



ANDMEKAITSE INSPEKTSIOON

**PRESCRIPTION-WARNING in  
personal data protection case No. 2.1.-6/21/27**

**Prescription maker** Raiko Kaur, a lawyer at the Data Protection Inspectorate

**Time and place of issuing the prescription** 15.11.2021, Tallinn

**Addressee of the injunction** Olerex AS (10136870)  
[info@olerex.ee](mailto:info@olerex.ee)

Representative: Advokaadibüro Lillo & Partners  
[lillo@advokaat.ee](mailto:lillo@advokaat.ee)

**responsible person** Olerex AS board member

**RESOLUTION:** § 56 subsection 1, subsection 2 point 8, § 58 subsection 1 of the Personal Data Protection Act (IPS) and Article 58 subsection 1 point d and subsection 2 points d, e and f of the General Regulation on Personal Data Protection (IKÜM), also considering Articles 5 of the IKÜM and 6 does Data Protection Inspection to Olerex AS to comply with the mandatory order:

- 1. To remove the audio surveillance from the service stations of Olerex AS** (see points 2.1 of the reasons for the inspection).
- 2. Notify employees of a violation related to the use of audio surveillance** (see point 4 of the inspection's reasons for more detail). **Send the inspection a copy of the letter that was sent to the employees regarding the violation.**
- 3. Bring the use of video surveillance into line with the conditions set forth in Article 6(1)(f) of IKÜM, whereby:**
  - 3.1. change the locations of the cameras or the field of view of the cameras in such a way that the cameras are aimed only at a specific security risk (threat) and which actually ensures that the employees are in the field of view of the camera at a minimum during work** (see point 2.2.3 of the inspection's reasons) ;
  - 3.2. End the use of video surveillance to monitor the performance of processes and to ensure the fulfillment of contracts (except for checking cash receipts and the handover of goods) until the correct legitimate interest is presented to the inspectorate**

**analysis and the inspection has confirmed its legality** (see points 2.2.1 and 2.2.3 of the inspection's reasons); **3.3. End the use of video surveillance for the purpose of checking the work duties of employees until a correct legitimate interest analysis has been submitted to the inspectorate and the inspectorate has confirmed its legality** (see point 2.2.3 of the inspectorate's reasons); **3.4. Stop allowing video camera images to be viewed in the living room of service stations until a correct legitimate interest analysis has been submitted to the inspection and the inspection has confirmed its legality** (see points 2.2.3 of the inspection's reasons).

- 4. Provide the inspection with a clear and comprehensible legitimate interest analysis that meets the conditions set forth in point f of Article 6(1) of the IKÜM, that is, by reading it, it is possible for both the inspection and the data subjects to clearly understand the following (see points 2, 2.2 of the reasons for the inspection and its sub-points) : a) what are the specific legitimate interests of Olerex AS; b) for what reason is the use of video surveillance and video recordings actually necessary for the realization of the legitimate interests specified in point a; c) what are the rights and freedoms of employees that are violated when video surveillance is used; d) how do the legitimate interests of Olerex AS (points a and b) outweigh the interests and fundamental rights of the data subject (point c).**
- 5. Send confirmation to the inspection that the video recordings will be deleted immediately, but at the latest after 72 hours (see point 3 of the inspection's reasons). A longer storage period is allowed if Olerex AS has substantiated the need for a longer storage period and the inspection has given a corresponding confirmation.**

We set the deadline for the execution of the order **to be 30.11.2021**. Report compliance with the order to the e-mail address of the Data Protection Inspectorate at [info@aki.ee](mailto:info@aki.ee) by this deadline at the latest.

#### **REFERENCE FOR DISPUTES:**

You can contest this order within 30 days by submitting either: - an appeal in accordance with the Administrative Procedure Act to the Data Protection Inspectorate or - an appeal in accordance with the Administrative Court Procedure Code to the Tallinn 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 assign the addressee of the injunction to the recipient of the injunction on the basis of § 60 of the Personal Data

Protection Act: **Extortion money for each item and sub-item of the injunction that has not been complied with is 25,000 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 (1) of the Personal Data Protection General Regulation may result in a misdemeanor proceeding based on § 70 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:** On

07.04.2021, the Data Protection Inspectorate (Inspeksioon) initiated a self-initiated supervisory procedure regarding Olerex AS. The initiation of the monitoring procedure was due to the fact that information reached the inspectorate, according to which Olerex AS uses cameras in service stations (gas stations) to monitor and evaluate employees (including what the employee's clothing is, how the employee communicates with colleagues and customers, whether the employee smiles when communicating with customers, whether the employee wears a work jacket smoking, is the work area clean at the end of the shift). At the same time, the employee is given an assessment based on this (unsatisfactory, satisfactory, good, very good, excellent).

In connection with this, the inspection wanted to know whether and for what legitimate purposes and legal basis the cameras are used, and whether and to what extent the rules for the use of the cameras have been introduced to the employees. To find this out, we sent the following inquiry to Olerex AS on 07.04.2021:

1. List all the purposes of using cameras.
2. On what legal basis are the cameras used under article 6, paragraph 1 of the IKÜM?
3. If the cameras are used, among other things, on the basis of IKÜM Article 6(1)(f) (legitimate interest), then a comprehensive analysis of the legitimate interest should be submitted to the inspection, on the basis of which it would be possible to assess the legality of the use of the cameras.
4. If Olerex AS also uses a sound recording, but the legitimate interest analysis mentioned in point 3 does not include an assessment of its legality, then separately justify whether and on what legal basis and purpose Olerex AS uses the sound recordings.
5. Forward all documents that regulate the use of cameras and that have been introduced to employees. If the document is not only related to the use of cameras, refer to the specific points in the document that specifically regulate the use of cameras.
6. Whether and how employees can familiarize themselves with the legitimate interest analysis mentioned in point 3.

On 20.04.2021, Olerex AS submitted a response to the inspection confirming the following: **Olerex does not use cameras to monitor employees in service stations or elsewhere for evaluation purposes, and due to the above, no corresponding procedure has been developed.** Olerex AS also mentioned the purposes of using the cameras in the response, but the inspection's inquiry was not answered in other respects.

Considering the above, the inspection sent a repeated inquiry to Olerex AS on 07.05.2021:

1. **On what legal grounds arising from article 6 paragraph 1 of IKÜM cameras is used?**
2. **If the cameras are used, among other things, on the basis of IKÜM Article 6(1)(f) (legitimate interest), a comprehensive analysis of the legitimate interest should be submitted to the inspection, on the basis of which it would be possible to assess the legality of the use of the cameras.**
3. **If Olerex AS also uses the audio recording, but the legitimate interest analysis mentioned in point 2 does not include an assessment of its legality, then separately justify whether and on what legal basis and purpose Olerex AS uses the audio recordings.**
  - 3.1. **If Olerex AS does not use audio recordings, confirm this.**
4. **Forward all documents that regulate the use of cameras and that have been introduced to employees. If the document is not only related to the use of cameras, refer to the specific points in the document that specifically regulate the use of cameras.**
5. **If Olerex AS uses audio recordings, then all documents that regulate the use of audio recordings and which have been introduced to the employees must be forwarded.**

***If the document is not only related to the use of audio recordings, then refer to the specific points in the document that regulate the use of audio recordings.***

**6. Whether and how it is possible for employees to familiarize themselves with the legitimate interest analysis specified in point 2.**

On 21.05.2021, Olerex AS sent a response to the inspection's repeated inquiry, including a legitimate interest analysis, which the inspection also evaluated during the supervision procedure.

On 16.09.2021, the inspection made a proposal to Olerex AS in case number 2.1.-1/19/2688 with the following content:

**Summary**

*Considering the above, Olerex AS has not proven that the use of audio recordings in service stations complies with the principles of personal data processing set forth in Article 5, paragraph 1 of the IKÜM, i.e. the processing of personal data is legal and the limitation of the purpose and the collection of as little data as possible is guaranteed.*

*Also, regarding the use of video surveillance, it has not been explained what is meant by monitoring the performance of processes and control of ensuring the fulfillment of the contract, and there is also no analysis of legitimate interest in this regard. Therefore, data processing in this way also does not comply with the principles of legality, purpose limitation and the collection of as little data as possible.*

*In addition, the video recordings are stored for 60 days, and the inspection also does not understand how this meets the principles of the collection and storage of as little data as possible. According to the inspection, a 72-hour recording retention period should generally be sufficient, as indicated by the European Data Protection Board. If a violation is detected within 72 hours, it is possible to keep that particular recording even longer. Here, too, we emphasize once again that the longer the recordings are stored, the greater the burden on the persons (including employees) left behind on the recordings.*

*The data processor himself is responsible for the fulfillment of the aforementioned principles and their fulfillment must be proven (see IKÜM Article 5 paragraph 2). If the processing of personal data does not comply with the principles set forth in Article 5 of the IKÜM (the controller cannot prove this), the processing of personal data is also prohibited in this respect.*

*In accordance with § 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.*

**Based on the above, we make the following proposals to Olerex AS:**

**1. Immediately remove cameras with audio surveillance.**

*In the event that Olerex AS wishes to continue to use cameras with audio surveillance at service stations, it must prove to the inspection that it complies with the principles of personal data processing (legality, purpose limitation and the principles of gathering as little data as possible). **Further use of cameras with audio guard is allowed only if Olerex AS has proven to the inspection the legality of using audio guard and the inspection has sent Olerex AS a confirmation regarding the permissibility of using cameras with audio guard.***

**1.1. Provide the inspection with a list of which service stations had cameras with audio surveillance and on which date the audio surveillance was removed from a specific service station.**

**2. Stop using the video surveillance recordings for the purposes you stated (except for the protection of persons and property) until the inspection has been presented with a legitimate interest analysis that covers all the purposes you stated and that comply with the principles of personal data processing (including purpose limitation, collection of as little data as possible).**

**3. Confirm that video recordings will be deleted within 72 hours.** If you do not agree with the proposal of the inspectorate, submit a comprehensive analysis to the inspectorate, which would show the need for a longer storage period and which would meet the principles of personal data processing (the principle of collecting and storing as little data as possible).

**4. To transmit to the inspection the locations of the cameras located inside the service station and extracts of their camera images for the following service stations: -**

**Tallinn Peetri gas station (Tartu mnt 169); -**

**Jõelähtme gas station (Kivisilla tee 1); -**

**Kärdla gas station (Kõrõsaare mnt 45); -**

**Kuressaare gas station (Tallinn tn 84); -**

**Põlva gas station (Tartu mnt 1b);**

**- Marjamaa Orgita filling station (Kürtsu).**

On 04.10.2021, the representative of Olerex AS sent a reply in which, among other things, the existence of an additional legitimate interest was assessed. Reasons were also presented as to why it is necessary to preserve 60 days of audio and video surveillance recordings, and pictures of the camera extracts of service stations selected by the inspection were presented. In this regard, Olerex AS did not remove the cameras with audio monitoring, did not change the purposes of using the cameras or reduce the term of storage of the recordings

#### **EXPLANATION OF PERSONAL DATA PROCESSOR**

**4. Proposal 1: remove cameras with audio surveillance immediately. In the event that AS Olerex wishes to continue to use cameras with audio surveillance at service stations, the inspection must prove compliance with the principles of personal data processing (legality, purpose limitation and the principles of gathering as little data as possible).**

5. First of all, we emphasize that AS Olerex considers the protection of personal data and privacy to be very important. AS Olerex is also aware that the use of audio and video surveillance in service stations may infringe the fundamental rights and freedoms (including privacy) of data subjects. In order to ensure that such interferences are legal, proportionate and necessary only for the legitimate interest of AS Olerex, AS Olerex bases its activities on the principles of data protection and works daily to ensure that the data processing carried out by the company is in accordance with all legislation.

6. In its proposal of 16.09.2021, the inspectorate explained that in order for the processing of personal data to be allowed, it must comply with all the principles set forth in Article 5(1) of the General Regulation on the Protection of Personal Data (hereafter IKÜM). As AS Olerex estimates that it is inevitably necessary to use cameras with audio surveillance in addition to video surveillance in service stations, we will explain and analyze below the compliance of the use of cameras with audio surveillance to the principles of personal data processing.

