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CNPD

national commission

Data Protection

I. Order

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'1 . Through the Office of the Deputy Secretary of State and the Internal Administration, it was requested, on the 19th of April 2021, opinion to the National Data Protection Commission (hereinafter, CNPD) "concerning the request authorization presented by the Public Security Police (PSP), following the use of a camera of portable video surveillance, carried out by the Metropolitan Command of Lisbon and whose use has been authorized by the National Director of the PSP, under paragraph 2 of article 6.0 of Law n.a. 1/2005, of 10 January [...].

2. Specifically, the use of a video surveillance camera by the PSP on Rua Duque de Palmela, in the city of Lisbon, on the 16th of April 2021, on the occasion of a «Manifestação de apoio ao Judge Rui Fonseca and Castro», which began at 14:00.

3. The use of video cameras by security forces and services in public places of use common, for the capture and recording of image and sound and its subsequent treatment and regulated by Law No. 1/2005, of 10 January, amended and republished by Law No. 91/2012, of 23 February (hereinafter, Law No. 1/2005), and depends, under the terms of this law, on the prior authorization of the member of the Government responsible for the force or service of

applicant security, which must be preceded by the opinion of the CNPD regarding aspects of the treatment of personal data resulting from the use of the cameras provided for in paragraph 2 of article 3.0 of the same diploma.

4. However, as is apparent from the request, a distinct and exceptional procedure is followed here, since the use of video surveillance cameras and the recording of images took place based on the authorization of the National Director of the PSP based on n.º 2 of article 6.0 of Law n.

of the CNPD as the decision of the Assistant Secretary of State and Internal Administration, hereby competent by delegation of the ministerial body, are issued after their use.

## II Analysis

### i. Purpose of treatment and grounds presented

5. The fundamentals of camera use presented in the National Director's dispatch lead to the processing of personal data for the purpose of protecting the security of people and property, public or private, and prevention of the practice of facts qualified by law as crimes (under the terms of subparagraph c) of paragraph 1 of article 2.0 of Law No. '112005).

6. The cNPD does not question the suitability and necessity of processing personal data from the use of video surveillance camera, taking into account the specific circumstances described in the aforementioned order, recognizing

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that the balance between the public interest pursued and the reservation of the intimacy of private life did not justify a prevalence of the latter dimension, in light of the provisions of article 7.0 of Law no. 1/2005.

7. However, it is also important to consider the other requirements of Law No. 1/2005 and Ordinance No. 31212012, of 16 November, here necessarily applicable.

ii. The requirements provided for in Law No. 0 1/2005 and in Ordinance No. 37212012, of November 16

8. In the aforementioned order, information regarding the use of the camera is indicated, either in terms of location or

as to the time period of its use. The technical characteristics of the camera are also described.

video used, model Sony Cyber-shot DSC-HX400V, and the model of the mobile phone that was used for recording after failure of the first camera (Samsung 52't 5G).

The. sound recording

9. First of all, it is important to highlight that the dispatch states that there was the capture and recording of images, without clarifying whether or not there was sound recording, given that the camera model used it has a microphone and, therefore, the ability to capture and record sound.

10. In addition, as reported in the aforementioned order, the camera initially used broke down, when in which a service cell phone was used to continue capturing and recording images.

Also as for this device, which has sound recording capacity, nothing is mentioned about its effectiveness.

B. Ir/technical measures for video system security, personal data integrity and

Auditability of the video surveillance system

11. Considering now the minimum technical requirements that the cameras have to respect, according to the provided for in paragraph 7 of article 5.0 of Law n.0 1/2005, and which are defined in Ordinance n.

November, which specifies, in its article

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which applies to both fixed and portable cameras, it can be seen

that there are minimum requirements that have not been guaranteed, neither by the first camera used, nor by the camera of the

cell phone. Let's see.

12. It follows from the aforementioned Ordinance that the video surveillance system, whether composed of fixed cameras, is by portable cameras, you must ensure that the recording of the images on the video surveillance cameras is carried out in a encrypted form (cf. subparagraph b) of no. 2 of article 4.0 of the aforementioned Porlaria), still requiring the synuonization with rJ

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the Portuguese legal time, in order to guarantee the reliability of the date and time that must appear on each image captured (/e.e., that the recorded images correspond to events that occurred on the day and time recorded in the images - cf. subparagraph c) of paragraph 2 of the aforementioned article).

1 3. It is also required that the local system be auditable and specifically that the recording and all interventions in the local system are made in an auditable manner (cf. subparagraph d) of paragraph 2 and subparagraph d) of paragraph 3 of article 4.0 of the

Polítaria), and it is also specifically imposed, in paragraph 4 of the same article 4.0, that the operation of the local system obligatorily request that the eye reglslo system is active, in order to guarantee the operations of audit.

14. Nothing is mentioned on these matters in the aforementioned order, only stating that "there was a recording in SD memory caffon - SÁND/S (16GB of capacity, coupled to the equipment, as well as stored the images obtained by mobile phone, and all the images are enclosed in an envelope sealed, in the safe [...] at the order of the person responsible for processing the data'.

