

Conseil d'État, 10ème - 9ème chambres réunies, 22/12/2020, 446155

Council of State - 10th - 9th joint chambers

Reading for Tuesday, December 22, 2020

No. 446155
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Mentioned in the tables of the Lebon collection

Rapporteur
Mrs. Christelle Thomas

Lawyer(s)
SCP MARLANGE, FROM THE BURGADÉ

Public Rapporteur
Mr. Laurent Domingo

Full text

**FRENCH REPUBLIC
IN THE NAME OF THE FRENCH PEOPLE**

In view of the following procedure:

The association "La Quadrature du Net" has asked the interim relief judge of the Paris administrative court, ruling on the basis of Article L. 521-1 of the Code of Administrative Justice, to suspend the execution of the decision of the Paris police prefect, revealed by testimonies, photographs and videos disseminated by the press and by individuals on social networks, showing that the police are still using drones for administrative policing purposes, particularly during demonstrations on public roads, and to order the police prefect to immediately cease, as of the pronouncement of the order to be issued, capturing images by drones, recording them, transmitting them or using them and to destroy any image already captured in this context under penalty of 1,024 euros per day of delay. By order No. 2017540/3/5 of November 4, 2020, the interim relief judge of the Paris Administrative Court dismissed this request.

By an appeal and three briefs in reply, registered on November 9, December 4, December 9 and December 11, 2020 at the litigation secretariat of the Council of State, the association "La Quadrature du Net" asks the interim relief judge of the Council of State, ruling on the basis of Article L. 521-1 of the Code of Administrative Justice:

- 1°) to annul this order;
- 2°) to grant its requests at first instance;
- 3°) to order the State to pay the sum of 4,096 euros under Article L. 761-1 of the Code of Administrative Justice.

Having regard to the other documents in the file;

Having regard to:

- the Constitution;
- the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Directive 2016/680 of the European Parliament and of the Council of 27 April 2016;
- Law No. 78-17 of 6 January 1978;
- the Code of Administrative Justice and Decrees No. 2020-1404 and 2020-1406 of 18 November 2020;

Having heard in public session:

- the report of Ms. Christelle Thomas, Master of Requests in extraordinary service,
- the conclusions of Mr. Laurent Domingo, public rapporteur;

The floor having been given, before and after the conclusions, to SCP Marlange, de la Burgade, lawyer for the Association La Quadrature du Net;

Having regard to the note in deliberation, registered on 15 December 2020, presented by the Minister of the Interior;

Considering the following:

