

Case C-180/21**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:**

23 March 2021

Referring court:

Administrativen sad Blagoevgrad (Bulgaria)

Date of the decision to refer:

19 March 2021

Applicant:

Mr VS

Defendant:

Inspektor v Inspektorata kam Visshia sadeben savet

Subject matter of the case in the main proceedings

The main proceedings are based on an action brought by Mr VS before the Administrative Sad Blagoevgrad (Administrative Court, Blagoevgrad, Bulgaria) against the decision of an inspector of the Inspektorat kam Visshia sadeben savet (Inspectorate at the Supreme Judicial Council, Bulgaria; ‘the IVSS’), acting on behalf of the IVSS as the national supervisory authority for the protection of data subjects in the event of violations of their rights under Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 199, p. 1; ‘Regulation 2016/679’).

The applicant complains of unlawful processing of his personal data, which the Rayonna prokuratura – Petrich (District Public Prosecutor’s Office, Petrich, Bulgaria; ‘the Petrich RP’) collected from him in his capacity as the victim of a crime. He submits that the processing consists in the fact that the Petrich RP subsequently used the data to investigate him as an accused person in the same preliminary investigation for the same offence.

Mr VS also complained that the Petrich RP unlawfully used his personal data in civil proceedings that he had brought against the Prokuratura na Republika Bulgaria (Public Prosecutor's Office of the Republic of Bulgaria) for the payment of compensation for the excessive duration of the preliminary investigation conducted by the Petrich RP. The personal data concerned by this second complaint were collected in various public prosecution investigation files, on the basis of which, however, no preliminary investigation was subsequently initiated due to the lack of a criminal offence. Those personal data were used in the civil proceedings as evidence in support of the Public Prosecutor's Office's arguments in defence against the action for compensation, according to which the acts committed by Mr VS which had been the subject of the Public Prosecutor's Office's investigation had also affected his state of health.

Subject matter and legal basis of the request

Interpretation – pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU) – of Article 1(1) of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ 2016 L 119, p. 89; 'Directive 2016/680') and of Article 6(1)(f) of Regulation 2016/679

Questions referred for a preliminary ruling

1. Is Article 1(1) of [Directive 2016/680] to be interpreted as meaning that, when stating the objectives of that directive, the terms 'prevention, investigation, detection or prosecution of criminal offences' are listed as aspects of a general objective?
2. Are the provisions of [Regulation 2016/679] applicable to the Public Prosecutor's Office of the Republic of Bulgaria in view of the fact that information concerning a person, which was collected by the Public Prosecutor's Office, in its capacity as 'controller' pursuant to point 8 of Article 3 of [Directive 2016/680], in an investigation file opened in relation to that person with a view to verifying indications of a criminal offence, was used in the context of the judicial defence of the Public Prosecutor's Office as a party to civil proceedings – by virtue of the fact that the circumstance of that file having been opened was revealed or that the contents of the file were presented?
 - 2.1 If that question is answered in the affirmative:

Is the expression ‘legitimate interests’ in Article 6(1)(f) of [Regulation 2016/679] to be interpreted as including the disclosure, in whole or in part, of information concerning a person which has been collected in a public prosecution investigation file opened in relation to that person for the purposes of the prevention, investigation, detection or prosecution of criminal offences, in the case where that disclosure is carried out for the purposes of the defence of the controller as a party to civil proceedings, and does that expression exclude the consent of the data subject?

Provisions of EU law and the case-law relied on

Provisions

Directive 2016/680

Recitals 1, 12 (first sentence), 17, 21 (first sentence), 29, 31, 34 (third and fourth sentences)

Article 1(1), Article 2(1) and (2), points (1), (2), (7)(a) and (8) of Article 3, Article 4(2) and Article 9(1)

Regulation 2016/679

Recitals 4, 15 (first and second sentences), 16, 45 (first to fourth sentences), 46 (excluding the second sentence), 50 (first to third sentences);

Article 2(1) and (2), points (1), (2) and (7) of Article 4, Article 6(1)(f) and Article 10

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ 2012 L 315, p. 57; ‘Directive 2012/29’).

