

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.-1/21/3983 Issuer

of the injunction Data Protection Inspectorate lawyer Virve Lans Time and place of the injunction 09.12.2021 in Tallinn

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

Personal Data Protection Act (IKS) paragraph 1, paragraph 2 point 8, § 58 paragraph 1 and Article 58 paragraph 1 point d and

paragraph 2 points e and f of the General Personal Data Protection Regulation (IPPR), as well as taking into account §§ 4 and

11 of the Personal Data Protection Act and Article 6 of the IPR, the Data Protection Inspectorate XXX to fulfill a mandatory

prescription: 1. XXX must either: 1.1. stop disclosing photo XXXX containing another person's personal data on your Facebook

account; or 1.2. limit in point 1.1. the disclosure of the said photo until the legality of the disclosure of the photo has been

proven to the inspection and the inspection has given a corresponding confirmation. The photo must be restricted in such a

way that the photo is visible only to you in the future. 2. Send confirmation to the inspection whether 2.1. disclosure of the

photo and further data processing has ended or 2.2. the publication of the photo is temporarily restricted (until the legality of

the publication of the photo is proven). I set the deadline for the fulfillment of the injunction to be 13.12.2021. Report

compliance with the order to 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 Administrative Court Procedure Code 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 specified deadline, the Data Protection Inspectorate will impose an extortion fee of 500 (five

hundred) 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 CIRCUMSTANCES:** The Data Protection Inspectorate received a complaint according to which you, XXX, have published a photo (XXXXXX) containing the complainant's personal data (image) on your personal Facebook account. According to the complaint, the complainant has not consented to his photographing/filming, nor to the publication of the recording containing his personal data, and wants the recording containing his personal data to be removed from social media. The inspection has started the supervision procedure on the basis of IKS § 56, paragraph 3, point 8. In order to fulfill its tasks, the inspection has the right to demand explanations necessary for conducting the supervision procedure in accordance with § 57 of the IKS and § 30 (1) of the Law on Law Enforcement. The inspectorate also has the right to request the deletion of personal data or restriction of processing arising from clauses 3 and 4 of § 56 (3) of the IKS. **FOUNDATIONS FOR THE DATA PROTECTION INSPECTION:** According to article 4 point 1 of the IKYM, 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, primarily based on such identification as name, personal identification number, location information; but also based on one or more physical, physiological, etc. characteristics of this natural person. Therefore, personal data is information that enables the identification of a person. According to article 4 point 2 of 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, you have disclosed the applicant's personal data (image) in the sense of clauses 1 and 2 of Article 4 of IKÜM. The requirements for personal data processing are primarily established by the IKÜM, Article 5 of which stipulates the principles of personal data processing, including the principle of legality. The processing of personal data (including disclosure on the Internet) is legal only if there is a legal basis for this in Article 6, paragraph 1. 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. The inspection is of the opinion that in this case, the disclosure of the disputed photo does not comply with any of the points specified in Article 6, subsection 1 of the IKÜM, so the disclosure of the photo is not legal. In certain cases, the disclosure of some people's data may be justified for a journalistic purpose, but under strict conditions: it must be a journalistic purpose, the publication must be in accordance with the rules of journalistic ethics, and there must be a public interest in the disclosure of a specific person's identity. Also, disclosure must not unduly harm anyone's rights. In this case, the inspectorate does not see that there is such a public interest in covering this situation that would fall under the journalistic exception, and the publication of the photo in this

form excessively harms human rights. The data protection rules would not apply if you had shared other people's data only for personal purposes within your immediate family or close circle of friends. A post that is public to everyone does not fall under the personal data processing exception. The person disclosing the other person's data, in this case you, XXX, is responsible for ensuring that the disclosure of data is legal. Data processing must be stopped if the data processor cannot prove that it is processing data for a valid legitimate reason.

1. Journalistic purpose On the basis of IKS § 4, personal data may be processed for journalistic purposes without the consent of the data subject, if there is a public interest, if it is in accordance with the principles of journalistic ethics, and the disclosure of personal data is not excessively harmful to the person. Disclosure of the identity of a specific person for journalistic purposes is permitted only if this person has justified it by his/her actions (e.g. public figures, exercisers of state power, criminals). And in doing so, one must distinguish between public interest and curiosity. In the current case, it does not appear that the person depicted in the photo has in any way justified publication for journalistic purposes by his actions. The journalistic goal is to provide information and promote debate on a topical and necessary topic in society. At the same time, the journalistic goal is not fulfilled if personal data is disclosed to third parties, because social debate can be held without involving third parties, which would not limit the journalist's freedom of expression and freedom of speech. In the case of the photo in question, you have disclosed the personal data (image) of a third party, in such a situation the person could not avoid being recorded or let you know that he does not agree to being photographed/filmed. In this case, you lacked information as to why the person ended up in such a state, and now putting it in a context that suits you is arbitrary. I

