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Opinion in relation to the query made by a body in relation to the installation of video surveillance cameras for traffic control in the urban center

A consultation is presented to the Catalan Data Protection Authority by the data protection representative (DPD) of several councils assisted by an organization in relation to the installation of video surveillance cameras for traffic control in the urban area.

In the consultation, it is stated that the municipalities to which DPD services are provided, which do not have local police, have received the offer of a company that offers them the installation of video surveillance cameras for traffic control in the urban area, with the purpose of road safety and traffic control, as well as the installation of radars with the purpose of sanctioning excessive speed.

In this context, he requests the opinion of this Authority on whether *"despite not having local police and based on the powers attributed to the municipalities by article 7 of RDL 6/2015, if the mentioned installation is possible simply with the previous incorporation of the treatment into the RAT and the risk analysis"*.

Having analyzed the query that is not accompanied by other documentation, in accordance with the report of the Legal Counsel I issue the following opinion:

I

(...)

II

First of all, it must be taken into account that to the extent that through the installation of a video surveillance system the direct or indirect identification of physical persons is allowed - either because the image of a natural person is captured on the public road or because images are captured of the vehicles that circulate on the streets of the municipality and people can be identified through the license plate -, personal data will be processed. In this sense, article 4.1 RGPD establishes that information that allows a natural person to be directly or indirectly identified, among others through an identification number, will be considered personal data.

In accordance with Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27 2016, General Data Protection Regulation (hereinafter, RGPD) any processing of personal data, understood as *"any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other"*

another form of enabling access, comparison or interconnection, limitation, suppression or destruction.” (article 4.2 RGPD), has submitted to the principles and guarantees established by that Regulation.

Article 5.1.a) of the RGPD establishes that all processing of personal data must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency).

In order for a treatment to be lawful, it is necessary to have, at least, a legal basis of those provided for in article 6.1 of the RGPD that legitimizes this treatment, either the consent of the person affected, or any of the other circumstances which provides for the same precept. In the field of public administrations, the legal bases provided for in letters c) and e) of article 6.1 of the RGPD are of particular interest, according to which the treatment will be lawful when it is necessary for the fulfillment of 'a legal obligation applicable to the controller (letter c), or when the treatment is necessary for the fulfillment of a public interest or in the exercise of public powers conferred on the controller (letter e).

The installation and use of surveillance cameras for the purpose of control, regulation, surveillance and traffic discipline is regulated in the eighth additional provision of Organic Law 4/1997, of August 4, which regulates the use of video cameras for the Security Forces and Bodies in public places.

This additional provision establishes:

"The installation and use of video cameras and any other means of capturing and reproducing images for the control, regulation, surveillance and discipline of traffic will be carried out by the authority in charge of traffic regulation for the purposes provided for in the articulated text of the Law on Traffic, Circulation of Motor Vehicles and Road Safety, approved by Royal Legislative Decree 339/1990, of March 2, and other specific regulations in the matter, and subject to the provisions of Organic Laws 5/1992, of October 29, Regulation of the Automated Treatment of Personal Data, and 1/1982, of May 5, Civil Protection of the Right to Honor, Personal and Family Privacy and One's Image, in the framework of the principles of use of the same provided for in this Law."

This rule is deployed in Catalonia by Decree 134/1999, of 18 May, regulating video surveillance by the general police and the local police of Catalonia, which includes in the second additional provision a specific provision regarding video surveillance for traffic control purposes.

The second additional provision of Decree 134/1999 establishes:

"2.1 The police of the Generalitat-mossos d'esquadra and the local police will install video cameras and any other means of capturing and reproducing images and will use them for control, regulation, surveillance and traffic discipline on public roads subject to the regulations included in additional provision 8 of Organic Law 4/1997, of August 4, which regulates the use of video cameras by security forces and bodies in places public, and to this Decree.

2.2 The competent authorities to order the installation and use of the devices referred to in the previous section are:

On public roads where traffic regulation is not attributed to the municipalities, the director of the Catalan Traffic Service in the territory where the police officers exercise this competence.

In public roads under the jurisdiction of the municipalities, the mayor of the respective municipality.

