

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

registry code 70004235 PRESCRIPTION WARNING in personal data protection case no. 2.1.-1/2022-3005-3 Prescription

author Data Protection Inspector's lawyer Alissa Hmelnitskaja Time and place of issuing the injunction 12.05.2023 in Tallinn

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

1, subsection 2 point 8, § 56 subsection 3 of the Personal Data Protection Act (IKS) on the basis of points 3 and 4, § 58,

paragraph 1, and Article 58, paragraph 1, point d, and paragraph 2, points f and g of the General Personal Data Protection

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

inspectorate issues a mandatory order for compliance: on XXX, terminate the personal Facebook account made in the post

Disclosure of personal data of YYY. I set the deadline for the execution of the order to be 26.05.2023. 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 500

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 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 FACTS: The Data Protection Inspectorate (AKI) has a complaint filed by YYY

(complainant), according to which XXX (controller/data processor) has disclosed the personal data of the complainant in the

Facebook group "XXX": the full name of the complainant with a reference to his personal Facebook profile. In addition,

information that the applicant is in debt has been disclosed in this post. The post was made on 23.07.2022 at 10:25. AKI

started a monitoring procedure on the basis of § 56 subsection 3 point 8 of the Personal Data Protection Act (IKS), within the framework of which proposal no. 2.1.-1/23/3005-2 was made on 15.03.2023 for better compliance with personal data protection requirements. The content of the proposal was as follows: to stop disclosing the applicant's personal data in the post you made in the Facebook group "XXX" and to send a confirmation of this to AKI no later than 29.03.2023. 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 not responded to AKI's proposal.

FOUNDATIONS OF THE DATA PROTECTION INSPECTION: According to Article 4, point 1 of the GDPR, personal data is any information about an identified or identifiable natural person ("data subject"); an identifiable natural person is a person who can be directly or indirectly identified, in particular on the basis of an identification feature such as name, social security code, location information, network identifier or on the basis of one or more physical, physiological, genetic, mental, economic, cultural or social characteristics of that natural person. Thus, personal data includes, among other things, name and other information that enables the identification of a person. According to Article 4, point 2 of the IKÜM, the processing of personal data is an automated or non-automated operation or a set of operations performed with personal data or their collections, including their distribution or disclosure by making them available in another way. As a result of the above, the data processor has disclosed the applicant's personal data in the sense of Article 4 points 1 and 2 of the IKÜM. There must be a legal basis for the disclosure of personal data. According to Article 6 of the IKÜM, the processing of personal data is legal if it meets one of the conditions set out in points a to f of paragraph 1. 1. IKÜM Article 6(1)(a) According to IKÜM's Article 6(1)(a), 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, the inspectorate does not establish whether consent has been obtained for the disclosure of data on the part of the complainant, and the inspectorate 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, since he has not submitted a legitimate interest analysis to the inspection.

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 disclosing the personal information of a single specific person or debtor does not contribute to the social debate. Also, the journalistic goal is not fulfilled, but the data processor uses the disclosure of the data in his personal interest to collect the debt and keep the so-called shame mail. However, the legislator has provided other legal remedies for debt recovery. 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.

4. IKS § 10 In addition to the legal bases given in Article 6 of the IKÜM mentioned above, it is possible to rely on IKS § 10 for the disclosure of debtors' data, which provides that the disclosure of personal data related to the violation of a debt relationship to a third party and the processing of the transmitted data by a third party is permitted for the purpose of assessing the creditworthiness of the data subject or for another similar purpose, and only if all three conditions are met: 1) the data processor has verified that there is a legal basis for data transmission; 2) the data processor has checked the correctness of the data; 3) the data transmission is registered (keeping information about who and what was transmitted). In this case, according to AKI, the assumption that the data controller would have checked the legal basis for transferring personal data has not been met. However, the controller has made the debt data publicly visible to the unlimited public, which means that the

controller cannot control who sees the data and therefore cannot control whether the recipient of the data has a legal basis.

Since one of the criteria for the application of IKS § 10 is unfulfilled, AKI does not analyze the remaining criteria, because personal data cannot be made public on the basis of IKS § 10 due to just one unfulfilled criterion. Taking into account the above, AKI is of the opinion that in this case none of the legal bases mentioned 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 § 10 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 in the Facebook group "XXX". According to IKS § 58 paragraph 1 and IKÜ Article 58 paragraph 2 points f and g, the inspectorate has the right to issue an order to limit the processing of personal data. Taking into account that in the specific case the personal data of the applicant is disclosed illegally and that the data controller has not responded to AKI's proposal, AKI considers that issuing a mandatory injunction in this case is necessary in order to stop the infringement as soon as possible. (digitally signed) Alissa Khmel'nitskaja lawyer under the authority of the Director General