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NATIONAL DATA PROTECTION COMMISSION

OPINION No. 6/2018

I. Order

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 request for the installation and use, by the Public Security Police (PSP), of a video surveillance system in the city of Coimbra.

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.

At issue is the request for authorization to use fixed cameras in the city of Coimbra. The request is accompanied by a document identified as «Video surveillance in downtown Coimbra», which contains the reasons for the request and the technical information of the system, hereinafter referred to as “reasonings”.

II. Scope of competence of the CNPD

- 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, 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 installing fixed cameras in areas that, despite located in public places,

whether, by their nature,

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intended to be used in guarding or the use of video cameras when the capture of images and sounds involves the interior of a house or inhabited building or its 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.

III. Limit of scope of opinion

The CNPD has already commented on the scope of the opinion on September 26, 2017¹, in connection with the initial request from the office of the Assistant Secretary of State and Internal Administration.

What is now being analyzed are only the aspects that, however, deserved clarification on the part of the PSP, precisely in reaction to the aforementioned original opinion. And, in terms of clarification, there are five notes that the security force adds to the aspects criticized by the CNPD, namely: regarding respect for the right to information of data subjects; regarding the technical characteristics of the system; regarding system security requirements; on the existence of mobile cameras and, finally, on the question of the functioning of the cameras after the legally authorized time.

From these five notes, we understand the analysis to be divided by the themes of (1) the rights of the holders, (2) the

technological aspects and, finally, (3) the legality of the treatment that took place in the meantime (from 2013 to 2016).

An assessment of the system's technical aspects was requested from the IT and Inspection Service (SII), now completed with new information from the PSP.

1 Opinion No. 46/2017, available at https://www.cnpd.pt/bin/decisooes/Par/40_46_2017.pdf.

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1. About the rights of holders

In the original opinion, the CNPD had highlighted the impossibility of verifying respect for the data subjects' right to information, since the PSP was limited to stating the existence of information notices in accordance with Ordinance No. 373/2012, of 16 November, in addition to announcing a dissemination action with the media.

The CNPD also pointed out that in no element could it be detected the possibility of the data subject exercising the rights of access and deletion, except in Annex G and in an unclear way.

The PSP now completes the information then presented, detailing the legal obligations in terms of notices and mentions included in them. Nothing is said, however, about the information to the data subjects regarding the rights of access and elimination, leaving the unknown on how this security force will overcome this insufficiency.

2. About the technological aspects

Regarding this matter, the new elements that the PSP brought to the process are analysed, point by point.

- Point 2 informs that «the cameras do not capture and record sound and that protection of fundamental rights will be guaranteed by applying a "filter" whenever the capture of images and sounds covers the interior of a house or building, inhabited or its dependence and that the image capture system is equipped with a privacy filter (or privacy mask) configured at the time of installation [...]», identifying the software used, as well as the respective version.

The measures described to reduce the impact on the privacy of individuals are considered adequate.

It should be noted, however, that from the analysis of the technical documentation of the software in question, it was possible to verify that the indicated version is already out of date. In particular, it was verified that this version was released in 2007 and that the minimum system requirements were adequate for systems that are already obsolete (e.g.

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Windows XP Professional2 operating system and Pentium IV processor with 2.3GHz). Attention is drawn to the fact that the software has been subject to several updates in the meantime, and versions that guarantee greater security are available on the market, namely protection against SSL Heart Bleed attacks.

- Point 3 refers to security measures in the communication of data that the images collected are "encrypted at the output of the camera, using the following encryption measures: software [...] that has its own codec (encoder) that protect images. Thus, the collected images can only be viewed on a system where the aforementioned applications run, whose encryption key is changed every six months. The collected images converge directly, via iP Protocol, to the recording center installed in the control center of the Coimbra District Command, through dedicated optical fiber (mu/timode and single-mode)».

From the description given of the system, it is understood that communication security is based on video encoding with a manufacturer's own codec and the use of dedicated physical communication channels (optical fiber). It is understood that these two elements provide reasonable security for the data and it is suggested, only as an additional security measure, that all communicated data circulate over an SSL (encrypted) channel.

- The sender clarified, in point 4, that the previous description of the system wrongly defined the cameras as being mobile, of the speed-dome type, and that they are, in fact, fixed.

The doubt initially raised by the CNPD, which resulted from the information that the PSP had added to the request for an opinion, is thus clarified. On the substance of the matter, it is considered that the use of fixed cameras, in comparison with the use of mobile cameras, represents a less serious impact on the privacy of individuals, insofar as it is technologically simpler for the data controller data to apply mitigation measures (e.g., physical or logical masks), making their correct application more effective.

2 Support for the Microsoft Windows XP operating system was discontinued on 04/08/2014, which means that any vulnerabilities detected in this system after that date have not been, and will not be, patched and/or updated by Microsoft.

