

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.-1/23/2839-11
Issuer of the injunction Alissa Hmelnitskaja, lawyer of the Data Protection Inspectorate Time and place of the injunction
24.03.2023 in Tallinn Recipient of the 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, on the basis of Article 58
paragraph 2 points f and g of the General Personal Data Protection Regulation (IPPR), as well as taking into account Article 6
of the IPPR, the Data Protection Inspectorate issues a mandatory order for compliance: 1. Stop the video published on the
Facebook platform at: XXX disclosing other people's personal information, either by deleting the video from public channels or
by making the images and voices of all other people in the video unidentifiable; 2. Stop disclosing another person's personal
information in the YouTube video at: XXX, either by deleting the video from public channels or by making the image and voice
of the other person unrecognizable in the video; 3. Stop disclosing another person's personal information in the video
published on the Facebook platform at: XXX, either by deleting the video from public channels or by making the image and
voice of the other person unidentifiable in the video; 4. Stop disclosing other people's personal information in the video
published on the Facebook platform at: XXX, either by deleting the video from public channels or by making the images and
voices of all other people in the video unidentifiable. I set the deadline for the execution of the order to be 04/07/2023. 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. WARNING: If the injunction is not fulfilled
by the specified deadline, the Data Protection Inspectorate will issue the injunction to the addressee on the basis of § 60 of the
Personal Data Protection Act: The injunction for each unfulfilled obligation specified in the resolution is 500 euros. 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 (AKI) has received complaints regarding the fact that XXX (data processor or responsible processor) publishes videos on the Internet in which other people can be seen and/or heard. Videos are published on Youtube and Facebook platforms. AKI started a supervisory procedure on the basis of IKS § 56 (3) point 8, within the framework of which a proposal was made to the data processor on 17.02.2023 for better compliance with the requirements for personal data protection No. 2.1.-1/23/2839-7, the content of which was as follows: "terminate Teil on YouTube and Facebook platforms disclosure of other people's personal information in disputed videos, either by deleting the videos from public channels or by making the images and voices of all other people in the videos unrecognizable. The proposal lists 6 videos in which other people's personal information has been disclosed. The deadline for responding to the proposal was 03.03.2023. 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 responded to AKI's proposal on 01.03.2023. Based on the response, the data controller has partially fulfilled AKI's proposal, as the data controller deleted only 2 videos out of the six published videos.1 PERSONAL DATA PROCESSOR'S EXPLANATION: In the following, AKI outlines the data controller's reasons: 1. The data controller is of the opinion that AKI does not have the competence to give an assessment, whether the condition stipulated in § 4 of IKS has been met, namely to assess whether there is a public interest in the disclosure of personal data or not, as this would constitute censorship by AKI and such an assessment would be contrary to § 45 of the Constitution of Estonia (PS). 2. The controller explains, that his aim was not to insult or embarrass a natural person, but the aim is the further development of the society of car owners by means of public debates. My video materials contain images and voices of people only so that in interviews given by people they present the reasons why they violate this or that section of the Traffic Act. Also, in their interviews, people give their opinions on what the Tallinn City Government or the Tallinn Transport Authority could do to prevent such violations. The image of the person is not very useful in the report, but his voice is the main part of the interview. Interviews are an important part of journalism, it is the heart of journalism. 1 In proposal no. 2.1.-1/23/2839-7, videos no. 1 and 2. 3. When disclosing video materials, the data controller relies, among other things, on § 11 of the IKS and explains it as follows: A