2.3 The resolution ordering the installation and use of these devices will include: the body responsible for the recording operation, the identification of public roads or sections thereof, the measures to be taken in order to guarantee respect for the legal provisions in force, as well as the body in charge of its custody and the resolution of requests for access and cancellation. The validity of the resolution will be indefinite as long as the circumstances that motivated it do not change.

2.4 This resolution must be notified to the Commission for the Control of Video Surveillance Devices, which, if necessary, if it deems it relevant, may issue a report on the suitability of the resolution to the general principles of Organic Law 4/1997, of August 4.

The custody and conservation of the recordings and the resolution of access and cancellation rights will correspond to the bodies set out in the resolution authorizing the installation and use of the devices. The regime of conservation and custody of the recordings obtained will be governed by the same principles applicable to the recordings obtained using the video cameras regulated by this Decree.

2.5 The exercise of rights of access and cancellation of recordings by those affected will be governed by the provisions of article 15 of this Decree.

2.6 The resolution of authorization will not be necessary when means of capturing and reproducing images of a mobile nature are used in order to ensure compliance with traffic and road safety regulations. However, the Catalan Traffic Service and/or the Directorate General of Citizen Security will be able to issue the necessary instructions and guidelines on their use by the agents of the Generalitat police force in charge of traffic surveillance."

In accordance with these provisions, the installation and use of surveillance cameras for traffic control, regulation, surveillance and discipline must be carried out by the authority in charge of traffic regulation for the purposes provided for in Law on Traffic and, Circulation of Motor Vehicles and Road Safety and other specific regulations that may regulate the matter, subject to the data protection regulations, at this time by the RGPD, Organic Law 3/2018, of December 5, of protection of personal data and guarantee of digital rights henceforth LOPDGDD and by Instruction 1/2009, of February 10, 2009, on the processing of personal data through cameras for video surveillance purposes of the Catalan Protection Authority of Data, in that it has not been modified by the RGPD and the LOPDGDD.

Thus, the installation of these video surveillance systems is subject to compliance with the provisions of the second additional provision of Decree 134/1999 regarding the body competent to agree the installation and use of these devices, for regarding the content of the resolution ordering the installation and also regarding the communication to the Commission for Control of Devices

Video surveillance They will also be governed by the provisions of Decree 134/1999 regarding the regime of conservation and custody of the recordings obtained and the exercise of the rights of access and cancellation of the recordings by those affected. Beyond this, these systems must comply with the principles or obligations arising from the application of the RGPD, the LOPDGDD and Instruction 1/2009.

IV

Article 6.1.e) of the RGPD enables public administrations to carry out the processing necessary for the exercise of a mission in the public interest or a public power attributed to it by the law of the member states. According to article 8 of the LOPDGDD, the rule that must make this attribution must be a rule with the status of law. For this reason, it was essential to analyze whether the affected municipalities have powers attributed by law that can justify this treatment.

In this context, the consultation raises whether municipalities without local police can install video surveillance cameras for traffic control in the urban center for the purpose of road safety and traffic control based on the powers granted to municipalities by the article 7 of the Royal Decree Legislative Decree 6/2015, of October 30, which approves the revised text of the Law on Traffic and Circulation of Motor Vehicles and Road Safety, and "(...) ~~if the law for the police installation is possible~~ *if the law for the police installation is possible* treatment into the RAT and the risk analysis."

Article 7.a) of RDL 6/2015, to which the query refers, establishes that it corresponds to the municipality:

*"The regulation, ordering, management, vigilance and discipline, **by means of own agents**, of traffic on the urban roads under its ownership, as well as the reporting of infractions that are committed on said roads and the sanctioning of the same when it is not expressly attributed to another Administration."*

This article attributes to the municipalities the regulation, ordering, management, surveillance and discipline of traffic on the urban roads under their ownership through their own agents, as well as the reporting and sanctioning of infractions that occur on these roads.

For its part, paragraph 2 of the second additional provision of Decree 134/1999, of May 18, establishes that the competent authorities to agree the installation of video surveillance systems for traffic control on public roads under the jurisdiction of municipalities are the mayors of the respective municipalities.

