean that all such cases can be resolved through the Data Protection Inspectorate. The Data Protection Inspectorate is a law enforcement agency within the meaning of the Law Enforcement Act and must follow the rules of the Law Enforcement Act. 1 The decision of the Supreme Court of 10 June 2009 in case 3-2-1-43-09 and the decision of the European Court of

Human Rights of 16 June 2015 in case 64569/09 made in the same case. 2 Decision of the Supreme Court of December 9, 2010 in case 3-2-1-127-10. 3 According to § 4 (2) of the Law on Law Enforcement, the intervention of a law enforcement agency in a private legal relationship is justified only under the following conditions: 1) it is not possible to obtain judicial legal protection in time 2) and without the intervention of a law enforcement agency, the realization of the right is not possible or is significantly difficult 3) and if the prevention of the threat is in public for the sake of It is explained in the explanatory letter of the Law on Protection of Order that "The protection of the subjective rights of individuals is primarily a function of the judiciary. If the executive power, in the form of law enforcement bodies, started to solve issues concerning the rights and freedoms of individuals, competing with the judiciary, it would lead to a violation of the principle of separation of powers, legal uncertainty and a risk of arbitrariness would arise. Law enforcement bodies cannot and should not be able to determine the actual legal relationships between persons in every case, which can be very difficult when resolving private legal disputes.". The European Court of Human Rights also emphasizes in every judgment on journalism that freedom of expression represents one of the indispensable foundations of a democratic society, is one of the basic conditions for the development of a democratic society and the free self-realization of every individual. According to the practice of the ECtHR, there must be a compelling social need to restrict freedom of expression. Intervention criteria The Data Protection Inspectorate will most likely take a complaint to decide on intervention in the proceedings if any of the following circumstances exist:

- o The situation requires faster action than is possible in civil court proceedings, for example, sensitive data has been illegally disclosed on the Internet and due to the availability and constant dissemination of the data, later intervention would no longer make any sense. because irreversible damage has occurred.
- o The person about whom the data has been disclosed is helpless or in a particularly vulnerable state and cannot protect his or her own rights
- o Data of a minor
- o Special personal data, which are indeed sensitive

Here, the Data Protection Inspectorate does not simply rely on the list of special personal data contained in the General Regulation on Personal Data Protection, but evaluates , whether the data are really private and offensive. Data concerning a person's state of health and sexual life are especially sensitive. At the same time, this does not mean that the Data Protection Inspectorate intervenes every time the slightest bit of health information is made public. For example, the piece of information that "the official was on sick leave that day" is not deeply offensive. At the same time, an extremely detailed description of the medical history, treatment, accident or malformations is deeply personal, and its disclosure can be downright degrading to human dignity. Being a victim of a serious crime (eg rape) is delicate. 4

- o The violation affects a large number of people or is repeated.

For example, the disclosure of the top 100 balances of accumulated pensions obtained from a non-public data set as a result of a data leak, or the same malpractice spreads, e.g. the publication of weekly lists of minor misdemeanors in a personalized and open to search engines in an online publication.

