

National Data Protection Commission

OPINION/2021/149

I. Order

1. The Education, Science, Youth and Sports Commission of the Assembly of the Republic referred the National Data Protection Commission (CNPd) for an opinion on Bill No. 920/XIV/23 (IL), which "revokes the « Fan Card» for non-discrimination and stigmatization of citizens in sports venues (4th amendment to Law No. 39/2009, of 30 July)".

2. The request made and the present opinion fall within the attributions and powers of the CNPD, as the national authority to control the processing of personal data, in accordance with the provisions of subparagraph c) of paragraph 1 of article 57 and in the paragraph 4 of article 36 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3 .°, in paragraph 2 of article 4 and in paragraph a) of paragraph 1 of article 6, all of Law n.° 58/2019, of 8 August (which aims to ensure the implementation, in the domestic legal order, of the GDPR).

3. The assessment of the CNPD is restricted to aspects of the regime relating to the processing of personal data, that is, operations that focus on information concerning natural, identified or identifiable persons - cf. Article 4(1) and (2) of the GDPR.

4. The fan card was created by Law No. 113/2019, of 11 September, with the designation of «Access card to zones with special conditions for the access and permanence of fans», as a mechanism for accessing the «Zones with special conditions of access and permanence of supporters» (cf. article 3, paragraph q) and r), of Law No. 113/2019, of 11 September).

5. The practical aspects of its implementation and operation are contained in Ordinance No. 159/2020, of 26 June, which defines the rules applicable to the request, issuance, operation and use of the fan card, as well as approving the respective models and features.

6. The legal and regulatory regime mentioned above clearly results from the existence of processing of personal data subject to the RGPD, on which the CNPD did not have the opportunity to comment on its compliance with that Regulation, neither in the legislative procedure, nor in regulatory procedure seat.

II. Analysis

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i. Repeal of the legal requirement for a 'fan's card'

7. Specifically regarding the present legislative initiative to eliminate the processing(s) of personal data(s) resulting from the creation of the «fan card», it does not give rise to any reservation to the CNPD, especially as the institution of the card is not sufficiently substantiated as to the suitability and necessity of processing the corresponding personal data for the intended purpose, and it even appears that the restriction imposed by Law No. respect for private life and freedom - enshrined in articles 35 and 26 of the Constitution of the Portuguese Republic (CRP) - does not meet the parameters of proportionality, first of all, adequacy and necessity (in violation of paragraph 2 of article 18 of the CRP).

8. In fact, in the light of Law No. 39/2009, of 30 July, before the last amendment, it was already possible to control access and permanence in sports venues by the authorities in relation to fans prevented from attending them (see articles 5, 7, 14, 15 and 16). This law provides for the obligation for fans affiliated or not affiliated to a sports club who want to be part of an «Organized Group of Supporters» to join this «Group», which is obliged to register with the Authority to Prevention and Combat of Violence in Sport (APCVD), with the purchase of tickets by those conditioned to the inclusion of their name in an "updated list" containing their identification, to be provided by the Group to the security forces within the scope of travel to any sporting event.

9. In the event of non-compliance, it is legally determined to apply sanctions to the promoters of the sports show, national associations, sports clubs and societies, with responsibility for creating and maintaining “a systematized and updated register of affiliates”, as well as as well as in the verification and inspection of the eligibility conditions in the acquisition of the ticket to enter high-risk sporting events. Simply, the regime defined in this way did not achieve the intended purpose, as it will be

enough for an "Organized group of supporters" not to register with the competent entity, with the promoters, in turn, shielding themselves from the "systematized and updated registration of members of the group ».

10. Law no. 113/2019 introduced the «fan card» essentially to control supporters belonging to «organized groups» who wanted to access specific areas of sports venues with unique special conditions provided for by law for those who stay there, namely the use of megaphones that can be used to support sports clubs and societies, flags, banners and other accessories. At the same time, this card was given the auxiliary role of the promoters of the show and the security forces of «[...] verification in good time of judicial and administrative decisions that prevent certain people from accessing the sports venues», according to the preamble of Ordinance no.

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159/2020, of 26 June, which regulates the conditions for issuing, operating and using the fan card.

11. Now, as for the second purpose, of controlling the access of people who are, by judicial or administrative decision, prevented from attending sporting events, the measure as envisaged is not adequate to fulfill its purpose, as only access is controlled to such restricted areas, not being able to prevent entry into other areas of the sports venue by citizens who are subject to judicial or administrative measures prohibiting access - thus not complying with the principle of proportionality, in terms of adequacy (cf. Article 18(2) of the CRP).

