Case C-439/19

Summary of the Request for a Preliminary Ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

11 June 2019

Referring court:

Satversmes tiesa (Constitutional Court, Latvia)

Date of the decision to refer:

4 June 2019

Applicant:

B

Body responsible for the act the constitutionality of which is at issue:

Latvijas Republikas Saeima (Parliament of the Republic of Latvia)

Subject matter of the main proceedings

The purpose of the proceedings is to determine the compatibility with Article 96 of the Latvijas Republikas Satversme (Constitution of the Republic of Latvia), concerning the inviolability of private life, of Article 14.[1](2) of the Ceļu satiksmes likums (Law on motoring), inasmuch as it provides, inter alia, that information relating to penalty points recorded against drivers for motoring offences falls within the public domain.

Subject matter and legal basis of the request for a preliminary ruling

On the basis of Article 267 TFEU, the referring court seeks an interpretation of Regulation 2016/679 and Directive 2003/98 with a view to determining whether they prohibit Member States from stipulating in their legislation that information relating to penalty points recorded against drivers for motoring offences falls within the public domain, thus allowing such personal data to be processed by being communicated and transmitted for re-use.

In the alternative, the referring court also seeks an interpretation of the principles of the primacy of EU law and legal certainty in order to clarify whether the national provision at issue in the main proceedings is applicable and whether its legal effects can be maintained until such time as the decision which the referring court ultimately gives on its constitutionality becomes final.

Questions referred for a preliminary ruling

1. Must the expression '[p]rocessing of personal data relating to criminal convictions and offences or related security measures', used in Article 10 of Regulation 2016/679, be interpreted as meaning that it includes the processing of information relating to penalty points recorded against drivers for motoring offences as provided for in the provision at issue?

2. Irrespective of the answer to the first question, can the provisions of Regulation 2016/679, in particular the principle of 'integrity and confidentiality' referred to in Article 5(1)(f) thereof, be interpreted as meaning that they prohibit Member States from stipulating that information relating to penalty points recorded against drivers for motoring offences falls within the public domain and from allowing such data to be processed by being communicated?

3. Must recitals 50 and 154 and Articles 5(1)(b) and 10 of Regulation 2016/679 and Article 1(2)(cc) of Directive 2003/98/EC be interpreted as meaning that they preclude legislation of a Member State which allows information relating to penalty points recorded against drivers for motoring offences to be transmitted for the purposes of re-use?

4. If any of the foregoing questions is answered in the affirmative, must the principle of the primacy of EU law and the principle of legal certainty be interpreted as meaning that it might be permissible to apply the provision at issue and maintain its legal effects until such time as the decision ultimately adopted by the Constitutional Court becomes final?

Most relevant provisions of EU law

Treaty on the Functioning of the European Union, Article 16(1).

Charter of Fundamental Rights of the European Union, Article 8(1).

Directive 95/46/EC (Data Protection Directive). Article 94.

Regulation (EU) 2016/679 (General Data Protection Regulation). Recitals 4, 9, 50 and 154 and Articles 4, 5, 6, 10 and 94.

Directive 2003/98/EC on the re-use of public sector information. Recital 21 and Article 1.

Most relevant provisions of national law

Latvijas Republikas Satversme (Constitution of the Republic of Latvia). Articles 32, 89 and 96.

Ceļu satiksmes likums (Law on motoring). Articles 14.[1] and 43.[1].

Sodu reģistra likums (Law on the register of penalties). Article 1.

Fizisko personu datu aizsardzības likums (Law on the protection of the data of natural persons).

Fizisko personu datu apstrādes likums (Law on the processing of the data of natural persons).

Informācijas atklātības likums (Law on the disclosure of information). Article 1.

Case-law of the Court of Justice

Judgment of the Court of Justice of 16 January 2019, *Deutsche Post AG* (C-496/17, EU:C:2019:26), paragraph 57.

Judgment of the Court of Justice of 21 June 2007, *Stichting ROM projecten* (C-185/06, EU:C:2007:370), paragraph 24.

Judgment of the Court of Justice of 10 March 2009, *Gottfried Heinrich* (C-345/06, EU:C:2009:140), paragraph 44.