Case-law

In relation to the admissibility of the reference

Judgment of 2 April 2020, *Ruska Federacija* (C-897/19 PPU, EU:C:2020:262, paragraph 43)

Judgment of 8 May 2019, *PI* (C-230/18, EU:C:2019:383, paragraph 42)

Judgment of 19 December 2018, *AREX CZ* (C-414/17, EU:C:2018:1027, paragraph 34)

Judgment of 6 November 2003, *Lindqvist* (C-101/01, EU:C:2003:596, paragraphs 40 and 42)

Judgment of 20 May 2003, *Österreichischer Rundfunk and Others* (C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 42)

Judgment of 9 July 2020, *Land Hessen* (C-272/19, EU:C:2020:535, paragraph 68)

Opinion of Advocate General M. Szpunar of 17 December 2020 in Case C-439/19 (EU:C:2020:1054, points 53 and 55)

In relation to the second question referred

Judgment of 10 July 2018, *Jehovan todistajat* (C-25/17, EU:C:2018:551, paragraphs 57 and 58).

National provisions

Zakon za zashtita na lichnite danni (Law on data protection; ‘the ZZLD’)

According to Article 1 of the ZZLD, the latter lays down rules relating to the protection of natural persons with regard to the processing of personal data by the Public Prosecutor’s Office and the investigating authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public order and security (‘purposes of combating crime’) and relating to the powers of the IVSS in the context of its supervision of the processing of personal data by the Public Prosecutor’s Office and the investigating authorities.

In accordance with Article 38b of the ZZLD, the data subject has the right to lodge a complaint with the IVSS in the event of a violation of his or her rights under Regulation 2016/679 and under this Law in relation to the processing of personal data by the Public Prosecutor’s Office and the investigating authorities for the purposes of combating crime. In accordance with Article 38c of the ZZLD, complaints under Article 38b(1) are to be examined by an inspector of the IVSS. An action against the inspector’s decision may be brought under the *Administrativnoprotsesualen kodeks* (Code of administrative procedure) within 14 days of receipt.

In accordance with Article 45 of the ZZLD, the processing of personal data by the controller which initially collected them or by another controller for a purpose related to the combating of crime other than that for which the data were initially collected is permitted, provided that the controller is authorised to process personal data for that other purpose and that the processing for that other purpose is necessary and proportionate under EU law or the law of the Republic of Bulgaria. Regulation 2016/679 (Article 42 of the ZZLD) applies in such cases. The processing under Article 45 of the ZZLD may include archiving in the public interest, scientific, statistical or historical use of data, for the purposes of

combating crime, subject to appropriate safeguards for the rights and freedoms of data subjects.

According to Article 47 of that law, the controller must make a clear distinction, as far as possible, between personal data of different categories of data subjects such as: suspects; persons convicted of a criminal offence; victims; potential witnesses; persons possessing information regarding criminal offences; and other third parties.

Article 49 of the ZZLD provides that the processing of personal data is lawful if it is necessary for the exercise of the powers of the competent authority for the purposes of combating crime and is provided for in EU law or in a legal provision which specifies the purposes of the processing and the categories of personal data to be processed.

According to the additional provisions for the ZZLD, the terms used therein correspond to the definitions in Article 4 of Regulation 2016/679. The ZZLD lays down implementing measures for that regulation and sets out the requirements of Directive 2016/680.

Constitution of the Republic of Bulgaria

Article 127 of the Constitution of the Republic of Bulgaria establishes the exclusive competence of the Public Prosecutor's Office to conduct investigations, charge offenders and bring criminal charges before the courts in the case of offences that are the subject of prosecution by the public prosecutor.