---

7. Compliance of the use of audio surveillance with article 5 paragraph 1 point a of IKÜM (principle of legality):

---

7.1. According to article 5 paragraph 1 point a of IKYM, the processing of personal data must be legal, fair and transparent. The same principle is included in the Personal Data Protection Act (hereinafter

*IKS) § 14 ps 1, which states that the processing of personal data must be done legally and fairly.*

*In connection with the mentioned principles, the inspection on 31.05.2018. a, it is explained in the instruction "General instructions for the processor of personal data" that there must be a basis for any processing of personal data. <sup>1</sup>*

*7.2. In its 21.05.2021 answer, AS Olerex explained that it uses cameras at service stations, i.e. both audio and video surveillance based on Article 6(1)(f) of the IKÜM (legitimate interest) and also submitted a legitimate interest analysis to the inspection. In its proposal of 16.09.2021, the inspectorate found that the analysis of the mentioned legitimate interest does not deal with the use of audio surveillance.*

*Based on the above, we present a legitimate interest analysis regarding the use of audiovalve by AS Olerex in service stations.*

*7.3. Both in its inquiry of 07.04.2021 and in its proposal of 16.09.2021, the inspection has explained that in order to rely on the legitimate interest arising from point f of Article 6, paragraph 1 of the IKÜM when processing personal data, all of the following conditions must be met at the same time: a) the controller or a third party has a legitimate interest in data processing ; b) the processing of personal data is necessary for the exercise of a legitimate interest; c) the legitimate interests of the data controller and/or third party outweigh the interests or fundamental rights and freedoms of the protected data subject.*

*7.4. In the following, we will analyze the fulfillment of the aforementioned conditions in connection with the use of audio surveillance at service stations.*

#### *(a) Legitimate Interest*

*7.5. In relation to the legitimate interest arising from Article 6, paragraph 1, point f of the IKÜM, it is explained in the IKÜM that the legal basis for processing may be the legitimate interest of the controller, provided that the interests or fundamental rights and freedoms of the data subject are not more important, taking into account the reasonable expectations of the data subject, based on in his relationship with the data controller.*

*Such a legitimate interest may exist, for example, if there is a relevant and appropriate relationship between the data subject and the controller, for example, if the data subject is a client of the controller or works for him. Legitimate interest can also consist of preventing fraud.<sup>2</sup> In the "Legitimate interest" instruction of the Inspectorate dated 15.05.2021, it is explained that legitimate interest can include broader interests of the personal data processor, both important and minor.<sup>3</sup>*

*7.6. In relation to the above, the inspection has explained in its proposal of 16.09.2021 that the legitimate interest must be in accordance with the current legislation, formulated clearly enough (i.e. sufficiently concrete) and real and present at the moment (i.e. not speculative).*

*7.7. In its answers of 20.04.2021 and 21.05.2021, AS Olerex has explained that the company's territories (including showrooms) are equipped with cameras, i.e. both audio and video surveillance, to ensure the preservation of the company's assets and the safety of employees and customers. At the same time, in order to minimize violations of the basic rights and freedoms of employees and customers, cameras with audio surveillance are installed only at the cash desks of service stations. More specifically, AS Olerex has pointed out that cameras are used in service stations for the following purposes: a) to identify a possible threat of attack and a dangerous situation for the life and/or health of those present and/or the property of AS i Olerex and/or other persons;*

---

<sup>1</sup> Data Protection Inspectorate. General instructions for the processor of personal data. Confirmed on 31.05.2018. - page 7. On the computer network: [https://www.aki.ee/sites/default/files/dokumendid/isikuandemte\\_tootleja\\_uldjuhend.pdf](https://www.aki.ee/sites/default/files/dokumendid/isikuandemte_tootleja_uldjuhend.pdf)

<sup>2</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27.04.2016 on the protection of natural persons in the processing of personal data and on the free movement of such data and on the repeal of Directive 95/46/EC (General Regulation on the Protection of Personal Data). – p 47.

<sup>3</sup> Data Protection Inspectorate. Legitimate interest. Confirmed 15.05.2020. – p. 6. On the computer network: [https://www.aki.ee/sites/default/files/dokumendid/oigustudu\\_huvi\\_juhend\\_15052020.pdf](https://www.aki.ee/sites/default/files/dokumendid/oigustudu_huvi_juhend_15052020.pdf) Tatari tn 39 / 10134 Tallinn / 627 4135 / info@aki.ee / www.aki.ee Registration code 70004235

b) monitor the performance of processes; c) ensure the safety of employees; d) to ensure the fulfillment of contracts (e.g. control of payment of a specified amount for goods).

7.8. Regarding the mentioned goals, in its proposal of 16.09.2021, the inspection took the view that AS Olerex has not explained whether and for which goals it is inevitably necessary to use audiovalve (i.e. how audiovalve supports the mentioned goals) and which goals cannot be fulfilled without audiovalve. We hereby explain that the unavoidable necessity of using audio surveillance in AS Olerex service stations in order to fulfill the stated goals is manifested in the following:

7.8.1. in connection with the identification of a possible threat of attack and dangerous situations, AS Olerex explains that the stated goal is not only intended to prevent the occurrence of such situations (we admit that the wording of the goal may have given such a false impression), but also to find out and resolve the circumstances related to the incidents that have already occurred. AS Olerex has explained in its 21.05.2021 answer that it is in its interest as an employer and economic and service company that service stations are used by as many people as possible. Among other things, it helps to achieve this goal if visiting and staying at service stations is as safe as possible for both employees and customers. In turn, it helps to ensure security if, in addition to preventing incidents, the incidents that have occurred can be resolved quickly. In such situations, audio recordings of service stations are indispensable aids. For example, there was an incident at the XXX Tammsaare service station where a man with a weapon-like object entered the gas station, threatened the attendant and stole cash from the register and fled.

In order to solve the case and prosecute the person, it was first necessary to identify his identity.

Since the mentioned man was wearing a hat, mask and sunglasses during the robbery, it was impossible to identify his identity only by visual inspection.<sup>4</sup> The audio recording of the service station camera was used to identify the person, among other things. By comparing the voice heard from the audio recording with the voice of the suspect, it was possible to identify the perpetrator of the act.

Related to the above, as far as AS Olerex service stations are public places, the use of cameras with audio surveillance in service stations is also in the public interest.

As well as in the interest of AS Olerex and the company's employees and customers, it is also in the interest of the wider public to catch criminals who are dangerous to society as quickly as possible. From the example described above, it is clear that the cameras located in AS Olerex service stations (including cameras with audio surveillance) are very important for achieving this goal.<sup>5</sup> Therefore, it is inevitably necessary to use audio recordings in AS Olerex service stations to resolve dangerous situations and ensure security;

7.8.2. in connection with monitoring the performance of the processes, AS Olerex explains that the mentioned purpose means checking the circumstances related to customer service at the service station (including communication between the customer and the customer service representative) and resolving the resulting claims. As an economic and service company and employer, it is in the interest of AS Olerex that the claims, complaints, etc. of both customers and employees are resolved quickly and fairly.

There are frequent situations where a conflict arises between a customer and a customer service representative (e.g. one party insults the other) or a dispute (e.g. over which currency the cash receipt was handed over). In such cases, it is common for one or the other party to submit a claim to AS Olerex, in order to resolve it, AS Olerex needs to find out all the circumstances related to the case, including what the customer and the customer service representative said to each other (e.g. did the insult actually take place) .

It is possible to identify such circumstances only with the help of audio recordings, i.e. audio recordings are used as auxiliary material to solve incidents that occurred at service stations. We explain that it is not possible to find out the aforementioned circumstances only with the help of e.g. video recordings.

---

<sup>4</sup> XXX

<sup>5</sup> See also Öhtulehet's article about the Lihula shooting. Online: <https://www.ohhtuleht.ee/1003773/ajatelt-mida-teamee-from-the-shooting-that-took-place-in-Lihulas-to-the-present> Tatari tn 39 / 10134 Tallinn / 627 4135 / info@aki.ee / www.aki.ee  
Registration code 70004235

*With the help of video recordings, it is possible to identify, for example, the time of the incident and the parties involved, but with video recordings it is not possible to identify the content of the dialogue between the parties. For example, there was an incident at XXX Õismäe gas station where a customer behaved rudely towards a customer service representative, i.e. insulted the customer service representative and used obscene expressions towards the customer service representative. The customer service representative wanted to file a complaint with the police, and the audio and video recordings of the service station were very helpful in finding out the circumstances of the conflict (see correspondence, appendix). Therefore, it is inevitably necessary to use audio recordings in AS Olerex service stations to monitor the performance of processes and to resolve incidents that occurred at the service stations;*

---

7.8.3. regarding employee safety, AS Olerex has explained in its 21.05.2021 response that as an employer, AS Olerex is obliged to ensure the safest possible working environment for its employees.

At the same time, the inspection instruction "Legitimate interest" also states that one of the most typical interests of a personal data processor in the sense of article 6, paragraph 1, point f of IKÜM may be the monitoring of employees for safety or management purposes.<sup>6</sup> In the practice of AS Olerex, there are frequent cases where aggressive customers insult and threaten AS Olerex employees (see the example given in the previous point). In order to ensure the protection of the employee's rights and future safety, it is important to find out the circumstances related to such cases. By finding out the circumstances, it is possible to decide whether and which measures need to be implemented. For example, if the threat is sufficiently serious, if there is reason to fear that the threat will be carried out, it is possible to file a criminal complaint against the perpetrator.<sup>7</sup> Since the threat is a verbal attack, it is only possible to find out the circumstances related to such attacks with the help of audio recordings. Although the cameras located at the cash registers of the service stations also make video recordings, as explained above, it is not possible to identify the content of the dialogue between the parties with the video recording. However, in the case of threats, what matters most is what one party said to the other. Therefore, it is inevitably necessary to use audio recordings in AS Olerex service stations to ensure the safety of employees;

---

7.8.4. in relation to the execution of contracts, AS Olerex explains that the stated purpose is more specifically the declarations of intent made by the parties, i.e. the customer and the customer service representative, when concluding and executing purchase and sale contracts and providing services at service stations. The protection of AS Olerex's rights and debt claims are also related to the mentioned purpose (e.g. in a situation where the customer fails to pay for goods or services). The "Legitimate interest" guide of the inspectorate also explains that one of the most typical interests of a personal data processor in the sense of Article 6(1)(f) of IKÜM may be to ensure compliance with legal requirements, including debt collection through extrajudicial procedures. <sup>8</sup> As explained above, AS Olerex appears in practice constant disputes, claims, complaints, etc. in connection with the services provided to customers at the service station and the goods sold. For example, there are often disputes about whether the customer asked AS Olerex's customer service representative to remove or replace some component of the ordered food (i.e. when the customer receives the order, he claims that he asked not to add jalapeno when placing the order, but it is still included in the food). Disputes also arise as to whether the customer informed the customer service representative that he had refueled or not (e.g. the customer only pays for coffee, but later it turns out that he had also refuelled). With the help of audio recordings, AS Olerex can identify the circumstances related to such disputes and thereby protect its rights. By listening to the dialogue between the customer and the customer service representative, it is possible to identify whether the customer service representative, for whose actions AS Olerex is responsible, was wrong, or whether the customer was wrong (or deliberately misled). We also explain once again that claims and complaints submitted to AS Olerex are mainly related to verbal conflicts that took place at service stations, the circumstances of which

---

<sup>6</sup> See Legitimate Interest Guidance (ref. 3), page 7.

<sup>7</sup> According to § 120, paragraph 1 of the Penal Code, threatening to kill, cause health damage or damage or destroy property to a significant extent, if there is reason to fear that the threat will be carried out, is punishable by a financial penalty or up to one year of imprisonment.

<sup>8</sup> See Legitimate Interest Guidance (ref. 3), page 6.



identification is only possible using audio recordings. Therefore, it is inevitably necessary to use audio recordings in AS Olerex service stations to ensure the fulfillment of contracts.

7.9. Therefore, it follows from the above that AS Olerex has a legitimate interest in data processing through audio recordings in this case.

(b) necessity of data processing

7.10. As explained above, it is important for AS Olerex and in the company's legitimate interest to protect the company's own rights and ensure the safety of employees and customers at service stations.