Judgment of the Court of Justice of 9 March 1978, *Simmenthal* (106/77, EU:C:1978:49), paragraph 17.

Judgment of the Court of Justice of 8 September 2010, *Winner Wetten GmbH* (C-409/06, EU:C:2010:503), paragraph 67.

Brief presentation of the facts and main proceedings

1 Article 14.[1](2) of the Latvian Law on motoring, in the amended version thereof that entered into force on 10 May 2018, is worded as follows:

‘(2) Information relating to a vehicle owned by a legal person, … to a person’s right to drive vehicles, to fines for the commission of motoring offences which have been imposed on a person but not paid within the time limits laid down by law and other information recorded in the national register of vehicles and drivers, as well as in the system of information on means of traction and drivers, shall be regarded as information in the public domain’.

2 The ‘Ceļu satiksmes drošības direkcija’ (Road Safety Directorate) (‘the Directorate’), a national company limited by shares, recorded in the national

register of vehicles and drivers (‘the national vehicle register’) the penalty points that had been awarded against the applicant for motoring offences, this being information which, in accordance with Article 14.[1](2) of the Law on motoring (‘the provision at issue’), falls within the public domain and can be communicated to anyone. That information was transmitted for re-use to two legal persons (‘re-use operators’).

3 The applicant initiated proceedings before the referring court relating to the constitutionality of the provision at issue.

Essential arguments of the parties to the main proceedings

4 **The applicant** submits that the provision at issue is not consistent with Article 96 of the [Latvian] Constitution, relating to the inviolability of private life, because it permits the processing of his personal data. In particular, the information contained in the vehicle register with respect to penalty points for motoring offences must be regarded as personal data relating to penalties imposed in punitive administrative proceedings and, as such, falls within the scope of Article 10 of Regulation 2016/679. He states that personal data relating to penalties imposed in administrative proceedings may be processed only by persons designated by statute, but there is no statute that confers that right on the Directorate. As regards the re-use of personal data, the applicant maintains that the principle of re-use must be implemented and applied in full compliance with the principles that govern the protection of personal data. He states that the Directorate is not empowered to process for the purposes of re-use the public-domain information that is in its possession. The applicant further argues that the processing of personal data entails a duty to observe the principles of lawfulness, minimum intervention, equity and anonymity, as well as the principles of participation and transparency.

5 The **Saeima** (Parliament) maintains that the provision at issue is consistent with Article 96 of the [Latvian] Constitution. In order to understand the meaning of the provision at issue, it is necessary to take into account the practice by which it is applied and the legal system within which it operates. In practice, information relating to penalty points for motoring offences is not automatically available to the general public. The Parliament submits that the provision at issue is closely linked to the introduction in Latvia of the system of penalty points for motoring offences as one of the measures to improve road safety. This system has two principal purposes: to identify motor vehicle drivers who systematically and wilfully infringe road traffic rules and to operate as a precaution in relation to the conduct of road users. Those purposes cannot be fully and effectively achieved if that information does not fall within the public domain. Consequently, in stipulating that such information falls within the public domain, the legislature guaranteed the right of third parties to access information, as provided for in Article 100 of the [Latvian] Constitution, and, at the same time, secured the attainment of the main objective of protecting the rights of third parties and public

safety. In the opinion of the Parliament, penalty points for motoring offences cannot be regarded as data relating to penalties imposed in administrative proceedings within the meaning of Article 10 of Regulation 2016/679. Penalty points for motoring offences do not constitute a form of administrative penalty. Furthermore, in addition to the vehicle register, Latvia also has a register of penalties, which contains a record of persons who commit both criminal and administrative offences. Article 43.[1](1) of the Law on motoring expressly provides that administrative offences committed by drivers are to be recorded in the register of penalties, while penalty points for motoring offences are to be recorded in the vehicle register. It submits that, even if Article 10 of Regulation 2016/679 were applicable to penalty points for motoring offences, the processing of those penalty points by the Directorate would be fully compliant with the conditions laid down in that provision. The processing of that information is based on Article 6(1)(c) and (e) of Regulation 2016/679. In addition, the applicable national legislation provides appropriate safeguards for the rights and freedoms of data subjects.

