

NATIONAL COMMISSION

DATA PROTECTION

OPINION/2019/88

I. Order

The Assistant Secretary of State and Internal Administration requested the opinion of the National Data Protection Commission (CNPd) on the request of the Public Security Police (PSP) for the use of fixed and portable video cameras «in the prevention and monitoring of incidents arising from of the 2019/2020 New Year's Eve festivities, at Praça do Comércio in Lisbon».

The use of video cameras 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. 9/2012, of February 23 (hereinafter, Law No. 1/2005).

The use of such 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.

Pursuant to paragraph 2 of article 3 of the same diploma, the CNPD's opinion is limited to pronouncing on the compliance of the request with the rules regarding the security of the processing of the collected data, the special security measures to be implemented, to guarantee entry controls on the premises, data carriers, insertion, use, access, transmission, introduction and transport, as well as verification of compliance with the duty of information and to 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, are, by their nature, intended to be used as a guard; the opinion also focuses on respect for the prohibition on the use of video cameras when the capture of images and sounds involves the interior of an inhabited house or building or its dependence, as well as the prohibition on capturing images and sounds in places

Av. D. Carlos I, 134 - 1st 1200-651 Lisbon

Tel: «351 213928400 Fax: *351 213976832

geral@cnpd.pt www.cnpd.pt

PRIVACY NAIL

Day» business «i* d»* 10 A* 13 h

dwtd»*@enpd.pt

Process PAR/2019/78 1v.

NATIONAL COMMISSION

DATA PROTECTION

public, when the capture directly and immediately affects people's privacy, or results in the recording of conversations of a private nature.

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.

II. appreciation

The Public Security Police (PSP) intends to use a video surveillance system, for image recording, during the 2019/2020 New Year's Eve celebrations, composed of four fixed cameras, to be placed in Praça do Comércio, Rua da Alfândega and Avenida da Ribeira das Naus, and by four portable cameras, which will be carried "by uniformed police elements and/or being duly identified as police officers through a high-visibility vest", and which will collect images between 8 pm on December 31, 2019 and 4:00 am on January 1, 2020¹.

The CNPD cannot fail to note that the reasoning presented is literally the same as that which accompanied the request regarding the use of video surveillance in the 2018/2019 New Year's Eve festivities, at Praça do Comércio in Lisbon.

Its use is justified by the principles of precaution and criminal prevention, taking into account the «nature of the event and its dimension», the «continuous jihadist propaganda, and the general threat made to European capital cities», as well as

¹ It should be noted that the authorization request is limited to the use of four mobile cameras, but, when issuing this opinion, the CNPD also considered that the request extends to four fixed cameras, whose characteristics and location are described in the request. .

Av. D. Carlos I, 134 - lo 1200-651 Lisbon

rkTIII-I:XTJ

geral@cnpd.pt

Td: *351213928400

Fax: '351213976832 www.cnpd.pt

PRIVACY LINE

Working days* from* 10 am to 1 pm

dUYKj«#Cttd fs<

Process PAR/2019/78 2

NATIONAL COMMISSION

DATA PROTECTION

as 'the occurrences of a criminal nature'. The use of video surveillance is also justified, given the characteristics of the area and the large concentration of people in the city's main festivities. Finally, reference is made to the «deterrent effect that video surveillance will have on general crime, taking into account that in previous events several occurrences of a criminal nature were recorded, most of them related to crimes against property».

As it does not fall within the competence that is legally attributed to it, the CNPD limits itself to pointing out that the specific grounds for the use of video surveillance must be objective and embodied, and it does not seem sufficient to invoke an alleged deterrent effect when, for at least two years, there has been resorts to the use of this type of systems in the same place for the same type of event, In fact, considering this fact as well as the statement contained in the request «taking into account that in previous events several occurrences of a criminal nature were recorded, mostly related to with crimes against property', one would even be led to the conclusion that the use of video surveillance cameras is not fulfilling the intended purpose.

The CNPD does not question the need to resort to exceptional security measures under the precautionary and criminal prevention principles, since it is not responsible for issuing such judgments.

However, it cannot fail to take into account the public interests targeted by the use of this video surveillance system to balance them with the rights affected, within the scope of its powers defined in the final part of paragraph 2 of article 3 of the Law No. 1/2005, in particular regarding the assessment of respect for the prohibition of capturing images, in public places, when the capture directly and immediately affects the privacy of people or results in the recording of conversations of a private nature .

In fact, according to the provisions of paragraph 7 of article 7 of Law no. 1/2005, «the capture of images and sounds [...] is prohibited when such capture directly and immediately affects ,

cim-gUFrj

Av. D. Carlos 1, 134 - 1.º 1200-651 Lisbon

Tel: +351 213928400 Fax: *351213976832

geral@cnpd.pt www.cnpd.pt

PRIVACY LINE Useful ies from* 10 am to 1 pm

<iuvfdasfiSatiXj.fi?