15. In order to fill in the omissions of information essential to the pronouncement of the CNPD, the analysis of the characteristics of the camera model used initially, made available by the Manufacturer, resulting in from this analysis that the camera does not guarantee the encryption or encryption of the images recorded, nor, prima facie, the automatic synchronization with the Portuguese legal time, and the synchronization could have been ensured manually, but with the risk of error due to human intervention. In any case, it is repeated, also in this respect, the order is omitted.

16. Also the mobile phone used in a second moment does not guarantee the encryption or encryption of the images

recorded. Furthermore, nothing is stated on the question of whether it has been guaranteed, as to this device, the automatic synchronization with the Portuguese legal time, nor regarding the way of transmitting the images recorded on the mobile phone, with no description of specific security measures in its transmission.

17. Furthermore, Sony's handheld camera, being a still camera (with video functionality), does not allow the auditability of the operations carried out therein, insofar as it is not susceptible of recording the events (/logs). The same can be said of the cell phone camera.

18. It is important to emphasize here that portable cameras, by their very nature, carry an increased risk of undue access, for which reason they must be subject to increased security measures. And one of the measures essential concerns the encryption or encryption of data (images), which is also presented as condition of the reliability of the evidence in relation to the conducts captured by the camera. Too much, country of

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As a key to any legal proceedings, it is also essential to synchronize the date and time of the recorded images with Portuguese time.

19. In view of what was stated in the request for an opinion and the technical characteristics of the two cameras used, the CNPD concludes that the video surveillance system used does not meet most of the requirements defined in the article 4.0 of Ordinance No. 372/2012, first of all because the camera models used are not susceptible to comply with such requirements, in particular, those relating to information security and the integrity of images

for the purposes of evidence in any legal proceedings, as well as the auditability of data processing:

encryption or encryption of recorded images, synchronization with Portuguese legal time and registration of operations on the local system.

20. Consequently, it can only be concluded that the video surveillance system used in this case is not capable of guarantee the recording of images for the purpose stated in the aforementioned order.

21, It should also be noted that, under the terms of Ordinance No. 37212012, the local system of each force or service of security must guarantee the visualization, control and management of the cameras in real time (ci. paragraphs a) of article 3.0). However, in this case, in view of the gaps in the order containing the information regarding the treatment of data, nothing indicates that there has been transmission for real-time viewing.

22. 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, in article 1.0, expressly covering the two types of chambers as its object and not distinguishing the requirements listed according to their nature). Nevertheless, it is also noted in this aspect, that the video surveillance system used does not meet the regulatory technical requirements taxes.

ç. the right to information

23. Finally, the right of information regarding the processing of personal data is presented, for to say the least, very poorly secured.

24. It is recalled, in this regard, that citizens have, under the terms of paragraph 1 of article 35.0 of the Constitution of the Portuguese Republic and paragraphs 1 and 2 of article 14.0 of Law no. 59/2019, of 8 August, right to be informed the use of video surveillance cameras.

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25. With regard to video surveillance using fixed cameras, article 4.0 of Law no. 1/2005 obliges the posting notices in conspicuous places specifying the area covered, its purpose and the responsible for the treatment.

26. Regarding the use of mobile cameras, although it is admitted that the guarantee of this right is not always can be carried out under the legal and regulatory provisions for the installation of fixed cameras, the means found to guarantee it must still be able to enable people to decide to undergo treatment of personal data, thus enabling the decision not to travel or not be in the place where the capture of the images will take place,

27. In the case and for this purpose, the solution adopted, described in the information accompanying the request, is objectively insufficient: «Police responsible for capturing the images were identified as Police and duly framed in the present police force/device».

28. While it is recognized that decisions to use cameras taken at the beginning of the event that intends to monitor are not easily compatible with the forms of disclosure used by the PSP resort when using portable cameras, even so the CNPD understands that there would be forms of disclosure that, In this specific case, they do not seem to have been considered.

### III. Conclusion

29. Even considering the specific circumstances that justified the use of portable cameras, the CNPD understands that the right to information, constitutionally and legally enshrined, was very deficient assured.

30. The CNPD also understands that the video surveillance system used is not capable of guaranteeing the recording of images for the stated purpose, since the cameras used are not capable of fulfilling the technical and security requirements legally and regulatory imposed, not guaranteeing, in particular, the relating to information security and the integrity of images for the purpose of evidence in a possible process Judicial, as well as the auditability of the processing of personal data resulting from the use of the cameras.

31. In particular, as stated and given the technical characteristics of camera models

used,

i. there is no guarantee of:

(i) there was no capture and recording of sound;

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(ii) there has been synchronization of the date and time of the recorded images with the Portuguese legal time,

as for the cell phone camera; and

ii. not seen:

(i) the synchronization of the date and time of the recorded images with the Portuguese legal time (how much to the camera used first);

(ii) encryption of images recorded by the two cameras;

(iii) the recording of interventions in the two chambers (/ogs).

32. On these grounds, and pursuant to paragraph 3 of article 6.0 of Law no. 1/2005, the CNpD's opinion can only be negative.

Lisbon, April 27, 2021

Filipa Calvão (President)