In order to achieve this goal, according to AS Olerex, it is absolutely necessary to use cameras with audio recording in service stations. As AS Olerex has explained in its answer of 21.05.2021, AS Olerex owns a total of 98 service stations (of which 12 are automatic filling stations and 86 are those that also have a shop and customer service staff) across Estonia, and a total of over 600 employees work at the service stations. Considering the number of service stations and their location, it is not economically or reasonably possible for AS Olerex to ensure the fulfillment of the mentioned goals in any other way.

7.11. The use of audio surveillance in service stations allows AS Olerex to identify important circumstances in retrospect to ensure the legitimate interest of the company and/or the rights of employees and/or customers. As explained above, in the practice of AS Olerex, cases where conflicts occur at service stations are common, but claims, complaints, etc. related to said conflicts are submitted to AS Olerex later. In order for AS Olerex to be able to identify circumstances related to conflicts and resolve disputes, it is inevitably necessary to use audio recordings of service stations. Conflicts that take place in service stations are often verbal, which is why it is not possible to identify the circumstances related to such incidents, e.g. with the help of video recordings. Also, as explained above, the audio recordings of AS Olerex service stations have also been used by the police in solving crimes and misdemeanors that occurred at service stations. Thus, the audio recordings made at AS Olerex service stations are everyday helpers for the police in ensuring public order and reducing crime.

7.12. There are no other more effective ways to protect AS Olerex's legitimate interest. There are monitoring centers in service stations, which transmit an alarm signal to security companies and AS Olerex security department employees when the "panic" and "radio panic" buttons are pressed, but the corresponding centers do not provide the same protection as audio recordings. For example, with the help of monitoring centers, it is not possible to identify the circumstances related to the incidents that took place at the service station afterwards. In the situations described above, AS Olerex's legitimate interest can be protected only with the help of audio recordings from security cameras.

7.13. Therefore, it follows from the above that the processing of personal data through audio recordings is necessary for the exercise of AS Olerex's legitimate interest.

c) consideration of the interests and rights of the data processor and data subject

7.14. AS Olerex has explained in its 21.05.2021 answer that in connection with the use of security cameras at service stations, the data subjects, i.e. the persons whose personal data are processed, are the employees and customers of the service stations. In relation to the interests and fundamental rights of data subjects, the inspectorate has explained in its proposal of 16.09.2021 that it is first necessary to analyze what are the possible interests or fundamental rights and freedoms of the data subject that may be harmed by the processing of personal data and then to compare the possible impact of the processing of personal data on the data subject with the legitimate interests of the data controller.

7.15. AS Olerex considers that the main interests, fundamental rights and freedoms of employees and customers, which may be damaged by making audio recordings, are the following: a) human dignity of employees and customers; b) privacy of employees and customers; c) the right of employees and customers to message secrecy; d) the right of employees and customers to decide on the collection and distribution of their data.

7.16. According to the opinion of AS Olerex, the company's legitimate interests in the use of audio surveillance in this case outweigh the possible interference with the interests or fundamental rights and freedoms of the company's employees and customers:

7.16.1. first of all, it is important that the employees and customers of AS Olerex can expect the processing of personal data through audio surveillance. The employees of AS Olerex can be considered as persons with whom AS Olerex has a relevant and appropriate relationship in the sense of point 47 of the IKÜM's reasons. As a result, it is rather necessary to take the position that employees can expect that AS Olerex processes their personal data.<sup>9</sup> In this case, the use of audio surveillance in gas station service stations is common. AS Olerex points out that, for example, Circle K also uses cameras with both audio and video surveillance in the checkout area of its service stations.

<sup>10</sup> In addition to the above, AS Olerex has installed signs in service stations that inform about the presence of a camera with audio surveillance, and AS Olerex has also separately informed its employees about this. Therefore, both AS Olerex employees and customers can expect that they can stay in the area where audio surveillance cameras record sound at service station checkouts;

7.16.2. secondly, it is important that the processing of personal data using audio recording is in the interest of both AS Olerex employees and customers. As explained above, AS Olerex ensures through the use of audio surveillance that visiting and staying at service stations is as safe and secure as possible for AS Olerex employees and customers. Audio recordings are also important in resolving claims, complaints, etc. submitted by employees and customers.

7.16.3. thirdly, the processing of personal data of AS Olerex employees and customers through audio surveillance cannot be considered too intrusive or inappropriate to the rights and freedoms of employees and customers. With any data processing, there is a risk that such data processing may harm the rights of data subjects. According to AS Olerex, the company has done everything reasonably possible to avoid unjustified infringements of the rights of its employees and customers and misuse of data:

a) employees and customers have been informed about the location of the cameras and the fact of making audio recordings. Corresponding signs have been installed in AS Olerex service stations, and AS Olerex has also informed its employees about these circumstances separately;

b) cameras with audio recording are located only at the cash desks of service stations. AS Olerex emphasizes that there are no cameras with audio recording elsewhere in the sales hall or in the employees' living and rest rooms. Cameras with audio recording are installed only at the cash registers of service stations, where the need to make audio recordings is most necessary (see reasons above). In connection with the above, in its proposal of 16.09.2021, the inspectorate accused AS Olerex that AS Olerex has not done anything to prevent employees from being disturbed by the audio recordings, but on the contrary, the audio recordings have been placed near the cash registers, where the employees are present throughout the working hours. AS Olerex emphasizes that such a complaint by the inspectorate is unfounded, since the employees of AS Olerex are not present at the cash desk of the service station throughout the working hours.

We would like to clarify that there is no separate position of cashier in AS Olerex, i.e. a person whose job is to

<sup>9</sup> See IKÜM (reference 2), p. 47.

<sup>10</sup> Circle K. Processing of personal data. On the computer network: <https://www.circlek.ee/isikuandemte> [t%C3%B6C3%B6tlemine](https://www.circlek.ee/isikuandemte) Tatari

be at the cash desk of the service station throughout the working hours. In service stations, a total of one to three customer service personnel work in one shift, whose tasks are very diverse and constantly rotate during one shift. One customer service representative works in the warehouse, checkout zone, cooking zone, outdoor area, sales hall, etc. during one shift. The customer service representative moves to the checkout area only when the customer wants to pay for the purchase. At the same time, a free customer service person moves to the cash register, not a fixed employee. It is also customary at AS Olerex that employees of AS Olerex do not have personal conversations or do other personal tasks while performing their duties. Therefore, to the extent that the employees of AS Olerex are not constantly in the checkout zone during their working hours, there cannot be unjustified and excessive infringements of the employees' rights in connection with the use of audio surveillance in the checkout zones;

---

c) no real-time monitoring/listening of audio recordings. AS Olerex explains that the computer, which shows the image of the service station's security cameras, is located in the checkout zone, and in larger gas stations, one computer is also located in the employees' living rooms. These computers are used by service station employees themselves and not by any third party. At the same time, these computers do not allow real-time audio monitoring. Audio recordings can only be consulted in the cases determined by AS Olerex "Procedure for the use of video surveillance and processing of video materials"<sup>11</sup> ;

d) AS Olerex has established strict rules regarding the use and processing of audio recordings. As mentioned above, AS Olerex has established "Procedures for the use of video surveillance and processing of video materials". We clarify that, regardless of the name of the referred procedure, it also deals with audio recordings. Among other things, the said procedure regulates who and in what cases has the right to use audio and video recordings made at AS Olerex service stations.

For example, the processing procedure in chapter IV "Activity description" in point 4 stipulates that only the head of AS Olerex IT department with the permission of the network administrator can access the monitoring devices installed in the service stations. Therefore, AS Olerex has strictly limited who has access to the audio recordings and in which cases;

---

e) employees and customers have the right to consult the recordings made about them. Both employees and customers have the right to submit a corresponding justified request to AS Olerex to review the audio recording concerning the employee or customer and to demand from AS Olerex the deletion, transfer of the audio recording, to submit objections, etc.;

f) the processing of personal data using audio recordings is necessary for the protection of AS Olerex's legitimate interest. As explained above, if audio surveillance is not used at service stations, there is a risk that AS Olerex will not be able to ensure the protection of its legitimate interests, including the company's property, employees and customers. AS Olerex considers that it cannot use other measures to protect its rights.

---

7.16.4. Therefore, as a result of the above, AS Olerex estimates that the legitimate interests of the company outweigh the interests or fundamental rights and freedoms of the protected data subject when using audio surveillance.

---

7.17. In summary, AS Olerex considers that the use of audio surveillance in the service stations owned by AS Olerex and thus the processing of personal data complies with the principle of legality arising from Article 5 paragraph 1 point a of IKÜM, insofar as the use of audio surveillance and thus the processing of personal data is carried out on the basis of a legitimate interest arising from Article 6 paragraph 1 point f of IKÜM.

8. Compliance of the use of audio surveillance with IKÜM article 5 paragraph 1 point b (principle of purpose limitation):

---

8.1. According to article 5 paragraph 1 point b of the IKÜM, personal data must be collected for precisely and clearly defined and legitimate purposes, and personal data must not be processed later in a way that is inconsistent with these purposes. In connection with this purpose, "Personal data

---

<sup>11</sup> See AS Olerex 24.04.2021 answer no. VL-TR-25622021, appendix.

processor's general instructions" explained that in order to ensure the purposefulness principle, the data processor must define the purpose for which the data is needed and there must be another basis for processing the same data for another purpose.<sup>12</sup>

8.2. The objectives on the basis of which AS Olerex uses audio surveillance at its service stations have been outlined and explained above by AS Olerex. At the same time, AS Olerex considers that the mentioned goals are sufficiently precisely and clearly defined and understandable. AS Olerex confirms that AS Olerex does not perform data processing through audio valve for any other purposes that are not discussed in this answer.

---

8.3. Therefore, AS Olerex is of the opinion that the use of audio surveillance in the service stations owned by AS Olerex and thus the processing of personal data complies with the principle of purpose limitation arising from Article 5(1)(b) of the IKÜM.

9. Compliance of the use of audio surveillance with IKÜM article 5 paragraph 1 point c (principle of collecting as little data as possible):

---

9.1. According to article 5 paragraph 1 point c of IKÜM, the processed personal data must be relevant, important and limited to what is necessary for the purpose of their processing.

In connection with the mentioned principle, the "General Guide to the Processor of Personal Data" explains that the data processor may not collect more data than is necessary to achieve the purpose.<sup>13</sup>

9.2. AS Olerex confirms that it collects as much data as necessary and as little data as possible.

---

In the case of audio surveillance, it is an unavoidable situation that, in addition to the data that the data processor needs to collect in order to fulfill its legitimate purposes, the audio recording may contain data that is not necessary for the data processor (e.g. private conversations of individuals). The same problem occurs in any situation where people's speech is recorded. Many service providers (banks, authorities, etc.) record calls between customers and customer service representatives to ensure the best service and to verify the information disclosed during the conversation. It may happen that while the customer is talking to the customer service representative, the customer is talking to a third party about his private affairs (for example, when the customer calls the service provider from the car using the hands-free system). In such a situation, the service provider has no way of distinguishing the client's private information from the information related to the provision of the service, i.e. the entire client's conversation is recorded as a whole.

9.3. In this case, there are no technical solutions for distinguishing necessary and unnecessary data in the case of audio recordings. No such audio recording technique has been created that can be programmed in such a way that it automatically identifies the data necessary for the data processor and the unnecessary data and performs the recording accordingly. At the same time, creating such a technique is probably also impossible, as it is not possible to know in advance which data may be necessary in the future. It is also unthinkable that, for example, the employees of AS Olerex service stations would start to switch the audio recording equipment on and off manually.

9.4. Therefore, AS Olerex is of the opinion that the use of audio surveillance in the service stations belonging to AS Olerex, and thus the processing of personal data, complies with the principle of collecting as little data as possible arising from Article 5(1)(c) of the IKÜM.

**10. In summary, AS Olerex considers that the use of cameras with audio surveillance in service stations owned by the company complies with the principles of personal data processing (legality, purpose limitation and collection of as little data as possible).**

---

<sup>12</sup> See general instructions for the personal data processor (reference 1), page 7.

<sup>13</sup> See general instructions for the personal data processor (reference 1), page 7.

**11. Proposal 1.1: Provide the inspection with a list of which service stations had cameras with audio surveillance and on which date the audio surveillance was removed from a specific service station.**

12. As explained in the previous point, to the extent that AS Olerex considers that the use of cameras with audio surveillance in service stations owned by the company is legal, AS Olerex will continue to use cameras with audio surveillance in service stations.

