

Deliberation 2019-140 of December 5, 2019 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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CNIX1935641X Deliberation No. 2019-140 of December 5, 2019 providing an opinion on a draft decree relating to the implementation of the processing of personal data from the individual cameras of prison administration surveillance staff (request for opinion no. 19020058) The National Commission for Computing and Liberties,

Seizure, on November 7, 2019, by the Minister of Justice of a request for an opinion concerning a draft decree relating to the implementation of the processing of personal data from the individual cameras of the administration's surveillance personnel prison;

Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to automatic processing of personal data;

Having regard to Directive 2016/680 of 27 April 2016 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of the prevention and detection of criminal offences, investigation and prosecution in this area or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its article 87;

Considering the law n° 2009-1436 of November 24, 2009 penitentiary, in particular its articles 2 and 12;

Having regard to law n° 2018-697 of August 3, 2018 relating to the harmonization of the use of mobile cameras by public security authorities, in particular its article 2;

Having regard to decree n° 2019-536 of May 29, 2019 taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; After having heard Mrs. Christine MAUGÜÉ, commissioner, in her report, and Mrs. Nacima BELKACEM, Government Commissioner, in her observations, Issues the following opinion:

Article 2 of Law No. 2018-697 of 3 August 2018 referred to above opened up the possibility, on an experimental basis, to prison administration surveillance staff for missions presenting, by reason of their nature or the level of dangerousness of the detainees concerned, a particular risk of incident or escape, to make an audiovisual recording of their interventions by means of individual cameras, when an incident occurs or is likely to occur, having regard to the circumstances of the intervention or

the behavior of the persons concerned.

It is planned that the methods of application and use of the data collected by means of these individual cameras will be specified by a decree of the Conseil d'Etat, issued after a reasoned and published opinion from the Commission.

The Commission considers that it follows both from the main purposes pursued and from the missions entrusted to the prison administration, that the planned processing falls under the provisions of Directive (EU) 2016/680 of 16 April 2016 referred to above as transposed in Articles 87 and of the amended law of January 6, 1978.

Insofar as the planned processing is likely to create a high risk for the rights and freedoms of natural persons, in particular because it relates to sensitive data, the Ministry of Justice has carried out an impact analysis relating to the protection of personal data (AIPD), which was sent to the Commission with the request for an opinion in accordance with article 90 of the law of 6 January 1978 as amended. On the purposes:

The Commission notes that, in general, the deployment of individual camera devices is intended to meet a need for physical security of prison administration officers in the context of certain risky interventions, on the one hand, and to secure movements detainees (transfer, judicial extractions, etc.), on the other hand.

Article 2 of the draft decree thus provides that the processing of personal data from individual cameras, implemented by the prison administration, has the following purposes: - the prevention of incidents and escapes;

- the finding of offenses and the prosecution of their perpetrators by collecting evidence;

- the training and education of prison officers. The Commission considers that the purposes pursued by the planned processing, set by the legislator, are determined, explicit and legitimate, in accordance with Article 4 (2°) of the law of 6 January 1978 amended. On the scope of the devices and the nature of the data processed:

As a preliminary point, the Commission notes that it will be possible, through the use of individual cameras, to capture sensitive data within the meaning of I of Article 6 of the law of January 6, 1978 as amended, the implementation processing of personal data from these devices therefore implies providing strict safeguards.

With regard to the scope of implementation of individual camera systems, Article 1 of the draft decree expressly provides that only prison administration surveillance personnel individually designated by the competent hierarchical authority or by persons to whom it delegates its signature will be able to carry out an audiovisual recording by means of individual cameras for the missions presenting, because of their nature or the level of dangerousness of the detainees, a particular risk of incident or

escape.

The Commission notes in this respect that the DPIA transmitted with the draft decree lists the surveillance personnel who may be appointed individually (in particular the members of the regional intervention and security teams or the national transfer teams) and specifies the missions justifying the wearing of individual cameras, which is noted. It thus notes that the missions authorizing the wearing of a camera are: - external operations (judicial extractions, medical extractions, authorizations for escorted outings, administrative transfers, judicial translations and handing over of detainees to foreign authorities when they take place on national soil, perimeter security mission for penitentiary establishments);

- interventions within penitentiary establishments or hospital units with a view to controlling a detained person or maintaining or restoring order;

- the supervision of detainees who, due to their behavior or background, are likely to present a significant risk to the security of persons and the establishment or a high risk of escape (these are detainees assigned to central houses or central house quarters, disciplinary and isolation quarters, radicalization assessment quarters, specific heightened security quarters [unit for violent prisoners, radicalization care quarter] as well as persons managed in protective and intervention suits [equipped management] in ordinary detention). of establishments), the latter do not make it possible to determine the establishments concerned and, consequently, the number of people nels who can benefit from this device.

