

§ NATIONAL DATA PROTECTION COMMISSION

OPINION/2019/91

I. Order

1. On October 4, 2019, by order of the Assistant Secretary of State and Internal Administration, an opinion was requested from the National Data Protection Commission (CNPd) on the project to install, by the Public Security Police (PSP), a video surveillance system in the city of Estremoz.

Having meanwhile reiterated the interest in issuing this opinion within the scope of the authorization procedure within the competence of the member of the Government responsible for the requesting security force or service, the CNPD assesses the project under the terms and for the purposes of Law No. 1/ 2005, of 10 January, amended and republished by Law No. 9/2012, of 23 February, which regulates the use of video camera surveillance systems by security forces and services in public places of common use, for capture and recording of image and sound and their subsequent treatment.

The request is accompanied by a document containing the reasons for the request and the technical information of the system, hereinafter referred to as "Rationale".

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, 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,

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are, by their nature, intended to be used in guarding or the use of video cameras when the capture of images and sounds involves 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. Video surveillance in public places of common use in the city of Estremoz for the purpose of protecting people and property and preventing crimes

2.1. previous notes

It should be noted that, on 23 April 2019, the CNPD issued its opinion 2019/23 on a project to install a video surveillance system in the city of Estremoz¹, a project that was revised in some aspects, no longer providing for integration into the video surveillance system. of the “Intellex Smart Search” functionality, whose suitability for the pursuit of the purpose of crime prevention and security of people and goods in the public space was not demonstrated.

To that extent, the CNPD reiterates the observations contained in the aforementioned opinion regarding the characteristics that the system, as described in the new project, continues to present, insofar as they remain fully relevant.

From the outset, we take up the note that, contrary to what is stated in the request and the respective reasoning of the Évora District Command of the PSP, it is not a well-known fact that «the confidence of the citizen in these systems and in their updating has been grow significantly, with the effective availability of people to give up, as necessary and in proportional terms, their privacy due to the placement of video surveillance systems in public spaces, being aware of their potential in terms of increasing their security » (cf. point 2, page 4, of the

¹ Opinion available at <https://www.cnpd.pt/bin/decisooes/Par/PAR 2019 23.pdf>.

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Rationale). In reality, this conviction lacks demonstration. All the more so as the number of participations and complaints that

citizens submit to the CNPD has been increasing, revealing a growing awareness of the importance of safeguarding their privacy, especially in the context of public spaces. Therefore, the CNPD considers that the alleged willingness of citizens to give up privacy cannot serve as a basis for any consideration of proportionality regarding the use of the video surveillance system described in that request.

Furthermore, as it does not fall within the competence that is legally attributed to it, the CNPD limits itself to pointing out that the concrete grounds for the use of video surveillance are reduced to very little, especially considering that crime has decreased significantly in the last year in the city of Estremoz, in particular with regard to crimes against persons and property - the prevention of which is, it should be recalled, the purpose of installing this video surveillance system (cf. point 2, page 4, of the Justification).

In any case, attention is drawn to the legislative change that has taken place in the meantime regarding the legal regime for the processing of personal data, which has direct repercussions on the processing of data under analysis.

In fact, the new Law no. Directive (EU) 2016/680 of the European Parliament and of the Council, of 27 April 2016, requires the person responsible for processing personal data to carry out a data protection impact assessment (see article 29) .

It is important to remember here that paragraph 2 of article 2 of Law no. 1/2005 determines that the processing of personal data resulting from the use of the video surveillance system is governed by the provisions of Law no. 26 October, in everything that is not specifically provided for in this law, and that this law, regarding the treatments carried out for the purposes of prevention, detection, investigation or prosecution of criminal offenses or the execution of criminal sanctions, was revoked and replaced by the Law No. 59/2009, of August 8th. Considering also that, in paragraph 3 of article 67 of this last piece of legislation, it is determined that "All references made to the Law on the Protection of Personal Data, approved by Law n.0 67/98, of 26 October, consider up made

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for the purposes of this law, when they concern the protection of natural persons in relation to the processing of personal data by the competent authorities for the purposes of prevention, detection, investigation or prosecution of criminal offenses or the

execution of criminal sanctions, including safeguarding and preventing of threats to public security', can only be concluded by the direct application of the provisions of Article 29 to the processing of personal data resulting from the use of video surveillance systems. Thus, taking into account that this treatment implies a large-scale systematic control in the city of Estremoz, the significant risk that it poses to the rights, freedoms and guarantees of individuals, in particular the fundamental rights to data protection and respect for private life as well as freedom of action.

For all these reasons, the CNPD considers that article 29 of Law no. of people and the careful assessment of the measures planned to mitigate them.

2.2. The rights of information, access and deletion of data

Regarding the rights of data subjects, attention is drawn to the fact that they are currently defined in Law No. , detection, investigation or prosecution of criminal offenses or enforcement of criminal sanctions, transposing Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016. The right to information is specifically addressed of data subjects, further defined in article 14 of Law No. 59/2019, of 8 August.

It is positive that, in this new project, which is now being considered, in addition to declaring that the warning and symbology models to be used respect the provisions of Ordinance no. information on the installation of the video surveillance system in digital media for disseminating information from the PSP (cf. point 3 d), p. 14, of the Justification).

