

SECURITY AND PRIVACY

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If, on the one hand, the right to the public and private security and the right to the privacy represent different profiles of the right to inviolability of the person and of the principle of not aggression, on the other hand they are under various aspects in contrast and need a balance judgement.

It is easy, as a matter of fact, to notice that the technological progress allows a greater and greater possibility to submit people's daily life to sophisticated and aimed controls, able to contribute to realise more and more advanced frontiers in terms of public and private security, but equally able to insert in a more and more penetrating and invasive way in the private sphere of the individuals, not always distinguishing previously and exactly between the so called "proper" invasion and the unjustified, or rather the disproportionate invasion. Such issue, which has been at the centre of a lively national and international debate for some decades, is emphasised most of all in relation to the phenomenon of the video-surveillance, that is to say the more and more widespread tendency on part of public subjects (ministries, local agencies, commandos of police and others) and private subjects (banks, shops, petrol pumps) to resort to the installation of more or less articulated systems of video-audio control of spaces, both exterior and interior, above all for the prevention and the repression of the crimes, but also for controls and surveyings of various nature.

The video-surveillance systems, whose adoption is in constant increase in Italy like in the countries with advanced industrial economy, have been at first functional mostly to the prevention and the repression of crimes and the control of the security of work places.

Later on the images and sounds recorded have been used also for different purposes, such as the creation of market strategies through the analysis of the consumers' behaviour.

In our Country we have assisted in particular, during few years, to the passage from a situation in which the systems of visual monitoring were set in rather limited city zones, to a situation in which such control systems extend not only to more and more various urban and extraurban zones (like stadiums, museums and waste dumps) but also to wide territorial zones (like street, highway sections and zones of important naturalistic or historical interest).

The dimensions that such phenomenon has currently assumed have induced to reflect on the setting of the point of equilibrium between the need of the public order, of prevention and repression of crimes, and the right to privacy of the individuals.

Italy is still lacking specific regulation about video-surveillance, unlike some European countries such as France, Denmark, Island, Norway and Spain. The Communitarian directive 95/46/CE and the Convention n. 108/1981 of the Council of Europe oblige the countries members to enforce the law on the protection of the personal data to every information that allow to identify the people it refers to also in indirect way (that is to say through the connection with other information).

The law December 31st, 1996 n. 675, that has put into operation the convention and has partially enforced the European direction, has introduced in our code a very wide notion of "personal datus". Also the art. 1 of the already mentioned law n. 675/1996 defines "personal datus" any information that allows to identify the physical or juridical person it refers to also in indirect way (like the number or codified data, as well as sounds or images).

Considering, therefore, that sounds and images are surely included in the quoted notion of personal data, the prescription and the principles included in the law n. 675/1996 constitute the only reference law of general character applicable to the use of the video-surveillance systems. As a matter of fact, the quoted law constitutes the main legislative reference on whose base the Authority frequently intervenes to regulate the different profiles of interconnection between security and privacy in the installation and the management of the video-surveillance systems.

As a mere example, it is useful to illustrate the content of three actions of the Authority in matter of video-surveillance applied respectively to the field of the access to the historical centres and the zones with limited traffic, the field of the urban public means of transportation, and to the field of the highway circulation (it is opportune to specify that the following briefly examined actions are not exhaustive of the numerous fields to which in concrete has been applied the video-surveillance).

The Presidency of the Cabinet and the Department of the Public Function have demanded the Guarantor's opinion according the art. 31, codicil second of the law n. 675/1996 on the outline of the norm about the authorization to the installation and the managing of systems for the survey of the accesses to the historical centres and the zones to limited traffic.

The observations formulated on this subject by the Authority have been substantially collected in the regulation later issued with d.P.R. n. 250/1999, which represents a valid organizational and managerial model of a video-surveillance system that moderates the reasons of the security and the privacy, without affecting the efficacy of the controls.

The quoted regulation establishes also that:

- the images can be recorded by the systems of tele-supervision only in case of infringement, while the monitoring of the traffic normally happens through anonymous data;
- the recorded data can be used only for the purposes of application of the same regulation;
- the data can be kept only for the period necessary to the survey of the violation and to the definition of the eventual litigation, save the further use for purposes of criminal police or penal surveying;
- the data cannot be interconnected to other archives.