Nakazatelen kodeks (Criminal Code; 'the NK')

Article 325(1) of the NK defines the offence of 'hooliganism' as, in particular, the commission of disorderly acts that grossly disturb public order.

Zakon za sadebnata vlast (Law on the judiciary)

Article 145 of the Zakon za sadebnata vlast (Courts Act) provides that the public prosecutor may conduct investigations personally or delegate them to other bodies. In accordance with paragraph 2, the public prosecutor is to decide on the results of the investigation within one month of receipt. The **Ukazaniya na Glavniya prokuror (Instructions of the Prosecutor General)** of the Republic of Bulgaria on the application of Article 145(2) of the Zakon za sadebnata vlast (Law on the judiciary) states that the investigation is a non-procedural activity and that the time limits under that paragraph are orientational in nature.

Pravilnik za administratsiata na prokuraturata na Republika Bulgaria, izdaden ot Visshia sadeben savet (Statute for the Administration of the Public Prosecutor's Office of the Republic of Bulgaria, issued by the Supreme Judicial Council)

In accordance with Article 67 of that statute, the offices, in particular the district and regional public prosecutor's offices, are to keep entry and exit logs and other document registers and maintain a unified information system of the Public Prosecutor's Office.

According to Article 68 of that statute, new entries are to be entered in the entry log with a serial number, and entries relating to investigation files already kept are to be noted in the appropriate place in the entry log and added to the files without being assigned a new number.

In accordance with Article 71 of that statute, investigation files are to be archived after they have been closed and can be requested if they are needed for the work of public prosecutors. Where technically possible, an electronic version of all orders and documents in the investigation and criminal prosecution files must also be created.

Administrativnoprotsesualen kodeks (Code of administrative procedure)

Article 145(1) of the Administrativnoprotsesualen kodeks (Code of administrative procedure) provides that administrative acts may be challenged before a court as to their legality.

Grazhdanski protsesualen kodeks (Code of civil procedure)

Article 154(1) of the Grazhdanski protsesualen kodeks (Code of civil procedure) stipulates that each party bears the burden of proof in respect of the facts on which claims are based and in respect of its own objections.

Zakon za otgovornostta na darzhavata i obshtinite za vredi (Law on the liability of the State and municipalities for damages)

Article 26 of the Zakon za otgovornostta na darzhavata i obshtinite za vredi (Law on the liability of the State and municipalities for damages; 'the ZODOV') provides that the State is liable for damages suffered by citizens and legal persons due to a violation of the right to have a trial conducted within a reasonable time pursuant to Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR').

Succinct presentation of the facts and procedure in the main proceedings

- 1 The applicant in the main proceedings lodged a complaint with the IVSS on 12 March 2020.
- 2 The first ground of complaint asserted before the IVSS concerns unlawful processing of the applicant's personal data collected by the Petrich RP in public prosecution investigation file No 1548/2013, preliminary investigation No 252/2013 of the Rayonno upravlenie 'Politsia' – Petrich (Petrich District

Police Administration, Bulgaria; 'Petrich RUP'), within the framework of which he was recorded as the victim of a crime under Article 325(1) of the NK. According to the applicant, the unlawful processing of his personal data by the Petrich RP resides in the fact that the latter subsequently used the data it had collected from him in his capacity as the victim of a crime in preliminary investigation No 252/2013 with a view to initiating investigations into him as an accused person in the same preliminary investigation for the same act, which had been identified as a criminal offence under Article 325(1) of the NK.