13. AS Olerex emphasizes that when using audio surveillance, it definitely takes into account the inspectorate's explanations about the possible problem areas of using audio surveillance and does everything to ensure the proportionality and transparency of the use of audio surveillance at service stations and the least possible interference with the rights of data subjects. As AS Olerex explained above, compliance of data protection and data processing with legislation is one of AS Olerex's priorities.

**14. Proposal 2: End the use of video surveillance recordings for the purposes stated by you (except protection of persons and property) until the inspection is presented with a legitimate interest analysis that covers all the purposes stated by you and that comply with the principles of personal data processing (including purpose limitation, collection of as little data as possible) )**

15. In its proposal of 16.09.2021, the inspection stated that the objectives of monitoring the performance of processes with cameras and ensuring the fulfillment of the contract remain unclear to the inspection. According to the inspection, the documents provided by AS Olerex do not contain information about which processes are monitored and how, and why video surveillance is inevitably necessary to monitor said processes, and it is not possible to ensure the performance of the processes with other, less intrusive measures.

16. Although in its 21.05.2021 response, AS Olerex has presented a legitimate interest analysis, among other things, regarding the use of video surveillance, based on the proposal of the inspection on 16.09.2021, AS Olerex provides additional explanations regarding the legitimate interest of AS Olerex regarding the use of video surveillance at service stations. Since the inspection has taken the position that the use of video surveillance by AS Olerex for the protection of persons and property is possible and justified, AS Olerex does not consider it necessary to repeat its views in this regard. Therefore, AS Olerex deals below only with monitoring the performance of processes and ensuring the fulfillment of the contract.

17. In its 21.05.2021 answer, AS Olerex explained that it uses video surveillance at service stations on the basis of a legitimate interest arising from Article 6(1)(f) of IKÜM. As already explained above, in order to rely on a legitimate interest, all three of the following prerequisites must be met at the same time: a) the controller or a third party has a legitimate interest in data processing; b) the processing of personal data is necessary for the exercise of a legitimate interest; c) the legitimate interests of the data controller and/or third party outweigh the interests or fundamental rights and freedoms of the protected data subject.

18. In the following, AS Olerex analyzes the fulfillment of the aforementioned conditions in connection with the use of video surveillance to monitor the performance of processes and to ensure the fulfillment of contracts.

(a) Legitimate Interest

19. As explained above, the legitimate interest arising from point f of Article 6, paragraph 1 of the IKÜM may exist if there is a relevant and suitable relationship between the data subject and the controller, e.g. if the data subject is a client of the controller or works for him. A legitimate interest may also consist of preventing fraud. In addition, the inspection manual "Legitimate interest" explains that the legitimate interest can include both important and minor interests of the personal data processor.

20. In its answers of 20.04.2021 and 21.05.2021, AS Olerex has explained that the company's territories (including showrooms) are equipped with cameras, i.e. both audio and video surveillance, to ensure the preservation of the company's assets and the safety of employees and customers. More specifically, AS Olerex pointed out that the company uses cameras with video surveillance in service stations for the following purposes, among others (i.e. in addition to the protection of persons and property): a) to monitor the performance of processes;

b) to ensure the fulfillment of contracts (e.g. control of payment of a specified amount for goods).

21. AS Olerex explains that the unavoidable necessity of using video surveillance in the fulfillment of the stated goals is manifested in the following:

21.1. first of all, AS Olerex explains that in connection with video surveillance, process performance monitoring is intended to check circumstances related to customer service at the service station. In connection with the \_\_\_\_\_ mentioned processes, various demand letters are often submitted to AS Olerex. For example, the Police and Border Guard Board (hereinafter PPA) submitted a letter of demand to XXX AS Olerex in connection with the purchase made at the Papsaare filling station in XXX Pärnu. PPA asked AS Olerex, if possible, to issue photos of the person who made the purchase and the vehicle he was using. Based on the video recordings of the security cameras, AS Olerex was able to fulfill the PPA requirement. The said purpose also includes control over whether the customer service agents fulfill their obligations arising from the law. For example, in addition to regular goods, restricted products (e.g. tobacco products, alcoholic beverages) are also sold at service stations. As a result, in the practice of AS Olerex, there is often a need to check whether the customer service agent checked the customer's age before making the sale. Based on the video recordings, it is possible to identify the fact that the customer service agent asked for an identity document. AS Olerex explains that the video recordings show whether the customer hands the document to the customer service representative or not. It is not possible for AS Olerex to guarantee the mentioned goals in any other way. Although the fact that the customer service representative asked for a document can also be detected with, for example, an audio recording, whether the document check actually took place can only be detected with a video recording. At the same time, ensuring the fulfillment of such statutory obligations is also in the public interest. Norms prohibiting the sale of tobacco, alcohol, etc. products to minors have been established based on public interests and social norms. By ensuring that its employees fulfill the aforementioned obligations, AS Olerex significantly contributes to the fulfillment of important goals in society and ensuring safety.

Therefore, according to AS Olerex, it is inevitably necessary to use video surveillance in service stations to monitor the performance of processes;

21.2. in relation to ensuring the fulfillment of contracts, AS Olerex explains that the purpose mentioned is the control of circumstances related to the conclusion of purchase and sale contracts and the provision of services at service stations. For example, in the practice of AS Olerex, there have been situations where a dispute arises between the customer and the customer service representative about which bill the customer used to pay for the purchase/service. XXX there was an incident at the Aovere gas station where a dispute arose between a customer service representative and a customer about whether the customer paid for the purchase with a 5-euro note or a 50-euro note. To resolve the situation, the customer service representative contacted the security manager, who established \_\_\_\_\_ based on the video recording that the customer paid for the goods with a 5-euro banknote<sup>14</sup>. At the same time, AS Olerex considers that it is not possible to identify such circumstances and resolve conflicts quickly with the help of other than security camera video recording. Video recordings are also important to check, for example, whether the procedure for selling specially marked diesel fuel was followed. In accordance with § 12 (1) of the Liquid Fuel Special Labeling Act (VKEMS), the seller is obliged to identify the buyer when selling special purpose diesel fuel. For this purpose, the seller must require the natural person buyer to submit an identity document and the representative of the legal entity a power of attorney with the name and details of the representative of the legal entity. With the help of video recordings, AS Olerex can check whether the customer service representative asked the buyer for an identity document and whether the buyer \_\_\_\_\_

<sup>14</sup> XXX

submitted the document. If the buyer refuses to provide identification data and documents or if the buyer fails to declare the purpose of use of the special purpose diesel fuel, the seller is obliged to refuse the sale of the fuel  
<sup>2</sup> according to VKEMS § (1). AS 1 Olerex cannot identify the aforementioned circumstances in any other way. Therefore, according to AS Olerex, it is inevitably necessary to use video surveillance in service stations to ensure the fulfillment of contracts.

---

22. Based on the above, AS Olerex considers that the company has a legitimate interest in monitoring the performance of processes and ensuring the fulfillment of contracts, and thereby data processing through video surveillance.

*b) necessity of data processing*

23. The use of video surveillance for the above-mentioned purposes is necessary for the realization of AS Olerex's legitimate interest, insofar as it enables the identification of AS Olerex's legitimate interest, including important circumstances for ensuring the rights of AS Olerex employees and customers afterwards. AS Olerex explains that, for the most part, video recordings of service stations turn out to be necessary afterwards. It is usual for claims, complaints, etc. to be submitted to AS Olerex after the event has taken place. For example, in the above example, Olerex submitted a claim to PPA AS almost 2 months after the relevant event took place. Therefore, the video recordings made by AS Olerex are also daily helpers for the police and ensure the protection of public interests.

---

24. AS Olerex considers that, although making video recordings for the mentioned purposes may violate the rights of both AS Olerex employees and customers, AS Olerex estimates that the company has no other more effective and less intrusive measures to exercise its legitimate interest.

*(c) consideration of the interests and rights of the data processor and data subject*

26. AS Olerex has explained in its 21.05.2021 answer that in connection with the use of security cameras in service stations, the data subjects, i.e. the persons whose personal data are processed, are the employees and customers of the service stations. In relation to the interests and fundamental rights of data subjects, the inspectorate has explained in its proposal of 16.09.2021 that it is first necessary to analyze what are the possible interests or fundamental rights and freedoms of the data subject that may be harmed by the processing of personal data and then to compare the possible impact of the processing of personal data on the data subject with the legitimate interests of the data controller.

27. AS Olerex considers that the main interests, fundamental rights and freedoms of employees and customers, which may be damaged by making video recordings, are the following: a) human dignity of employees and customers; b) privacy of employees and customers; c) the right of employees and customers to decide on the collection and distribution of their data.

28. However, AS Olerex considers that the legitimate interests of the company in performing video surveillance outweigh in this case the possible interference with the interests or fundamental rights and freedoms of the company's employees and customers:

28.1. first, AS Olerex considers that its employees and customers can expect the processing of personal data through video recordings for the aforementioned purposes. The employees of AS Olerex can be considered as persons with whom AS Olerex has a relevant and appropriate relationship in the sense of point 47 of the IKÜM's reasons. As a result, it is more likely to take the position that employees can expect that AS Olerex processes their personal data. In this regard, the use of video surveillance in gas station service stations or other showrooms is common. AS Olerex points out that both audio and

---

<sup>15</sup> See IKÜM (reference 2), p. 47.

for example, Circle K also uses cameras with video surveillance in the checkout area of its service stations.<sup>16</sup> All shopping centers and grocery stores also use security cameras. To ensure that the employees and customers of AS Olerex are aware of the implementation of video surveillance, AS Olerex has installed corresponding signs in the service stations. AS Olerex has also informed its employees separately about video surveillance;

28.2. secondly, AS Olerex considers that the processing of personal data using video recordings for the aforementioned purposes is in the interest of both AS Olerex employees and customers. As explained above, AS Olerex, through video surveillance, ensures, among other things, that disputes between customers and customer service representatives during the execution of purchases and sales at the service station and the provision of services are resolved. According to AS Olerex, it is in the interest of both employees and customers that in the event of a dispute it is possible to identify all the circumstances and resolve the dispute correctly;

28.3. thirdly, AS Olerex considers that the processing of personal data of employees and customers through video surveillance for the aforementioned purposes is not too intrusive or inappropriate to the rights and freedoms of employees and customers. AS Olerex accepts that with any data processing there is a risk that such data processing may harm the rights of data subjects. At the same time, according to AS Olerex, the company has done everything reasonably possible to avoid unjustified infringement of the rights of its employees and customers and misuse of data:

a) as explained above, employees and customers have been informed about the locations of the cameras and the fact of video surveillance. At the same time, no cameras are located in the employees' living and rest rooms. Also, the video surveillance cameras at the cash registers are directed in such a way that the camera captures the important, i.e. the checkout zone and the counter (to capture the movement of cash, the verification of the authenticity of the cash by the customer service representative, the handing over of goods, etc.).

The movements of customer service personnel are mostly not visible to the cameras in the checkout zone or are captured from behind. At the same time, AS Olerex emphasizes that none of the company's employees is in the checkout zone during the entire working time. AS Olerex does not have a separate cashier position, i.e. a person whose task is to be at the cash desk of the service station all working hours. In service stations, a total of one to three customer service personnel work in one shift, whose tasks are very diverse and constantly rotate during one shift. One customer service representative works in the warehouse, checkout zone, cooking zone, outdoor area, sales hall, etc. during one shift. The customer service representative moves to the checkout area only when the customer wants to pay for the purchase. At the same time, a free customer service person moves to the cash register, not a fixed employee. So far, no employee has approached AS Olerex with claims or other complaints regarding the location of the cameras;

b) the video surveillance image can be monitored in real time only by customer service personnel of the service station. AS Olerex has explained that the computer that shows the image of the service station's security cameras is located in the checkout zone, and in larger gas stations, one computer is also located in the employees' living rooms. These computers are used only by the employees themselves and not by third parties to monitor security camera images;

c) AS Olerex has established a strict procedure for the use and processing of video recordings. AS is Olerex has established the "Procedure for the use of video surveillance and processing of video materials".