Such regulation norms constitute an application of the discipline relative to the treatment of the "common" personal data on part of public subjects, contained in the art. 27 of the law n. 675/1996 (as a matter of fact it is the communal administrations that are legitimated to the installation and the management of such type of systems of video-supervision functional to the control of the city traffic).

It is known that the treatment of the personal data on part of the public subjects, unlike the one carried out from the private subjects and the economic public bodies, does not need the consent of the involved individuals and must be functional to the fulfilment of the institutional

purposes of which the body is titular. It is necessary, as a matter of fact, that the administration conforms to what established by the attributive norm of the powers of the agency or that, in case there is not specification in the norm, verifies the concrete existence of the nexus of instrumentality between the types of the data they want to collect and deal with and the pursued purposes.

The last three provisions are moreover expression of the more general principle of pertinence and of not excess contained in the art. 9 of law n. 675/1996, according to which the holder of the treatment is legitimated to use and keep the personal data only in order to fulfil the purposes for which the data have been collected. Another example of techno-legal solution in matter of video-surveillance that subtends an appraisal of proportionality between the right to security and the right to privacy in application of the principles and the provisions contained in the law n. 675/1996 is the project of installation of videocameras on some routes of bus and tram and near some bus-stops of the Commune of Turin.

The Piedmontese communal Administration and the society that runs public transport, in agreement with the Prefect and the authorities of public security, have arranged a project of video-surveillance for the security of the travellers and in order to prevent crimes and damages against things and actions of vandalism. The Guarantor has been asked his opinion about this project. In such occasion the Authority has indicated some conditions for the legitimacy of the project such as the exact determination of the videocameras' localization and of the shooting modalities in adhesion to the fulfilled purposes.

In particular, the Guarantor has established that the shooting modalities must be such as to take a panoramic image of the people and the places, avoiding so detailed shots as to be intrusive of the privacy of the customers of the public transportation service and the privacy of the people passing by the bus-stops.

The Guarantor has also established that it is necessary to avoid that the videocameras shoots in stable way the drivers' seats in the observance also of the limits established by the art. 4 of the Statute of the workers (law n. 300/1970). The existence of the video-surveillance system must then be conveniently pointed out to the customers of the transportation service. Buses and trams provided with videocameras must therefore contain inside both proper information or marks about the presence of videocameras and the notice according to the art. 10 of the law. In conclusion, an example of video-surveillance applied to the field of the highway traffic is the project of the Ministry of the Interior (in particular of the Committee of surveillance of the operative programme "Security for the development of Southern Italy) concerning the installation of a sophisticated integrated system of tele-surveillance and satellite communication along the highway section Salerno-Reggio Calabria.

Such project, finalized to the prevention and the repression of crimes in a zone characterised by a strong criminal presence, provides also the control of the highway accesses and of the areas of service and parking through videocameras in order to read the plates of the automobiles in transit, and the connection with the center of control in case of recording plates already known to the forces of order. Also in this case the Guarantor has established that the data relative to the images of the people and the plates must not be interconnected with other information databases, but for reasons strictly indispensable to the accomplishment of penal or police surveyings. This is a position consolidated by now, already expressed in numerous statements of the Authority on this subject and it applies the mentioned principle of pertinence and of not excess, which sets as a limit of legitimacy of the

personal data treatment the general prohibition of communication of the personal data to other Administrations.

The Guarantor has also established that, in the specific case, acoustic surveys must not be recorded as they are exceeding in comparison to the pursued purposes, and he has prescribed the proper information to the motorists about the presence of the video-surveillance system.

From this brief and synthetic description of the consult activity of the Guarantor in matter of video-surveillance it emerges that the Authority, in absence of a specific norm and in application of the principles and of the provisions contained in the law on the protection of the personal data (law n. 675/1996), has established some lines of general character as to the possibility to install and to manage legitimately tele-surveillance systems. Such activity has also facilitated the formation of a collective awareness, of which our Country was lacking, to the problems connected with the diffusion of the videocameras with the aim of surveillance. It is now desirable that soon a complete and articulate regulation of the field will be issued, so that it can conciliate in a preventive and exact way the need of security and that of privacy.