

NATIONAL COMMISSION

DATA PROTECTION

OPINION/2020/139

I. Order

Through the Office of the Assistant Secretary of State and Internal Administration, on November 17, 2020, an opinion was requested from the National Data Protection Commission (hereinafter, CNPD) on the “use of portable video surveillance cameras by the Metropolitan Command of Porto of the Public Security Police (PSP) authorized by the National Director of the PSP, under paragraph 2 of article 6 of Law n.º 1/2005, of 10 January”.

Specifically, the use of video surveillance cameras by the PSP at Praça General Humberto Delgado - Avenida do Aliados, in the city of Porto, on November 13, 2020, between 4:15 pm and 5:45 pm, on the occasion of a manifestation.

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 23 February (hereinafter, Law No. 1/2005), and depends, under this law, on the prior authorization of the member of the Government responsible for the requesting security force or service, which must be preceded by the opinion of the CNPD regarding the aspects of the processing of personal data resulting from the use of the cameras provided for in paragraph 2 of article 3 of the same diploma. However, and 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 no. 2 of article 6 of Law no. 1/2005, so both the pronouncement of the CNPD and the decision of the Assistant Secretary of State and Internal Administration, hereby competent by delegation of the ministerial body, are issued at a later time to its use.

II. appreciation

1. Purpose of treatment and grounds presented

The National Director's order in which he certifies that he has authorized the use of video surveillance cameras, as well as the information accompanying the request for an opinion, refers, as regards the grounds for that use, to the number of demonstrators (about 1000), to the

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altered emotional state that the protesters had, the probable escalation of violence and the imminent risk of disorder, alteration of public order and consequent impacts on security, thus leading the processing of personal data to the purpose of protecting the safety of people and property, public or private, and prevention of the practice of acts qualified by law as crimes (item c) do no. 1 of article 2.º of Law no. 1/2005).

Although it can be admitted that the capture and recording of the images in the specific circumstances of the aforementioned manifestation, also considering the specific spatial context and the delimited time period, did not have a special impact on the intimacy of the people who were on the public road, nor of the that were eventually located inside the surrounding buildings, in particular considering the provisions of article 7 of Law No. 1/2005, and that, therefore, the balance between the public interest pursued and the reservation of the intimacy of private life a prevalence of the latter dimension, the CNPD cannot fail to point out that this procedure suffers from several flaws, both in the light of Law no. here necessarily applicable. These are the aspects that are analyzed below.

2. The requirements provided for in Law No. 1/2005 and in Ordinance No. 372/2012, of November 16

2.1. Firstly, the request for an opinion contains some information regarding the use of cameras, but only focuses on the following aspects:

«Public place where images were taken: [...]

Time period of use of the camera: [...]

Technical characteristics of the equipment used: [...]

Responsible for data processing: [...]

Procedures adopted for information to the public: [...]

Storage and mechanisms that ensure data security: [...]»

First of all, although in the formulation of the request for an opinion and in the dispatch of the National Director who accompanies it, the use of cameras is reported, therefore, using the plural, in the information accompanying the request there are expressions that point to the use of a single camera. In short, the exact number of cameras is not clear.

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used, a fact that is not irrelevant for the purpose of assessing the proportionality of the processing of personal data.

Furthermore, even if only the capture and recording of images is declared, at no point is it stated that there was no sound recording, given that the camera model indicated to have been used has a microphone and, therefore, the ability to capture and record of sound.

2.2. In addition, the right to information regarding the processing of personal data is, to say the least, very poorly ensured.

It is recalled, in this regard, that citizens have, under the terms of paragraph 1 of article 35 of the Constitution of the Portuguese Republic and paragraphs 1 and 2 of article 14 of Law no. 1/2019, of 8 August, right to be informed about 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 is admitted that the guarantee of this right cannot always be implemented under the legal and regulatory provisions for the installation of fixed cameras, the means found to guarantee it must still be able to allow people to decide to be subject to the processing 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.

In the case and for that purpose, the solution adopted, described in the information accompanying the request, is objectively insufficient: “The police officer responsible for capturing the images was identified as a Police and duly included in the police force present”.

Even recognizing that the decisions to use cameras taken at the beginning of the event to be monitored are not easily compatible with the forms of disclosure that the PSP usually resorts to when using portable cameras, even so, the CNPD believes that there would be forms of disclosure that, in the specific case, do not even seem to have been considered.

