

NATIONAL DATA PROTECTION COMMISSION

OPINION/2020/32

I. ORDER

By order of the Assistant Secretary of State and Internal Administration of March 23, 2020, an opinion was requested from the National Data Protection Commission (CNPd) on the request for authorization for the «collection of images by mobile cameras, with the support of Remotely Piloted Aircraft Systems (RPAS)» of the Guarda Nacional Republicana (GNR) «on the border line, as well as in the sanitary fences established or to be established, during the State of Emergency».

The GNR's request is made under Law no. 1/2005, of 10 January, amended and republished by Law no. 10/2016, of 22 June, regarding the use of 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.

The request also invokes the state of emergency, which temporarily limits the use of this video surveillance system.

The request is accompanied by two annexes where the territorial areas subject to border control are indicated, as well as technical information on the equipment. At the request of the CNPD, additional technical information regarding security measures was also sent.

II. ASSESSMENT

1. Object of the opinion to be issued under the terms of article 3 of Law No. 1/2005, of 10 January

Pursuant to Article 3(2) of Law No. 1/2005, of January 10, as amended by Law No. 9/2012, of February 23 (hereinafter, Law No. 1 /2005), the CNPD's opinion is limited to pronouncement on the compliance of the request with the rules regarding the security of the treatment of the collected data, as well as on the special security measures to be implemented adequate to guarantee the entrance controls in the premises, of data carriers, insertion, use, access, transmission,

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of introduction and transport and, as well as verification of compliance with the duty of information and before whom the rights of access and rectification can be exercised.

In accordance with the provisions of the same legal precept and in paragraphs 4, 6 and 7 of article 7 of that law, the CNPD's opinion is also subject to respect for the prohibition of installing fixed cameras in areas that, despite located in public places, whether, by their nature, intended to be used in guarding or the use of video cameras when the capture of images and sounds covers the interior of a house or inhabited building or its dependence.

The CNPD must also verify that all persons appearing in recordings obtained in accordance with this law are guaranteed the rights of access and elimination, with the exceptions provided for by law.

Pursuant to paragraph 7 of article 3 of the same legal instrument, the CNPD may also formulate recommendations with a view to ensuring the purposes provided for by law, subjecting the issuance of a totally positive opinion to the verification of completeness of compliance with its recommendations.

### 2. Use of mobile video cameras with RPAS support in a state of emergency

The authorization request refers to the use, during the state of emergency, of 14 video cameras with RPAS support, on the border line between authorized crossing points at land borders and between river/maritime crossing points, duly identified, as well as “in the sanitary fences established or to be established, during the State of Emergency”. The cameras only capture images, not sound, which are viewed by the aircraft operator on the equipment's own hardware and are transmitted in real time to the National Integrated Center for Operational Management of the Operational Command (CINGOp) of the GNR, in Lisbon, where are also displayed.

Law no. 1/2005 provides, in its article 6, and regulates the use of portable video cameras for the purposes listed in paragraph 1 of its article 2, among which those aimed with the present request: guaranteeing the safety of people and property, public and private, and preventing the practice of crimes, in places where there is a reasonable probability of their occurrence. However, the present application for the use of portable video cameras has the specificity of being coupled or

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integrated in the RPAS - in Unmanned Aerial Vehicles, enhancing the impact of this use on people's private lives and on their freedom of movement.

As is well known, the CNPD has understood that Law No. 1/2005 does not serve as a basis of legitimacy for the use of cameras using RPAS, since neither its literal content nor its ratio reflects the balance between the interests underlying video surveillance with that scope and impact and the extent and intensity of restriction of the fundamental rights of individuals.

However, this request invokes the state of emergency, declared by Decree of the President of the Republic No. 14-A/2020, of 18 March, in the context of the current pandemic. This Decree determined, for a period of 15 days, the partial suspension of the exercise of the right to travel and settle in the national territory, legitimizing the necessary restrictions to this right "to reduce the risk of contagion and implement measures to prevent and combat the epidemic. , including [■■■] the establishment of sanitary fences", as well as legitimized the establishment of "border controls on people and goods, including sanitary controls at ports and airports, with the aim of preventing entry into national territory or conditioning such entry subject to compliance with the conditions necessary to avoid the risk of spreading the epidemic' (cf. Article 4).

The partial suspension of freedom of movement and establishment in the national territory, as well as the authorization of the reposition of borders thus decreed, allows the adoption of adequate, necessary and proportionate police measures to prevent and combat the epidemic in constitutionally framed terms, serving to legitimize the use of video surveillance cameras using RPAS to the extent that it proves to be adequate, necessary and not excessive for those purposes. To this exact extent, the Presidential Decree makes it possible to overcome the legal gap regarding the use of RPAS with video cameras and regarding the control, in this way, of the movement and location of the people captured in the images.

It should be noted that the CNPD does not contest, in the exceptional situation that exists in Portugal, the suitability and need to use a video surveillance system supported by RPAS to control national borders, in particular "on the border line between the places indicated in the list in Annex I", as claimed, with reasons, in the request of the GNR. At the same time, the CNPD does not question the suitability and necessity of using the same system to control respect for the sanitary fence established in the municipality of Ovar, although with special caution, given the fact that they cover areas

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with greater population density, where the impact on fundamental rights can be more intense.