6 The **Datu valsts inspekcija** (State agency for data protection), a party which has been invited to participate in this case, submits that, in order to assess the constitutionality of the provision at issue, it is necessary first of all to analyse the legal nature and scope of the expression ‘penalty points for offences’. The purpose of recording penalty points awarded for motoring offences is to have a register of motoring-related administrative offences so that, depending on the number of offences committed, additional measures can be taken to influence the conduct of drivers. Penalty points for motoring offences may be regarded as personal data within the meaning of Regulation 2016/679, since they relate to an identified natural person and form part of private life. The State agency for data protection submits that personal data containing information on private life and liability to the administrative authorities (as a result of a penalty) warrant special protection within the meaning of Regulation 2016/679. If the provision at issue stipulates that information on penalty points for motoring offences falls within the public domain, then, without any doubt, the corresponding limitation of fundamental rights must necessarily be directed towards the attainment of a legitimate aim and respect the principle of proportionality.

7 The **Directorate** recognises that it processed the applicant’s personal data in the vehicle register. It states that the provision at issue stipulates that that information falls within the public domain and that the national legislation does not impose any limitations on its re-use.

Brief presentation of the reasons for the request for a preliminary ruling

8 As regards the legal nature of the system of penalty points for motoring offences, the referring court notes that, according to Article 43.[1](1) of the Law on motoring, administrative offences committed by drivers are to be recorded in the register of penalties and penalty points awarded for motoring offences are to be recorded in the vehicle register. The register of penalties is a single register of persons who

have committed criminal and administrative offences; it records information on persons who have committed administrative offences, including information on the administrative offence and the administrative penalty imposed. The purpose of recording penalty points awarded for motoring offences, on the other hand, is to track motoring-related administrative offences so that, depending on the number committed, additional measures can be taken to influence the conduct of drivers. Records of penalty points awarded for motoring offences are removed from the register when the points expire.

9 The referring court notes that information relating to natural persons falls within the concept of the 'right to the inviolability of private life', which appears in Article 96 of the [Latvian] Constitution. The scope of that concept encompasses the processing of data relating to private life and includes the communication and storage of such data.

10 In order to clarify the content of and apply the national legislation, it is necessary to take into account EU law and its interpretation in the case-law of the Court of Justice. Under Article 16(1) TFEU and Article 8(1) of the Charter of Fundamental Rights of the European Union, everyone has the right to the protection of personal data concerning them, the protection of such data being governed by Regulation 2016/679. As regards the processing of data, the referring court mentions the case-law of the Court of Justice (judgment in Case C-496/17, *Deutsche Post*, paragraph 57) which recognises that all processing of personal data must comply, first with the principles relating to data quality set out in Article 5 of Regulation 2016/679 and, second, with one of the criteria governing the legitimacy of data processing listed in Article 6 of that regulation. The referring court also notes that, in accordance with Article 10 of Regulation 2016/679, processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) are to be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. It follows from the case-law of the referring court that certain categories of personal data warrant special protection. Since Article 10 of Regulation 2016/679 allows such data to be processed only under the control of official authority or when the processing is authorised by Union or Member State law providing appropriate safeguards for the rights and freedoms of data subjects, legislation enacted by Member States may give authorisation to engage in the processing of data, including in the form of communication, only to the persons mentioned in the legislation in question. This therefore means, first, that the further processing of such data is permitted only where it takes place under the control of official authority. Secondly, the classification of a particular piece of information as falling within the public domain may, by definition, make it impossible to provide appropriate safeguards for the rights and freedoms of data subjects, since that information is available to anyone. Consequently, the referring court concludes that the scope of Article 96 of the [Latvian] Constitution includes the protection of information relating to the criminal convictions and offences of natural persons.

11 The referring court observes that the provision at issue gives anyone a subjective right to seek and obtain from the Directorate information contained in the vehicle register with respect to penalty points recorded against drivers for motoring offences. However, the documents before the court show that, when the provision at issue is applied in practice, such information is provided if the person requesting it gives the personal identification numbers of the drivers in question. It follows from this that information relating to the forenames and surnames of identifiable natural persons and the penalty points awarded against them for motoring offences must be regarded as personal data and the communication of those details must be regarded as the processing of personal data within the meaning of Article 96 of the [Latvian] Constitution.

