

National Data Protection Commission

OPINION/2021/77

I. Order

1. On May 20, 2021, the National Data Protection Commission (CNPd) received a request, by determination of the Assistant Secretary of State and Internal Administration, for an opinion on the authorization request, presented by the Guarda Nacional Republicana (GNR), for the use of video surveillance cameras supported by Remotely Piloted Aircraft Systems, during the period from May 15, 2021 to October 31, 2021, for image capture in the forest areas of the municipalities and parishes identified as priority, for inspection purposes of fuel management, within the scope of fire prevention, according to the classification of the Instituto da Conservação das Florestas, I.P., contained in Annexes I and II of Order No. 3403/2021, of 30 March, of the Secretary of State of the Internal Administration and Secretary of State for Nature Conservation, Forests and Territorial Planning, and the areas identified in paragraphs 2 and 3 of the same diploma, as well as in the bands forests identified in numbers 1,2,10 and 13 of article 15 of Decree-Law no. 124/2006, of 28 June.

2. The request is made under Law No. 1/2005, of 10 January, amended and republished by Law No. 9/2012, of 23 February, which regulates the use of surveillance systems by video cameras. video by security forces and services in public places of common use, for capturing and recording image and sound and their subsequent processing. 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.

3. The request is accompanied by a document entitled "Video Surveillance Process for Preventing Rural Fires from Portable Cameras Coupled to Remotely Piloted Aircraft Systems (RPAS)", which includes two annexes: Annex A, concerning the 'Identification of technical characteristics of the 14 video surveillance equipment in RPAS', and Annex B, concerning the 'Assessment of the impact of data processing operations'.

II. appreciation

4. The authorization request refers to the use of 14 equipment listed in Annex A, which correspond to video cameras coupled to Remotely Piloted Aircraft Systems (remotely manned aerial vehicles, henceforth RPAS), for the purpose of preventing and

reducing ignitions 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., given the fragility and forest density of these areas.

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5. At stake are “forest areas and uninhabited areas”, specifically “in shadow areas where other forms of surveillance are inaccessible”, where, therefore, surveillance and protection against the risk of ignition are lacking.

6. It is declared that the cameras only capture images, which are viewed in real time 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 «[Considering the mission they perform, the means operate at an average altitude of 100 meters above the ground, without any personal identification, but only the visualization of spaces.]»

7. It is also clarified that «the thermal sensor in the cameras that have it detect temperature, but do not identify its source, being necessary to carry out its personal recognition in the field».

8. 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 and a minimum of 50 meters, only affects uninhabited forest areas, with very difficult access or impossible by land, where, therefore, there will be, in principle, no capture of images of people, and that the objective is not, effectively, to detect or track individuals.

9. In these terms, it is concluded that it is very unlikely to capture images of people capable of, directly or indirectly, identifying them, so the use of this video surveillance system, in general, does not imply the processing of personal data, as defined in Article 4(2) of Regulation (EU) 2016/679 of 27 April 2016 - General Data Protection Regulation.

10. However, the "Drone DJI TELLO" model equipment, according to the technical characteristics described in Annex A, does not comply with one of the risk mitigation measures declared in the data protection impact assessment (AIPD) relating to

altitude of flight - in fact, being 30 meters the maximum altitude indicated, it is admitted that the impact assessment carried out, where it is declared as a mitigating measure that the system is operated at an average altitude of 100 meters and a minimum of 50 meters, does not focused on this specific equipment.

11. To that extent, and given the relevance of this aspect for the conclusion of low risk or improbability of capturing images of people likely to, directly or indirectly, identify them, it has not been demonstrated, nor can it therefore be said, that the use of the RPAS model "Drone DJI TELLO" with the video surveillance camera attached does not imply the processing of personal data and does not significantly impact the fundamental rights of citizens.

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III. Conclusion

12. Thus, from the perspective of the legal regime for the protection of personal data and the protection of the fundamental right to respect for private life, there is nothing to oppose the use by the GNR of the video surveillance system described with support in RPAS for the stated purpose, with the exception of equipment - the "Drone DJI TELLO" model, in relation to which measures were not established to mitigate the risk of identifying citizens and affecting their rights, freedoms and guarantees.

Lisbon, June 9, 2021

Filipa Calvão (President, who reported)

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