It also notes that it appears from the AIPD that establishments for minors will be excluded from the experiment, which it acknowledges.

The Commission also notes that the draft decree provides that only cameras provided to prison administration surveillance staff as staff equipment are authorized, which excludes the use of any other device allowing the recording of visual and sound elements, and in particular to personal cameras.

With regard to situations in which prison administration surveillance staff are authorized to trigger recording, article 1 of the draft decree reproduces in extenso the terms of the aforementioned law of 3 August 2018 and specifies that the cameras may be used when an incident occurs or is likely to occur, given the circumstances of the intervention or the behavior of the persons concerned.

Article 2 of the aforementioned law of August 3, 2018 specifies that the recording is not permanent and that no recording can be triggered during an excavation carried out pursuant to article 57 of the penitentiary law n° 2009-1436 of November 24,

2009.

The Commission observes that the AIPD transmitted mentions elements of the doctrine of use concerning the triggering of the cameras, it considers that these elements are likely to guide the surveillance personnel, wearing such devices, in their use of them. ci, thus limiting any disproportionate collection of personal data. It nevertheless regrets that the employment doctrine was not brought to its attention in its entirety.

With regard to the data processed, article 3 of the draft decree lists the categories of personal data and information recorded in the processing implemented, namely the images and sounds captured by the individual cameras used by the personnel prisons, the day and time slots for recording, the identification of the officer carrying the camera when recording the data and the place where the data is collected.

If the use of sound recording systems coupled with video devices can pose difficulties with regard to the requirement of proportionality resulting from the texts relating to the protection of personal data, the collection of sound data nevertheless appears in the species relevant and proportionate to the objective pursued by the processing.

The draft decree provides that the data recorded in the processing is likely to reveal, directly or indirectly, sensitive data. However, I of article 6 of the modified law of January 6, 1978 establishes the principle of a ban on the processing of such data. However, III of this same article indicates that the prohibition provided for in I is not subject to automated processing or processing not justified by the public interest and authorized under the conditions provided for in II of Article 31, which is the object of this draft decree. In addition, article 89-II of the amended law of January 6, 1978 provides that the processing of such data is possible insofar as it is authorized by legislative and regulatory provisions, which is the case here. The processing should then offer appropriate safeguards for the rights and freedoms of the data subject. In this respect, the Commission points out that it will be prohibited to select a particular category of persons in the processing operations on the basis of these data alone.

With regard to the use of sound and audiovisual recordings for educational and training purposes, Article 6 of the draft decree provides that these will be anonymised. In this respect, the Commission recalls that anonymisation implies preventing any individual re-identification of the persons concerned by the recordings. It acknowledges that the anonymization will relate to visual elements (blurring of faces and physical characteristics) and to the names of officers, detainees or third parties (appending a beep when a person's name is spoken). The Commission recalls in general that anonymisation should also

concern any element relating to the individual situation of the persons concerned or to the particular context of the intervention.

Subject to the foregoing, the Commission considers that the data processed are adequate, relevant and not excessive with regard to the purposes pursued, in accordance with the provisions of Article 4-3° of the law of January 1978 as amended.

conservation :

Article 2 of the aforementioned law of August 3, 2018 provides that audiovisual recordings are erased after six months, except in the event that they are used in the context of legal, administrative or disciplinary proceedings. The draft decree specifies the starting point of this retention period, namely six months from the date of their registration.

This retention period, which is longer than the periods commonly accepted by the Commission in the context of the implementation of video surveillance systems, must make it possible to take into account the average processing times for legal, administrative or disciplinary proceedings. In this regard, the Commission points out that the storage period is a fixed period and not a maximum period. As a result, the data processed cannot be deleted before the end of this period, at the risk of depriving the persons concerned of the possibility of accessing the data which concern them and therefore of asserting them, if necessary, within the framework of a procedure.

Article 6 of the draft decree specifies that at the end of this period the recordings are subject to automatic deletion, and that when the data have been extracted and transmitted for the purposes of a procedure, they are kept according to the rules specific to each type of procedure.

The Commission considers that the data collected are kept for a period that does not exceed the period necessary taking into account the purposes for which they are collected and processed, in accordance with article 4-5° of the law of January 6, 1978 as amended. On the accessors and recipients of the processed data:

The categories of persons authorized to access the data and the recipients mentioned in Article 5 of the draft decree do not call for any particular observation by the Commission. On the information and rights of the persons concerned:

With regard to the information of the persons concerned, article 2 of the aforementioned law of August 3, 2018 provides that the cameras are worn visibly by the agents and that a specific visual signal indicates whether the camera is recording. It also provides that the triggering of the recording is the subject of information of the persons filmed, except if the circumstances prohibit it.