- o Data obtained as a result of a serious offense is disclosed, or the disclosure itself is a serious offense (other than a violation of § 4 of the IKS) For example, if sensitive data is disclosed in the media by a person subject to a heightened obligation of confidentiality (for example, a doctor); if the disclosed personal data was obtained as a result of intrusion into the computer system; when the press has gone beyond all good practices, e.g. the person who committed suicide is shown in a personalized and sinister way. Due to the interplay of IKS § 4 and KorS § 4(2) and taking into account the practice of the European Court of Human Rights, the Data Protection Inspectorate generally does not intervene in the following cases:
- o Disclosures of politicians, high-ranking state and local government officials, businessmen, journalists, and other public figures (athletes, entertainment workers, other persons exposing themselves to the public with their behavior) and data in the orbit of public interest (e.g. judges, lawyers). In addition to the fact that their activities are in the public interest, they usually also have all the opportunities and knowledge to protect their interests in civil court, if what is published should not meet the requirements for the press. Based on the practice of the European Court of Justice, not only the public interest in a politician justifies the disclosure of information about his relatives, but it can be assumed that such people have the skills and opportunities to protect their rights.
- o Criminals, suspects, accused persons The reporting of serious crimes is of public interest. Disclosure of data before conviction is also consistent with the practice of the Court of Justice, provided that it is clear from the article that a conviction has not yet been made. As a rule, the Data Protection Inspectorate does not intervene even if the sentence has been served and expired and the person wants to delete an article about a former crime from the Internet. For this, a person has the opportunity to appeal to the publication itself, the operator of the search engine or the civil court. The Data Protection Inspectorate intervenes only if it is justified by the compelling circumstances of a specific case, for example the interests of a minor.
- o Data related to a person's entrepreneurship or professional activities or other activities aimed at the public. Professional activities and entrepreneurship, the provision of goods or services to the public, regardless of whether as a private person or FIE, is directed from the person's personal sphere, outside the family circle, to the public. Commenting on this activity in a public space is not the kind of invasion of privacy that would require the immediate intervention of a law enforcement agency. Defamation and defamation charges must be settled in civil court.
- 5 o The dispute is about the accuracy of the data, including defamation and defamation accusations. Determining whether there is incorrect

information and whether the disclosure of incorrect information was unlawful and whether the valuations were appropriate requires extensive fact-finding and assessment and should be resolved in civil court. o The data is disclosed only in a paper publication or a TV/radio program that cannot be viewed/listened to afterwards. Since the Data Protection Inspectorate does not award damages and, as a rule, does not decide on the collection of paper publications from sale, complaints in such cases should be resolved in a civil court. Misdemeanor liability also comes into question for journalists only in very exceptional circumstances. o The data has not yet been disclosed and the applicant wishes to prevent disclosure (e.g. to withdraw the given consent). The Data Protection Inspectorate does not pre-censor the press. Pre-censorship has been strictly condemned by the EIK. o The parties are already in litigation on the same subject or the parties are disputing a civil contract (e.g. reality TV show participants who have entered into an agreement with the producer of the TV show to participate in the show). o The person himself has disclosed information about himself to the media and later wants to withdraw it or eliminate comments that are inappropriate for him. In general, a person must consider the consequences of his actions in advance and cannot expect that someone else will eliminate these consequences for him. In addition to the author of the comments, the operator of the portal is also responsible for the comments, to whom such claims can be submitted. o Chatting between private individuals on a social network or forum (typically between neighbors or ex-partners). Measures applied to the media The Data Protection Inspectorate intervenes in the press based on complaints and only in exceptional cases on its own initiative. In case of intervention, we can make a recommendation/suggestion/recommendation to the publication: o to remove the person's name from the article or to remove excessive data from the article; o in the case of widespread malpractice, to refrain from further malpractice. o Making an addition to an old article can be discussed, e.g. if a criminal charge against a person was discussed in the press, but the person was later acquitted. In such a case, the EIK has considered the appropriate measure to be the addition of a relevant supplement to the original article. The complaint is the reason for deciding on the need to start the state supervision procedure, filing a complaint does not automatically start the procedure, and the complainant cannot demand that the procedure be started. Nor can the applicant demand the implementation of a specific measure. The Data Protection Inspectorate does not award damages, does not oblige to publish apologies or refutations of incorrect data, as a rule does not conduct misdemeanor proceedings against journalists, does not decide on the sale of printed publications. 6 If the Data Protection Inspectorate does not intervene, the person can still protect his rights: o contact directly the person who disclosed the data, (including demanding that the original source in turn organizes the termination of the publication of data from internet

search engines), o contact the owner of the portal about the content created by the users of the portal, i.e. in terms of comments, etc., o contact the operator of the search engine to exclude the data from the search engine results, o contact the Press Council if the media company has joined the Press Council, o contact the county court with a civil lawsuit.