

INSTRUCTION

NO. 31, DATE 27.12.2012

**Official translation of the text published
In the Official Gazette No. 175, date December 2012¹**

On specification of the terms and conditions for the exemption from the relevant obligations for the processing of data for journalistic, literary or artistic purposes

Pursuant to Article 11, letter c, point 1 of article 30, and letter f, point 1 or article 31 of the Law on Protection of Personal Data, as amended, the Commissioner for the Protection of Personal Data gives the following

INSTRUCTIONS:

Article 1 Purpose

this Instruction sets out the basic terms on which the processing of personal data may be exempted from the obligations contained in Articles 5, 6, 7, 8, 18, and 21 of the Law, in order to reconcile individuals' right to the protection of their personal data with the rules governing the right to freedom of expression.

Article 2 Scope

This Instruction applies to any controller/legal or natural person processing personal data for journalistic, literary or artistic purposes.

Article 3 Definitions

¹ The translation was commissioned by the EU funded Project "Support to the Commissioner for the Protection of Personal Data (KMDP) with Training of Data Protection Officers in the Albanian Public Sector"

1. The terms used in this Instruction have the same meaning as those in Article 2 of the Law on Protection of Personal Data. In addition, in this Instruction:

- a. “The Law” means the Law on Protection of Personal Data, as amended.
- b. “Publication” includes supplying material to another person for publication by the latter.
- c. “The relevant obligations” means the obligations contained in Articles 5, 6, 7, 8, 18, and 21 of the Law.

Article 4

Terms and conditions of the exemption

1. The processing of personal data is exempted from any of the relevant obligations where
 - a. the controller intends to publish journalistic, literary and artistic material for whose preparation the personal data in question are necessary; and
 - b. publication of the material would be in the public interest; and
 - c. compliance with that obligation would be incompatible with the intended journalistic, literary or artistic purpose.
2. Where the controller can comply with any of the relevant obligations without relying on the exemptions in point 1, he must do so.
3. Where the controller relies on the exemptions in Article 11 of the Law, he must retain the personal data only for as long as needed to publish journalistic, literary or artistic material for whose preparation the personal data are needed.
4. Where the controller relies on the exemptions in Article 11 of the Law, he shall not disclose the personal data to any other person except:
 - a. in the form of published journalistic, literary or artistic material; or
 - b. to recipients who are assisting him with the preparation of journalistic, literary or artistic material which he intends to publish; or
 - c. to recipients who are the intended publishers of that material.
5. Where the controller relies on the exemptions in Article 11 of the Law, he shall not process the personal data for any purpose other than a journalistic, literary or artistic purpose.
6. Where journalistic, literary or artistic material which has been prepared in reliance on the exemption in Article 11 of the Law is published, it must not contain information from which a minor may be identified, whether directly or indirectly, except
 - a. with the consent of the parent, or the legal guardian of the minor; or

b. with the leave of a court.

7. Where journalistic, literary or artistic material which has been prepared in reliance on the exemption in Article 11 of the Law is published, it must not contain information from which the victim of, or a person who claims to have been injured as a result of a criminal offence, may be identified, whether directly or indirectly, except

- a. with the consent of the victim or the person who claims to have been injured as a result of a criminal offence; or
- b. with the leave of a court.

8. Without prejudice to the general effect of points 6 and 7 of this Instruction, where journalistic, literary or artistic material which has been prepared in reliance on the exemption in Article 11 of the Law and which contains images of minors, or of victims of criminal offence, or of persons who claim to have been injured as a result of a criminal offence is published, effective means must be used to conceal the identity of the individuals concerned. In particular, the entire face of the individual, and of any relatives or known close associates of the individual, whether they appear in the same image or in a separate image published at the same time, must be pixelated or otherwise rendered unidentifiable.

Article 5

Final provisions

1. All controllers as provided in article 2 of this Instruction are in charge for applying this instruction.

2. Non-fulfilment of the requirements of this instruction constitutes a violation of the Law on protection of personal data and is sanctioned under article 39 thereof.

3. This instruction enters into force immediately and is published in the Official Gazette.

COMMISSIONER
FLORA ÇABEJ (POGAÇE)