- 3 The second ground of complaint asserted before the IVSS concerns unlawful processing of the applicant's personal data collected under public prosecution investigation file Nos 517/2016, 1872/2016, 2217/2016 and 1870/2016. That processing consists in the fact that the supervising public prosecutor of the Petrich RP made reference to information contained in those files in the course of civil proceedings No 144/2018 conducted before the Okrazhen sad – Blagoevgrad (Regional Court, Blagoevgrad, Bulgaria). Those civil proceedings were initiated by an action brought by the applicant against the Public Prosecutor's Office of the Republic of Bulgaria under Article 26 of the ZODOV.
- 4 Regarding the first ground of complaint, the inspector of the IVSS established that investigation file No 1548/2013 was opened by decision of the public prosecutor of the Petrich RP of 18 May 2013 against an unknown perpetrator, with the applicant as the victim of the crime.
- 5 The investigations relate to an event that took place in a snack bar (caravan) at approximately 11 p.m. on 18 April 2013, in which an unknown perpetrator, together with other persons, allegedly assaulted Mr VS.
- 6 By decision of 4 April 2018, Mr VS was charged as an accused person in respect of an offence under Article 325(1) of the NK in preliminary investigation No 252/2013, in which, until then, he had been recorded as a victim of the offence. That decision was challenged before the Okrazhna prokuratura – Blagoevgrad (District Prosecutor's Office, Blagoevgrad), which confirmed it.
- 7 On 14 October 2019, a public prosecutor of the Petrich RP brought charges against the applicant and eight other persons, but the criminal proceedings being conducted before the Rayonen sad – Petrich (District Court, Petrich) were terminated by that court by order of 10 November 2020 in respect of all the defendants, including the applicant in the main proceedings, due to the extinction of criminal liability following the expiry of the absolute statute of limitations.
- 8 As regards the second ground of the complaint of 12 March 2020, the inspector of the IVSS established the following.
- 9 Public prosecution investigation file No 517/2016 of the Petrich RP was opened on 5 April 2016 due to a complaint filed against Mr VS. On 11 May 2016, the supervising public prosecutor decided not to open a preliminary investigation because there was no evidence of a criminal offence.

- 10 Public prosecution investigation file No 1870/2016 of the Petrich RP was opened on 26 October 2016 due to a complaint filed against four persons, one of whom was Mr VS. On 22 February 2017, the supervising public prosecutor decided not to open a preliminary investigation, since there was no evidence of a criminal offence, which was confirmed by the District Prosecutor's Office, Blagoevgrad.
- 11 Public prosecution investigation file No 1872/2016 of the Petrich RP was opened on 26 October 2016 due to a complaint filed against four persons, one of whom was the applicant Mr VS. On 22 February 2017, the supervising public prosecutor of the Petrich RP decided not to open a preliminary investigation, since there was no evidence of a criminal offence (offence that is the subject of prosecution by the public prosecutor).
- 12 In the court hearing of 15 October 2018 before the Regional Court, Blagoevgrad in the civil case of Mr VS against the Public Prosecutor's Office of the Republic of Bulgaria, the public prosecutor of the Petrich RP requested the production of investigation files No 517/2016 and No 1872/2016 of the Petrich RP. The public prosecutor's request was made in the context of the defence against Mr VS's claim for compensation owing to the excessive duration of preliminary investigation No 252/2013, by providing evidence that the acts committed by Mr VS and investigated by the Petrich RUP and the Petrich RP had also had an impact on his state of health.
- 13 By order of 15 October 2018, the Regional Court, Blagoevgrad obliged the Petrich RP to submit certified copies of the contents of public prosecution investigation file Nos 517/2016 and 1872/2016 in those civil proceedings.
- 14 On 22 June 2020, the inspector of the IVSS, Ms QR, issued a decision on Mr VS's complaint of 12 March 2020, against which the action in the main proceedings was brought.
- 15 She dismissed Mr VS's complaint as unfounded with regard to the first ground of complaint concerning an infringement of Article 42(2) of the ZZLD in the processing of his personal data in public prosecution investigation file No 1548/2013 and as inadmissible with regard to the second ground of complaint concerning an infringement of the provisions of the ZZLD and Regulation 2016/679 in the processing of his personal data in public prosecution investigation file No 517/2016, No 1870/2016, No 1872/2016 and No 2217/2016, admitted as evidence in the civil proceedings before the Regional Court, Blagoevgrad.
- 16 On 31 July 2020, Mr VS brought an action before the Administrative Court, Blagoevgrad against the decision of the inspector of the IVSS, Ms QR, of 22 June 2020, that action forming the basis of the main proceedings.

