

/ NATIONAL DATA PROTECTION COMMISSION

OPINION/2020/65

I. Order

The Committee on Constitutional Affairs, Rights, Freedoms and Guarantees asked the National Data Protection Commission (CNPd) to comment on Draft Law No. 28/X1V/1.a (GOV), which amends the applicable legal regime the prevention of domestic violence and the protection and assistance of its victims.

The CNPD issues an opinion within the scope of its attributions and powers, as the national authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 4 of article 36 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - GDPR), in conjunction with the provisions of article 3, paragraph 2 of article 4 and in paragraph a) of paragraph 1 of article 6, all of Law no. 58/2019, of 8 August.

The assessment of the CNPD is limited to the rules that provide for or regulate the processing of personal data.

II. appreciation

The CNPD had already been asked to comment by the Government, in the draft phase of the draft law to amend Law No. 112/2009, of 16 September, which establishes the legal regime applicable to the protection and assistance to its victims, having issued Opinion/2020/31, of March 23, 2020 at the time.

The Bill now under analysis generally accepted the observations made by the CNPD within the scope of the draft bill.

However, there are still some aspects that need to be clarified by the Assembly of the Republic, which focus on article 37, °-A, under the heading Database on Violence against Women and Domestic Violence (BDVMVD).

In paragraph 6 of the article, which regulates access to the database, the criminal police bodies (OPC) that can access the database must be expressly listed, which, taking into account the attributions conferred by paragraph 1 of the article 3 of the Research Organization Act

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(LOIC)1, must be the same OPCs that are identified as a source of information in paragraph 5, paragraphs a), b) and c) of the

same article, that is, the GNR, PSP and PJ, otherwise the rule admit access to BDVMVD to any OPC. This can be done, in a simple way, by referring to the OPC indicated in the previous number.

Also in paragraph 8 of article 37-A, it is indicated, in subparagraph a), that “the specific list of crimes covered by the BDVMVD” will be included in the ordinance that will regulate the operation of the database. «The CNPD understands that the exact list of crimes must be included in the law and not in the ordinance. This is a substantive issue, relating to the scope of application of the diploma itself and with repercussions on the processing of data that results from it, and therefore falls within the legislative competence of the Assembly of the Republic». This understanding had already been expressed in the CNPD's Opinion/2020/31.

In fact, it appears that the Draft Law has now introduced a new paragraph 4 in article 37-A, which indicates which crimes are covered by the BDVMVD, thus meeting what was defended by the CNPD.

Therefore, point a) of paragraph 8 of article 37-A should be deleted, since the catalog of crimes is already referenced above. Finally, it is necessary to correct the expression used in paragraphs 10 and 11 of the same article, as it is inaccurate and equivocal: without any identification of personal data. It should only be replaced by “no personal data”. In fact, that is the meaning of the rule: that personal data not be communicated to CIG and other third parties.

III. Conclusion

Based on the above, the CNPD considers that the text of the Draft Law should be amended from time to time in Article 37-A in the following aspects:

1. In paragraph 6, add that access to the BDVMVD is made by users (...) “from the criminal police bodies indicated in the previous number” (...);

1 Law No. 49/2008, of 27 August, last amended by Law No. 57/2015, of 23 June.

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2. In paragraph 8, eliminate subparagraph a), regarding the specific list of crimes to be referred to regulation by ordinance, given that a new paragraph 4 was introduced in the article, which indicates the catalog of crimes covered by the base of data; otherwise, this can never be done by ordinance for violation of constitutional precepts.

3. In paragraphs 10 and 11, replace the expression without identifying personal data with “without personal data”.

Approved at the plenary meeting of June 8, 2020

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