

Questions referred

1. What degree of distinction between individual data subjects is required by Article 4(1)(c) or Article 6 in conjunction with Article 10 of Directive 2016/680? ⁽¹⁾ Is it compliant with the obligation to minimise personal data processing, and with the obligation to distinguish between various categories of data subjects, for national law to permit the collection of genetic data in respect of all persons suspected or accused of having committed an intentional criminal offence?
2. Is it in accordance with Article 4(1)(e) of Directive 2016/680 if the necessity of continued retention of a DNA profile is assessed, with a reference to the general prevention, investigation, and detection of criminal activity, by Police authorities on the basis of their internal regulations, which frequently means in practice that sensitive personal data is retained for an unspecified period without a maximum limit for the duration of the retention of that personal data being set? If not, by what criteria should the proportionality of the period of the retention of the personal data collected and retained for that purpose be assessed?
3. In the case of particularly sensitive personal data falling under Article 10 of Directive 2016/680, what is the minimal scope of the substantive or procedural conditions for obtaining, retaining, and deleting such data that must be regulated by a 'provision of general application' in the law of a Member State? Can judicial case-law qualify as 'Member State law' within the meaning of Article 8(2) in conjunction with Article 10 of Directive 2016/680?

⁽¹⁾ 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).

Request for a preliminary ruling from the Juzgado Contencioso-Administrativo n.º 5 de Barcelona (Spain) lodged on 6 February 2023 — Pedro Francisco v Subdelegación del Gobierno en Barcelona

(Case C-62/23, Pedro Francisco)

(2023/C 173/23)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo n.º 5 de Barcelona

Parties to the main proceedings

Applicant: Pedro Francisco

Defendant: Subdelegación del Gobierno en Barcelona

Questions referred

1. Is Article 27 of Directive 2004/38/EC ⁽¹⁾ to be interpreted as meaning that a police record may be the basis or foundation of the personal conduct of the individual concerned for the purposes of assessing whether a genuine threat exists when the purpose of a criminal trial is to prove whether that threat is genuine?
2. If the answer to the first question is in the affirmative, in the light of Article 27 of the directive, must the interpretation be that the governmental authority is required to set out expressly and in detail the facts on which that record is based and any judicial proceedings which have been brought and their outcome in order to confirm that we are not merely dealing with initial presumptions?

⁽¹⁾ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).