

r

NATIONAL DATA PROTECTION COMMISSION

OPINION No. 7/2018

ORDER I.

Through the President of the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees, the opinion of the National Data Protection Commission (hereinafter referred to as CNPD for short) was requested on Bill 746/XIII (3.a) /PS, regarding the strengthening of the legal-criminal protection of privacy on the internet.

The consultation is carried out, under the terms and for the purposes of paragraph 2 of article 22 of Law no. 67/98, of 26 October, amended by Law no. August - Personal Data Protection Law (hereinafter abbreviated as LPDP), and the Opinion is issued under the provisions of paragraph a) of paragraph 1 of article 23 of the LPDP.

II. ASSESSMENT

The bill on the strengthening of the legal-criminal protection of privacy of privacy on the Internet contains several rules that regulate the sanctioning of conduct that is harmful to the privacy of privacy of private life, and is intended, according to the explanatory memorandum, "to updating of the normative framework that protects informational identity, namely the right to the veracity and rectification of information, the right to be forgotten, the right to the protection of a good name and the protection against the appropriation of identity».

This is the 43rd amendment to the Portuguese Penal Code and the amendments introduced through the bill in question are intended to modify the content of the rules contained in articles 152 and 197, in order to provide for an aggravation whenever, within the scope of the crimes typified therein, the disclosure of personal data via the Internet or by any other means is at stake, without the consent of the respective holder

With regard to article 152 of the Penal Code, the addition of paragraph 3 corresponds to a proposal to extend criminal protection, insofar as disclosure on the Internet or any other means of public dissemination is sanctioned. widespread situations of "data[] photographs, or footage relating to the intimacy of private life" of one of the persons listed in paragraph 1(1) of the same article.

www.cnpd.pt

wmmmmmm line

Weekdays from 10 am to 1 pm

doubts@cnpd.pt

Case No. 1688/2018 1v.

It should be noted, however, that the formula «data[J photographs or footage» lacks greater precision. In fact, it appears that the legal-criminal relevance of this conduct thus sanctioned is linked to the exposure of privacy to private life in situations that are particularly degrading to the dignity of the victims, which is why it can only be affirmed when the information disclosed concerns persons identified or susceptible to identification. If so, the CNPD understands that the standard should be densified, replacing the expression "data" with personal data, exemplifying with photographs, footage and making an express reference to sound, since the mention of footage may not be enough to cover situations of violation of fundamental rights, here object of protection, through the dissemination of sound. In this way, the CNPD takes the liberty of suggesting that the rule contains personal data, namely image or sound.

With regard to the amendment of the rule contained in paragraph b) of article 197 of the Penal Code, there is the addition of the segment relating to dissemination via the Internet, or other means of generalized public dissemination, with regard to crimes of violation of domicile or disturbance of private life, introduction into a place forbidden to the public, invasion of private life, penetration by means of computers, violation of correspondence or telecommunications and violation of secrecy, provided for and punished by articles 190, 191, 192, 193, 194, and 195, all of the Penal Code.

Considering the strengthening of the protection that was already conferred, in these rules, to the legal asset of private life, through the aggravation of the sanction in case the affectation of this fundamental human dimension is exponential, the CNPD has nothing to suggest.

III. CONCLUSION

On the grounds set out above, the CNPD recommends reviewing the wording of the rule contained in paragraph 3 of article 152 of the Penal Code, in the suggested terms.

This is the opinion of the CNPD.

Lisbon, February 27, 2018

ilipa Calvão (President)