person can also refuse to give an interview and go out of sight of the camera, this is his right which I strictly observe. All publicized interviews are voluntary recollections recorded by people in public places. These interviews and video footage are recorded for publicity purposes, which have been explained to people in any case. To leave the frame is a legal right, which defines IKS § 11. Unless the law provides otherwise, in the case of recording as sound or image material in a public place for the purpose of disclosure, the consent of the data subject shall be replaced by his notification in such a form that enables him to understand the fact of the recording of sound or image material and to avoid recording if desired. 4. The data controller is of the opinion that no personal data processing takes place in the disputed videos, since all people are anonymous. Regarding this, the data controller writes the following: It is also important that all these videos were recorded with an open camera in a public place for publicity purposes. This is not about videos recorded for personal use, the disclosure of which would be a violation of IKS requirements. These videos were originally recorded for publicity. Also, there is no aim to specify and disclose who this person is, all people are anonymous. The fact that someone from the person's company or his family looks like him in the video does not prove that the video could be a "shaming post". 5. In summary, the controller is of the opinion that there is a public interest in the disputed video and audio materials, which justifies the disclosure of the materials for journalistic purposes.

GROUNDS FOR THE DATA PROTECTION INSPECTION: I 1. 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 (Article 4 p. 1 of ALL). For direct identification, for example, the name of the data subject is sufficient, but indirect identification is also possible by combining different data. 2. AKI agrees with the data processor that, as a rule, the car number is not part of personal data. At the same time, it should be taken into account that many people feel showing the car number is a big hassle, because friends and acquaintances know the numbers and can still make assumptions. Therefore, depending on the nature of the recording, license plates should also be blurred if necessary, as indirect identification is possible. 3. In addition to the car numbers, the videos also contain persons driving the car, who have been provoked by the publicist to share comments about the parking of the car, including threatening to disclose the recording (in most cases, the faces are blurred, but the voice is not). Thus, it is possible to indirectly identify persons in all videos by combining data such as the person's voice and manner of speaking, location information (in each video it is written where the events take place (except the first video)), their clothing, physical and physiological characteristics and cars (touches No. 2., videos 3 and 4). In the

second video, the data subject also appears with his own face, so identifying the data subject is even easier. 2 General instructions for the processor of personal data. On the computer network:

https://www.aki.ee/sites/default/files/dokumendid/isikuandemte_tootleja_uldjuhend.pdf In addition, the data processor has stated in the published post attached to video no. 4 that a former Transport Board examiner appears in the video, i.e. he has provided additional information that allows the data subject to better identify. 4. Therefore, the controller's claim that the persons in the disputed videos are anonymous (the controller does not disclose the names of the data subjects and their faces are blurred) is not true, but it is personal data within the meaning of article 4, point 1 of IKÜM. 5. 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. 6. As a result of the above, the data processor processes personal data of other people in the videos discussed above in the sense of Article 4 points 1 and 2 of the IKÜM. 7. Pursuant to paragraph 1 of § 56 of the IKS, AKI performs national and administrative supervision over the fulfillment of the requirements set forth in the IKS, in the legislation established on its basis and in the IKÜM, and in other laws for the processing of personal data. To the extent that it is indisputable that other people's personal data are being processed in the disputed videos, the AKI must intervene, as the AKI is assigned supervisory competence by IKS § 56 (1) to check whether the processing of personal data is carried out in accordance with the requirements set out in the IKS and IKÜM. Therefore, the controller's claim that AKI does not have the competence to assess whether the conditions necessary for the application of IKS § 4 have been met (including assessing whether there is public interest in the disclosed video materials) is not relevant. II 8. According to article 6 paragraph 1 of IKÜM, the processing of personal data is legal only if at least one of the conditions stated in paragraph 1 is met. In certain cases, the disclosure of some people's data may be justified for journalistic purposes (ICS § 4). In connection with this, AKI considers it necessary to clarify the following: 9. Freedom of the press is recognized both in international law and in § 45 of the Criminal Code. The state generally has an obligation not to interfere with the freedom of the press, while it is tasked with ensuring a functioning legal framework for the functioning of fundamental freedoms and adequate legal remedies. The freedom of the press is limited by other rights: the protection of private life, the prohibition of insulting and defamation, the prohibition of transmitting false information and inciting racial hatred, as well as the prohibition of endangering minors, etc. 10. In order to balance the freedom of the press and privacy and the right to the protection of personal data, Article 85 of the IKÜM gives member states the opportunity to provide