With regard to these safeguards, the Commission considers that a recording cannot be made without the knowledge of the

person concerned. It considers, however, that if certain circumstances prohibit the immediate notification of the persons concerned of the initiation of the recording, the aforementioned provisions do not exempt the agents from issuing this information in a deferred manner, as soon as these circumstances have ceased and, at the latest, at the end of the intervention. It recalls that such information must enable the persons concerned to exercise their rights.

Article 2 of the law of August 3, 2018 provides that general information for the public on the use of individual cameras is organized by the Minister of Justice. Article 8-II of the draft decree specifies that this information will be provided on the website of the Ministry of Justice.

The Commission also notes that information on the use of cameras and the processing of personal data implemented will be issued by posting in prison establishments (in particular, as specified by the AIPD, in airlocks, passageways for detainees, in the family shelter, at the main entrance door and in staff quarters). It considers that the draft decree could usefully be supplemented to include these details.

The Commission also considers that the information provided by display or on the ministry's website should mention the actual operation of the systems implemented, particularly with regard to the precise methods for triggering the capture and recording of images. .

In addition, the draft decree provides that data subjects may exercise their rights to information, access, rectification and erasure directly with the hierarchical authority that designated and authorized the agent who carried out the registration. pursuant to articles 104 to 106 of the law of January 6, 1978 as amended.

The draft decree then specifies that for the reasons mentioned in 1°, 2°, 3° and 5° of I of article 107 of the amended law of 6 January 1978, the rights of access, rectification and deletion may be subject to the restrictions provided for in II and III of Article 107 of the aforementioned law. In this case, the rights are exercised with the Commission under the conditions provided for in Article 108 of the aforementioned law.

The Commission notes that the AIPD specifies that these restrictions would in particular guarantee the security of prison establishments, prevent the disclosure of confidential information on the methods of intervention of certain prison security teams or even guarantee the safety of prisoners involved in an incident. It considers that such restrictions therefore appear justified with regard to the purposes pursued by the planned processing.

Finally, the Commission notes that, with regard to the right of opposition, Article 8-I, para. 4, of the draft decree specifies that in

application of article 110 of the law of January 6, 1978 as amended, it is not intended to apply to the planned processing. On security measures:

Article 2 of the aforementioned law of August 3, 2018 provides that the personnel to whom the individual cameras are provided cannot have direct access to the recordings they make. Article 4 of the draft decree specifies that the data recorded by the individual cameras are transferred to a secure computer medium as soon as the agents return to service. This article adds that the recordings can only be consulted at the end of the intervention and after their transfer to a secure computer medium. No transmission system allowing remote viewing of images in real time can be implemented.

The Commission considers that these prohibitions in principle must be accompanied by technical measures, in particular of a nature to guarantee the integrity of the recorded data. It recommends in this respect that an integrity check be carried out on the video and audio data. By way of example, it could involve calculating a fingerprint of the data with a hash function in accordance with appendix B1 of the general security reference system and storing this fingerprint with the logging data. Although the Commission observes that total partitioning at network level of terminals dedicated to reading and extracting data is planned, it considers that measures should be planned to maintain this state of affairs (for example: blocking of ports network, the physical disconnection of network cards, regular agent awareness sessions, etc.) and that the DPIA should therefore be supplemented in this sense.

The Commission notes that encryption measures to guarantee the security of storage and data flows are planned. With regard to symmetric ciphers, the Commission nevertheless considers that the methods of transmission of secrets as well as the technical measures implemented to ensure their confidentiality (secure enclave, etc.) should be specified in the DPIA.

Article 7 of the draft decree provides that each operation of consultation, extraction and deletion of data is subject to recording in the processing or, failing that, to consignment in a register specially opened at this effect. In the absence of any clarification on this point, the Commission recalls that the register must be kept under conditions such as to guarantee the integrity of the data and that it cannot be left at the disposal of the officials concerned.

The Commission also notes that the transmission of data via physical media (USB key, DVD) is not subject to encryption measures. It therefore recommends that both technical and organizational measures be put in place and that the DPIA be completed in this sense.

Finally, the Commission reiterates the need to use up-to-date technological building blocks (operating system, antivirus and

software) and considers that the frequency and procedures for these updates should be specified in the DPIA.

The other security measures do not call for comments from the Commission. However, it recalls that the obligations relating to the amended law of 6 January 1978 require the updating of the AIPD and its security measures with regard to the regular reassessment of the risks.

M. L. Denis