Among other things, the said procedure regulates who and in what cases has the right to use audio and video recordings made at AS Olerex service stations. For example, the processing procedure in chapter IV "Activity description" in point 4 stipulates that only the head of the IT department of AS Olerex with the permission of the network administrator can access the monitoring devices installed in the service stations. Also, AS Olerex stores all recordings only for a limited time;

d) employees and customers have the right to consult the recordings made about them. Both employees and customers have the right to submit a corresponding justified request to AS Olerex to review the video recording concerning the employee or customer and to demand from AS Olerex the deletion, transfer of the video recording, to submit objections, etc.; Tatari tn 39 / 10134



e) AS Olerex considers that the use of video surveillance for the aforementioned purposes is necessary to protect the legitimate interest of AS Olerex. As explained above, if personal data were not processed using video recordings, there is a risk that AS Olerex will not be able to ensure the protection of its legitimate interests, including the company's property and the rights and interests of employees and customers.

29. In summary, AS Olerex considers that the use of video surveillance in service stations belonging to the company for the purpose of monitoring the performance of processes and ensuring the fulfillment of contracts, and thus the processing of personal data is carried out in accordance with IKÜM Article 6 paragraph 1 point f (legitimate interest). Accordingly, in the opinion of AS Olerex, such processing of personal data is also in accordance with the principle of legality arising from Article 5(1)(a) of the IKÜM.

30. AS Olerex considers that the use of video surveillance in service stations also complies with the principle of limitation of purpose arising from Article 5, paragraph 1, point b of IKÜM. As explained above, it follows from the said principle that personal data must be collected only for precisely and clearly defined and legitimate purposes. AS Olerex confirms that it uses video surveillance in its service stations only to protect the company's property and customers and employees, to ensure the fulfillment of contracts and to monitor the performance of processes. AS Olerex does not use video surveillance for data processing for any other purposes not specified by AS Olerex.

31. AS Olerex also considers that the use of video surveillance in service stations complies with the principle of collecting as little data as possible as stated in Article 5, paragraph 1, point c of the IKÜM. As explained above, this principle means that personal data must be collected as much as necessary and as little as possible. AS Olerex confirms that it collects as much data as necessary and as little as possible. When using video surveillance, it is an unavoidable situation that, in addition to the data that the data processor needs to collect to fulfill its legitimate purposes, video recordings may also contain other data that are not necessary for the data processor. At the same time, no technical solutions have been created that would allow storing only those data that are necessary for the data processor. Inevitably, it is not possible to know in advance when one or the other video recording may be necessary. In connection with the above, AS Olerex emphasizes that the company uses video recordings only when there is a real need for it. AS Olerex and its employees do not use video recordings, e.g. for their own interests or for other unnecessary purposes.

At the same time, the above is also not possible, since AS Olerex has established strict procedures regarding when and how video recordings can be used and consulted.

**32. In summary, AS Olerex considers that the company's use of video surveillance at service stations for the purpose of monitoring the performance of processes and ensuring the fulfillment of contracts is in the legitimate interests of AS Olerex and complies with the principles of personal data processing (including purpose limitation, collection of as little data as possible).**

**33. Proposal 3: Confirm that video recordings are deleted within 72 hours. If you do not agree with the proposal of the inspectorate, submit a comprehensive analysis to the inspectorate, which would show the need for a longer storage period and which would meet the principles of personal data processing (the principle of collecting and storing as little data as possible).**

34. In its 21.05.2021 response, AS Olerex explained that the company stores video recordings for 60 days, after which the recordings are deleted. In connection with this, the inspection took the position in its proposal of 16.09.2021 that such a storage period does not comply with the principles of personal data processing. According to the inspection, a storage period of 72 hours should generally be sufficient, and if a violation is detected during this time, it is possible to store a specific recording even longer.

35. AS Olerex agrees with the inspection that the storage of video recordings must be established Tatari tn  
39 / 10134 Tallinn / 627 4135 / info@aki.ee / www.aki.ee Registration  
code 70004235

the shortest possible term, insofar as this reduces the interference with the rights and freedoms of the persons recorded. At the same time, AS Olerex explains that in the company's practice, a considerably longer retention period has proven necessary. For example, there are thefts by both customers and employees at AS Olerex service stations. However, the lack of goods is often noticed only during the inventory. However, inventories are not carried out on a daily basis. For example, a situation occurred at the AS Olerex service station where a shortage of goods was detected during the inventory, and with the help of video recordings, it was established that several days earlier the customer service representative had violated the rules for handling cigarettes and took one pack of cigarettes out of the checkout area. After identifying the mentioned circumstances, explanations were also asked from the employee, who admitted to committing the theft. Also, letters of demand are submitted to AS Olerex to request video or audio recording more than 72 hours after the incident:

---

a) XXX submitted a letter of demand to PPA AS Olerex, with which PPA demanded from AS Olerex data on transactions made with customer cards of specific persons during the period XXX and video recordings related to these transactions. PPA also demanded from Olerex AS to submit video recordings (both inside and outside the service station) related to the events that took place at the XXX and XXX Tammsaare and St. Petersburg gas stations. Therefore, there was almost 2 months between the occurrence of the events and the submission of the letter of demand;

b) XXX submitted a letter of demand to PPA AS Olerex, with which PPA demanded AS Olerex XXX to submit video recordings (both inside and outside the service station) related to the event that took place at the Sõle gas station. Thus, there were 11 days between the occurrence of the event and the submission of the demand letter;

c) XXX submitted a letter of demand to PPA AS Olerex, with which PPA demanded AS Olerex XXX to submit video recordings (both inside and outside the service station) related to the event that took place at the Kiviõli gas station. Thus, there were 6 days between the occurrence of the event and the submission of the demand letter;

d) XXX submitted a letter of demand to PPA AS Olerex, with which PPA demanded AS Olerex XXX to submit video recordings (both inside and outside the service station) related to the event that took place at the gas station in Narva. Thus, there was approximately 1 month between the occurrence of the event and the submission of the demand letter;

e) XXX submitted a letter of demand to PPA AS Olerex, with which PPA demanded AS Olerex XXX to provide video recordings (both inside and outside) related to the event that took place at the gas station in Papsaare.  
Thus, approximately 2 months elapsed between the occurrence of the event and the submission of the demand letter;

36. In connection with the above, we explain that insofar as PPA demand letters have been recognized for internal use both on the basis of § 35 (1) p. 1, 3, 12 and 19 of the Public Information Act (AvTS) and § 4 (5) of the Police and Border Guard Board Act (PPVS), it is not possible for AS Olerex to submit the above-mentioned demand letters to the inspection.

37. AS Olerex explains that the above is only a few individual examples. Requests for issuing video and audio recordings are submitted to AS Olerex on a daily basis. At the same time, in practice, the most frequent situations are those where there is approximately 2 months between the event for which a video or audio recording is requested and the request is submitted. As a result, in AS Olerex's practice, the storage of video and audio recordings has proven to be optimal for 60 days. AS Olerex points out that other companies also use a much longer storage period than 72 hours. For example, AS Krooning<sup>16</sup> and Alexela<sup>17</sup> store video recordings for 30 days. Circle K

---

<sup>16</sup> AS Krooning. Privacy policy and personal data processing principles. On a computer network: <https://krooning.ee/isikuandmete-tootlemise-pohimotted>.

<sup>17</sup> Alex. Principles of personal data processing. On the Internet: <https://www.alexela.ee/sites/default/files/documents/2021-Tatari>  
tn 39 / 10134 Tallinn / 627 4135 / info@aki.ee / www.aki.ee Registration  
code 70004235

keeps security recordings for up to 60 days.<sup>18</sup> SEB bank also keeps security recordings for 2 months, unless another deadline is stipulated by legislation.<sup>19</sup>

38. In connection with the storage of data, AS Olerex emphasizes once again that it is important for the company to ensure the protection of collected data, and AS Olerex will do everything reasonably possible for this purpose. As explained several times above, AS Olerex has established strict measures for the use and viewing of both video and audio recordings.

39. **Therefore, as a result of the above, AS Olerex is of the opinion that the 60-day retention period for security camera recordings of AS Olerex service stations, including both audio and video surveillance, is justified and necessary.**

40. **Proposal 4: To transmit to the inspection the locations of the cameras located inside the service station and extracts of their camera images for the following service stations: - Tallinn Peetri gas station (Tartu mnt 169); - Jõelähtme gas station (Kivisilla tee 1); - Kärkla gas station (Kõrõsaare mnt 45); - Kuressaare gas station (Tallinn tn 84); - Põlva gas station (Tartu mnt 1b); - Marjamaa Orgita filling station (Kürtsu).**

41. Excerpts from service station camera images are available on XXX. The locations of the cameras on the territory of the service stations can also be seen in the mentioned picture. If the inspection considers it necessary and wants it, AS Olerex is ready to explain the locations of the cameras in other ways.

## **GROUND FOR DATA PROTECTION INSPECTION:**

### **1. Processing of personal data**

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 (see IKÜM Article 4, point 1).

With the help of cameras, a person (especially an employee) can be identified in any case. Olerex AS also uses audio surveillance. The voice is also a personal gift, by which it is possible to identify a person. In the case of video and audio surveillance, it is the processing of personal data, which must comply with the requirements set forth in the General Regulation on the Protection of Personal Data (GPA).

When processing personal data, the data controller must follow the principles set forth in Article 5, paragraph 1 of the General Data Protection Regulation. The responsible processor himself is responsible for the fulfillment of these principles and must be able to prove their fulfillment (see IKÜM Article 5 paragraph 2). To the extent that data processing does not fully comply with the principles set forth in Article 5, paragraph 1 of the IKÜM, or the controller cannot prove compliance with these principles, data processing is also prohibited.

### **2. Legality of personal data processing (Article 5 paragraph 1 point a)**

The processing of personal data is legal only if at least one of the conditions stipulated in Article 6, paragraph 1 of the General Regulation on the Protection of Personal Data (GPR) is met. Olerex AS considers that Olerex AS has a legitimate interest in the use of video and audio surveillance used in service stations arising from point f of Article 6, paragraph 1 of IKÜM.

---

[06/Isikuandemtet%20t%C3%B6%C3%B6tlemise%20p%C3%B5him%C3%B5tted.pdf](https://www.isikuandemtet.ee/06/Isikuandemtet%20t%C3%B6%C3%B6tlemise%20p%C3%B5him%C3%B5tted.pdf).

<sup>18</sup> Circle K. Processing of personal data. On the computer network: <https://www.circlek.ee/isikuandemtet%20t%C3%B6%C3%B6tlemise>. <sup>19</sup>

SEB. Terms of processing customer data. Valid from 01.11.2018. Page 3, p 10.1. On a computer network: [https://www.seb.ee/sites/default/files/tac/kliendiandmete\\_tootlemise\\_tingimused\\_2018\\_EST.pdf](https://www.seb.ee/sites/default/files/tac/kliendiandmete_tootlemise_tingimused_2018_EST.pdf).

Tatari tn 39 / 10134 Tallinn / 627 4135 / info@aki.ee / www.aki.ee Registration code 70004235

According to Article 6(1)(f) of IKÜM, the processing of personal data is legal if the processing of personal data is necessary for the legitimate interest of the data controller or a third party, unless such interest is outweighed by the interests of the data subject or the fundamental rights and freedoms for which personal data must be protected (Article 6 paragraph 1 point f of IKYM).

Thus, IKÜM article 6 paragraph 1 point f stipulates three conditions, **all of** which must be met in order for the processing of personal data to be permitted: - the data controller

or third parties have a legitimate interest in data processing; - the processing of personal data is necessary for the exercise of a legitimate interest; - the legitimate interests of the controller and/or the third party outweigh the protected interests, fundamental rights and freedoms of the data subject.

The possibility of using the said legal basis and its assessment can be graphically divided into three stages, i.e. firstly, the legitimate interests of the personal data processor or third parties and their importance, secondly, the rights and interests of the data subject and their importance, and thirdly, the weighing of conflicting interests, including a preliminary assessment + additional protective measures, if necessary, and a final assessment.