for exemptions and exceptions from the obligations stipulated in the IKÜM, which is why a regulation was established to preserve the right to process personal data for journalistic purposes without the consent of the data subject, i.e. IKS § 4. This means, that a person processing personal data for journalistic purposes does not have to proceed from the usual legal bases for processing personal data, which are stipulated in Article 6 of the GDPR. For example, it is not necessary to ask for the data subject's consent. At the same time, a person processing personal data for journalistic purposes is obliged to comply with the principles of personal data protection, which are stipulated in Article 5 paragraph 1 of the GDPR, including whether personal data is processed to the minimum extent necessary to achieve its purpose. 11. IKS § 4 states that personal data may be processed for journalistic purposes without the consent of the data subject, in particular disclosed in the media, if there is public interest and it is in accordance with the principles of journalistic ethics. The disclosure of personal data must not excessively harm the rights of the data subject. 12. The prerequisite for the application of this provision is that: the disclosure of data takes place for journalistic purposes; there is an overriding public interest in disclosing the data; the disclosure of data is in accordance with the principles of journalistic ethics; disclosure of data does not excessively harm the rights of the data subject. Journalistic purpose 13. According to the practice of the European Court of Human Rights (ECtHR), 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 broad 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, the sole purpose of which is to offend.³ 14. The press has the obligation to convey information and thoughts on political topics as well as on all other matters of interest to the public, but also when using journalistic freedom of speech, it must respect and take into account the rights of other people and freedoms and obey the law. § 26 of the Civil Code stipulates everyone's right to the inviolability of family and private life. The sphere of private life includes, among other things, a person's right to informational self-determination, the right to his own word and image, personal identification and other aspects of personality.⁴ 15. An individual has an expectation of privacy. The coverage of an individual's data by the press must be justified by something very important, so that the interference in his private life is proportionate. 16. In the current case, what was published is not based on bringing out a problematic topic, but on a case-by-case basis, specific individuals were approached, provoking them to speak and threatening to make the video

public. Such a person-based approach is more of a stigmatizing activity than a journalistic activity that would contribute to the public debate on improper parking. Public interest 17. Due to the nature of the freedom of the press, the press has a wide decision-making freedom in defining the range of topics of public interest. The lack of public interest could be established, for example, if details of private life are published that are in no way related to public interest and do not contribute to the social debate. The preponderance of the public interest must be determined on the basis of the circumstances of a specific case, comparing the circumstances in favor of publishing the data with the consequences that will be caused to the person. The publication of personal data is not justified by mere private interest or thirst for sensation. When evaluating the legality of data disclosure, the processing of personal data must also be taken into account. Germany (also known as Princess Caroline's Case). Available online: [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-61853%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-61853%22]) 4 TlnRnKo, 14.12.2021, 3-20-1076, p 30. principles and the fact whether the person whose data is disclosed is, for example, a public figure and the person has exposed himself or his activities to the public.⁵ 18. The Court of Justice has formulated criteria that must be additionally taken into account when publishing personal data for journalistic purposes: contribution to a debate in the public interest, the reputation of the data subject, the previous behavior of the data subject, the content, form and consequence of the publication and the circumstances of the acquisition of the information in question and the validity of the information.⁶ 19. According to the practice of the EIK and the Supreme Court, the degree of justified interest of the public in a person's private life varies and depends on what the person does (official , politician, businessman) or to what extent he himself has placed himself in the orbit of public interest (opinion leader, pop star). 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, which is why the person must take into account greater public attention and the related obligation of tolerance. 20. In the current case, it does not appear that the persons who were recorded in the videos are known to the average Estonian citizen. 21. Also, when assessing damage to public interest and personal rights, it must be taken into account, among other things, that in this case it is not, for example, the reporting of a large court case of interest to the public, so the data subject must be ready for a greater obligation to bear. 22. Taking into account the above, AKI is of the opinion that there is no such public interest in relation to data subjects that would allow them to be reflected in an identifiable form. At the same time, it is not caused by their actions, which are reprehensible, but not to such an extent that it should be associated with their person in public. Even the data of criminally punished persons are not made public in every case, but even then they are carefully considered and often chosen to be published in an unpersonalized

