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CNPD

National Data Protection Commission

OPINION/2022/19

## I. Order

1. By order of the Assistant Secretary of State and Internal Administration, dated 2 December 2021, an opinion was requested from the National Data Protection Commission (CNPD) on the request for authorization to «use the Video Surveillance system for the prevention of of public order incidents in sporting events classified as high risk from portable cameras attached to Remotely Piloted Aircraft Systems», submitted by the Guarda Nacional Republicana (GNR).

2. The request was submitted under the terms of paragraph 2 of article 3 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 cameras by security forces and services in public places of common use, for capturing and recording images and sound and their subsequent processing.

3. 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", which also includes, in an annex, the impact assessment on data protection (AIPD).

## II. appreciation

i. Object of the opinion to be issued pursuant to article 5 of Law No. 95/2021, of 29 December

4. Although the request was made under Law No. 1/2005, of 10 January, as, in the meantime, this was revoked by Law No. 95/2021, of 29 December, which regulates the use and access by security forces and services and by the National Emergency and Civil Protection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 image and sound (hereinafter, Law No. 95/2021), the CNPD appreciates the present treatment of personal data under the new legal regime.

5. Thus, under the terms of Article 5(3) and Article 9(1) of Law No. 95/2021, the CNPD's opinion 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 .

6. Pursuant to these articles, the CNPD's opinion is also subject to respect for the prohibition of installation and use of 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 involves the interior of an inhabited house or building or its dependence or establishments

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hoteliers and the like, and when this capture directly and immediately affects the sphere of private and intimate life.

7. The collection and subsequent processing of personal data is also subject to the opinion of the CNPD, 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 of conservation of recordings.

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

ii. The purpose of using drones in sporting events qualified as high risk

9. Although, under the terms of the powers defined in Law No. 95/2021, it is not up to the CNPD to pronounce on the proportionality of the use of video surveillance systems in public spaces and in private spaces with public access, 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 inside the house or inhabited building or its dependence or from hotels and similar establishments, or when the capture of images or sound affects, directly and immediately, the sphere of privacy and private life (cf. paragraphs 4 to 6 of article 4 of Law No. 95/2021).

10. At issue is the use of a video surveillance system for the prevention of public order incidents in sporting events classified

as high risk, consisting of 14 portable cameras coupled to Remotely Piloted Aircraft Systems (remotely piloted aircraft, commonly known as drones).

11. The qualification of sporting events is regulated in article 12 of Law no. 39/2009, of 30 July, amended by Law no. 92/2021, of 17 December.

12. According to the request and the accompanying reasoning, its use is intended to protect people and goods, public or publicly accessible, and to prevent the practice of acts qualified by law as crimes, in places where there is a reasonable risk of its occurrence, thus corresponding to the purposes set out in subparagraph d) of paragraph 1 of article 3 of Law no. 95/2021 (see p. 2 of the Justification). Specifically, it is intended that this use takes place "in places/events qualified as high risk by the Authority for the Prevention and Combat of Violence in Sport", ensuring "adequate coverage of accesses and areas surrounding the sports venue, namely service stations on the main access roads, access roads within a perimeter of 2 km from the enclosure, car parks in the area surrounding the enclosure and access areas to the security perimeter of the enclosure, places and areas considered to be of

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greater history of occurrences and civil disturbances». It should also be noted that «the targeted space is strictly intended to monitor access roads and areas where people accumulate, public areas of free access and non-housing» (cf. point 4.a. of the Justification accompanying the request) .

13. It is also declared that the system does not capture or record sound - strictly speaking, the cameras used do not have this functionality - and that images will be viewed in real time, without transmission or recording. In fact, it is specified that the captured images are only viewed by the camera operator when they are used (cf. point 4.g. of the Justification). And it is clarified that, for monitoring the movement of people and vehicles before, during and after the sporting event, remotely manned aircraft "operate at an average altitude of 100 meters above the ground, without any personal identification" (cf. . point 4.e. of the Justification).

14. In view of the above, as the risk of identifying persons is reduced, it appears that the limits defined in paragraphs 4 to 6 of article 5 of Law No. 95/2021 are respected.

15. In any case, it should be noted that the use of cameras installed in air vehicles, in accordance with Article 9(2) of Law No. 95/2021, is now subject to specific conditions, the which aim precisely to prevent the identifiability of the people captured in the images. There it is mandatory that the cameras only capture “vertical images, for the purpose of viewing the framing spaces and that do not allow the identification of people”. Therefore, when using this video surveillance system, these limits must be taken into account.

