

NATIONAL COMMISSION

DATA PROTECTION

OPINION/2019/50

I. Order

Through the Office of the Assistant Secretary of State and Internal Administration, on August 8, 2019, the National Data Protection Commission (CNPd) requested an opinion on the request for the use of portable video cameras by the National Guard. Republicana (GNR) and the Public Security Police (PSP) in the prevention and monitoring of incidents resulting from the strike announced by the Union for Hazardous Material drivers.

The use of video camera surveillance systems by security forces and services in public places of common use, for capturing and recording images and sound and their subsequent processing is regulated by Law No. 1/2005, of 10 January, amended and republished by Law No. 9/2012, of 23 February.

The installation of fixed 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.

II. appreciation

Preliminary note: scope of competence of the CNPD

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 present opinion of the CNPD is limited to the 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 entry controls in the installations, data carriers, insertion, use, access, transmission, introduction and transport, as well as verification of compliance with the duty to provide information and to whom the rights of access and rectification may be exercised.

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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 law, the CNPD may also formulate recommendations with a view to ensuring the purposes set out in the law, subjecting the issuance of a totally positive opinion to the verification of full compliance with its recommendations.

1. The protection of the privacy of private life

The assessment of the aspects that the CNPD is responsible for evaluating will be carried out jointly by any of the security forces, since there is a great identity in the requests made to the guardianship, except for the number of cameras to be used (30 by the PSP and 6 by the GNR).

Since the areas potentially subject to the capture of images can be of a very different nature, depending on whether we are talking about industrial-type installations or filling stations near residential areas, the risk of intrusion into the private sphere of citizens is also variable. . In this sense, it is important that the concrete use of these means of surveillance respects the privacy of private life and the essential core of the protection of personal data, both constitutionally enshrined fundamental rights (cf. arts. 26 and 35 of the CRP) . This means that the security forces must refrain from capturing images of areas intended to be used in guarding or of the interior of an inhabited house or building or its dependence, even because it is Law No. Article 7(6)

It can be seen, from the logic of the operational action that is in question, that the affixing of masks over the images is not indicated here. Such a procedure could become counterproductive, even resulting in the obsolescence of the medium, since the cameras will serve

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precisely to guarantee the identification of individuals who, by their actions, violate the law. It so happens, however, that due to the scale and scope of the announced police operation, many unsuspecting citizens may be subject to the capture of images, the registration of which may last for the permissible legal period. For this reason, it is recommended that special attention be paid to the quantity and quality of information collected, which, under the terms of Article 7(8) of Law No. 1/2005, can be considered accidental and not respect to any suspected illegal activity, it must be destroyed immediately.

As far as sound capture is concerned, despite the fact that many of the cameras used have this functionality, both security forces guarantee, in point 4 of each of the authorization requests made, that the video surveillance systems to be used do not have that purpose, that, in this regard, and thus materializing the police action, the CNPD considers that the provisions of paragraph 7 of article 7 of that law have been complied with.

2. The rights of data subjects

With regard to guaranteeing the rights of citizens, and because only the use of mobile cameras is foreseen, the conditions set out in article 4 of Law No. 1/2005 do not apply. In any case, both security forces undertake to disseminate "an advance notice, in the usual means of dissemination, that the [GNR and PSP will] use these video surveillance systems in the places indicated from OOhOO on the 12th of August 2019, until the end of the strike and its direct effects". The appeal to the idea of ending the direct effects of the strike must be understood as restrictively as possible, since we are faced with considerable restrictions of fundamental rights. of concepts whose extension is not reached automatically may constitute an unnecessary compression of the rights recognized to data subjects, especially the right to information. 209, of 8 August¹, implying, for the crime prevention activity, the provision of a set of information to data subjects, under the terms of its article 14. It is true that Law No. 1/2005

constitutes /ex specia/is in relation to that legal diploma, but the inexistence of a precise and specific legal provision, in Law no. ' Approving the rules on the processing of personal data for the purpose of preventing, detecting, investigating or prosecuting criminal offenses or enforcing criminal sanctions, transposing Directive (EU) 2016/680 of the European Parliament and of the Council, of 27 April 2016.

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data as a result of the use of mobile cameras, must result in the interpretation that, for the use of mobile cameras, the security forces must provide and implement a means of disseminating the information required by the aforementioned article 14. Think, for example, of the dissemination, on institutional sites, of the aforementioned information regarding the generality of operational actions in which mobile cameras are used2.