With regard to the rights of access and deletion of data, provided for in article 10 of Law no. 1/2015, it is mentioned in the Justification (in point 3 c), p. 13) to

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possibility of exercising the right of access, identifying before which PSP agent it can be guaranteed.

2.3. The technical characteristics of the equipment

According to the request (cf. point 3 a), p. 6, of Fundamentation), it is intended to install a system composed of nine chambers arranged in the historic entrances of the city, in the industrial area and in the center, in the main public square.

It should be noted that the present request is accompanied by a detailed description of the characteristics of the equipment, thus allowing the CNPD to comment on the different aspects of the regime indicated in paragraph 2 of article 3 of Law no.

2015 and Ordinance No. 372/2012, of 16 November. Here, characteristics likely to affect privacy or not complying with adequate security levels will be particularly highlighted.

The. With regard to safeguarding privacy and the intimacy of private life, it is stated in the Grounds that both fixed cameras and those that allow 360° rotation (called mobile cameras) will not capture sound (cf. point 3 b) , pgs. 11 and 12, of the Justification).

Fixed cameras are, as stated, configured with physical privacy masks (cf. point 3 b), p. 11, of the Rationale).

As for the two cameras that allow 360° rotation, one of which is installed in the center of the city, it is stated that they will be configured with physical privacy masks «in areas where necessary (for example, windows, doors or private areas)» - cf. point 3b), p. 12, of the Grounds. However, there is still doubt as to the suitability of physical masks to fulfill the purpose of safeguarding people's privacy when applied to cameras with rotation capacity such as those at issue here. To that extent, the CNPD underlines the need for, by this or other means, to achieve the result of not capturing images of the interior of buildings (especially) intended for housing, nor of other areas intended for use.

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with reservation, in accordance with the limits defined in paragraphs 6 and 7 of article 7 of Law no. 1/2005.

It is also stated that cameras 2, 4, 6 and 8 do not capture the interior of houses or inhabited places (cf. page 7 of the Justification)2.

It is also stated that «the cameras support remote control optical zoom in digital zoom in any area of the image», but that analytical technology will be applied in order to “pixelize” the image of people, thus limiting itself to

The impact on privacy (cf. point 3 b), p. 11 and 12, of the Justification).

Thus, in view of the above, the CNPD considers that the provisions of paragraph 6 and, in part, paragraph 7 of article 7 of Law no. 1/2005 have been respected.

B. However, in point 3 b) of the Justification (see page 7), the existence, in the command operator post and in the secondary post, of 'an interface [...], which allows, in particular, to provide access video to any event, simultaneously in “Live”, “Recording” and “Playback” mode”.

However, the functionality that allows Reproduction seems to violate the provisions of no.

1 of article 9 of Law No. 1/2015, which requires the codification of the recording of images, precisely to prevent agents authorized to view the images in real time from accessing the recorded images or reproducing them.

For this reason, the CNPD recommends that measures be adopted to ensure compliance with the provisions of Article 9(1) of Law No. 1/2015.

ç. With regard to the security conditions of the system, the encryption of the cameras as well as the transmission of images between the cameras and the server, located in the command center, using the HTTPS protocol (cf. point 3 b), pp. . 12 and 13, of the Justification).

2 In Opinion 2019/23, the CNPD noted that “[Considering that Chamber No. 3 is not expressly included in this group of chambers, there is doubt about its ability to affect residential buildings or the interior of other buildings However, consulting the image relating to the angle of view of camera no. 3, on page 20 of the Grounds, indicates that this possibility is ruled out.’ It should be noted now, only, that the elements that instruct the present request do not allow, due to the lack of quality of the image related to the aforementioned camera no.

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It also refers, on pages 7 et seq. of the Rationale, that the recording management and control system works on a TCP/IP network and that the control will be carried out from two control posts (one main and one secondary; this , located in the server room, is used for «analysis of occurrences in a properly controlled and safe way» «in case of need and in specific situations»). Physical and logical security measures are also described.

After analyzing the declared elements regarding security measures, the CNPD has nothing to observe.

III. CONCLUSION

As it is not within the competence that is legally attributed to it to comment on the concrete grounds for the use of video surveillance in the city of Estremoz, the CNPD, with the arguments set out above, recommends that:

i. The duty provided for in article 29 of Law no. 59/2019, of 8 August (applicable here under the terms of article 67, no. 3, of the same diploma, and no. 2 of the article 2 of Law no. 1/2005), to carry out an impact assessment of the processing of personal data on the rights, freedoms and guarantees of individuals, within the scope of this authorization procedure;

ii. Measures are taken to ensure compliance with the provisions of paragraph 1 of article 9 of Law no. 1/2015, blocking the functionality that allows the reproduction of images;

iii. The measures envisaged to reduce the impact on privacy are re-examined, in order to ensure that they guarantee that images are not taken of the interior of buildings (especially) intended for housing, or of other areas intended for use with reservation, in accordance with the limits defined in paragraphs 6 and 7 of article 7 of Law no. 1/2005.

Lisbon, December 27, 2019

Filipa Calvão (President, who reported)

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