Based on the above, the data controller is obliged to compare the legitimate interests of himself and/or a third party with the interests and fundamental rights of the data subject, as a result of which it becomes clear whether it is possible to rely on IKÜ Article 6(1)(f) as the legal basis for processing. If the data processor has a legitimate interest in the processing of personal data, this does not automatically mean that the data processor can rely on Article 6(1)(f) of the IKÜM. The justification of the controller's interest is only a starting point, i.e. one of the elements that must be analyzed, and whether the basis of legitimate interest can be relied upon depends on the result of the balancing. It is the duty of the controller to make sure whether the provision of legitimate interest can be relied on, who must carry out the consideration in a transparent manner and also be able to justify (prove) it.

Therefore, in order to understand whether it is possible to process personal data on the basis of Article 6(1)(f) of the IKÜM, Olerex AS must prove whether and what the company's legitimate interest is. Legitimate interests must be formulated clearly enough. This requires a real and present interest – something related to an activity currently taking place or a benefit expected to be received in the near future. In other words, interests that are too vague or speculative are not enough. If the legitimate interests are not formulated clearly enough, it is not possible to balance said interests with the interests and fundamental rights of the data subject. Therefore, it is important that the legitimate interest is in accordance with the current legislation, formulated clearly enough (ie sufficiently specific) and real and present at the moment.

Secondly, it is necessary to analyze what are the possible interests or fundamental rights of the data subject - and the freedoms that may be harmed by the processing of personal data.

Thirdly, the legitimate interests of Olerex AS must be balanced with the interests and fundamental rights of the data subject. In doing so, the possible impact on the data subject from the processing (collection, use, storage) of personal data is compared with the legitimate interests of the controller, and it is assessed whether and to what extent the legitimate interest of the controller outweighs the interests of the data subject.

If the data processor fails to perform one of the previous steps correctly, data processing is not permitted on the basis of Article 6(1)(f) of the IKÜM, and the inspectorate has the right to prohibit further processing of personal data. The inspection checks compliance with Article 6(1)(f) of the IKÜM, taking into account the above and the explanations given in the proposal sent to Olerex AS on 16.09.2021.

## **2.1. Olerex AS legitimate interest analysis in the use of audio surveillance**

Olerex AS has stated the following regarding the legitimate interests of using audiovalve:

- *Since AS Olerex service stations are public places, the use of cameras with audio surveillance in service stations is also in the public interest. At the same time, one example was also forwarded to the inspectorate where an audio recorder was used to identify a person (thief). Based on this example, the following was noted: Therefore, in order to solve dangerous situations and ensure safety in AS Olerex service stations, it is inevitably necessary to use audio recordings;*
- *There are frequent situations where a conflict arises between a customer and a customer service representative (e.g. one side insults the other) or a dispute (e.g. over which currency the cash receipt was handed over). In such cases, it is common for one or the other party to submit a claim to AS Olerex, in order to resolve it, AS Olerex needs to find out all the circumstances related to the case, including what the customer and the customer service representative said to each other (e.g. did the insult actually take place) . It is possible to identify such circumstances only with the help of audio recordings, i.e. audio recordings are used as auxiliary material to solve incidents that occurred at service stations.[..]*

*Therefore, it is inevitably necessary to use audio recordings in AS Olerex service stations to monitor the performance of processes and to resolve incidents that occurred at the service stations;*

- *In order to ensure the protection of the employee's rights and future safety, it is important to find out the circumstances related to such cases.[...] Since the threat is a verbal attack, it is possible to find out the circumstances related to such attacks only with the help of audio recordings.[...] Therefore, AS Olerex service stations to ensure the safety of employees, it is also necessary to use audio recordings;*

Regarding the necessity of the aforementioned legitimate interests, Olerex AS has stated:

*7.10. As explained above, it is important for AS Olerex and in the company's legitimate interest to protect the company's own rights and ensure the safety of employees and customers at service stations.*

*In order to achieve this goal, according to AS Olerex, it is absolutely necessary to use cameras with audio recording in service stations. As AS Olerex has explained in its answer of 21.05.2021, AS Olerex owns a total of 98 service stations (of which 12 are automatic filling stations and 86 are those that also have a shop and customer service staff) across Estonia, and a total of over 600 employees work at the service stations. Considering the number of service stations and their location, it is not economically or reasonably possible for AS Olerex to ensure the fulfillment of the mentioned goals in any other way.*

---

*7.11. The use of audio surveillance in service stations allows AS Olerex to identify important circumstances in retrospect to ensure the legitimate interest of the company and/or the rights of employees and/or customers. As explained above, in the practice of AS Olerex, cases where conflicts occur at service stations are common, but claims, complaints, etc. related to said conflicts are submitted to AS Olerex later. In order for AS Olerex to be able to identify circumstances related to conflicts and resolve disputes, it is inevitably necessary to use audio recordings of service stations. Conflicts that take place in service stations are often verbal, which is why it is not possible to identify the circumstances related to such incidents, e.g. with the help of video recordings. Also, as explained above, the audio recordings of AS Olerex service stations have also been used by the police in solving crimes and misdemeanors that occurred at service stations. Thus, the audio recordings made at AS Olerex service stations are everyday helpers for the police in ensuring public order and reducing crime.*

---

*7.12. There are no other more effective ways to protect AS Olerex's legitimate interest. There are monitoring centers in service stations, which transmit an alarm signal to security companies and AS Olerex security department employees when the "panic" and "radio panic" buttons are pressed, but the corresponding centers do not provide the same protection as audio recordings. For example, with the help of monitoring centers, it is not possible to identify the circumstances related to the incidents that took place at the service station afterwards. In the situations described above, AS Olerex's legitimate interest can be protected only with the help of audio recordings from security cameras.*

*7.13. Therefore, it follows from the above that the processing of personal data through audio recordings is necessary for the exercise of AS Olerex's legitimate interest.*

The inspection cannot understand how the audio recording helps to identify the currency in which the cash receipt was handed over. It is true that the use of audio recordings allows Olerex AS to subsequently listen to the communication between the customer and the customer service representative, including assessing the conflict or threats that occurred. But it cannot be accepted that gathering evidence in this way is inevitably necessary and there are no less intrusive measures to prove the situations.

We explain that situations related to a conflict or threat can also be assessed if the situation is described by an employee or employees, and camera recordings are also reviewed. In addition, it is possible for every person to contact the police if he finds that a crime has been committed against him. If necessary, the police will be able to identify who saw a specific incident and who could describe it further from the camera recordings and the transactions that took place. However, it is inevitable that it is not possible to resolve/prove all the (conflict) situations that have arisen.

The inspection does not agree with the statement that since Olerex AS service stations are public places, it is inevitably necessary to use audio recordings to resolve situations and ensure security, and in the public interest. If the use of audio surveillance for such a purpose were unavoidably necessary, it would mean that audio recordings should also be used in all other public places to ensure security.

That being said, there are definitely situations where an audio recording is useful. However, accepting the permissibility of using audio surveillance to ensure security, resolve customer disputes, etc. leads to the same situation we are in with video cameras. It would become a new reality at every turn. AS Olerex itself indicates that customers and employees can expect video surveillance because it is common everywhere. But video surveillance has not always been the normality of everyday life either. Over time, video surveillance is exploited more and more, while the functionalities and quality of video surveillance improve. Over time, people have accepted the inevitability of video surveillance being used on such a large scale. Starting to use audio surveillance for the same purposes, step by step at first in some companies, it will spread indiscriminately everywhere. If one gas station can do it, other gas stations will be inspired. If gas stations can, shops will be inspired by this. Gas stations are not so special in nature that audio surveillance can be considered permissible only in them. A gas station provides a civil law service in exactly the same way - it sells goods and provides services, like any other civil law service provider (shop, service point, cafe). All these circumstances (threats, insults, asking requested questions), which AS Olerex refers to when using audio surveillance, also exist in other service locations. Being open 24 hours a day is also not such a special circumstance as to justify audio surveillance.

Therefore, the Data Protection Inspectorate does not consider audio surveillance inherently permissible in companies engaged in the provision of goods and services. Only very exceptional circumstances that do not exist elsewhere could justify the use of Audiovalve.

The police use what they can get as evidence. If audio recordings are not made, they cannot be claimed. Just because the police often use them, the private sector cannot start collecting any data. In this way, we could reach a situation where, for the purpose of solving possible future crimes, everything will be recorded, just in case.

As for the indication that audio recording is also used at another gas station or that telephone calls are recorded, the possible violations of other companies cannot justify one's own actions. Although the inspectorate cannot process all companies at the same time, we try to do our best and we will certainly take action against other gas stations in the same matter. However, the recording of phone calls cannot be compared one-to-one with audio recording at the gas station cash register, because everything is recorded in the gas station service station cash register, both employees, customers and conversations between employees and customers.

In the case of a telephone conversation, there are usually two parties, i.e. the customer and the employee. Also, in a situation where a customer calls a specific work number, it is usually also a work-related communication, in contrast to service stations, where there may be many parties and the conversation may not often be limited to work-related conversations. Also, in addition to making a call, the customer can mostly choose between several different communication channels (e-mail, visiting, self-service environment). While making a purchase at a service station (except for refueling only), it is necessary to enter the service station. In addition, with regard to the latch, it cannot be overlooked that the service station has, in addition to audio recordings, video surveillance, which the employee is constantly in sight of. The inspectorate also does not agree that the recording of all calls, for example for the sake of better customer service, can be legitimate.

The European Data Protection Inspector has already stated in 2010 that the use of audio recordings in the workplace is prohibited.<sup>20</sup> This is also confirmed in the guidelines of the European Data Protection Board, which state that monitoring devices should not offer functions that are not necessary (e.g. audio recordings). Therefore, unnecessary functions must be deactivated or monitoring devices with no additional functions must be used.<sup>21</sup>

Since the use of audio surveillance at the workplace is inherently prohibited and Olerex AS has not cited exceptional circumstances, due to which it would still be necessary to use audio recordings at service stations, the inspection is of the opinion that audio surveillance is not permitted at Olerex AS service stations due to the IKÜM.

## **2.2. Analysis of the legitimate interest of Olerex AS in the use of video surveillance**

### **2.2.1. Use of video cameras to monitor process performance and ensure compliance with contracts.**

Olerex AS has justified the necessity of video surveillance: - **To**

**monitor the performance of processes** - AS Olerex first explains that in connection with video surveillance, monitoring the performance of processes is intended to check circumstances related to customer service at the service station. In connection with the mentioned processes, various demand letters are often submitted to AS Olerex. For example, the Police and Border Guard Board (hereinafter PPA) submitted XXX. a letter of demand to AS Olerex in connection with the purchase made at the Papsaare filling station in XXX Pärnu. The said purpose also includes control over whether the customer service agents fulfill their obligations arising from the law.

- **To ensure the fulfillment of contracts (e.g. control of the payment of a specified amount for the goods)** - In connection with ensuring the fulfillment of contracts, AS Olerex explains that the purpose mentioned is the control of circumstances related to the conclusion of purchase and sale contracts and the provision of services at service stations. For example, in the practice of AS Olerex, there have been situations where a dispute arises between the customer and the customer service representative about what kind of bill the customer paid for the purchase/service with.[...] At the same time, AS Olerex considers that such circumstances are not possible with the help of video recording other than a security camera.

<sup>20</sup> European Data Protection Supervisor, Video-surveillance Guidelines, 2010, p 6.12.

<sup>21</sup> European Data Protection Board, Guidelines 3/2019 on the processing of personal data in video devices, 2020, point 129

*identify and resolve conflicts quickly. Video recordings are also important to check, for example, whether the procedure for selling specially marked diesel fuel was followed.*

*In accordance with § 12 (1) of the Liquid Fuel Special Labeling Act (VKEMS), the seller is obliged to identify the buyer when selling special purpose diesel fuel. For this purpose, the seller must require the natural person buyer to submit an identity document and the representative of the legal entity a power of attorney with the name and details of the representative of the legal entity.*

*With the help of video recordings, AS Olerex can check whether the customer service representative asked the buyer for an identity document and whether the buyer submitted the document. If the buyer refuses to provide identification data and documents or if the buyer fails to declare the purpose of use of the special purpose diesel fuel, the seller is obliged to refuse the sale of the fuel according to § 12 subsection 1 of VKEMS. AS Olerex cannot identify the aforementioned circumstances in any other way. Therefore, according to AS Olerex, it is inevitably necessary to use video surveillance in service stations to ensure the fulfillment of contracts.*

*Olerex AS has explained the necessity of using cameras for the aforementioned purposes as follows: The use of video surveillance for the aforementioned purposes is necessary for the exercise of AS Olerex's legitimate interest, insofar as it enables the identification of AS Olerex's legitimate interest, including important circumstances for ensuring the rights of AS Olerex's employees and customers afterwards. AS Olerex explains that, for the most part, video recordings of service stations turn out to be necessary afterwards. It is usual for claims, complaints, etc. to be submitted to AS Olerex after the event has taken place. For example, in the above example, Olerex submitted a claim to PPA AS almost 2 months after the relevant event took place. Therefore, the video recordings made by AS Olerex are also daily helpers for the police and ensure the protection of public interests.*

According to the inspection, the concept of process performance monitoring is inherently incomprehensible, and it is not possible to understand what Olerex AS meant by it.