12. In this judgment of proportionality on such restrictive measures, it cannot be ignored that the Council of Europe Convention on an integrated approach to Security, Protection and Services on the occasion of football matches and other sporting events (approved for ratification by the Resolution of the 52/2018, of 20 February), which presents a set of guidelines for the proper regulation of these matters for all States that ratify it, provides in its article 5, paragraph 4, that «[t]he parties will encourage the relevant entities to ensure that stadiums provide an inclusive and welcoming environment for all segments of society» and even foresee the adoption of «(...) legislation in which people recognized guilty of offenses related to violence or excesses of spectators, appropriate penalties or, where necessary, appropriate administrative measures».

13. However, the existence of «Zones with special conditions for access and permanence of supporters» and the respective

access card, an essential condition for entry into those, does not seem to find direct support in this international legal instrument. In fact, the Convention admits the definition of administrative measures aimed at persons admittedly guilty of offenses related to violence or excesses of spectators, but the definition of a restricted area for this universe of people seems to have a stigmatizing effect without proving suitable for prevent violent behavior. Furthermore, to the extent that the possibility of accessing those areas is extended to other persons who have not been sanctioned with the prohibition of access and if it does not prevent those sanctioned from entering other areas of the premises, the legally prescribed measure and the corresponding treatment of personal data does not fulfill its purpose.

14. For all of the above, the CNPD has no objection to the revocation of the requirement for a «fan card», provided for in the Bill submitted to it for consideration.

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ii. The use of the citizen's card for access control and areas with special conditions of access and permanence of supporters

15. In the request for an opinion sent by the Parliamentary Committee to the CNPD, it is also requested to pronounce on a set of pre-defined "scenarios", without, however, presenting a project or proposal for normative writing that explains and densifies the exact scope of each of them, which makes it difficult for the CNPD to form opinionated judgments.

16. Thus, the CNPD limits itself here to leaving some observations and only on hypothetical scenarios that directly imply the processing of personal data, in particular, through the use of the citizen's card.

17. The CNPD believes that a reassessment of the adequacy of the existence of areas with special conditions for access and permanence of supporters is justified for the purpose of preventing violence in sport and other illicit behavior (e.g.

manifestations of xenophobia, racism) - the that does not fall within the CNPD's attributions - and, in view of its suitability, the control of access to these areas can be done through the use of the citizen's card, whose purpose is to identify each citizen in their interaction in society .

18. This implies the processing of personal data, through the electronic reading of the citizen's card (and for citizens who do not have this card, a system for entering the necessary personal data) to compare with the list of citizens prevented from accessing sports venues by judicial or administrative decision, without conservation of the personal data of the universe of spectators of the event.

19. In any case, it is always added that, insofar as that solution does not prevent the access of citizens who are prevented from accessing sports venues by judicial or administrative decision to other areas of the sports venue, then it can be considered that that control through of the citizen card is made for access to any point of the enclosure.

20. However, it is underlined that this solution does not prevent possible violent behavior by the same citizens who are prevented from accessing sports venues in the respective neighboring areas, since, moreover, there is a widespread perception that these manifestations of violence occur outside the stadiums.

21. Thus, the CNPD recommends that other types of solutions be considered that show greater suitability for the intended purpose and that do not impact the fundamental rights of other citizens

III. conclusions

22. On the grounds set out above, the repeal of the requirement for a «fan card», provided for in the Draft Law, does not give rise to any reservation from the point of view of the protection of personal data.

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23. As for the other issues raised, in the absence of a draft or proposal for normative writing that explains and densifies the exact scope of each one of them, the CNPD is limited to a few observations, restricted to scenarios that directly have implications for data processing in terms of access control to sports venues through the citizen card and access control by the same means to areas with special conditions of access and permanence of supporters.

24. Thus, the CNPD recommends that:

The. The adequacy of the existence of areas with special conditions of access and permanence of supporters for the purposes of preventing violence in sport and other illicit behavior is reassessed. that effect, as explained above, in point 18;

B. In that consideration, bear in mind that this measure does not prevent

- i. Entry into other areas of the sports venue by citizens prevented from accessing by judicial or administrative decision, thus implying, in order to be fit for the intended purpose, control through the citizen card for access to any point of the venue;
- ii. Possible violent behavior on the part of the same citizens who are prevented from accessing the sports venues, in the respective neighboring areas, so it seems justified to consider other measures that do not impact the fundamental rights of other citizens.

Lisbon, November 22, 2021

Filipa Calvão (President, who reported)

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