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3. On the legality of the treatment that took place in the meantime (from 2013 to 2016)

The CNPD critically noted the assumption by the PSP, in the text of the request for an original opinion, of the use of the video surveillance system after the legally authorized time, that is, on February 17, 2012. The considerations that were then made, to make the matter clear:

a) «The presence of these means of video surveillance in Coimbra in the years 2013 to 2016 It is equivocal, but sufficiently clear for us to make a judgment about it, the reference to the use of video surveillance means in the area in question by the PSP, in the years 2013, 2014, 2015 and, above all, 2016.

In fact, the PSP itself refers, in a footnote (note 3) that «The video surveillance cameras are implemented in the field, in compliance with the provisions set out in the orders Dispatch No. n.º 47/2008 and Order n.º 4250/2011, of 07MAR. Although currently [emphasis added] there is no visualization or recording of images, there were periods in 2016 when they were only visualized, without, however, recording any.».

Soon after, on p. 4 of the authorization request along with the process, it is stated that "From the analysis of table 1, we found that in the area where the cameras of the video surveillance system are located, in the years under study, crime presents reduced numbers, showing that its presence continues to contribute to crime prevention'.

The PSP assumes, therefore, that during that period not only were the video surveillance cameras installed, but also that they were used to view images by this security force.

However, the order referred to by the PSP (the most recent, which is what, for this analysis, matters) is dated February 17, 2011 and details, in point 5, that 'The deadline referred to in the 5 of article 5 p] of Law n.º 1/2005, of 10 January, is one year, after which a new reassessment of the assumptions that determined the granting of authorization must be carried out.' We have, therefore, that the last authorization

3 «The maximum duration of the authorization is two years, subject to renewal for equal periods, upon proof of maintenance of the grounds invoked for granting them or the existence of new

fundamentals.”

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that the PSP had only guaranteed the use of the system until February 17, 2012.

While the suggestion that the maintenance of video surveillance cameras is a positive deterrent that should be underlined and praised is already debatable and at least worrying, due to the undervaluation of the intrusion on privacy that the mere presence of surveillance means causes for citizens, but This is serious when the PSP assumes that the video surveillance system was still in operation, although not recording images, and was used by the agents of this police force. In fact, the CNPD cannot, in the light of constitutional norms, the fundamental rights of citizens, the LPDP and Law no. internal), or the PSP itself to review the practices that allow such a violation of legal terms, as well as to strengthen security measures to prevent this from happening again.»

To justify these cycles of use in unauthorized periods, the PSP claims that the images contained in the letter for the presentation of the video surveillance data processing system to the CNPD on 07/27/2017 were collected by a team of technicians for the strict purpose of occasional tests and that the cameras have been inoperative for 3 years, without the images being recorded and even stating that such information was included in Annex I that originally accompanied the request for opinion.

Now, on the one hand, carrying out tests in this type of media cannot be considered legitimate prior to the authorization of the systems, when this is necessary, as is the case here. In addition, the CNPD has understood, in several administrative offences, some of which result from administrative infraction notices sent to it by this security force and where the same argument is made of the carrying out of experimental and not definitive periods by those responsible for the processing. , that this is not a minimally acceptable circumstance, since nothing authorizes or recommends that the tests be carried out prior to

the existence of the legally required authorization.

Then, the aforementioned Annex I ("Proof of Approval, capacity or guarantee of financing for the installation of the equipment used and the respective maintenance expenses"), which accompanied the initial request, made no reference to the existence of

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tests in the mentioned period, being certain that it mentioned the existence of the equipment and reported its inoperability due to lack of authorization.

Finally, even if the PSP's argumentation were accepted, which is not granted, the potential existence of treatments would always have to be underlined, for not being denied, during the years of 2012 (post-February), 2013 and, until, perhaps, 2014 , as the security force has limited itself to guaranteeing the inoperability of the video surveillance system for three years. Since such a guarantee was given in 2017, the date of the official letter that requested the CNPD's opinion, it would be necessary to consider that the PSP only guarantees that the cameras were not accessed and used from

In short, the CNPD's position in the original opinion, regarding the use of the system between 2013 and 2016.

IV. CONCLUSION

1. Most of the doubts or critical remarks that the CNPD had highlighted in opinion no. 46/2017 were satisfactorily clarified.
2. However, the lack of definition about the provision of all the information that the controller is obliged to provide to the data subjects remains, namely regarding the exercise of the right of access and elimination of their data;
3. The verification of the lawfulness of the data processing carried out through the use of the video surveillance system between the years 2013 and 2016 cannot be accepted simply because it is alleged that such use was limited to the existence of tests. The personal data protection regime in force does not exempt precarious data processing within its scope.

This is the opinion of the CNPD.

Lisbon, February 20, 2018

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Filipa Calvão President)

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