12 The referring court submits that this case calls for a clarification of the content of Article 10 of Regulation 2016/679. That article applies to the processing of personal data relating to criminal convictions and offences or related security measures. At first sight, that provision appears not to be concerned with persondata on penalties for administrative offences. In accordance with recital 9 of Regulation 2016/679, the objectives and principles of Directive 95/46/EC continue to apply and, in accordance with Article 94(2) of that regulation, references to the repealed directive are to be construed as references to Regulation 2016/679. Article 8(5) of Directive 95/46/EC provided that the processing of data relating to offences, criminal convictions or security measures may be carried out only under the control of official authority or if suitable specific safeguards are provided under national law, subject to derogations which may be granted by the Member State under national provisions providing suitable specific safeguards. However, a complete register of criminal convictions may be kept only under the control of official authority. Member States may provide that data relating to administrative sanctions or judgments in civil cases shall also be processed under the control of official authority. It follows, according to the referring court, that, during the period of validity of Directive 95/46, it fell to the Member States to ensure compliance with certain special conditions governing the processing of personal data relating to offences, criminal convictions or security measures, while the approval of specific provisions on personal data relating to administrative penalties was left to the discretion of the Member States. In Latvia, the conditions laid down in Directive 95/46/EC were transposed, in particular, by the Law on the protection of the data of natural persons, Article 12 of which stipulated that personal data relating to, inter alia, criminal offences, criminal convictions and penalties adopted in administrative proceedings could be processed only by the persons, and in the circumstances, provided for by law. That Law was repealed on 5 July 2018, on the entry into force of the Law on the processing of the data of natural persons, which, on the basis of the application of Regulation 2016/679, is intended to create the legal preconditions necessary for the establishment of a system for protecting the personal data of natural persons at national level. Consequently, for more than 10 years, that is to say up until the entry into force of Regulation 2016/679, the Latvian legal system applied similar conditions to the processing of personal data relating to criminal convictions, on the one hand, and penalties imposed in administrative proceedings, on the other.

The referring court notes that, according to recital 4 of Regulation 2016/679, the right to the protection of personal data must be considered in relation to its function in society. The function in society of Article 10 of Regulation 2016/679 is to protect personal data relating to criminal convictions and offences and to ensure that a person's private and professional life is not unduly adversely affected as a result of a penalty imposed on that person in the past. That function could be applied in a similar way to the protection of personal data relating both to convictions in criminal cases and to penalties adopted in punitive administrative proceedings. Furthermore, in the light of Article 6 of the European Convention on Human Rights and the case-law of the European Court of Human Rights, the referring court has recognised that, so far as concerns the guarantees derived from the right to a fair trial, punitive administrative proceedings may be classified as criminal cases when certain criteria are met. If Article 10 of Regulation 2016/679 also laid down specific rules on the processing of personal data relating to administrative penalties and offences in a situation such as that at issue here, information relating to penalty points awarded against an individual for motoring offences could not be regarded as falling within the public domain. The Court of Justice has no settled case-law on the issue raised by the referring court. In those circumstances, the provisions of Regulation 2016/679 cannot be regarded as laying down clear and precise obligations which, from the point of view of their discharge or their consequences, are independent of the later adoption of a legal act. It follows that, in the present case, the doctrine of *acte éclairé* is not applicable and there are doubts as to whether Regulation 2016/679 actually attaches specific conditions to the processing of personal data relating to punitive administrative proceedings.

13 In accordance with the case-law of the Court of Justice, all processing of personal data must also comply with the principles relating to data quality set out in Article 5 of Regulation 2016/679, including the principle of 'integrity and confidentiality'. That principle is contained in Article 5(1)(f) of Regulation 2016/679, which provides that personal data must be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing. Furthermore, in accordance with recital 39 of Regulation 2016/679, personal data should be processed in a manner that ensures appropriate security and confidentiality of the personal data, including for preventing unauthorised access to or use of personal data. In the present case, the provision at issue stipulates that information on penalty points recorded against drivers for motoring offences (which the referring court regards as personal data) falls within the public domain and allows that information to be communicated (which the referring court regards as the processing of personal data) to anyone, regardless of whether or not the person in question has reasonable grounds for obtaining that information. The referring court is of the opinion that, in a situation where it is stipulated that personal data fall within the public domain, it might not be possible to ensure appropriate security and confidentiality of such data. The provision at issue effectively provides for the unconditional processing of such personal data in the form of communication and allows the Directorate, on request, to communicate information relating to such personal data without taking

measures to ensure the security of the personal data in question. Consequently, in order to be able to give judgment in these proceedings, the referring court requires some clarification of the substance of the principle of 'integrity and confidentiality' referred to in Article 5(1) of Regulation 2016/679.