Essential arguments of the parties in the main proceedings

- 17 By his action, Mr VS alleges infringements by the national supervisory authority of Article 49 of the ZZLD, Directive 2016/680 and Regulation 2016/679.
- 18 In particular, the applicant submits that his personal data, pertaining to him as the victim of a crime, were unlawfully processed by the supervising public prosecutor in preliminary investigation No 252/2013 with a view to investigating him as an accused person in the same proceedings – in violation of his rights as a ‘victim’ under Directive 2012/29 and the principles of Directive 2016/680 – that is to say, for a purpose other than that for which they were initially collected.
- 19 He also complains of unlawful processing of personal data collected in public prosecution investigation file Nos 517/2016, 1870/2016, and 1872/2016 of the Petrich RP, for purposes other than those for which they were collected, contrary to the principles of Regulation 2016/679, after it had been decided not to open a preliminary investigation in those cases. In the alternative, he requests that the referring court refer the matter to the Court of Justice of the European Union for a preliminary ruling on the interpretation of Article 4(2) of Directive 2016/680 and Articles 4 and 50 of the Charter of Fundamental Rights of the European Union.
- 20 The defendant in the main proceedings, the inspector of the IVSS, confirms the reasoning of the decision which dismissed the complaint and is the subject matter of the main proceedings.
- 21 The defendant submits that, in particular, Article 42 of the ZZLD and the provisions of Directive 2016/680, which allow for the processing of personal data by national competent authorities, do not ‘divide’ the purposes of combating crime into groups. The defendant asserts that, while a distinction is made between categories of data subjects under Article 47 of the ZZLD, it does not follow that the processing of their personal data pursues different purposes, nor can the processing of the personal data of a person collected from him or her in his or her capacity as a ‘victim’ with a view to initiating investigations into him or her as a ‘defendant’ be categorised as ‘unlawful further processing’ for a purpose other than that for which they were initially collected.
- 22 With regard to the processing of the applicant’s personal data in the main proceedings, which were collected in the closed public prosecution investigation files, the supervisory authority submits that the considerations set out in the complaint lodged with the IVSS do not substantiate the infringements of Regulation 2016/679 alleged by Mr VS.

Succinct presentation of the reasoning in the request for a preliminary ruling

Admissibility of the request for a preliminary ruling

- 23 The dispute in the main proceedings primarily concerns the application of the provisions of Directive 2016/680 and Regulation 2016/679, with the result that it is necessary for those provisions to be interpreted by the Court of Justice of the European Union in the light of the circumstances of the main proceedings.
- 24 The referring court emphasises that it is for the Court of Justice to interpret all provisions of EU law which national courts require in order to decide the actions pending before them (*Ruska Federacija* [C-897/19 PPU]; *PI* [C-230/18]; *AREX CZ* [C-414/17]). It points out that Directive 2016/680 provides for a comprehensive system for the protection of personal data, and its scope includes the processing of personal data by law enforcement authorities and is not limited to the exchange of such data between Member States.
- 25 With regard to the expression ‘activities which fall outside the scope of Union law’, the referring court states that the Court of Justice made clear in *Lindqvist* (C-101/01) that that expression was not to be interpreted as meaning that as having a scope which would require it to be determined in each individual case whether the specific activity at issue directly affected freedom of movement between Member States, and, in *Österreichischer Rundfunk* (C-465/00), that the applicability of EU law cannot depend on whether there is a sufficient link with the exercise of the fundamental freedoms guaranteed by the Treaty. It notes that, in *Land Hessen* (C-272/19), the Court of Justice confirmed that that definition must be interpreted restrictively. Lastly, the referring court refers, in particular, to the Opinion of the Advocate General in Case C-439/19, according to which “‘processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1)’ of the GDPR [...] cannot have the accessory function which is proper to the Charter’ (point 53).

