

www.aki.ee Registry code 70004235 PRECAUTIONS WARNING in personal data protection matter no. 2.1.-6/21/24 Preceptor

Raiko Kaur, lawyer of the Data Protection Inspectorate Time and place of precept 03.09.2021 in Tallinn Recipient of the

precept - processor of personal data Viru Prison address: Ülesõidu 1, 41536 Jõhvi e-mail address: viruv.info@just.ee

RESOLUTION: Pursuant to § 751 (3) of the Government of the Republic Act, § 56 (1), § 56 (2) 8) and § 24 (1) of the Personal Data Protection Act (IKS), we issue a mandatory precept: - to issue the entry of the psychologist requested in XXX 19.05.2021.

We set the deadline for compliance with the precept on 17.09.2021. Notify the Data Protection Inspectorate of the fulfillment of the precept by that deadline at the latest. WARNING If a processor of personal data fails to comply with a precept of the Data

Protection Inspectorate, the Data Protection Inspectorate may apply to a higher authority, person or the whole of the personal data processor for official supervision or disciplinary proceedings against an official pursuant to subsection 59 (1) of the

Personal Data Protection Act. If a processor of personal data from a state agency does not comply with a precept of the Data Protection Inspectorate, the Inspectorate shall file a protest with an administrative court on the basis of subsection 59 (3) of the

Personal Data Protection Act. FACTUAL FACTS: On 19.05.2021, XXX submitted a request to Viru Prison requesting a copy of the psychologist's entry in connection with the xxx meeting. On June 15, 2021, Viru Prison responded to the aforementioned request and refused to issue a copy of the psychologist's entry. EXPLANATION OF THE PROCESSOR OF PERSONAL

DATA: Explanations submitted to the Inspectorate on 17.08.2021: On 27.07.2021 the Data Protection Inspectorate (hereinafter AKI) made a proposal to Viru Prison to issue XXX 19.05.2021 in personal data protection matter no. 2.1.-1/21/2302. an entry of the psychologist requested in the application. In case of disagreement with the proposal, AKI obliged Viru Prison to submit an

entry made about XXX in connection with the appointment of a psychologist xxx and to indicate in the specific entry those places that contain information on the methods, tactics and / or security risk assessment used in prison work. We hereby

inform you that Viru Prison does not agree with the proposal made and will not issue 2 (4) copies of the requested entry in the prison register to the person. Viru Prison maintains the position expressed in the decision refusing to perform the act on

15.06.2021 that it is information necessary for the assessment of security risks, the release of which a prison officer has the right to refuse on the basis of § 52 (6) of the Imprisonment Act if its disclosure could endanger imprisonment. enforcement.

The entry of xxx in the prison register shows: "Content: xxx" Psychologist's comment: "xxx" Viru Prison does not agree with

AKI's opinion that an entry made by a psychologist in a prison register about a conversation between a psychologist and a

prisoner cannot contain information about prison methods, tactics or security risk assessment. This is a recording of an interview related to an individual execution plan (ITC) resulting from a prisoner's risk assessment (RH). The risk assessment methodology is information intended for internal use that is not disclosed to detainees. The information contained in this entry will be used as a basis for deciding whether or not to support the placement of a detainee in an open prison or for early release from prison. It is therefore extremely important that the detainee cannot be manipulated. The prison agrees that the professional training of a psychologist involves the ability to recognize influencing techniques, but this may not always be possible or it will take time to reach a conclusion. A situation in which a prisoner tries to leave an impression of himself or a certain situation during the interview, which shows him in a better light or wants to divert attention from certain negative circumstances, cannot be ruled out. A psychologist may or may not understand this immediately. The fact that the manipulation has taken place may make the detainee even more adept at concealing reality in the future. At the same time, it is no less important that the absence of certain information in the record may also be important information for the detainee. We are not referring here to the view expressed in the proposal that a person may have spoken of very personal and intimate facts which he or she does not wish to be disclosed to other persons. During the conversation, the detainee was able to say something he did not really want to express, because it did not leave him with the desired impression. The detainee's purpose in reviewing the recording of the interview may be to make sure that the psychologist xxx. A bystander who has not taken part in the interview and does not know the background of the particular detainee may, on reading the recording of the interview, give the impression that its disclosure to the detainee can in no way jeopardize the execution of the sentence, but in reality this may not be the case. The background knowledge of the detainee and the prison may place the information contained in the record in a completely different context. Thus, it is the prison that is competent to assess whether or not a particular entry contains information the disclosure of which to a prisoner may jeopardize the execution of the sentence. The prison does not agree with the AKI's opinion that the request for a copy of the record is motivated primarily by a sincere desire to know the psychologist's assessment of his or her personality and therefore he or she must be able to examine it and express his or her opinion. In the framework of both pre-trial detention and early release procedures, a prisoner has the opportunity to express his or her views and, if he or she finds that decisions have been made on the basis of incorrect facts or assessments, to challenge those decisions. Thus, the detainee is guaranteed the opportunity to express his or her opinion and defend his or her rights. In addition, we note that if a detainee wishes to know what a psychologist thinks of him or her or inferred from certain behavior,

he or she can ask these questions during the interview. In resolving xxx's application, Viru Prison has assessed a specific entry in the prison register and, as a result of its consideration, has come to the conclusion that the requested entry is information the prisoner has the right to refuse to disclose pursuant to § 52 (6) of the Prison Act. The prison maintains this position.

