

NATIONAL DATA PROTECTION COMMISSION

OPINION/2019/23

I. Order

I. Through the Office of the Assistant Secretary of State and Internal Administration, an opinion was requested from the National Data Protection Commission (CNPd) on the project to install, by the Public Security Police (PSP), a video surveillance system in the city of Estremoz.

The use of video camera surveillance systems by security forces and services in public places of common use, for capturing and recording images and sound and their subsequent processing is regulated by Law No. 1/2005, of 10 January, amended and republished by Law No. 9/2012, of 23 February.

The installation of fixed cameras, under the terms of this law, is subject to authorization by the member of the Government responsible for the requesting security force or service, preceded by an opinion from the CNPD.

The request is accompanied by a document containing the reasons for the request and the technical information of the system, hereinafter referred to as "Rationale".

II. ASSESSMENT

1. Object of the opinion to be issued under the terms of article 3 of Law No. 1/2005, of 10 January

Pursuant to Article 3(2) of Law No. 1/2005, of January 10, as amended by Law No. 9/2012, of February 23 (hereinafter, Law No. 1 /2005), the CNPD's opinion is limited to pronouncement on the compliance of the request with the rules regarding the security of the treatment of the collected data, as well as on the special security measures to be implemented adequate to guarantee the entrance controls in the premises, of data carriers, insertion, use, access, transmission, introduction and transport and, as well as verification of compliance with the duty of information and before whom the rights of access and rectification can be exercised.

In accordance with the provisions of the same legal precept and in paragraphs 4, 6 and 7 of article 7 of that law, the CNPD's opinion is also subject to respect for the prohibition of

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installation of fixed cameras in areas that, despite being located in public places, are, by their nature, intended to be used in guarding or the use of video cameras when the capture of images and sounds covers the interior of a house or inhabited building or your dependence.

The CNPD must also verify that all persons appearing in recordings obtained in accordance with this law are guaranteed the rights of access and elimination, with the exceptions provided for by law.

Pursuant to paragraph 7 of article 3 of the same legal instrument, the CNPD may also formulate recommendations with a view to ensuring the purposes provided for by law, subjecting the issuance of a totally positive opinion to the verification of completeness of compliance with its recommendations.

2. Video surveillance in public places of common use in the city of Estremoz for the purpose of protecting people and property and preventing crimes

2.1. previous point

The CNPD cannot fail to point out that it is not a well-known fact, contrary to what is stated in the request and respective reasoning of the Évora District Command of the PSP, that «the confidence of the citizen in these systems and in their updating has been growing significantly , there being an effective availability of people to give up, as necessary and in proportionate terms, their privacy due to the placement of video surveillance systems in public spaces, being aware of their potential in terms of increasing their security" (cf. page 10 of the Rationale). In reality, this conviction lacks demonstration. All the more so as the number of participations and complaints that citizens submit to the CNPD has been increasing, revealing a growing awareness of the importance of safeguarding their privacy, especially in the context of public spaces. Therefore, the CNPD considers that the alleged willingness of citizens to give up privacy cannot serve as a basis for any consideration of proportionality regarding the use of the video surveillance system described in that request.

Furthermore, as it does not fall within the competence that is legally attributed to it, the CNPD limits itself to pointing out that the concrete grounds for the use of video surveillance are reduced to very little, especially considering that crime has decreased

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significantly in the last year in the city of Estremoz, especially with regard to crimes against people and against property - the

prevention of which, remember, is the purpose of installing this video surveillance system (see page 10 of the Rationale).

2.2. The rights of information, access and deletion of data

Regarding the right to information, despite stating that the warning models and symbols to be used respect the provisions of Ordinance No. 373/2012 of 16 November, the CNPD draws attention to the fact that the right to on the processing of personal data to be more densified in Directive (EU) 2016/680, of 27 April. Therefore, when a national law transposing the Directive is passed, it will be important to adapt the notices to the requirements defined therein, recommending that the content of the right to information that is not included in said notices be made available by other appropriate means (see the website from the PSP's Internet).

With regard to the rights of access and deletion of data, provided for in article 10 of Law No. 1/2015, the Grounds (page 14) mention the possibility of exercising the right of access, identifying that PSP agent the same can be guaranteed.

