

National Data Protection Commission

OPINION/2022/69

I. Order

1. By order of the Assistant Secretary of State and Internal Administration, on July 25, 2022, the National Data Protection Commission (CNPd) requested an urgent opinion on the authorization request, presented by the Guardia Nacional Republicana (National Republican Guard). GNR), for the use of video surveillance cameras supported by Remotely Piloted Aircraft Systems, until October 31, 2022, to ensure forest protection and fire detection in the forest areas of the municipalities and parishes identified as priorities.

2. The request is made under Law No. 95/2021, of 29 December, which regulates the use and access by security forces and services and by the National Emergency and Civil Protection Authority to video surveillance systems for capturing , recording and processing of image and sound (hereinafter, Law No. 95/2021). The use of mobile 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 (cf. Articles 9, paragraph 1, and 5. °, nos. 3 and 4).

3. The request is accompanied by a document containing the grounds for the request, hereinafter referred to as "Fundamentals", which also includes two annexes, with a description of the technical characteristics of the equipment and the impact assessment on data protection (AIPD).

II. Analysis

i. Object of the opinion to be issued pursuant to article 5 of Law No. 95/2021

4. Thus, under the terms of paragraph 3 of article 5 and paragraph 1 of article 9 of Law no. 95/2021, the opinion of the CNPD is limited to pronouncement on the compliance of the request with the rules regarding the security of the processing of the data collected and with the provisions of paragraphs 4 to 6 of article 4 and articles 16, 18 to 20 and 22 of the same legal instrument .

5. Pursuant to these articles, the CNPD's opinion is also subject to respect for the prohibition of installing and using fixed or

portable cameras in areas that, despite being located in public places, are, by their nature, intended to be used in protection and also the use of video cameras when the capture of images and sounds covers the interior of an inhabited house or building or its dependence or of hotels and similar establishments, and when this capture affects, directly and immediately, the sphere of the reservation of the intimate and private life.

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6. The collection and possible subsequent processing of personal data is also subject to the CNPD's opinion, especially when carried out through an analytical management system of the captured data, by application of technical criteria, as well as respect for the conditions and limits conservation of recordings.

7. In this way, although it is not up to the CNPD, under the terms of the powers defined in Law no. this competence already exists when the cameras are installed in areas that, by their nature, are intended to be used as guards, or when they capture images and sound from the interior of the inhabited house or building or its dependence or from hotels and similar establishments, or when the capture of images or sound directly and immediately affects the sphere of privacy and privacy (cf. paragraphs 4 to 6 of article 4 of Law No. 95/2021).

ii. The purpose of using drones and the impact on citizens' rights

8. At stake is the use of a video surveillance system to guarantee forest protection and the detection of rural fires in the forest areas of the municipalities and parishes identified as priority, according to the classification of the Instituto da Conservação das Florestas, I.P.

9. The system consists of nine (9) portable cameras coupled to Remotely Piloted Aircraft Systems -RPAS (remotely piloted aircraft, commonly known as drones), with the technical characteristics described in Annex A.

10. It is declared that the cameras only capture images, which are visualized by the aircraft operator on the equipment's own

hardware, with no data transmission to any other location, and that there is no recording of images or capture and recording of sound. It is also specified that “no personal identification is carried out, but only the visualization of spaces.”, stating that “the means operate at an average altitude of 100 meters from the ground” (cf. 3, paragraph g), of the Rationale).

11. The areas subject to surveillance by means of video surveillance supported by this equipment correspond to "forest areas and uninhabited areas", "in shadow areas of the lookout posts and in areas where other forms of surveillance are not inaccessible", in order to " ensure adequate coverage of areas at higher risk, shaded areas and areas with a greater history of forest fires. It should be noted that the space in question is in essentially uninhabited areas with great fragility and forest density” (cf. 3, paragraph b), of the Justification).

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12. Taking into account all the above, it is understood that the video surveillance system using RPAS, operating at an average altitude of 100 meters above the ground, only affects uninhabited forest areas, with very difficult or impossible access by land , where, therefore, there will, in principle, be no capture of images of people, and that the objective is not, effectively, to detect or track individuals.

13. In these terms and in view of the current legal framework for the use of RPAS (cf. article 9 of Law no. 95/2021), it is concluded that the capture of images of people susceptible to, directly or indirectly, identify them, in compliance with the limit defined in the final part of no. 2 of article 9 of Law no. 95/2021.

14. On the other hand, as the video surveillance system does not imply the transmission of images or the capture and recording of sound, declaring that the functions for this purpose have been blocked in the equipment, the CNPD has no recommendations to make.

15. A final note, to underline that public disclosure of information on the use of RPAS is ensured, in the areas in question and on the GNR institutional website (in accordance with article 23 of Law No. 95/2021), but that it makes no sense to refer to “the rights of access, rectification and deletion of the processing of personal data (cf. point 3, point e), of the Grounds and point 2 of the AIPD), since there is no conservation of the images.

III. Conclusion

16. On the grounds set out above, as it complies with the law and the risk of identifying people is very low, the CNPD has nothing to oppose the use by the GNR of the video surveillance system described with support in RPAS, until October 31 2022, for the purpose of forest protection and detection of rural fires in defined priority areas.

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