And it recognizes that, with the existence of a constitutional framework for restrictions on freedom of movement “necessary to reduce the risk of contagion and to implement measures to prevent and combat the epidemic”, also the restriction of privacy, in the strict dimension that is directly dependent on that freedom, is constitutionally framed. It is clarified that the right to respect for private life is affected by the possibility that, through the use of capturing images using RPAS, security forces are recognized to control the movements of people and, therefore, to have knowledge of their localization. It is important, however, to emphasize that the restriction of privacy is mitigated by the fact that there is no sound capture.

In these terms, based on article 4 of Decree of the President of the Republic no. video cameras with RPAS support in the areas specifically defined in the request made by the GNR.

2. Even so, because, as highlighted in the presidential decree and imposed by paragraph 2 of article 18 of the Constitution of the Portuguese Republic (CRP), restrictions must be limited to what is strictly necessary for the purposes pursued, the CNPD makes the following observations and recommendations:

The. Regarding the capture of images, taking into account the stated purposes and the respective legal basis, it is important to ensure that the capture of images is done in a way that safeguards the privacy of those who are in the respective homes. In fact, the aforementioned Presidential Decree does not legitimize the restriction of the intimacy of private life and, therefore, of the sphere of privacy when people are confined to their homes. Thus, capturing images using RPAS should, if possible, avoid residential areas. When this is not possible, also in order to comply with the provisions of paragraph 6 of article 7 of Law no. interior of dwellings, perhaps determining that, in these areas, the flight of remotely controlled aircraft takes place at a higher altitude.

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This recommendation is particularly relevant in monitoring compliance with the sanitary fence in the municipality of Ovar.

B. The request states that the right to information imposed by Article 4 of Law No. 1/2005 is guaranteed. The GNR states that “the capture of images will be carried out by uniformed guards and/or being duly identified as GNR military personnel through a high visibility vest, with these and the mobile cameras visible to the public, being easily identifiable as elements of this Security Force. , given the size and characteristics of the sites, it would be impossible to post information in such a way as to cover all possibilities».

The CNPD recognizes that posting the notices provided for in Ordinance No. , «in the usual means of dissemination, that the GNR will use this video surveillance system in the indicated places», as is also indicated in the request.

However, the request is silent regarding the guarantee of the rights of access and deletion of data subjects, provided for and regulated in article 10 of Law No. 1/2015. However, the circumstances on which the request is based and the grounds for the request, in particular the state of emergency, do not seem to justify the general restriction of those rights, in particular the right of access, which is enshrined in paragraph 1 of article 35 . of the CRP. Even if it is accepted that the exercise of the same may be, within the framework of Law no.

Thus, the CNPD recommends guaranteeing the right of access, even if it may be conditioned based on specific circumstances.

ç. Regarding the security measures provided for the transmission and conservation of images, as well as access to them, it is clarified in the request that the transfer between the cameras and the respective command of the operation is encrypted (although the protocol is not specified). encryption), also indicating the means of transmitting images to CINGOp.

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However, it remains to be clarified in what terms the physical transfer of the records on the camera's internal disk (SD card),

where the images are recorded, to the "encrypted information container" takes place, and the CNPD cannot comment on this aspect. if due to insufficient elements. It should be noted that the statement that «the terms of custody and confidentiality of files are guaranteed at all times»-> does not explain, nor does it allow to understand, the measures that will eventually be adopted regarding this specific process. Furthermore, it is established that access to and viewing of images in CINGOp is carried out by GNR military personnel, «duly authorized and accredited, through authentication in the system, with the operations carried out being subject to registration, subject to auditing».

In short, most of the security measures, as described, appear to be adequate, with the exception of only transferring the records of the images from the cameras to the aforementioned "encrypted information container", in relation to which, given the insufficiency of information in the process, the CNPD recommends the adoption of adequate measures to guarantee the integrity of the recorded images.

3. Finally, one last remark related to the scope of the authorization request. The GNR wants an authorization that covers the monitoring of the sanitary fences established or to be established, during the State of Emergency. In this opinion, the CNPD limited its assessment to the monitoring of the sanitary fence established in the municipality of Ovar, as it considers that the object of the opinion and the authorization to be issued concerns concrete and duly delimited situations. Not ignoring that, in the exceptional state resulting from the pandemic, the Government may determine other health fences and that, therefore, regarding these, it will prove essential and urgent to use video cameras in support of RPAS and, to that extent, it is also urgent to issue the corresponding authorization, the CNPD understands, however, that its opinion cannot go beyond the specific conditions for capturing and transmitting the images.

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### III. CONCLUSION

On the grounds set out above, the CNPD believes that Decree of the President of the Republic no. 2005 regarding the use of remotely piloted aircraft (or unmanned aircraft) with video cameras and the control, in this way, of the movement and location

of the people captured in the images. To that extent, the CNPD considers that there is a legal framework for the use of video cameras attached or integrated in the aforementioned aircraft on the border line between authorized crossing points at land borders and between river/maritime crossing points, duly identified in the request of the GNR, as well as the sanitary fence established in the municipality of Ovar.

As restrictions on fundamental rights must be limited to what is strictly necessary for the purposes pursued with the use of this video surveillance system, the CNPD recommends:

- a) That it is ensured that the capture of images carried out in this way safeguards the privacy of those who are in the respective dwellings;
- b) That the right of access to the recorded images is guaranteed, under the legally established terms.

It also recommends the adoption of adequate measures to guarantee the integrity of the images recorded in the process of transferring the records of the images from the camera to the aforementioned “encrypted information container”.

Lisbon, March 26, 2020 Filipa Calvão (President, who reported)

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