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g NATIONAL COMMISSION -JL ON DATA PROTECTION

OPINION/2019/90

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 request for authorization to extend the video surveillance system in the city of Olhão, submitted by the Public Security Police (PSP).

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 covers the interior of an inhabited house or building or its dependence, or when this capture affects, directly and immediately, privacy, or results in conversations of a private nature being recorded.

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 Olhão for the purpose of protecting people and property and preventing crimes

2.1. prior note

Notwithstanding, under the terms of the legal powers defined in Law no. 1/2005, it is not up to the CNPD to pronounce on the proportionality of the use of video surveillance systems in public places of common use for the purpose of protecting people and property, 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. October 26, in everything that is not

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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 Law No. 59/2009, of 8 of August. 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.º 67/98, of 26 October, consider - if made for the regime 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 the prevention of threats to public security', can only be concluded by directly applying the provisions of article 29 to the processing of personal data resulting from the use of video surveillance systems.

Therefore, taking into account that this treatment implies a large-scale systematic control in the city of Olhão and in areas with buildings intended for housing, there is no denying the significant risk that it poses to the rights, freedoms and guarantees of people, in particular 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.

In particular, because the authorization applicant seems to have considered the need to protect people's privacy, insofar as buildings are hidden in the images that are presented in the reasoning accompanying the request. However, this concealment stems from a mere graphic editing of the images and there is no reference to the type of mechanism that is intended to be used to achieve the same effect in the images to be captured by video surveillance cameras. It is therefore understood that it is necessary to identify and justify the measures planned to mitigate the impact on privacy, in compliance with the provisions of paragraphs 6 and 7 of article 7 of Law No. 1/2005, namely, specifying what type of masks or busbars are intended to be applied to the cameras (e.g., whether digital or physical).

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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 noted as very positive the fact that, in the reasoning accompanying the request, in addition to stating that the warning models and symbols to be used comply with the provisions of Ordinance No. 373/2012, of 16 November, it is added that Further information on the installation of the video surveillance system will be published «on the new communication platforms, namely the official PSP website» (see Annex E of the statement of reasons accompanying the request).

With regard to the rights of access and deletion of data, provided for in article 10 of Law No. 1/2015, the possibility of exercising the right of access is mentioned in Annex C to the aforementioned reasoning before whom it can be guaranteed.

2.3. The technical characteristics of the equipment

According to the request (cf. Annex 2 of the reasoning accompanying the authorization request), a system consisting of twenty-six chambers located in the downtown area of the city of Olhão is intended to be installed.

Notwithstanding what has been recommended above, point 2.1., having analyzed the technical characteristics of the equipment and the mechanisms foreseen to ensure the correct use of the recorded data, the CNPD limits itself to noting that there are no security measures in place for the two locations « where, in the first instance, the signals from the video surveillance cameras converge' (duly identified in the request and where it is not possible to visualize the captured images), in addition to the PSP Police Station. Given the importance of these structures for the functioning of the system, according to the Process PAR/2019/59 3

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stated in Annex I of the statement of reasons, and considering the risk arising from improper access to them, the CNPD recommends the adoption of appropriate measures to prevent access by unauthorized personnel.

Furthermore, taking into account what was stated in the aforementioned reasoning, the CNPD has nothing else 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 Olhão, 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. The measures envisaged to mitigate the impact on privacy are identified and justified, namely, explaining what type of masks or barriers are intended to be applied to the cameras;

iii. Adequate security measures are foreseen and adopted to protect the equipment located in the places “where the signals from the video surveillance cameras converge in the first instance”.

Lisbon, December 27, 2019

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Filipa Calvão (President, who reported)

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