

J NATIONAL DATA PROTECTION COMMISSION

OPINION/2019/65

I. Order

The Office of the Secretary of State for Justice asked the National Data Protection Commission (CNPD) to issue an opinion on the draft Ordinance that aims to regulate the obtaining, by the courts, of information about the educational establishment attended by the student, as well as electronic communications carried out between the judicial courts and the schools of the public network under the supervision of the Ministry of Education in the context of proceedings concerning students in these establishments.

The request made and the opinion issued derive from the attributions and powers of the CNPD, as the national authority for controlling the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 51 and 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, no. Article 4(2) and Article 6(1)(a) 6, all of Law No. 58/2019, of 8 August.

The assessment of the CNPD is limited to the rules that provide for or regulate the processing of personal data.

II. appreciation

Decree-Law no. 97/2019, of 26 July, amended the regime for the electronic processing of judicial proceedings provided for in the Code of Civil Procedure, with the CNPD having commented on the draft diploma in question through Opinion n. ° 22/2019, of April 15th.

Pursuant to paragraph 5 of article 132 (Electronic Process) of the aforementioned Decree-Law, communications between courts and public entities may be carried out electronically, by sending structured information and interoperability between the information system of support to the activity of the courts and the information systems of the referred entities, in the terms foreseen in the decree of the members of the Government responsible for the area of justice and for the public entity in question.

As follows from the preamble of this draft Ordinance, with the publication of Decree-Law No. 97/2019, of 26 July, the conditions for the implementation of

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various measures regarding the simplification and dematerialisation of communications between the courts and public entities.

The present Ordinance Project implements one of these measures by providing that the communications of the judicial courts addressed to school establishments be made electronically, through an integrated student management system (Escola 360), while speeding up and accelerating the acquisition of by the court of information on the student's school career, starting with the indication of the educational establishment where he is enrolled.

Pursuant to article 2 of the draft Ordinance "When, in the context of a judicial process, it is necessary to consult information relating to the identification of the pre-school, primary or secondary education establishment in which the child or young person is enrolled, that consultation is carried out directly by the court, through the information system supporting the activity of the courts, in the integrated management system of students of the Ministry of Education, which centralizes information of an administrative nature concerning the students integrated in these educational establishments» , such consultation being carried out by the student's full name, civil identification number or tax identification number.

In turn, article 3 of the draft Ordinance aims to regulate communications between the judicial court and the educational establishment in which the student is enrolled, by electronic means, by sending structured information and electronic documents between the support system for the activity of the courts and the Escola 3601 platform. Thus, pursuant to paragraph 4 of article 3, information relating to the student (student record, evaluation record, attendance, disciplinary occurrences in the school environment) can be communicated. , relating to parents (name and address) and information relating to the class director (identification).

It should be noted that article 3 of the project states that the sending of information between the information system supporting the activity of the courts and the Escola 360 platform will be carried out under the terms of the protocol to be signed between the Institute of Financial Management and Equipment of the

1 According to the official website of Escola 360 (available at <https://e360.edu.gov.pt/>), this is a "system of the Ministry of Education that centralizes student management processes, from pre-school education to high school. The objective is to provide all administrative information related to students on a single platform."

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Justice, IP and the Directorate-General for Education and Science Statistics without, however, mentioning the prior consultation of the CNPD.

In this regard, the CNPD recalls that the protocols, insofar as they correspond to legal acts of public entities that define binding rules for the parties regarding the processing of personal data of third parties, have the nature of an administrative regulation.

To that extent, under the terms of Article 36(4) and Article 57(1)(c) of the GDPR, they must be subject to prior assessment by the CNPD. So that there is no doubt as to this duty, the CNPD suggests its clarification in the text of the article.

In turn, Article 4 of the draft Ordinance raises some reservations with regard to security measures.

In fact, in addition to providing for the mandatory electronic records (logs) of accesses and communications carried out under this decree, it only states that the information systems supporting the activity of the courts and the Escola 360 platform guarantee compliance with the rules of security and access to information and technical availability, in order to ensure the confidentiality of the data.

It can be seen, therefore, that the norm is completely silent on the security measures involved in the transmission of data, without specifying, from the outset, whether the transmission is carried out on a public or private network. It is strange that the normative precept uses a notoriously vague formulation to refer to the guarantee of data confidentiality without specifying the way in which it is or should be carried out. All the more so as the protection of personal data requires security measures specifically suited to the nature of the information processed.

Thus, in compliance with the principle of integrity and confidentiality, provided for in subparagraph f) no. adequate security for these processing of personal data.

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III. Conclusion

On the above grounds, in order for the Draft Ordinance to comply with the legislative command contained in paragraph 5 of article 132 of Decree-Law No. 97/2019, of July 26, the CNPD recommends:

1 - The express consecration of the obligation for the protocol referred to in article 3 to be subject to prior appraisal by the CNPD;

2 - The reformulation of article 4 of the draft Ordinance, in order to contain the security measures involved in this processing of personal data.

Lisbon, October 1, 2019

Filipa Calvão (President)