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2.3. Considering now the minimum technical requirements that the chambers must respect, in accordance with the provisions of paragraph 7 of article 5 of Law no. 1/2005, and which are defined in Ordinance no. of 16 November, which specifies, in its

article 1, that it applies to both fixed and portable cameras, it appears that there are minimum requirements that have not been guaranteed. Let's see.

The. 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 of the aforementioned Ordinance), 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 facts that occurred on the day and time recorded in the images - see Article 4(2)(c)).

It is also required that the local system be auditable and specifically that the recording and all interventions in the local system be made in an auditable manner (cf. subparagraph d) of paragraph 2 and subparagraph d) of paragraph 3 of article 4 . of the Ordinance), and it is also specifically imposed, in paragraph 4 of the same article 4, that the operation of the local system requires that the event recording system be active, in order to guarantee the audit operations .

On this matter, nothing is mentioned in the information accompanying the request, only stating that "The image capture was carried out without any type of transmission, only the recording being made exclusively on the memory card attached to the equipment." In addition, with regard to storage and security measures, that «Images were recorded on an SD memory card - SANDISK, 16GB of capacity, coupled to the equipment, which is closed in a sealed envelope, in the safe [ ...]»

In order to fill in the omissions in the information provided in the request for an opinion, an analysis was made of the characteristics of the camera model, provided by the manufacturer, resulting in this analysis that the camera does not guarantee the encryption of recorded images, nor, prima facie, the synchronization automatic with the Portuguese legal time, and the synchronization could have been ensured manually, but with the risk of inaccuracy resulting from human intervention. In any case, the information accompanying the request is, it is reiterated, also silent on this aspect.

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In addition, this portable camera, being a photographic camera (with video functionality), does not allow the auditability of the operations carried out, as it is not capable of recording events (/ogs).

It is important to emphasize here that portable cameras, by their very nature, carry an increased risk of undue access, which is why they must be subject to increased security measures. And one of the essential measures concerns the encryption or encryption of data (images), which is also presented as a condition of the reliability of the evidence in relation to the conducts captured by the camera. Furthermore, for the purpose of evidence in any legal proceedings, it is also essential to synchronize the date and time of the recorded images with Portuguese time. In addition, the camera model considered here has the functionality of connecting to the Wi-Fi network, which allows the sending of recorded images to a mobile phone or tablet. In view of what was stated in the request for an opinion and the technical characteristics of the camera, the CNPD concludes that the video surveillance system used does not meet most of the requirements defined in article 4 of Ordinance no. camera model used is not likely to meet these requirements, in particular those relating to information security and the reliability of evidence in any legal proceedings, as well as the auditability of data processing: encryption of recorded images, synchronization with the legal time Portuguese, register of operations in the local system:

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

B. It should also be noted that, under the terms of Ordinance No. 372/2012, the local system of each security force or service must guarantee the visualization, control and management of the cameras in real time (cf. paragraphs a) of article 3rd). However, in this case, it is stated that there was no transmission of images, deducing that there was no transmission for viewing in real time.

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, expressly covers as its object the two types of cameras and not distinguishing the listed requirements according to their nature). Even so, it appears, also in this aspect, that the video surveillance system used does not meet the technical requirements imposed by law.

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### III. Conclusion

Even considering the specific circumstances that justified the use of portable cameras, the CNPD believes that the right to

information, constitutionally and legally enshrined, was very poorly ensured.

The CNPD also understands that the video surveillance system used is not able to guarantee the recording of images for the stated purpose, since the camera model used is not likely to meet the technical and safety requirements legally and regulatory imposed, not guaranteeing , in particular, those relating to information security and the reliability of evidence in any legal proceedings, as well as the auditability of the processing of personal data resulting from the use of the clearinghouse. In particular, as stated and taking into account the technical characteristics of the camera model used, there is no guarantee that there was no capture and recording of sound, nor was it verified:

- i. Encryption of recorded images;
- ii. The synchronization of the date and time of the recorded images with the Portuguese legal time;
- iii. The recording of interventions in the chamber {logs}.

On these grounds, and pursuant to Article 6(3) of Law No. 1/2005, the CNPD's opinion can only be negative.

Lisbon, November 19, 2020

Filipa Calvão (President, who reported)