1. The first paragraph of Article L. 521-1 of the Code of Administrative Justice provides that: "When an administrative decision, even one of rejection, is the subject of a request for annulment or reformation, the interim relief judge, hearing a request to this effect, may order the suspension of the execution of this decision, or of certain of its effects, when the urgency justifies it and a means is put forward which is likely to create, in the current state of the investigation, a serious doubt as to the legality of the decision."
2. It is clear from the documents in the file submitted to the interim relief judge that following order No. 440442, 440445 of 18 May 2020, by which the interim relief judge of the Council of State ordered the State to cease, without delay, carrying out drone surveillance measures to ensure compliance in Paris with the health safety rules applicable to the lockdown period until the resulting serious and manifestly illegal infringement of the right to respect for private life had been remedied, either by the intervention of a regulatory text, adopted after consulting the National Commission for Information Technology and Civil Liberties (CNIL) authorising, in compliance with the provisions of the law of 6 January 1978 relating to information technology, files and civil liberties, applicable to processing falling within the scope of the directive of 27 April 2016, the creation of a personal data processing system, or by providing the devices used by the police prefecture of technical devices likely to make it impossible, whatever their uses, to identify the people filmed, the association "La Quadrature du Net" has, through a series of documents produced in support of its application, argued that the police prefecture continued to use drones for the surveillance of public demonstrations in Paris, in breach of this order, and asked the interim relief judge of the Paris administrative court to suspend the implicit decision of the police prefect to continue the use of such a device and to order him to cease all image capture by this process. The association is appealing to the Court of Cassation against the order of November 4, 2020 by which the interim relief judge of the Paris administrative court dismissed its application.
3. On the one hand, Article 3 of the Directive of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties and on the free movement of such data and repealing Council Framework Decision 2008/977/JHA defines, in point 1, personal data as "any information relating to an identified or identifiable natural person" and specifies that an "identifiable natural person" is deemed to be "a natural person who can be identified, directly or indirectly in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person".
4. On the other hand, the same Article 3 defines, in point 2, processing as "any operation or set of operations which is performed on personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction."
5. It is clear from the documents in the file submitted to the interim relief judge of the Paris Administrative Court and from the clarifications provided by the parties during the oral hearing organized by the 10th Chamber of the Litigation Section of the Council of State that, following the intervention of the order of 18 May 2020 mentioned in point 2, the Paris Police Prefecture set up, for the purpose of monitoring large-scale events taking place on public roads, a technical device based on the addition to the tool for capturing images by drone without recording software for automatic and real-time blurring of personal data in the video streams transmitted to the command room of the Public Order and Traffic Directorate (DOPC) of the Police Prefecture.
6. First, it follows from the provisions cited in points 3 and 4 that the surveillance system at issue, which consists of collecting data by capturing images by drone in order to transmit them, after applying a blurring process, to the command centre of the police headquarters for viewing in real time, constitutes processing within the meaning of the directive of 27 April 2016.
7. Second, although this system makes it possible to return only blurred images to the operational management, it constitutes only one of the operations in the overall processing of data, which goes from the collection of images by the drone to their sending to the command room, after transmission of the streams to the blurring server, decomposition of these streams image by image in order to identify those which correspond to personal data in order to carry out the blurring operation, then to the recomposition of the video stream containing the blurred elements. Since the images collected by the devices are likely to contain identifying data, the fact that only the data processed by the blurring software reaches the command center is not such as to change the nature of the data being processed, which must be regarded as personal data.
8. By ruling that the contested decision did not have the effect of authorizing the processing of personal data, on the grounds that only the blurred stream of images captured by drones would arrive in the command room and by dismissing on this ground the argument based on the fact that this processing should have been the subject of a text authorizing it, the interim relief judge of the Paris Administrative Court tainted his order with an error of law. The association is therefore entitled to request its annulment.
9. In the circumstances of the case, it is appropriate to resolve the case under the interim relief procedure initiated, pursuant to Article L. 821-2 of the Code of Administrative Justice.

Regarding urgency:

10. Urgency justifies the suspension of an administrative act when its execution adversely affects, in a sufficiently serious and immediate manner, a public interest, the situation of the applicant or the interests that he intends to defend.
 11. In view of the significant number of people likely to be subject to the disputed surveillance measures and the potential infringement they may have on the freedom to demonstrate, and given that the Minister has not provided any evidence to establish that the objective of ensuring public safety during gatherings of people on public roads could not be fully achieved in the current circumstances without the use of drones, the condition of urgency must be considered to be met.
- As regards the serious doubt as to the legality of the contested decision:
12. It follows from the provisions cited in points 3 and 4 that the disputed surveillance system, which constitutes the processing of personal data and has the purposes of protecting against threats to public security and preventing such threats, falls within the scope of the Directive of 27 April 2016, which Title 3 of the Law of 6 January 1978 on information technology, data files and civil liberties transposes into domestic law.
 13. The argument based on the illegality of the implementation, on behalf of the State, of this processing of personal data without the prior intervention of a text authorizing the creation and setting out the terms of use is such as to create a serious doubt as to the legality of the contested decision. It is therefore appropriate to suspend the execution of the decision of the Prefect of Police to continue the use of drones for administrative policing purposes in the context of demonstrations or gatherings on public roads and to order the Prefect of Police to cease, as from the notification of this order, carrying out surveillance measures by drone of these demonstrations or gatherings, until a text has been adopted authorizing the creation, for this purpose, of a processing of personal data.
 14. In the circumstances of the case, it is appropriate to order the State to pay the sum of 3,000 euros to the association "La Quadrature du Net" under Article L. 761-1 of the Code of Administrative Justice.

DECIDES:

Article 1: The order of November 4, 2020 of the interim relief judge of the Paris Administrative Court is annulled.

Article 2: The decision of the Paris Police Prefect to use drones to monitor gatherings of people on public roads is suspended.

Article 3: The Police Prefect is ordered to cease, without delay, carrying out drone surveillance measures of gatherings of people on public roads.
Article 4: The State will pay the association "La Quadrature du Net" the sum of 3,000 euros under Article L. 761-1 of the Code of Administrative Justice.
Article 5: This decision will be notified to the association "La Quadrature du Net" and to the Minister of the Interior.
A copy will be sent to the Prime Minister.

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Analysis

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