GRUNDS FOR THE DATA PROTECTION INSPECTORATE: 3 (4) The entry of the psychologist in question was made within the framework of an individual enforcement plan pursuant to § 16 of the Imprisonment Act. The processing of personal data in the framework of the execution of imprisonment is regulated by the Personal Data Protection Act and, as a special law, the Imprisonment Act and regulations issued on the basis thereof. Section 52 (4) of the Imprisonment Act allows a prisoner to request information from the prison register about himself or herself, but according to subsection 6 of the same provision, the release of information may be refused if , detention or probation. The Data Protection Inspectorate is of the opinion that these norms also apply to the entry of a psychologist, but it cannot be concluded from this that it is always possible to refuse to issue an entry of a psychologist. In the opinion of the Supervision Authority, upon receipt of a request from a data subject (detainee), a discretionary decision based on specific circumstances must be made and each entry must be assessed separately. The Inspectorate agrees that it is the prison that is competent to assess whether a particular entry is information that a prisoner has the right to refuse to disclose. However, a prison must refuse to issue a specific entry pursuant to § 52 (6) of the Imprisonment Act, substantiating to the supervisory authority how the preconditions on which the refusal is based have been met in a particular case. It is important that in a specific case Viru Prison assesses whether and to what extent the psychologist's comment: xxx contains information on the methods, tactics or security risk assessment used in prison work and how issuing such an entry would jeopardize imprisonment, pre-trial detention, detention or probation. Although Viru Prison has indicated that the psychologist's record contains information necessary to assess security risks, the Inspectorate still does not understand how the psychologist's comment, including the reference to xxx, could in any way provide the detainee with information on prison methods, tactics or security risk assessment. However, the Inspectorate does not rule out the possibility that the psychologist's findings or assessments may in some cases contain such information, but in such a case the prison must also state very clearly what part and to what extent the psychologist's comment contains such information. However, Viru Prison has not done so in a specific case. The Inspectorate maintains its view that the mere hypothesis that a prisoner may be manipulative in future interviews with a psychologist is not information on the security risk assessment. In addition, Viru Prison has pointed out that xxx. A bystander who has not taken part in the interview and does not know the background of the

particular detainee may, on reading the recording of the interview, give the impression that its disclosure to the detainee can in no way jeopardize the execution of the sentence, but in reality this may not be the case. The background knowledge of the detainee and the prison may place the information contained in the record in a completely different context. At the same time, Viru Prison has not provided the Inspectorate with materials (evidence) that would show that the specific psychologist's entry in the prison has a completely different context than it appears. Viru Prison has explained: This is an entry in a conversation related to the individual execution plan (ITC) resulting from the prisoner's risk assessment (RH). The risk assessment methodology is information intended for internal use that is not disclosed to detainees. The Supervision Authority finds that the entry of a psychologist is not equal to the risk assessment methodology. The entry of a psychologist is the basic data on the basis of which, together with other data, the risk assessment of a prisoner is made. And the fact that the psychologist's assessment is used at all in risk assessment is no secret. The assessment of criminogenic risks that is part of an individual enforcement plan is regulated by a regulation of the Minister of Justice, § 3 (4) of which lists the circumstances to be assessed.

4 (4) It is clearly stated that, inter alia, the prisoner's relationships, substance abuse and problem behavior, health and emotional state, thinking and behavior, attitudes are assessed. Thus, it cannot be a secret for a detainee that these circumstances are assessed in the risk assessment. In addition, we emphasize that according to § 52 (6) of the Imprisonment Act, it can only be refused if two cumulative conditions are met - information on the method used in prison work, the disclosure of which may jeopardize the execution of imprisonment. In other words, it is not enough that this is information about the method. Only in the case of a refusal should it be justified how the release of specific data would jeopardize the execution of the sentence. With regard to possible subsequent manipulation, the Inspectorate has previously explained to the prison that the professional training of a psychologist should ensure that he or she is better able to see people and recognize manipulations. And the psychologist's record is just one part of, but not limited to, the risk assessment. In addition to the psychologist's entry, the prison itself has a wealth of other information on the basis of which the prisoner can be assessed. Viru Prison has stated: Within the framework of both the placement in the open prison and the early release procedures, the prisoner has the opportunity to express his or her views and, considering that the decisions have been made on the basis of incorrect facts or assessments, these decisions may be contested. It is not clear to the Inspectorate how a detainee can find (and challenge) that he or she has been given a wrong assessment or that it has been based on incorrect circumstances if he or she cannot get acquainted with that assessment at all. Although the prison has stated that if a prisoner wants to know what

a psychologist thinks of him or inferred from a certain behavior, he or she can ask these questions during the interview, this does not mean that the prisoner does not have the right to ask for a copy of the psychologist's record. Also, the answer given during the interview and the written comment may not exactly match. In conclusion, we note that we understand the difficult situation of the prison, where many prisoners are purposefully looking for ways to obstruct the work of the prison and are not exercising their rights under the law in good faith. In the opinion of the Inspectorate, the prison can take into account, among other things, whether the request of a detainee is clearly excessive and abuses his or her rights. This was not apparent to the Inspectorate (unlike the requests made to the Inspectorate by a number of other detainees). The prison states that he does not agree that the detainee's desire to inspect the record was motivated by a sincere desire. However, such a reference alone is not sufficient to prove that the data subject's request is excessive. In order to reject a data subject's request on the grounds of redundancy, a clear justification should be given as to why the request of a particular detainee is excessive (eg whether he / she constantly makes the same requests, constantly burdens the prison with different requests, has a misleading title, etc.). Based on the above, we find that the failure to issue a copy of the psychologist's entry requested in the application was not justified, and we therefore satisfy the complaint. / digitally signed / Raiko Kaur, lawyer, authorized by the Director General