Public interest towards the applicant Disclosure of personal data must not excessively harm the data subject. In addition to what is stipulated in the legal act, the practice of the European Court of Human Rights (ECHR) results in the obligation to distinguish between the topic of public interest and specific interest in individuals. Public interest in the corona crisis does not mean that the data of all individuals can automatically be made public. The Supreme Court has explained in the administrative case No. 3-3-1-85-15 that the predominance of the public interest must be determined based on the circumstances of a specific case, comparing the circumstances in favor of publishing the data with the consequences that are caused to the person. The publication of personal data is not justified by mere private interest or thirst for sensationalism. According to the practice of the European Court of Justice and the Supreme Court, the degree of justified public interest in a person's private life is different and depends on what a person does (official, politician, businessman) or how much he himself has placed himself in the orbit of 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. In the orbit of public interest are primarily figures of public life and people who have entered the public sphere due to some of their activities. At the head of public figures are members of the government and parliament, followed by other politicians. 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 creation. In all other cases where it is not a public figure, it must be assessed in each specific case whether the reporting of the case is also necessary to disclose the personal data of the affected person in a personalized form, or whether the journalistic goal can be achieved without it. Therefore, in this case, it must be assessed whether there is such a public interest in the ordinary citizen depicted in the photo published by you that the publication of his personal data (image) is justified in order to fulfill the journalistic goal. In the current case, the inspectorate does not see that there has been such a public interest in the person of the applicant that would fulfill a journalistic purpose or that the publication of the applicant's personal data would add value to the social debate regarding the corona crisis. Recently, there has been an unfortunate trend of filming, publicizing and ridiculing on social media, including people who are not in the public eye.

II Journalism Ethics According to point 1.2 of the Estonian Journalism Code of Ethics, journalism serves the public's right to receive true, honest and comprehensive information about what is happening in society. The principles of journalistic ethics include, among other things, journalist independence, impartiality, balance, verifiability of material and information, and the ability to object. Section 4.9 of the Code of Ethics. According to this, materials that violate a person's privacy are published only if the public's interests outweigh the person's right to privacy.

III Excessive damage to the applicant's rights The processor of personal data for journalistic purposes must analyze whether the processing does not involve excessive damage to the rights and freedoms of the data subject. If there is damage to the rights and freedoms of the data subject, but it is not excessive, it is allowed to process personal data. According to the complaint, the complainant has been sent links to your post by his friends, and he himself has seen the post on social media. Both the disclosure of the photo in question and the appeals of acquaintances are extremely disturbing for the applicant, and the spread of the recording on social media is also a concern for the applicant. A person has lost control over his personal data. Thus, the publication of the post has also resulted in damage to the rights of the complainant. I would also like to add that, according to case law, the posters are to a certain extent also responsible for the comments on the post. Insofar as the applicant does not want the photo depicting him in this way to be visible to an unlimited circle of persons, I find that the disclosure of the photo containing the applicant's personal data is

accompanied by excessive damage to the rights of the data subject. As a result of the above, in the opinion of the inspectorate, the controversial Facebook post does not have a journalistic purpose in the sense of § 4 of the IKS. 2. Public place According to § 11 of the IKS, unless the law provides otherwise, in the case of the recording of sound or image material in a public place for the purpose of publicity, the consent of the data subject shall be replaced by his/her notification in such a form that enables him to understand the fact of the sound or image material being recorded and to avoid his own recording if he wishes. . The applicant did not have such an opportunity. Also, it does not appear from the photo that it is a public place, as the complainant is in a closed room, where there was a glass door and what is happening in the room is visible to outsiders. Not all places that are visible through doors and windows can be considered public places. Also, not all photos recorded in a public place can be published, especially if they contain personal data of third parties and the publisher does not have consent for publication. Summary If there is no legal basis for the processing of personal data arising from legislation, the processing of personal data is prohibited. As long as you have not proven to the inspectorate that you have a legal basis for publishing the photo and the inspectorate has not accepted such a basis, you must ALWAYS restrict the processing of personal data (stop publishing on Facebook) on the basis of Article 18(1)(d) until it is checked whether the controller's legitimate the reasons outweigh the data subject's rights. If the processing of personal data does not comply with the conditions stipulated by law or the controller cannot prove it, the processing of personal data is prohibited. Therefore, you must stop publishing a photo containing personal data on your Facebook account or limit the publication of the video until the legality of the video publication has been proven to the inspection. According to § 58(1) of the Personal Data Protection Act and Article 58(2)(f) of the General Regulation on Personal Data Protection, the inspectorate has the right to establish a temporary or permanent limitation of personal data processing, including a processing ban. Therefore, the inspectorate has the right to impose either a temporary or permanent processing restriction, including a processing ban, for the publication of the photo. The fact is that you have published a photo containing personal data on Facebook on your personal account, and the post containing the complainant's personal data is public. As long as you have not proven to the inspectorate that you have fulfilled the requirements of IKS (§§ 4 or 11) or IKÜM (Article 6), I believe that issuing a mandatory injunction to stop or limit the publication of the photo is necessary in this case in order to stop the offense as soon as possible. /signed digitally/ Virve Lans lawyer under the authority of the director general