The relevance of the questions referred

- 26 The ZZLD provides for remedies for individuals in relation to the processing of personal data in accordance with Regulation 2016/679 and the processing of such data by competent authorities for the purposes of combating crime.

The first question referred

- 27 In the main proceedings, it is for the referring court to assess whether the further use of the applicant’s personal data – which had been collected from him in his capacity as the victim of a crime in the course of preliminary investigation No 252/2013 – with a view to opening investigations into him in the same preliminary investigation constitutes unlawful processing of personal data.
- 28 The Public Prosecutor’s Office of the Republic of Bulgaria is a ‘competent authority’ within the meaning of point (7)(a) of Article 3 and a ‘controller’ within the meaning of point (8) of Article 3 of Directive 2016/680. The collection of information about a person in the context of a preliminary investigation falls within the scope of Article 2(1) of Directive 2016/680, and the information

constitutes ‘personal data’ within the meaning of point (1) of Article 3 of that directive.

- 29 At the same time, it is not clear whether the processing by the same controller of a person’s personal data collected from him or her in his or her capacity as a victim of a crime in a preliminary investigation with a view to initiating an investigation into that person constitutes processing for a purpose other than that for which it was initially collected, taking into account recital 31 of the directive: ‘... a clear distinction should, where applicable and as far as possible, be made between personal data of different categories of data subjects such as: suspects; [and] victims’.
- 30 In that regard, since recital 29 and Article 4(2) of Directive 2016/680 concern the processing of personal data for a purpose falling within the scope of that directive (Article 1(1)) but other than that for which they were collected, the referring court considers it necessary to ask whether the list in Article 1(1) – ‘the prevention, investigation, detection or prosecution of criminal offences’ – refers to individual aspects of a general purpose or whether it is to be interpreted as a list of different purposes.

The second question referred

- 31 The second plea in law raised by the applicant in the main proceedings concerns the ‘unlawful processing’ by the Public Prosecutor’s Office of the Republic of Bulgaria of his personal data, which had been collected in the public prosecution investigation files held against him, which were closed without a preliminary investigation being initiated. The personal data were admitted as evidence in a civil case for the payment of damages that the applicant brought against the Public Prosecutor’s Office of the Republic of Bulgaria under the ZODOV.
- 32 In that regard, the referring court will assess, first, whether the controller’s transmission to the civil court of information regarding the fact that public prosecution investigation files concerning the applicant had been opened and closed, or the disclosure to the civil court of the contents of those files, constitutes ‘processing’ of ‘personal data’ within the meaning of points (1) and (2) of Article 4 of Regulation 2016/679 within the scope of Article 2(1) of that regulation. Second, the referring court will assess whether, in the circumstances of the main proceedings, the transmission of the personal data constitutes lawful processing within the meaning of Article 6(1)(f) of Regulation 2016/679 in view of the fact that the Public Prosecutor’s Office is a party to the civil proceedings and has a right to all procedural means of defence and evidence.
- 33 The referring court sets out the following considerations.
- 34 Article 9(1) of Directive 2016/680 states that Regulation 2016/679 applies to the processing of personal data collected for one of the purposes of combating crime but for purposes other than those of the directive.