Process PAR/2019/78 2v

NATIONAL COMMISSION

DATA PROTECTION

privacy, or results in the recording of conversations of a private nature». It is on this point that the first part of this opinion focuses, only after considering other aspects that the capture, recording and transmission of images raise.

In any case, attention is drawn to the legislative change that has taken place in the meantime regarding the legal regime for the processing of personal data, which has direct repercussions on the processing of data under analysis.

In fact, the new Law no. Directive (EU) 2016/680 of the European Parliament and of the Council, of 27 April 2016, requires the person responsible for these processing of personal data to carry out an impact assessment on data protection when there is a high risk to the rights , freedoms and guarantees of persons (cf. article 29).

It is important to remember here that paragraph 2 of article 2 of Law no. 1/2005 determines that the processing of personal data resulting from the use of the video surveillance system is governed by the provisions of Law no. 26 October, in everything that is not specifically provided for in this law, and that this law, regarding the treatments carried out for the purposes of prevention, detection, investigation or prosecution of criminal offenses or the execution of criminal sanctions, was revoked and replaced by the Law No. 59/2009, of August 8th. Considering also that, in paragraph 3 of article 67 of this last piece of legislation, it is determined that “All references made to the Law on the Protection of Personal Data, approved by Law no. 67/98, of October 26, are considered made for the regime of this lei, when they concern the protection of natural persons in relation to the processing of personal data by the competent authorities for the purposes of prevention, detection, investigation

or prosecution of

Av. D. Carlos I, 134 - 1, 1200-651 Lisbon

Tel: *351 213928 400 Fax: *351213 976 832

geral@cnpd.pt www.cnpd.pt

PRIVACY NAIL Working days from 10 am to 4 pm to 1 pm

duvtdMMgoftpdpt

Process PAR/2019/78 3

NATIONAL COMMISSION

DATA PROTECTION

criminal offenses or the execution of criminal sanctions, including safeguarding and preventing threats to public security', can only be concluded by directly applying the provisions of Article 29 to the processing of personal data resulting from the use of video surveillance systems. Thus, taking into account that this treatment implies a large-scale systematic control of the 2019/2020 New Year's Eve festivities, at Praça do Comércio in Lisbon, the significant risk it poses to the rights, freedoms and guarantees of people is undeniable. , in particular the fundamental rights to data protection and respect for private life, as well as freedom of action.

For all these reasons, the CNPD considers that article 29 of Law no. of people and the careful assessment of the measures planned to mitigate them.

1. Reserving the intimacy of private life

In the specific case, the CNPD notes that it intends to capture, record and transmit images in real time to the Tactical Command post installed in Praça do Comércio, where the images will be viewed. No sound is captured or recorded, so the CNPD limits its opinion to the processing of data associated with the capture and recording of images.

Regarding the capture and recording of images, the CNPD understands that the affectation of people's privacy is, in the described context, bearable to safeguard the public interests invoked, considering the space and period of time delimited, in the specific case of portable cameras. , provided that the right to information and security in the conservation and transmission of images are effectively guaranteed - which will be analyzed below.

Av. D. Carlos I, 134 - 1, 1200-651 Lisbon

Tel: *351 213928 400 Fax: '351213 976 832

geral@cnpd.pt www.cnpd.pt

PRIVACY LINE Hello* useful* da* 10 -H 13 h

«UYa»§í«jXS/en

Process PAR/2019/78

3v.

NATIONAL COMMISSION

DATA PROTECTION

As for the fixed cameras, it is not clear from the application whether the period of operation is the same, since the time delimitation is described in point 1., only concerning portable cameras.

In this sense, the CNPD considers that, in the present case, the processing of personal data that the capture and recording of images constitutes is still admissible, in a proportionality judgment, in view of the provisions of paragraph 7 of article 7 of the Law No. 1/2005, provided that the period of capture of images by fixed cameras coincides with that of portable cameras.

2. The right to information

Citizens have, under the terms of Article 35(1) of the Constitution of the Portuguese Republic and Article 14(1) and 14 of Law No. 59/2019, of 8 August, the right to be informed of the use of video surveillance cameras.

With regard to video surveillance using fixed cameras, article 4 of Law no. 1/2005 requires the posting in conspicuous places of notices specifying the area covered, its purpose and the person responsible for the treatment.

With regard to the use of mobile cameras, although it can be admitted that the guarantee of this right does not have to be implemented exactly under the terms legally and regulatory for the installation of fixed cameras, the solution presented is objectively insufficient: "uniformed police officers and/or or being duly identified as police through a high-visibility vest, being these and the cameras visible to the public, being easily identifiable as elements of the Public Security Police».