3. Technical characteristics of cameras and security measures

Security measures are also described regarding the capture and conservation of images, as well as access to them, noting that the recording is encrypted and that the operations carried out are subject to registration, thus allowing their auditing, as required by the Ordinance No. 372/2012, of 16 November (cf. points 5 and 6 of the GNR official letter and points 9 and 10 of the PSP official letter).

However, the security measures relating to the transmission of images are not detailed, nor is the protocol for encrypting the recording of images specified in the aforementioned official letters of any of the security forces. Both the GNR and the PSP must guarantee the confidentiality of the transmitted images, namely through data encryption, so this critical aspect must be addressed.

Regarding the cameras to be used by the PSP, some are identified as being portable PTZ equipment: DSS cameras with the model DDIP-M36SD-IR200 and AXIS, with the model P5534-E. Now, as a rule, the PTZ functionality is associated with fixed equipment, hence its added value in the movement functionality (pan and tilt) from remote control. AXIS equipment is effectively fixed equipment. Thus, doubts arise as to the portability of these systems. In order to verify that the use of fixed cameras is effectively intended, it is important that the installation locations and respective areas to be captured are identified, and the information requirements associated with this type of devices must also be met.

2 Which would faithfully translate the requirement for publicly and permanently accessible information to which Law 59/2019 refers. If there were particularities in certain operations that made the content of this generic information incomplete, the security force could make the necessary supplementary information available on that same site, but only regarding that specific operation.

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As described by the security forces, the images will be kept within the limits defined in Article 9(1) of Law No. 1/2005.

4. Use of remotely piloted aerial vehicles (drones)

The GNR refers, in point 3(c) of its request, to the intention to use a “Drone brand DJI, Phantom 3SE model...”. The use of these auxiliary means of surveillance cameras is not provided for in Law No. 1/2005, nor in any other legal instrument applicable to security forces. The CNPD believes, moreover, that the consideration of these means as analogous to those

provided for in Law No. 1/20 053, as we are faced with a means that restricts fundamental rights would always be unsustainable. In addition to this factor, the aforementioned Law no. [in] necessary for the exercise of an attribution of the competent authority for the purposes provided for in article 1, without prejudice to the provisions of paragraph 3.”⁴, which reinforces the inadmissibility of a means that is not expressly provided as legitimate to enhance processing of personal data. The inadmissibility of the use of these means without the express authorization of the law is even more defensible in the present context, in which, as is well known, the level of interference in the protection of personal data of countless holders is largely enhanced by a technology that multiplies the space under surveillance. to a level until recently unthinkable by security forces. This expanded radius of action and supervision corresponds to an infinitely greater potential (and probable) number of affected data subjects, citizens who, in most cases, will not even be suspected of any criminal activity. Finally, nowhere is it mentioned or, at least, implied by the security force that this medium will be accompanied by measures to mitigate the aforementioned interference in the protection of personal data of those who are targeted by it, namely measures that would prevent the

3 It should be noted that paragraph 2 of article 1, of Law no. 1/2005, states that “Any references made in this law to fixed or portable video cameras are understood to extend to any other similar technical means , as well as any system that allows the recordings provided for therein.”.

4 Paragraph 3 provides that “If not authorized by law, the processing of personal data can only be carried out if it is necessary for the protection of the vital interests of the data subject or another natural person.”, this being no exception. applicable here, nor has it been invoked.

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identification of data subjects, which would place the use of drones and cameras attached to them outside the scope of the legislation implementing article 35 of the CRP.

III. Conclusion

On the grounds set out above and within the strict scope of its powers, the CNPD is not opposed to the use of portable video cameras by the Guarda Nacional Republicana (GNR) and the Public Security Police (PSP) in the prevention and monitoring of incidents resulting from the strike. announced by the Union for Hazardous Goods drivers, as long as the essential security measures are implemented to guarantee the incorruptibility of the transmission of images from the devices to the operational centers and the data subjects are informed, under the terms of article 14 of the Law No. 59/2019, of August 8.

As for the use of drones as an element to support the use of video surveillance cameras, the CNPD considers that these means are not legitimized by Law no. 2012, of 23 February, so the GNR must refrain from using them in surveillance operations that it may carry out.

Lisbon, August 9, 2019

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