- 35 With regard to the requirement in Article 2(1) of Regulation 2016/679, according to which the latter is to apply to the processing of personal data which form part of a filing system, the referring court refers to the judgment in *Jehovan todistajat* (C-25/17), in which the Court of Justice clarifies that ‘the requirement that the set of personal data must be “structured according to specific criteria” is simply intended to enable personal data to be easily retrieved’, and that it cannot be inferred that the personal data at issue ‘must be contained in data sheets or specific lists or in another search method’.
- 36 In the exercise of its statutory functions, the Public Prosecutor’s Office may conduct investigations that are non-procedural activities in accordance with the *Ukazaniето относно прилагането на член 145, алинея 2 от Закона за съдебната власт* (Instruction on the application of Article 145(2) of the Law on the judiciary). Data on persons contained in the public prosecution investigation files are collected for the purposes of combating crime, and the records are archived if no preliminary investigation is initiated.
- 37 In view of the above considerations and Article 10 of Regulation 2016/679, information concerning a person, irrespective of how it is structured, falls within the scope of Article 2(1) of that regulation if it has been collected in the context of a public prosecution investigation file opened as a result of a complaint filed against that person. In addition, the information collected within the framework of a public prosecution investigation file is stored in the electronic database of the Public Prosecutor’s Office of the Republic of Bulgaria, with the result that it is possible for the person concerned to be identified.
- 38 Having regard to the jurisdiction of the Court of Justice of the European Union in respect of the interpretation of EU law, the referring court wishes to ascertain whether it already constitutes ‘processing’ of ‘personal data’ within the meaning of Article 4(1) and (2) of Regulation 2016/679, which falls within the scope of Article 2(1) of that regulation, if the controller informs the civil court that the Public Prosecutor’s Office has opened and closed investigation files on the applicant or provides it with that information.
- 39 The reference in the civil proceedings to information regarding the fact that public prosecution investigation files have been opened in relation to the applicant in the main proceedings is made for a purpose other than that for which the information was collected. This raises the question as to the ‘lawful processing’ of that information within the meaning of Article 6(1)(f) of Regulation 2016/679.
- 40 The reason why the Public Prosecutor’s Office of the Republic of Bulgaria forwarded the information regarding the public prosecution investigation files opened in relation to the applicant was to defend itself against the action brought against it. As a party to the civil proceedings, it is entitled to all the procedural means of defence and evidence, and the request for the public prosecution investigation files to be admitted as evidence in the civil proceedings is permissible under the national Code of civil procedure.

- 41 Article 45 of the ZZLD provides that the processing of personal data by the controller which initially collected them, for a purpose related to the combating of crime other than that for which the data were initially collected is permitted, provided that the controller is authorised under EU law or the law of the Republic of Bulgaria to process personal data for such a purpose and that the processing for that other purpose is necessary and proportionate under EU law or under the law of the Republic of Bulgaria.
- 42 At the same time, as stated in recital 50 of Regulation 2016/679, the subsequent processing of personal data for purposes other than those for which those data were initially collected is allowed where the processing is compatible with the purposes for which the personal data were initially collected. The referring court proceeds on the assumption that the cases referred to in Article 6(1)(c), (d) and (e) are clearly not applicable.
- 43 It points out that, in accordance with recital 4 of Regulation 2016/679, the scope of Article 10 of that regulation must be determined in consideration of the function of fundamental rights in society. In this regard, it states that the European Court of Human Rights (ECtHR) accepts that information contained in a police report concerning acts for which the person has not been convicted falls within the scope of Article 8 ECHR when it is presented in court in other criminal proceedings (ECtHR, judgment of 18 November 2008, *Cemalettin Canli v. Turkey*, No 22427/04, §§ 33 and 42-43), and that the storage of information about a person in a police database containing convicted persons, defendants and victims, allowing conclusions to be drawn about his or her identity, constitutes an interference with the right to respect for private life (ECtHR, judgment of 18 September 2014, *Brunet v. France*, No 21010/10, §§ 42-45). The referring court also states that the telephone records of a person ordered in the course of a criminal investigation were subsequently used unlawfully in the context of disciplinary proceedings following a decision not to initiate criminal proceedings (ECtHR, judgment of 7 June 2016, *Karabeyoğlu v. Turkey*, No 30083/10, §§ 117-121).
- 44 Since, in the view taken by the referring court, the issue in the present case concerns the compatibility of data protection with the rights of the controller as a party to legal proceedings, the referring court has decided to refer the matter to the Court of Justice under Article 267 TFEU.