In the case at hand, according to the DPD, the councils interested in the installation of these video surveillance systems do not have local police, although some may have guards.

Regarding the vigilantes, article 1.2 of Law 16/1991, of July 10, on local police set:

"Municipalities that do not have local police can be equipped with guards, watchmen, agents, bailiffs or the like to carry out the functions referred to in article 13."

All of this staff receives the generic name of "vigilantes" in the area of Catalonia.

With regard to the functions attributed to the vigilantes, article 13.b) of Law 16/1991, of July 10, on the local police establishes:

"The guards referred to in article 1.2 can only carry out the following actions:

- a) Custodial and surveillance of goods, services, installations and municipal dependencies.*
- b) **Order and regulate traffic within the urban core, in accordance with traffic rules.***
- c) Participate in citizen assistance and civil protection tasks, in accordance with the provisions of the laws.*
- d) Ensure compliance with regulations, ordinances, bans, resolutions and other municipal provisions and acts."*

For its part, Law 10/1994, of July 11, on the police of the Generalitat Mossos d'Esquadra, attributes to this police force the exercise of the functions *"proper to the local police in municipalities that do not have it"* (article 12.1.fifth.b)). In these cases, letter c) of this article establishes that *"the Generalitat and the local corporations must sign the corresponding cooperation agreements, in which the objectives, resources, financing must be defined in any case, the organization and the respective obligations and faculties"*.

Therefore, with respect to the municipalities referred to in the query, we could find ourselves with three different situations regarding the possibility of installing video surveillance cameras for traffic control purposes:

1. That the municipality does not have local police, or security guards, nor has it signed the agreement referred to in article 12.1.cinquè.c) of Law 10/1994, of July 11, on the Generalitat police Mossos d'Esquadra.
2. That the municipality does not have local police but does have guards.
3. That the municipality does not have local police or security guards but has signed the agreement referred to in article 12.1.fifth.c) of Law 10/1994, of July 11, on the police of the Generalitat Mossos d'Esquadra.

The possibility of municipalities installing video surveillance cameras for traffic control purposes in each of these three cases is analyzed below.

v

As stated in article 7 of RDL 6/2015, of October 30, which approves the revised text of the Law on Traffic and, Circulation of Motor Vehicles and Road Safety, attributes to the municipalities the powers relating to the regulation, ordering, management, surveillance and discipline of traffic through its own agents.

The municipalities that do not have their own agents, that is to say they do not have local police, nor watchmen, nor have signed the agreement referred to in article 12.1.cinquè.c) of Law 10/1994, of July 11, of the police of the Generalitat Mossos d'Esquadra, they cannot exercise the functions relating to the control

of the traffic attributed to them in the aforementioned article 7 and, consequently, they will also not be able to install video surveillance cameras for the purpose of traffic control.

Regarding case 2, that is to say, when the municipality does not have local police but does have vigilantes, who, in accordance with the aforementioned article, article 13.b) of Law 16/1991, of July 10, of the local police forces can *"order and regulate traffic within the urban core, in accordance with traffic rules"*, these municipalities will be able to exercise the powers attributed to them in article 7 relating to the ordering and regulation of traffic within the city urban and, they will be able to install video surveillance cameras for the purposes of traffic control, however, limited to the functions that municipal watchmen can perform.

Finally, in the case of municipalities that do not have local police or security guards but have signed an agreement with the Generalitat Catalunya, in application of article 12.1. fifth.c) of Law 10/1994, of July 11, of the police of the Generalitat Mossos d'Esquadra de Catalunya, it will be this police who assumes the powers of traffic control in the terms that the aforementioned agreement establishes. Therefore, in these cases the municipality may install video surveillance systems for the purpose of traffic control.

In the latter case, it must be taken into account that, from the point of view of the data protection regulations, the municipality will have the status of responsible for the treatment (Article 24 RGPD) while the Generalitat will have the status of the person in charge of the treatment, being necessary the formalization of a legal instrument that regulates this assignment of the treatment in accordance with what is established in article 28.3 of the RGPD.