As for responding to demand letters, as stated above, this cannot be the reason why personal data is started to be processed. If Olerex AS has camera recordings, then Olerex AS really has a legal obligation to release the said information at the request of the police, but this does not mean that such inquiries independently create a legal basis for processing (collecting, storing) the data.

The inspectorate agrees that Olerex AS must ensure that the customer service representatives fulfill the requirements arising from the law (which are established in the public interest, e.g. such as checking the age limit). However, Olerex AS has not proven in the legitimate interest analysis why it is necessary to carry out such an inspection with cameras, and also after the fact. For example, the violation of the requirements for the sale of special-purpose diesel fuel can be checked by checking whether the buyer's name, personal or registry code, and purpose of use have been recorded. If this has not been done, the requirements of the sale have been violated, and it does not matter much whether the seller asked for an identity document or not. At the same time, Olerex AS itself has repeatedly confirmed within the supervision procedure that cameras are not used to monitor employees.

The analysis of legitimate interest must be so clear and understandable that every data subject (both employee and customer) must understand what the legitimate interests of Olerex AS are in the use of cameras when reading the analysis of legitimate interest. We note that initially Olerex AS only indicated that the use of cameras is necessary to monitor the performance of processes. Now it was pointed out that this means responding to demand letters and monitoring employees in terms of fulfilling the requirements arising from the law. According to the inspection, the explanations and justifications of Olerex AS are incomprehensible and unclear, including sometimes contradictory. We emphasize that Olerex AS should have conducted a legitimate interest analysis regarding the use of cameras already when the IKÜM came into effect. At the moment, however, it can be seen that Olerex AS has not clearly thought through the use of cameras and is also not able to clearly point out the legitimate interests of using cameras to the inspection.



On the basis of a legitimate interest, it is not possible to use the cameras in a way where general goals (concepts) are outlined and then interpreted as one wishes. A clear legitimate interest is, for example, *checking the transfer of cash at the cash register*. The analysis of the legitimate interest must reveal why the use of cameras is necessary for the realization of a specific legitimate interest.

If the legitimate interests are not formulated clearly enough, it is not possible to balance said interests with the interests and fundamental rights of the data subject. One of the reasons why the goals of using cameras are formulated in very general terms may be the fear that unforeseen, new situations will arise in the future. Yes, the needs and thus the legitimate interests can also change over time, but in this case an additional analysis must be done.

**The indication that Olerex AS uses video surveillance to monitor the performance of processes and to ensure the fulfillment of the contract is not sufficient. Individual examples also do not help to understand the real interest of Olerex AS in using video surveillance. If Olerex AS wants to use video surveillance for such purposes, Olerex AS must state all specific legitimate interests, including which laws are being checked with cameras and why cameras are used. In the meantime, the use of cameras to monitor process performance and ensure contract compliance must be discontinued.**

**Olerex AS is allowed to use cameras to record the movement of cash, provided that only the cash transfer area (the area of the counter where the money is placed) remains in the field of view of the camera.**

#### ***2.2.2. Interests or fundamental rights - and freedoms of the data subject***

AS Olerex considers that the main interests, fundamental rights and freedoms of employees and customers, which may be harmed by making video recordings, are the following: a)

*human dignity of employees and customers;*

*b) privacy of employees and customers; c) the right*

*of employees and customers to decide on the collection and distribution of their data.*

The ability to monitor employees during the entire working time leads to a very high level of interference. It is not possible for the employee to make any movement in such a way that his actions cannot be observed (except in the household and rest rooms). This, in turn, can cause stress, anxiety and other mental problems in employees (the inspectorate has also received a corresponding request from the data subject).

#### ***2.2.3. Balancing the legitimate interests of Olerex AS and the interests, fundamental rights and freedoms of data subjects***

Although Olerex AS has not formulated its legitimate interests sufficiently clearly and comprehensibly, and therefore it is not possible to balance these interests with the interests or fundamental rights - and freedoms of the data subject, we still reviewed the explanations of Olerex AS and submit our comments.

Olerex AS has stated: First, AS Olerex considers that its employees and customers can expect the processing of personal data through video recordings for the aforementioned purposes. The employees of AS Olerex can be considered as persons with whom AS Olerex has a relevant and appropriate relationship in the sense of point 47 of the IKÜM's reasons. As a result, it is rather necessary to take the position that employees can expect that AS Olerex processes their personal data. At the same time, the use of video surveillance at service stations or other showrooms is common. AS Olerex points out that Circle K, for example, uses cameras with both audio and video surveillance in the checkout area of its service stations. All shopping centers and grocery stores also use security cameras.

*To ensure that the employees and customers of AS Olerex are aware of the implementation of video surveillance, AS Olerex has installed corresponding signs in the service stations. AS Olerex has also informed its employees separately about video surveillance.*

The inspectorate agrees that video surveillance is often used for the protection of persons and property, and it can be said that it is a common practice. The use of cameras for this purpose can also be expected by employees and customers at service stations. We certainly cannot agree that customers and employees should expect the use of cameras for other purposes as stated by Olerex AS.

Olerex AS has stated: Secondly, AS Olerex considers that the processing of personal data using video recordings for the aforementioned purposes is in the interest of both AS Olerex employees and customers. As explained above, AS Olerex, through video surveillance, ensures, among other things, that disputes between customers and customer service representatives during the execution of purchases and sales at the service station and the provision of services are resolved. According to AS Olerex, it is in the interest of both employees and customers that in the event of a dispute it is possible to identify all the circumstances and resolve the dispute correctly.

The inspectorate agrees that the use of cameras for the protection of persons and property is important for the benefit of both employees and customers. But it remains unclear how, for example, checking the employee's legal obligations with cameras is in the employees' interest.

Olerex AS stated: *thirdly, AS Olerex considers that the processing of personal data of employees and customers through video surveillance for the aforementioned purposes is not excessively infringing on the rights and freedoms of employees and customers or inappropriate. AS Olerex accepts that with any data processing there is a risk that such data processing may harm the rights of data subjects. At the same time, according to AS Olerex, the company has done everything reasonably possible to avoid unjustified infringement of the rights of its employees and customers and misuse of data.*

The inspection does not agree with the statement of Olerex AS regarding the violation of the rights and freedoms of employees. If Olerex AS uses video surveillance to ensure the performance of processes and the fulfillment of contracts, giving only a few examples to explain these terms, it leads to a situation where employees do not understand what the cameras are actually used for in the workplace. In any case, this in itself is excessively infringing on the rights of employees.

Olerex AS stated: *In addition, as AS Olerex has previously explained, the security cameras are placed and directed in such a way that the employees of the service stations are minimally exposed to the security camera image.*

The inspection has no doubt that the use of cameras for the protection of persons and property is necessary at Olerex AS service stations, but when using cameras, it must be ensured that the employees remain in the field of view of the cameras to a minimum. In addition, the use of cameras for the protection of persons and property must also have a clear and comprehensible legitimate interest analysis, which can be consulted by every data subject.

On 05.10.2021, Olerex AS sent the inspection camera extracts of the selected service stations, based on which we assessed whether the employees are at least in the camera's field of view.

According to the inspection, however, for example, the cameras in the Kärđla, Orgita and Põlva service stations are aimed so that the employees are in the camera's field of view throughout the working hours (including the entire checkout zone (employee's work area) is covered by the cameras).

Olerex AS points out that no employee is in the cash register for the entire working time, and the customer service representative only goes to the checkout area when the customer wants to pay for the purchase. The question is not whether the employee is in the checkout zone the entire working time, but whether the employee is in the field of view of the camera throughout the working time. At Olerex AS service stations, however, a very large part (if not the entire part) of the work area is covered by cameras. This means that regardless of whether the employee is currently at the cash register or performing other tasks, he is still in the camera's field of view. According to the inspection, the customer service representative still spends a significant part of his working time in the checkout area. This would not be the case if most customers used self-service checkouts. Olerex AS also offers the possibility of checkou

for example, to order a meal, which means that cash registers are not only used to pay for purchases, but also to place and fulfill orders.

Olerex AS has stated: *Also, the video surveillance cameras at the cash registers are directed in such a way that the camera captures the important, i.e. the checkout zone and the counter (to capture the movement of cash, the verification of the authenticity of the cash by the customer service representative, the handing over of goods, etc.). The movements of customer service personnel are mostly not visible to the cameras in the checkout zone or are captured from behind.* According to the inspection, this is not true. If you look, for example, at Kärkla, Orgita and Põlva service station cameras, the entire checkout zone is in the camera's field of view, not just the area that allows recording the movement of cash or the handing over of goods. **If Olerex AS is unable to install (orient) the cameras in such a way that is aimed only at the security risk and which ensures that the employees are in the field of view of the camera as a minimum, then Olerex AS must remove the cameras.** If Olerex AS considers it necessary to direct cameras in service stations in such a way that also shows the activities of employees at the cash register (including, for example, preparing food), then this must be clearly stated in the legitimate interest analysis and the need for this must be justified.

Olerex AS has stated: Only the customer service personnel of the service station can monitor the video surveillance image in real time. AS Olerex has explained that the computer that shows the image of the service station's security cameras is located in the checkout zone, and in larger gas stations, one computer is also located in the employees' living rooms. These computers are used only by the employees themselves and not by third parties to monitor security camera images. Olerex AS has not justified in any way why it is necessary for employees to be able to view the video surveillance image in real time and also in the employees' living room. As far as the inspection is aware, there are employees in Olerex AS service stations (e.g. senior customer service representatives) whose job it is to evaluate the activities of customer service personnel and prepare assessments based on this (e.g. how the employee communicates with colleagues and customers, whether the employee smiles when communicating with customers, whether the employee smokes in a work jacket). Viewing the camera image in the living room allows you to check the employee's work and, if necessary, make assessments based on what you see.

Olerex AS has previously confirmed as part of the supervision procedure that the performance of employees' work duties is not checked with cameras. However, the opposite has been revealed in the supervision procedure (among other things, it also includes checking compliance with the requirements arising from the law). **The use of cameras for the purpose of checking employees (including through the transmission of the living room) must be stopped until a clear and comprehensible legitimate interest analysis is submitted to the inspection, based on which the checking of employees is necessary for the legitimate interests of Olerex AS and the necessity of which outweighs the interests of the employees.** If Olerex AS justifies that the transfer of the live camera image to the living room is still necessary for another purpose, specific explanations must also be provided as to why it cannot be done without, which cameras' images are transferred and how Olerex AS ensures that the camera image in the living room is not used by employees for assessment.

Olerex AS has stated: Employees and customers have the right to consult the recordings made about them. We explain that this is an obligation arising from the IKÜM, and pointing out such a possibility does not help to balance the legitimate interests of Olerex AS with the interests of the employees.

In addition, Olerex AS considers that the use of cameras complies with the principles set forth in IKÜM Article 5(1) (b) and (c): AS Olerex considers that the use of video surveillance in service stations also complies with the principle of purpose limitation arising from IKÜM's Article 5(1)(b). As explained above, it follows from the said principle that personal data must be collected only for precisely and clearly defined and legitimate purposes. AS Olerex confirms that it uses video surveillance in its service stations only to protect the company's property and customers and employees, to ensure the fulfillment of contracts and to monitor the performance of processes. AS Olerex does not use video surveillance for data processing for any other purposes not specified by AS Olerex.