form. As AKI has pointed out in the proposal, the existence of public interest can be confirmed if the topic raised and personal data disclosed contribute to the debate in a democratic society. If, for example, a video segment were published in which examples of difficult traffic situations, including frequently occurring identified violations (e.g. cases recorded by Mupo) were published, together with the reasons why the author believes that a violation is taking place in the video and what consequences may arise if the violation is committed, then such material would most likely help to debate in a democratic society. In the current case, there is no such public interest in the behavior of these particular natural persons and the purpose of the videos is only to excite and entertain the viewers. Principles of journalistic ethics 23. According to the Code of Journalistic Ethics (Code)⁷, 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. 24. The data processor has not proven to AKI that it has followed the principles of the Code when publishing the disputed videos. AKI is of the opinion that, in this situation, point 4.8 of the Code of Data Controller remained unfulfilled because he has not explained how the identification of the parties involved is absolutely necessary and what suffering it may cause to the parties involved. It also remains unclear how Section 4.9 of the Code has been fulfilled, according to which materials that violate a person's privacy are only published if the public's interests outweigh the person's right to privacy. In the current case, it does not appear that the data controller has considered whether the public interest outweighs the data subjects' right to privacy. Damage to the rights of the data subject 25. The essence of the distinction provided in Section 4 of the IKS consists in finding a balance between two fundamental rights through the protection of personal data - freedom of expression versus the right to privacy. The protection of the data subject's rights has been reduced in the case of journalistic purposes, and it has been stipulated that 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. Therefore, an assessment must also be made as to whether what was published in the videos was such an intense violation of the applicant's rights that the freedom of expression must be interfered with. The encroachment on the rights of the data subject and the opposing freedom of expression of the press must be evaluated in the context of the specific case. 26. In its response to the proposal, the data controller states that the disclosed material is not a shameful post or self-judgment, but at the same time writes that "People can see for themselves what is "good", what is "bad" and understand that every pedestrian brings a mobile phone in his pocket and films their driving and parking on the sidewalk

and forwards to law enforcement. Also, in video no. 3, the controller tells the data subject during the filming process that he will distribute this video on the Internet ("ну вас сегодня удитит веси интернет" - the seventh second of video no. 3). 27. AKI explains that disclosure of personal data, transmission to third parties and making data available in other ways is permitted only if there is a legal basis for doing so. A controller wishing to upload a recording to the internet must have a legal basis for such processing, such as consent obtained from the data subject pursuant to Article 6(1)(a). However, the disclosure of video recordings to law enforcement agencies is also an independent process that requires a separate justification from the controller. 28. Thus, the AKI emphasizes that Estonian legislation does not allow people to be shamed and thereby commit self-righteousness. The detection of a violation of the law and the imposition of a penalty are within the competence of law enforcement agencies, and such a call to film people and process personal data is not in accordance with the principles set forth in the IKÜM. Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the Treaty on the Functioning of the European Union stipulate that everyone has the right to the protection of their personal data. 29. Based on the previously conducted analysis, it is indisputable that other people's personal data is disclosed in the videos and that personal data is disclosed to an unlimited number of people on the Internet, therefore it must be taken into account that electronically available material reaches a larger circle of people compared to e.g. paper-based personal data processing, and in this way the published material may remain with the data subjects for a long time to load. 30. Thus, AKI takes the position that the controller's approach to the processing of personal data, i.e. disregarding the rules set forth in the IKS and the IKÜM, represents excessive damage to the rights of data subjects. III 31. The data controller has written in his response to the proposal that "A person can also refuse to give an interview and go out of sight of the camera, this is his right which I strictly follow. All publicized interviews are voluntary recollections recorded by people in public places. These interviews and video footage are recorded for publicity purposes, which have been explained to people in any case. To leave the frame is a legal right, which defines § 11 of IKS" 32. § 11 of IKS states that, unless the law provides otherwise, in the case of recording as 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 allows him/her to - or to understand the fact of recording the image material and avoid recording yourself if you wish. The notification obligation does not apply to public events that can reasonably be expected to be recorded for the purpose of publicity. 33. In other words, this means that filming in a public place (see definition below) can be done for the purpose of publicity without asking people for their consent, if the people in the field of view are informed in a form

