



REPUBLIC OF ESTONIA
DATA PROTECTION INSPECTORATE

ASUTUSESISESEKS KASUTAMISEKS
Teabevaldaja: Andmekaitse Inspektsioon
Märge tehtud: 03.11.2022
Juurdepääsupiirang kehtib kuni: 03.11.2097
{accessRestrictionEndDesc}
Alus: AvTS § 35 lg 1 p 2, AvTS § 35 lg 1 p 12

FINAL DECISION

SA Poland

Yours: 27.10.2022 nr
{senderRegNumber}

Our: {regDateTime} nr
{regNumber}

Notice of termination of the proceedings concerning the protection of personal data

Estonian Data Protection Inspectorate received a complaint via IMI system against an Estonian company, [REDACTED] regarding complainant accessing and processing their personal data.

We have explained several times that this is a known problem with the company. In addition to personal data processing errors, this is also a case of possible investment fraud, which is being processed under criminal law.

The first problem with this case is that from the information gathered, it was made certain that during 03.07.2018-19.03.2019, the member of the board was Latvian citizen [REDACTED] and from 21.02.2018- 23.12.2019 Estonian citizen [REDACTED]. Since 23.12.2019, the board member has been [REDACTED] (until bankruptcy proceedings).

Members [REDACTED] and [REDACTED] have both been active in decision making for the company. The criminal proceedings are taking place in Estonia, as the company is registered here. However, from the information the prosecutor's office has, it is impossible to say, which country (either Estonia or Latvia) was responsible for processing personal data and in which country this took place. Thus, during the complaint being submitted, it can be argued if LSA should be Estonia or Latvia.

The second issue is, that currently in this situation, the one responsible for the company is bankruptcy trustee ([REDACTED]). Even though factually the member of the board is also [REDACTED] the legal representative is considered to be the trustee. Nevertheless, the trustee is mostly in charge of the financial matters and may not have all the documentation and necessary data the company has collected.

Estonian Data Inspectorate could legally force a company to fulfill the obligation to delete complainant's data, although if the bankruptcy trustee would not do what is mentioned, there are no possible sanctions Estonian Data Inspectorate could use in this case. We cannot impose any financial sanctions to the company in bankruptcy due to the Estonian Bankruptcy Act and its deadlines to send any claims. Also, it is possible that after the proceedings are completed

and criminal procedure finished, the company will be ceased to exist. If this happens, there is no data processor left and our proceedings would be concluded.

We have come to the conclusion that the complainant themselves could make a request in the bankruptcy proceedings and forward their request to the bankruptcy trustee. However, it is still highly unlikely they have the necessary information or possibility to fulfill the request.

Considering that also in criminal proceedings, the possible measures to clarify the circumstances are significantly more extensive than in the state supervision or misdemeanor proceedings of the Estonian SA, it is not reasonable for us to proceed against the company. Please also note that the intervention of the Estonian SA would not ensure better protection of people's rights, taking into consideration the volume of the case and the amount of victims. There are several crime reports submitted against the company, making the investigation even more elaborate and fall out of the scope of Estonian Data Protection Inspectorate.

In addition, it is unreasonable for several government institutions to hold proceedings over one company at the same time as well. As [REDACTED] is undergoing criminal process and bankruptcy, we would have to see what is the outcome before enforcing anything becomes possible. We do not know currently (nor does the prosecutor's office) how long this may take. However, it appears that there has been distribution proposal, meaning it is possible the data processor ceases to exist in due time, making our proceedings concluded as well.

We gave SA Poland a deadline for providing their feedback on the draft decision and have the confirmation regarding the substance of the draft decision provided. However, they noted that it should be adopted under article 60 of GDPR, points 3 and 6-7. SA Estonia agrees with this outcome.

Considering all of the above, we will discontinue and terminate the supervision proceedings under GDPR article 60 (3, 6 and 7) and consideration of practical expediency, as this case is being handled under criminal and bankruptcy proceedings.

For further questions regarding [REDACTED] (bankrupt) in the future, bankruptcy trustee (contact above) or Prosecutor's Office (info@prokuratuur.ee) can be contacted.

With this, the current case will be closed.

Best regards,

[REDACTED]
lawyer
authorized by Director General