AS Olerex also believes that the use of video surveillance in service stations complies with the principle of collecting as little data as possible as stated in Article 5, paragraph 1, point c of IKÜM. As explained above, this principle means that personal data must be collected as much as necessary and as little as possible. AS Olerex confirms that it collects as much data as necessary and as little as possible. When using video surveillance, it is an unavoidable situation that, in addition to the data that the data processor needs to collect to fulfill its legitimate purposes, video recordings may also contain other data that are not necessary for the data processor. At the same time, no technical solutions have been created that would allow storing only those data that are necessary for the data processor. Inevitably, it is not possible to know in advance when one or the other video recording may be necessary. In connection with the above, AS Olerex emphasizes that the company uses video recordings only when there is a real need for it. AS Olerex and its employees do not use video recordings, e.g. for their own interests or for other unnecessary purposes.

At the same time, the above is also not possible, since AS Olerex has established strict procedures regarding when and how video recordings can be used and consulted.

In order to assess whether the use of cameras complies with the principle of purpose limitation and the collection of as little data as possible, it is necessary to: 1. state all specific purposes; 2. assess whether the use of cameras is necessary for the fulfillment of the stated objectives or whether there are other measures that are less intrusive to the data subject.

Olerex AS has not specified clear objectives (except for explanations regarding the protection of persons and property and the control of cash flow), on the basis of which it would be possible to assess whether the specified objectives are necessary for the legitimate interests of Olerex AS and whether it is necessary to use cameras to fulfill the objectives. Also, Olerex AS has not installed the cameras in such a way that the employees remain in the camera's field of view as little as possible. Olerex AS assumes that the use of cameras is necessary, i.e. whether and to what extent the use of cameras is actually necessary has not been analyzed.

In addition, Olerex AS has stated: *When using video surveillance, it is an unavoidable situation that, in addition to the data that the data processor needs to collect to fulfill its legitimate purposes, video recordings may also contain other data that are not necessary for the data processor. At the same time, no technical solutions have been created that would allow storing only those data that are necessary for the data processor.* Therefore, the use of cameras is a very invasive measure (everything is recorded, including what is not really needed), and before using the cameras, a correct analysis must be made regarding its legality. Legitimate interest in the analysis must be unambiguous

understand:

- what are the specific legitimate interests of Olerex AS; - is the use of cameras necessary for the realization of the mentioned legitimate interests (incl assessment that there are no other and less intrusive measures); - measures have been introduced that reduce the encroachment on the rights of employees.

### **3. Duration of storage of video recordings**

In its guidelines 3/2019 on the processing of personal data in video devices, the European Data Protection Board has stated the following<sup>22</sup>: *Taking into account the principles set out in Article 5(1)(c) and (e) of the General Regulation on Personal Data Protection, namely the collection of as little data as possible and the limitation of storage, personal data should in most cases (e.g. to detect vandalism) delete - ideally automatically - after a few days. The longer the prescribed retention period (especially if it is longer than 72 hours), the more the legitimacy of the purpose and the necessity of retention must be justified. If the controller uses video surveillance not only to monitor its premises, but also intends to store the data, the controller must ensure that the storage is actually necessary to achieve the purpose. If storage is necessary, the storage period must be clearly defined and established separately for each specific purpose.*

---

<sup>22</sup> [https://edpb.europa.eu/sites/default/files/files/file1/edpb\\_guidelines\\_201903\\_video\\_devices\\_et.pdf](https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_201903_video_devices_et.pdf) page 28 p 121

*The controller is responsible for determining the retention period in accordance with the principle of necessity and proportionality and for proving compliance with the provisions of the General Regulation on the Protection of Personal Data. In a situation where a longer retention period does not arise from a special law, the retention period of 72 hours must generally be used.*

Olerex AS has given 3 reasons regarding the need to store video recordings for 60 days: 1) *AS Olerex agrees with the inspection that the video recordings must be stored for as short a time as possible, as this will reduce the encroachment on the rights and freedoms of the persons caught in the recordings. At the same time, AS Olerex explains that in the company's practice, a considerably longer retention period has proven necessary. For example, there are thefts by both customers and employees at AS Olerex service stations. However, the lack of goods is often noticed only during the inventory. However, inventories are not carried out on a daily basis. For example, a situation occurred at the AS Olerex service station where a shortage of goods was detected during the inventory, and with the help of video recordings, it was established that several days earlier the customer service representative had violated the rules for handling cigarettes and took one pack of cigarettes out of the checkout area.*

2. Letters of demand are also submitted to AS Olerex to request video or audio recordings more than 72 hours after the occurrence of incidents: [...] Requests for the release of video and audio recordings are submitted to AS Olerex on a daily basis. At the same time, in practice, the most frequent situations are those where there is approximately 2 months between the event for which a video or audio recording is requested and the request is submitted. As a result, in AS Olerex's practice, the storage of video and audio recordings has proven to be optimal for 60 days.

3. *AS Olerex points out that other companies also use a much longer retention period than 72 hours. For example, AS Krooning<sup>23</sup> and Alexela<sup>24</sup> store video recordings for 30 days.*

*Circle K keeps security recordings for up to 60 days.<sup>25</sup> SEB bank also keeps security recordings for 2 months, unless another deadline is stipulated by legislation.<sup>26</sup>*

The inspection agrees that it is possible to check the deficiencies identified during the inventory (possible thefts) with camera recordings, but for this purpose (with a general reference to taking an inventory) it is certainly not appropriate and legal to keep the video recordings for 60 days (see IKÜM Article 5(1)(b), c and e) . If the use of a camera is necessary and the only effective tool for detecting inventory shortages, then the frequency of the inventory or the time it takes to conduct it must be reduced.

Conducting more frequent and/or faster inventories is, in any case, a less intrusive measure for employees than keeping all camera recordings for 60 days and reviewing them when a deficiency is detected. Only one example, where a shortage was detected during the inventory and the use of camera recordings helped to detect the theft, is not enough to keep the recordings for such a long time. It is also not very realistic that Olerex AS will review 60 days of records (reviewing this would take a huge amount of time) in order to identify a possible violation that may have occurred during that time.

The longer the retention period, the greater the burden on data subjects, especially employees, because longer time means more data.

When determining the retention period (as well as when storing in general), you cannot rely on demand letters from third parties. The police can also ask for recordings from several years ago, but this does not mean that the controller has the right and obligation to keep the recordings for that long.

---

<sup>23</sup> AS Krooning. Privacy policy and personal data processing principles. On a computer network: <https://krooning.ee/isikuandmete-tootlemise-pohimotted>.

<sup>24</sup> Alex. Principles of personal data processing. On the computer network: <https://www.alexela.ee/sites/default/files/documents/2021-06/Isikuandmete%20t%C3%B6%C3%B6tlemise%20p%C3%B5him%C3%B5tted.pdf>.

<sup>25</sup> Circle K. Processing of personal data. On the computer network: <https://www.circlek.ee/isikuandmetet%C3%B6%C3%B6tlemine>. <sup>26</sup>

The inspectorate does not know whether and for what reason other institutions keep video recordings for such a long time, but this does not justify keeping the camera recordings of Olerex AS.

**Based on the above, Olerex AS has not justified the need to store camera recordings (60 days) clearly and comprehensibly enough. The inspection also does not see that such a long storage period could be legitimate in a specific case. Therefore, in the future, Olerex AS must delete the recordings immediately, but no later than after 72 hours.**

According to the inspection, in order to protect the rights of employees, it is necessary to establish a restriction on the processing of personal data (limit the storage period of video recordings) until Olerex AS has proven to the inspection that the storage of video recordings for longer than 72 hours actually meets the principles of personal data processing, and the inspection has confirmed the need for a longer storage period.

#### **4. Informing employees about the violation**

The use of audio surveillance represents a very intense invasion of privacy, therefore it is particularly important that in situations where the audio surveillance has been installed illegally, i.e. the installation did not and does not comply with the principle of personal data processing (principle of legality), the audio surveillance is immediately removed and the employees are also informed of the violation (see Article 34 paragraph of IKÜM 1).

The violation notification describes the nature of the violation related to personal data in clear and simple language and provides at least the following information (see Articles 34 paragraph 2 and 33 paragraph 3 of the IKÜM): 1. Name and contact details of the contact person, through which it is possible to obtain more detailed information about the violation; 2.

Describe possible consequences related to personal data; 3. Describe the measures taken or planned to be taken to resolve the personal data breach.

Therefore, Olerex AS must convey the above information to the employees and confirm to the employees that the audio surveillance has been removed.

#### **Summary**

Considering the above, the inspection finds the following: 1.

Olerex AS does not have a legal basis (legitimate interest) to use audio surveillance at service stations, and the audio surveillance must be removed immediately. Since the audio surveillance has been used illegally, the employees must be informed of the violation.

2. The use of video surveillance at Olerex AS service stations is necessary for the protection of persons and property, but the cameras must be directed only to security risks and ensure that the employees are actually in the field of view of the camera to a minimum.

The objectives of monitoring the performance of the processes and ensuring the fulfillment of the contract are not sufficiently clear and understandable. Highlighting common interests or goals creates a situation where it is possible to interpret them differently, and such a situation must not arise. In this case, it is not possible for the data subjects to understand why the cameras are actually used. Therefore, Olerex AS must clearly state its legitimate interests and goals in the legitimate interest analysis.

Viewing the image of the video camera in the living room allows employees to be checked and, if necessary, to prepare assessments based on this. If Olerex AS considers that viewing the camera image in this way is necessary, then specific explanations must be provided as to how Olerex AS ensures that the camera image in the living room is not used to control employees (e.g. how the employee communicates with colleagues and customers, whether the employee smiles when communicating with customers, does the employee smoke in a work jacket).

3. According to the inspection, the reasons given by Olerex AS regarding the storage period of video recordings (60 days) are not sufficient and do not justify the storage of video recordings for more than 72 hours. Therefore, in the future, Olerex AS must delete the recordings immediately, but no later than after 72 hours.

Considering the above, the use of audio and video surveillance does not comply with the principles set forth in Article 5 of IKÜM, including points a, b, c and e of paragraph 1:

- the processing is legal, fair and transparent to the data subject; - personal data is collected precisely and clearly determined and lawfully purposes;
- personal data are relevant, relevant and limited to what is necessary for them from the point of view of the purpose of the processing;
- personal data is stored in a form that allows data subjects to be identified only as long as it is necessary to fulfill the purpose for which personal data is processed.

We emphasize that the analysis of the legitimate interest must be so clear that the employee can understand why the employer actually uses cameras and what he has done to ensure that the employee's rights are not excessively harmed.

If the processing of personal data does not comply with the principles set forth in Article 5 of the IKÜM, the processing of personal data is prohibited. The fulfillment of these principles is the responsibility of the data processor and must be proven by the data processor (see article 5 paragraph 2 of the GDPR).

Considering that the use of video surveillance in Olerex AS service stations is not legal (there is no correct legitimate interest analysis) and cameras are used to a greater extent than is actually necessary for the legitimate interests of Olerex AS, the inspection could also demand the termination of video surveillance until the processing of personal data has been completed compliance with the requirements set forth in the IKÜM. However, considering that the use of cameras is necessary for the protection of persons and property, the inspection does not use such a measure. However, Olerex AS must immediately change the camera locations or the field of view so that the employees are not in the field of view of the camera during the entire working time (including ensuring that the entire checkout zone is not monitored by cameras). Also, Olerex AS must stop using cameras for the purpose of monitoring the performance of processes and ensuring the fulfillment of contracts (except, if necessary, checking cash receipts and handover of goods) and remove the possibility of viewing real-time video surveillance images from utility rooms.

In accordance with § 58 (1) of the Personal Data Protection Act and Article 58 (2) d, e and f of the General Regulation on Personal Data Protection, the inspectorate has the right to establish a temporary or permanent restriction on the processing of personal data, including a processing ban, and to order that:

- the responsible processor would bring personal data processing operations into compliance with IKÜ requirements in a certain way and within a certain period of time; - the data controller would inform the data subject of a violation related to his personal data.

Taking into account the factual circumstances and the fact that in a specific case, personal data is processed illegally (data processing does not meet the requirements set forth in Articles 5 and 6 of the IKÜM), the inspectorate considers that issuing a mandatory injunction in this case is necessary to end the violation as soon as possible and ensure the protection of employees' rights. Also, taking into account that the rights of the employees have been violated by the use of audio surveillance, the employees must also be informed of the violation at Olerex AS.

*/signed digitally/*

Raiko Kaur, lawyer

under

the authority of the Director General