14 The referring court maintains that, in order to give judgment in the present case, it may be relevant to examine whether information relating to penalty points recorded against drivers for motoring offences can be transmitted for re-use. The conditions laid down in Directive 2003/98 were transposed in Latvia by the Law on the disclosure of information. In accordance with recital 21 and Article 1(4) of Directive 2003/98, that directive leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law, and in particular Regulation 2016/679. Recital 154 of Regulation 2016/679 also emphasises that Directive 2003/98 does not alter the obligations and rights set out in that regulation. Article 5 of Regulation 2016/679 lays down the principles relating to the processing of personal data, including the principle of 'purpose limitation', which means that personal data are to be collected for specified, explicit and legitimate purposes and are not to be further processed in a manner that is incompatible with those purposes. The referring court takes the view that, if information relating to penalty points recorded against drivers for motoring offences could be communicated to anyone, including re-use operators, it would not be possible to identify the purposes of the further processing of the data and it would be effectively impossible to evaluate whether personal data are being processed in a manner incompatible with those purposes. Article 10 of Regulation 2016/679 attaches specific conditions to the processing of personal data relating to criminal convictions and offences or related security measures. If those conditions are to be regarded as a regime governing access that limits access to certain information on grounds of protection of personal data, within the meaning of recital 154 of Regulation 2016/679 and Article 1(2)(cc) of Directive 2003/98, the personal data referred to in Article 10 of Regulation 2016/679 could not be transmitted for re-use. Consequently, for the purposes of giving judgment in the present case, it might be necessary to clarify whether recitals 50 and 154, Article 5(1)(b) and Article 10 of Regulation 2016/679 and Article 1(2)(cc) of Directive 2003/98 are to be interpreted as meaning that they preclude legislation of a Member State which allows information relating to penalty points recorded against drivers for motoring offences to be transmitted for re-use.

15 With respect to maintenance of the effects of the provision at issue, the referring court notes that, if, in the present case, the view is taken that that provision is contrary to the provisions of Regulation 2016/679 and Article 96 of the [Latvian] Constitution, the referring court could rule on when the provision at issue ceases to be in force. However, the referring court states that such a decision must take into account the fact that the principle of legal certainty forms part of the legal order of the European Union. As the Court of Justice recognised in the judgment in *Heinrich* (C-345/06), the principle of legal certainty requires that EU rules enable those concerned to know precisely the extent of the obligations which are

imposed on them. In the opinion of the referring court, compliance with the principle of legal certainty must be assessed in conjunction with the principle of the primacy of EU law, according to which the relationship between provisions of the Treaty and directly applicable measures of the institutions, on the one hand, and the national law of the Member States, on the other, is such that those provisions and measures, by virtue of the very fact of their entry into force, render automatically inapplicable any conflicting provision of current national law. Nonetheless, it has to date been the case-law of the Court of Justice that, where overriding considerations of legal certainty involving all the interests, public as well as private, are at stake, there may exceptionally be circumstances in which, subject to the conditions which the Court of Justice alone may impose, the primacy of EU law is limited (judgment of 8 September 2010, *Winner Wetten GmbH*, C-409/06, EU:C:2010:503, paragraph 67). The referring court is of the opinion that those considerations of legal certainty may be present in this case, meaning that the provision at issue, although not compliant with the provisions of Regulation 2016/679, is applicable and the legal effects of that provision will be maintained until such time as the decision which the referring court ultimately adopts becomes final. Consequently, in order to be able to give judgment in the case at issue, the referring court may require an interpretation of the principle of legal certainty and the principle of the primacy of EU law.