VI

With regard to the second part of the consultation carried out, relating to *"(..) if the aforementioned installation is possible simply with the previous incorporation of the treatment in the RAT and the risk analysis"*, as has been set out in the basis III of this opinion, the installation of video surveillance systems for traffic control is subject to compliance with the provisions of the second additional provision of Decree 134/1999 regarding the body competent to agree the installation and use of these devices, regarding the content of the resolution ordering the installation of fixed devices, the communication to the Commission for the Control of Video Surveillance Devices, as well as regarding the regime of conservation and custody of the recordings obtained and the exercise of the rights of access and cancellation of the recordings by those affected.

In addition, in order to consider the video surveillance system appropriate to the data protection regulations, it will also be necessary to comply with the principles and obligations established in the data protection regulations (RGPD and LOPDGDD) and, where appropriate, specified in the Instruction 1/2009.

Among these obligations, it should be highlighted, with regard to the case at hand:

- Make an impact assessment related to data protection

Paragraph 1 of article 35 of the RGPD establishes, in general, the obligation of those responsible for data processing (art. 4.7 RGPD) to carry out a data protection impact assessment (AIPD), prior to the start of treatment, when it is likely that

due to their nature, scope, context or purposes they entail a high risk for the rights and freedoms of natural persons, a high risk which, according to the RGPD itself, is increased when the treatments are carried out using "new technologies".

Section 3 of the same article 35 of the RGPD, establishes that the AIPD will be required in several cases, among others, in the event that a "large-scale systematic observation of an area of public access" (art. 35.3.c) RGPD). In the case at hand, although it is about the installation of cameras on public roads but in small municipalities, it may raise doubts that it can be considered a "large-scale" treatment in the sense of the article 35.3.c) of the GDPR. However, the Article 29 Working Group (WG 29) in its document "Guidelines on Data Protection Delegates (DPD)", recommends (section 2.1.3), that a series of factors when determining whether a treatment is large-scale, including the number of affected, either as a specific figure or as a proportion of the population, as well as the duration or permanence of the activity of data processing.

In any case, the concurrence of some of the criteria established in article 28 of the LOPDGDD or in the [list of types of data processing that require an impact assessment related to data protection published by this Authority under the provisions of article 35.4 of the RGPD](#), may justify the need to make an AIPD.

In the case we are dealing with, in which traffic control cameras must be located on public roads, it can be foreseen that the affected will be the entire population of the municipality, in addition to all those people who are not from the municipality circulate there. In other words, it would indiscriminately affect anyone who travels in any type of vehicle or on foot through the center of the population. In addition, it appears that the installation is planned for an indefinite period. Given these elements, it seems that the circumstances exist to consider that it would be a system of systematic observation on a large scale, in the terms of Article 35.3 of the RGPD and, therefore, subject to AIPD.

In this sense, to carry out the impact assessment it is recommended to take into account the [Practical Guide on the AIPD](#), of this Authority, available on the website www.apdcat.cat. On the Authority's website you can also find and download an app for preparing the assessment

It should be taken into account, finally, that if after having carried out the AIPD it turns out to be a high-risk situation that has not been mitigated, a prior consultation with the Catalan Data Protection Authority must be considered, which must be accompanied by a copy of the AIPD (art. 36 RGPD).

At this point it should be remembered that, in accordance with article 10 of Instruction 1/2009, prior to the start-up of a video surveillance system, a Report must be drawn up that must specify, among other issues, the justification of the legitimacy and proportionality of the treatment, the definition and technical characteristics of the video surveillance system, the planned security measures, etc. However, in the event that an AIPD is to be carried out, as it seems will happen in the case at hand, and to the extent that it incorporates the different aspects included in the Report provided for in article 10 of Instruction 1/ 2009, its elaboration would not be necessary.

- Incorporate the activity into the Treatment Activities Register (RAT)

Article 30 of the RGPD obliges those responsible for the treatment (in this case, the City Council), to keep a record of the activities of the treatment (RAT) which must contain the information detailed in the same article 30, section 1, of the RGPD. In addition, the inventory referred to in article 30 LOPDGDD must be published.