In fact, the right to information - as an aspect of the fundamental right to informational self-determination - aims to allow people to decide to subject themselves to the processing of personal data, thus enabling the decision not to travel or not be in the place where the images were captured. will take place.

esESsnassM

Av. D. Carlos I, 134 - 1st 1200-651 Lisbon

Tel:»351 213928400 Fax: «351213976832

geral@cnpd.pl www.cnpd.pt

PRIVACY NAIL Working day* <Sa 10th*13h

duvMj*s®»tp<Sps

Process PAR/2019/78

4

NATIONAL COMMISSION

DATA PROTECTION

In this sense, the CNPD reaffirms the understanding that it is essential to guarantee the right to information, through the posting of notices in the places subject to surveillance in the case of fixed cameras and by prior notice through the usual means of dissemination (e.g., the institutional website of the PSP on the Internet and the media), that the PSP will use this video surveillance system in the case of mobile cameras.

3. Technical requirements and security measures

The minimum technical requirements that the chambers must respect are defined in Ordinance No. 372/2012, of 16 November, in accordance with the provisions of Article 5(7) of Law No. 1/2005.

The CNPD notes that, in the context of this request for an opinion, it was not informed of the description of the technical characteristics of the portable cameras.

3.1. It follows from the aforementioned Ordinance that the video surveillance system, whether it is composed of fixed cameras or portable cameras, must guarantee that the recording of the images in the video surveillance cameras is done in an encrypted form (cf. subparagraph b) of paragraph 2 of article 4), also requiring synchronization with the Portuguese legal time, in order to guarantee the reliability of the date and time that must appear on each captured image (i.e., that the recorded images correspond to events that occurred on the day and time recorded in the images - see Article 4(2)(c)),

On this matter, point 9 of the Public Security Police letter is limited to stating that «the recording of images is carried out in digital format, in an encrypted form, with the system being in sync with the Portuguese legal time».

However, mobile cameras, by their very nature, carry an increased risk of undue access, which is why they must be subject to

increased security measures. In particular, it will have to be ensured that the devices encrypt the data they record and the data they transmit to the central. Also inherent to mobile cameras are the functions of sharing data with social networks or transmission (uploads)

Av. D. Carlos I, 134 - 1st 1200-651 Lisbon

Tel: *351213 928 400 Fax: *351213 976 832

geral@cnpd.pt www.cnpd.pt

geeebeo

PRIVACY LINE

O!»* ut«I* of the 10 i* 13 b

tíuvwJMgoipd pi

Process PAR/2019/78 4v.

NATIONAL COMMISSION

DATA PROTECTION

for cloud computing platforms. Therefore, these functions must be irreversibly disabled.

As there is no information in the process about these chambers that allows the assessment of what was declared in that letter, the CNPD limits itself to underlining the importance of the security of personal data, the requirement of confidentiality as well as the reliability of the system, to guarantee the reliability of the evidence. collected.

3.2. The same Ordinance also states that the local system of each security force or service must guarantee the visualization, control and management of the cameras in real time, as well as access to the images within a maximum period of sixty minutes after their capture (cf. Article 3(a) and (b)).

In points 7 and 8 of the Public Security Police letter, the location where the images will be viewed is identified and security measures related to monitoring are described. However, nothing is said about the real-time visualization. Likewise, no declaration is made as to compliance with the maximum period for accessing images at that location.

The CNPD understands that some of the technical requirements set out in the Ordinance are mainly designed for fixed cameras, which may justify an application with adaptations to portable cameras (although the Ordinance covers the two types of cameras as its object and does not distinguish the requirements listed according to their nature). Even so, it has

reservations about the adequacy of the present video surveillance system to safeguard the objectives pursued with the real-time visualization of the images.

Av. D. Carlos I, 134 -1.º 1200-651 Lisbon

Tel: «351 213928 400 Fax: «351213 976 832

geral@cnpd.pt www.cnpd.pt

PRIVACY LINE 01** út*i* da* 10 6* 13 h

d«MJa*@cnpd pi

Process PAR/2019/78 5

NATIONAL COMMISSION

DATA PROTECTION

III. Conclusion

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 2019/2020 New Year's Eve celebrations, at Praça do Comércio in Lisbon, the CNPD, on the grounds set out above, recommends that:

- i. The duty provided for in article 29 of Law no. 59/2019, of 8 August (applicable here under the terms of article 67, no. 3, of the same diploma, and no. 2 of the article 2 of Law no. 1/2005), to carry out an impact assessment of the processing of personal data on the rights, freedoms and guarantees of individuals, within the scope of this authorization procedure;
- ii. Notices are posted, in conspicuous places, specifying the area covered, its purpose and the person responsible for the treatment, as well as prior notice, in the usual means of dissemination (e.g., the institutional website of the PSP on the Internet and the media social), that PSP will use this video surveillance system in Praça do Comércio and Avenida Ribeira das Naus during the indicated period;
- iii. The functions of sharing data with social networks or transmission (uploads) to data platforms of mobile cameras are irreversibly deactivated.

Lisbon, December 27, 2019

Av. D. Carlos I, 134 - 1.º 1200-651 Lisbon Tel: +351213 928 400 Fax: -351213 976 832

Tel:*351 213928400

PRIVACY NAIL Business* day* from 10 am to 1 pm

<!uv<d»»@cníxj p*

geral@cnpd.pt

www.cnpd.pt