2.3. The technical characteristics of the equipment

According to the request (see page 6 of the Justification), a system consisting of nine chambers will be installed at the historic entrances of the city, in the industrial area and in the city centre, in the main public square.

It should be noted that the present request is accompanied by a detailed description of the characteristics of the equipment, thus allowing the CNPD to comment on the different aspects of the regime indicated in paragraph 2 of article 3 of Law no. 2015 and Ordinance No. 372/2012, of 16 November. Here, characteristics likely to affect privacy or not complying with adequate security levels will be particularly highlighted.

The. With regard to safeguarding the privacy and intimacy of private life, it is stated in the Grounds that both fixed cameras and those that allow

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360° rotation (called mobile cameras) will not capture sound (cf. pages 11 and 12 of the Groundwork).

As for the two cameras that allow 360° rotation, one of which is installed in the center of the city, it is stated that they will be configured with physical privacy masks «in areas where necessary (for example, windows, doors or private areas)» - cf. page 12 of the Rationale. It is also stated that cameras 2, 4, 6 and 8 do not capture the interior of houses or inhabited places (cf. page 7 of the Justification). Considering that chamber no. 3 is not expressly included in this group of chambers, doubts remain

as to its ability to affect residential buildings or the interior of other buildings. However, consulting the image relating to the angle of view of camera no. 3, on page 20 of the Grounds, indicates that this possibility is ruled out.

It is also stated that «the cameras support remote control optical zoom in digital zoom! in any area of the imagerm, but that analytical technology will be applied in order to “pixelize” people's image, thus limiting the impact on privacy (cf. pages 11 and 12 of the Justification).

Thus, in view of the above, the CNPD considers that the provisions of paragraph 6 and, in part, paragraph 7 of article 7 of Law no. 1/2005 have been respected.

B. With regard to the security conditions of the system, the encryption of the cameras as well as the transmission of images between the cameras and the server, located in the command center, using the FITTIPS protocol (see pages 12 and 13 of the Justification).

It also refers, on pages 7 et seq. of the Rationale, that the recording management and control system works on a TCP/IP network and that the control will be carried out from two control posts (one main and one secondary; this , located in the server room, is used for «analysis of occurrences in a properly controlled and safe way» «in case of need and in specific situations»). Physical and logical security measures are also described.

ç. It is also stated, on page 8 of the Rationale, that the system allows the intelligent search “Intellex Smart Search”, guaranteeing the possibility of searching for images from pre-defined alerts.

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Regarding this functionality, the CNPD has some reservations. In fact, the impact of its use on citizens' privacy can be significant, mainly because its use in the context of video surveillance in public spaces (with free access and circulation) for crime prevention and security of people and goods does not seem justified, in the abstract, from the outset in terms of adequacy. This functionality seems to be of limited use in the context of this video surveillance system, and it is not clear what type of alerts can be pre-defined taking into account that purpose and the PSP's attributions. In fact, the intelligent search system indicated here is more suitable for surveillance of spaces whose use is prohibited or is prohibited at a certain time of day - which is not the case in the public spaces in view here, which are of free access - or in the context of the criminal investigation - function that is not in charge of the PSP.

To that extent, considering the difficulty in understanding the proportionality of the use of Intellex Smart Search technology” in the context of this video surveillance system, from the outset, its suitability or suitability for the pursuit of the purpose of crime prevention and security of people and goods in the public space , the CNPD recommends that the use of this functionality, as well as the pre-definition of the alerts that are the basis of its operation, be specifically justified in the light of the principle of proportionality.

III. CONCLUSION

As it is not within the competence that is legally attributed to it to comment on the concrete grounds for the use of video surveillance in the city of Estremoz, the CNPD limits itself to pointing out, with the arguments set out above, that:

The. After the transposition of Directive (EU) 2016/680, of April 27, into the national legal system, it will be important to adapt the guarantee of the right to information to the requirements defined therein, recommending that the elements that integrate the content of this right that are not in video surveillance notices are made known to citizens by other appropriate means;

B. The suitability or suitability of using the “Intellex Smart Search” functionality for the pursuit of the crime prevention purpose is not evident

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and security of people and goods in the public space in the context of the present video surveillance system, the CNPD recommends that its use, as well as the pre-definition of the alerts that underlie its operation, be specifically specifically justified in light of the principle of proportionality.

Lisbon, April 23, 2019

Filipa Calvão (President)