Therefore, the City Council will have to incorporate into the RAT the processing of data through the video surveillance system for traffic control purposes referred to in the query, in the terms provided for in the data protection regulations. On the other hand, following the full applicability of the RGPD, the need to notify the treatment or the file to the Catalan Data Protection Authority for its registration, as foreseen in article 11 of the instruction

- Comply with the principle of purpose limitation

At the outset, it should be borne in mind that the images recorded for this purpose of traffic control may not be used for incompatible purposes, unless there is a sufficient legal basis (art. 6.1 RGPD), in application of the principle of limitation of purpose (art. 5.1.b) RGPD).

- Comply with the minimization principle

Article 5.1.c) of the RGPD states that the processed data must be adequate, relevant and limited to what is necessary in relation to the purpose of the processing. Considering that the purpose of the system is traffic control, the installation of the system must be carried out in such a way as to allow the capture of the minimum images necessary to achieve the purpose pursued. In the AIPD, the proportionality of the installed system must be justified taking into account the purpose.

- Integrity, security and confidentiality of data

In terms of video surveillance, it is also necessary to take into account, among others, the principles of integrity and confidentiality of the personal data that are the subject of treatment (art. 5.1.f) RGPD). For this reason, it will be necessary to adopt the security measures that are required in accordance with article 32 of the RGPD, DA 1a of the LOPDGDD and paragraphs 4 to 6 of article 21 of instruction 1/2009.

- Conservation of images

The regime for the conservation and custody of the recordings obtained is governed by the same principles applicable to the recordings obtained through the video cameras that regulate chapter V of Decree 134/1999, of May 18, on the regulation of video surveillance by the police of the general public and the local police of Catalonia.

- Duty of information to those affected

The City Council must also comply with the duty of information to those affected, in compliance with the principle of transparency (art. 5.1.a) RGPD).

In the case of traffic control devices, section 8 of article 12 of Instruction 1/2009 provides that *"Fixed cameras for the control, regulation, surveillance and discipline of traffic on the road public, the content of the sign can be limited to informing about the existence of the camera or the speed control device, without prejudice to what is established in section 6 of this article"*.

For its part, paragraph 6 of article 12 of the Instruction establishes that the person in charge *"also must provide the affected persons with information on the rest of the points provided for in article 5.1 of the LOPD through printed materials or through its website or electronic headquarters, where the specific nature of the surveillance must be stated, as well as the rest of the information established in sections a), d) and e) of article 5 of the LOPD."*

That is to say, given the special circumstances of these types of video surveillance systems in which the communication of all the mandatory information is practically impossible because the content of the information sign would be very difficult to read from a vehicle, the sign can be limited to inform about the existence of the cameras and the rest of the information can be offered, for example, through the web page of the person in charge of the treatment (the town hall) as long as it is easily accessible.

Conclusions

Municipalities that do not have local police, or vigilantes or have signed an agreement in application of article 12.1.fifth.c) of Law 10/1994, of July 11, on the police of the Generalitat Mossos d'Esquadra, they cannot install video surveillance cameras for the purpose of traffic control.

Municipalities that have vigilantes can install video surveillance cameras for the purpose of traffic control limited to the functions attributed to the vigilantes by their specific regulations.

In the case of municipalities that have signed an agreement pursuant to article 12.1.c) of the Law 10/1994, of July 11, of the police of the Generalitat Mossos d'Esquadra de Catalunya, can install video surveillance cameras for traffic control under the terms established by the aforementioned agreement.

The installation and use of surveillance cameras for the control, regulation, surveillance and discipline of traffic, must be adapted to what is established in the eighth additional provision of Organic Law 4/1997, of August 4, for which regulates the use of video cameras by the Forces and Bodies of Security in public places, deployed in Catalonia by the second additional provision of Decree 134/1999, of 18 May, regulating video surveillance by the general police and the local police of Catalonia, as well as the RGPD and the LOPDGDD and Instruction 1/2009, especially the aspects analyzed in legal basis VI of this opinion.

Barcelona, February 11, 2021