16. Bearing in mind these legal conditions, as well as the declaration in the IAPD that the video surveillance system will be operated at an average altitude of 100 meters and a minimum of 50 meters above the ground (cf. point 3 of Annex B), it seems it must be concluded that the use of the remotely manned aircraft last characterized in Annex A ('Drone DJI TELLO') does not meet the requirements and limits imposed or assumed in the authorization application. In fact, the indication, as a characteristic of the aforementioned drone, of "Altitude: 30m" in Annex B, without the AIPD having any specific assessment regarding this equipment and its ability to observe the condition of being "operated at an average altitude of 100 meters and a minimum height of 50 meters from the ground», leads to the conclusion that respect for the conditions assumed in the request and, in particular, the legal limits and specifically the guarantee that it does not allow the identification of persons has not been demonstrated. It is recalled that the AIPD's role is to demonstrate that video surveillance systems comply with legal requirements.

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17. Therefore, the CNPD recommends excluding the use of this equipment - «Drone DJITELLO» unless it is effectively

demonstrated that it guarantees compliance with the limits defined in paragraph 2 of article 9 of Law No. 95/2021 .

iii. The scope of the authorization request: sporting events classified as risky

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18. It is also important to point out that the scope of the authorization request (and the prior opinion of the CNPD) is presented in broad terms, for any sporting event that takes place in the future, provided that it meets the assumption of being classified as high risk by the Authority for the Prevention and Combat of Violence in Sport. However, such a scope de-characterizes the function of prior administrative control that the authorization procedure serves; control that, by definition, is concrete and, therefore, presupposes the appreciation of the specific circumstances of the event to determine the need to use a video surveillance system supported by drones with this intensity and scope.

19. In fact, the administrative authorization of the Minister of Internal Administration, or of the Secretary of State to whom the authorizing competence has been delegated, must correspond to an individual and concrete decision (cf. article 148 of the Administrative Procedure Code). However, when authorization is requested for all future sporting events of a certain type, the decision is issued in the abstract, without taking into account the specific circumstances of each event and, therefore, without allowing the proportionality of the use of the cameras to be assessed. video surveillance - without, from the outset, making it possible to assess whether it is justified, in each specific event, to use all the 13 video surveillance cameras attached to drones or a smaller number of cameras. It's just that, even considering only the events that today are classified as high risk, it quickly becomes intuited that they may not complain, first of all, due to the number of fans who travel to the venues (e.g., football matches and roller hockey games), the same intensity of preventive monitoring.

20. In this regard, it is important to note that the objective of simplifying the procedures for the use of cameras had some acceptance in Law no. of the Government that exercises direction over the security force or service when the cameras do not record the images. However, this legal exemption from authorization does not cover the use of cameras for the purpose on which this application for authorization is based (see Article 15(1)). And a generic authorization from the member of the Government is only provided for portable cameras for individual use, under the terms of article 10 of Law No. 95/2021.

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21. In short, the CNPD points out the abstract nature of an authorization that will be issued under the terms requested, as it refers to all events that are currently or will be classified as high risk. And, if it is still understood to issue a legal act with this abstract content, it recommends that, at least, the obligation be foreseen for the GNR to communicate to the competent member of the Government the intention to use the cameras attached to the drones in a certain high risk event. and under what conditions and terms, so that the former, in the exercise of the authorizing competence legally conferred and by application of the principle of proportionality, may prohibit or delimit such use.

#### iv. Rights of data subjects

22. The provision of information on the use of the system, by the means indicated in point 4.e. (1) of the Grounds is adequate. But, since there is no recording of images (nor of sound), no personal data stored or preserved, therefore, the reference to information to be provided to citizens on the possibility of exercising the "rights of access , rectification, elimination and limitation of the processing of personal data" (cf. point 4.e. of the Justification).

### III. Conclusion

23. It is not within the competence that is legally attributed to it to pronounce on the concrete grounds for the use of a video surveillance system for the prevention of public order incidents in sporting events classified as high risk from portable cameras attached to aircraft remotely manned, the CNPD highlights that this use, only for viewing the images on the equipment itself by the drone operator, must observe the limits and conditions defined in paragraph 2 of article 9 of Law n.º 95/2021, in particular ensuring the capture of images only vertically and without allowing people to be identified.

24. On the same basis and because the AIPD does not allow for a different conclusion, the CNPD also recommends that the use of the «Drone DJI TELLO» equipment is not authorized, unless it is effectively demonstrated that it guarantees compliance with the limits defined in paragraph 2 of article 9 of Law No. 95/2021.

25. Finally, the CNPD points out the abstract nature of an authorization that may eventually be issued under the terms requested, as it refers to all events that are currently qualified or will be classified as high risk. And, if it is still understood to issue a legal act with this abstract content, it recommends that, at least, the obligation be foreseen for the GNR to communicate to the competent member of the Government the intention to use the cameras attached to the drones in a certain

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high risk and under what conditions and terms, so that, in the exercise of the authorizing competence legally conferred and by application of the principle of proportionality, can prohibit or delimit such use.

Approved at the March 2, 2022 meeting

Firipa Calvão (President)