that allows them to understand the fact of being filmed and to avoid it if they wish. 34. As a result of the above, data subjects in this situation cannot assume that the data controller is filming them precisely for the purpose of disclosure and that they have not been given the opportunity to avoid it. 35. AKI also explains that it is not possible to talk about enabling the avoidance of being recorded even in a situation where a person in a vehicle is being recorded and the only option is for him to get out of the vehicle or drive away. In addition, video no. 4 shows that the controller also prevents the data subject from leaving the camera's field of view. 36. The AKI data controller also draws attention to the fact that the Supreme Court has clarified regarding the previous IKS regulation of the same content that the use of a person's image without his consent is generally permissible only to reflect a current daily event related to that person. The position of the Supreme Court: "In the opinion of the collegium, the public interest could be affirmed in particular if the plaintiff had committed a serious offense, the notification of which is in the interest of the public, especially in order to detect or prevent such offenses in the future. Therefore, the use of the plaintiff's image without his consent would not have been permissible even if, for example, the police had drawn up a report for him due to improper close-range shooting. As a result of the above, it is generally prohibited to use a person's image in random connection with the daily event being covered." 37. According to the AKI, it does not follow from this judgment that people can no longer be shown in the background of daily news. For example, when making news about the condition of the street surface or lighting, according to AKI, people and cars can also be seen in the section filmed on the street. It is important that a recording made of random people in a public place together with a news story must not in any way give the impression that the news is about the specific people seen in the recording. 38. However, since in the disputed videos the main emphasis is on specific data subjects and their behavior, AKI cannot agree that § 11 of IKS would be applicable in this situation, since the responsible processor has not fulfilled the notification obligation and has not given the opportunity to refrain from recording. 8 RKTko, 3-2-1-152-09, Tartu, 13.01.2010, p 13. IV 39. Considering the above, AKI is of the opinion that in this case there is no legal basis for disclosing personal data of other people and the data processor has not certified to AKI, that the legal basis for disclosing the data comes from § 4 of the IKS. Personal data has been processed without a legal basis, so the controller must stop disclosing videos containing the personal data of these people on the internet. 40. The data processor should consider whether this is a topic at all that is so important in society to be covered, or if it is the violation of parking rules, then in the future only publish articles and posts about this topic. For example, also pointing out what the state or society could do to solve this issue in terms of its own attitude. At the same time, you must avoid promoting and increasing road rage with your

own behavior. On a societal level, it is reprehensible when individuals cannot handle friendly communication between themselves to solve problems. Instead, the incidents are filmed and publicized in order to incite the anger of other readers and give them the opportunity to further express negative opinions about other individuals. 41. According to IKS § 58 paragraph 1 and IKÜM art 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 natural persons is disclosed illegally and that the controller has not fulfilled AKI 17.02. 2023 proposal No. 2.1.-1/23/2839-7, AKI considers that issuing a mandatory injunction in this matter is necessary to end the offense as soon as possible. (digitally signed) Alissa Khmel'nitskaja lawyer under the authority of the Director General