



Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 19 May 2022¹

Case C-180/21

VS

v

**Inspektor v Inspektorata kam Visshia sadeben savet,
intervener:**

Teritorialno otdelenie – Petrich kam Rayonna prokuratura – Blagoevgrad

(Request for a preliminary ruling from the Administrativen sad – Blagoevgrad (Administrative Court, Blagoevgrad, Bulgaria))

(Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data – Regulation (EU) 2016/679 – Articles 4 and 6 – Directive (EU) 2016/680 – Articles 1, 2 to 4 and 9 – Lawfulness of the processing of personal data in the course of criminal proceedings – Processing of data relating to the victim of a criminal offence for the purposes of the subsequent prosecution of that person and the defence of the public prosecutor’s office in civil proceedings – Concept of ‘purposes other than that for which the personal data were collected’)

1. A basic principle of Regulation (EU) 2016/679², which is the general legislation on the protection of personal data, and of Directive (EU) 2016/680³ (*lex specialis* on the same subject in relation to criminal proceedings) is the limitation of the collection of personal data and the processing of such data to the specific purposes stipulated by law.

2. In this case, the Court of Justice is required to answer questions from a Bulgarian court concerning the interpretation of the GDPR and of Directive 2016/680, in order to determine whether personal data held by the public prosecutor’s office of a Member State has been unlawfully processed where:

- first, those data were obtained from a person who was initially appearing as a victim but in respect of whom formal accusations were later made in the same criminal proceedings;

¹ Original language: Spanish.

² Regulation 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 119, p. 1; ‘the GDPR’).

³ Directive 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).

- second, the public prosecutor’s office attempts to use in its defence the data obtained in several criminal files, as evidence against a civil action in which the data subject seeks damages for the excessive slowness of the criminal proceedings.

A. Legislative framework. European Union law

1. GDPR

3. Pursuant to Article 2 (‘Material scope’):

‘1. This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

2. This Regulation does not apply to the processing of personal data:

- (a) in the course of an activity which falls outside the scope of Union law;

...

- (d) by competent 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 security.

...’

4. Article 4 (‘Definitions’) provides:

‘For the purposes of this Regulation:

...

- (2) “processing” means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

...

- (7) “controller” means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;

...’

5. Article 5 ('Principles relating to processing of personal data') provides:

'1. Personal data shall be:

- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject ("lawfulness, fairness and transparency");
- (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ("purpose limitation");
- (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimisation");

...'

6. Article 6 ('Lawfulness of processing') reads:

'1. Processing shall be lawful only if and to the extent that at least one of the following applies:

- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

...

- (c) processing is necessary for compliance with a legal obligation to which the controller is subject;

...

- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

- (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

...

3. The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by:

- (a) Union law; or

(b) Member State law to which the controller is subject.

The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. That legal basis may contain specific provisions to adapt the application of rules of this Regulation ... The Union or the Member State law shall meet an objective of public interest and be proportionate to the legitimate aim pursued.

4. Where the processing for a purpose other than that for which the personal data have been collected is not based on the data subject's consent or on a Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23(1), the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the personal data are initially collected, take into account, inter alia:

- (a) any link between the purposes for which the personal data have been collected and the purposes of the intended further processing;
- (b) the context in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller;
- (c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9, or whether personal data related to criminal convictions and offences are processed, pursuant to Article 10;
- (d) the possible consequences of the intended further processing for data subjects;
- (e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.'

2. Directive 2016/680

7. In accordance with Article 1 ('Subject matter and objectives'):

'1. This Directive lays down the rules relating to 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, including the safeguarding against and the prevention of threats to public security.

2. In accordance with this Directive, Member States shall:

- (a) protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data; ...

...'

8. Article 2 ('Scope') provides:

'1. This Directive applies to the processing of personal data by competent authorities for the purposes set out in Article 1(1).

...

3. This Directive does not apply to the processing of personal data:

(a) in the course of an activity which falls outside the scope of Union law;

...'

9. Article 3(1), (2) and (8) adopts the definitions laid down in Article 4(1), (2) and (7) of the GDPR.

10. Article 4 ('Principles relating to processing of personal data') provides:

'...

2. Processing by the same or another controller for any of the purposes set out in Article 1(1) other than that for which the personal data are collected shall be permitted in so far as:

- (a) the controller is authorised to process such personal data for such a purpose in accordance with Union or Member State law; and
- (b) processing is necessary and proportionate to that other purpose in accordance with Union or Member State law.

...'

11. Article 6 ('Distinction between different categories of data subject') provides:

'Member States shall provide for the controller, where applicable and as far as possible, to make a clear distinction between personal data of different categories of data subjects, such as:

- (a) persons with regard to whom there are serious grounds for believing that they have committed or are about to commit a criminal offence;
- (b) persons convicted of a criminal offence;
- (c) victims of a criminal offence or persons with regard to whom certain facts give rise to reasons for believing that he or she could be the victim of a criminal offence; and
- (d) other parties to a criminal offence, such as persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, persons who can provide information on criminal offences, or contacts or associates of one of the persons referred to in points (a) and (b).'

12. Article 8 ('Lawfulness of processing') states:

'1. Member States shall provide for processing to be lawful only if and to the extent that processing is necessary for the performance of a task carried out by a competent authority for the purposes set out in Article 1(1) and that it is based on Union or Member State law.

2. Member State law regulating processing within the scope of this Directive shall specify at least the objectives of processing, the personal data to be processed and the purposes of the processing.’

13. In accordance with Article 9 (‘Specific processing conditions’):

‘1. Personal data collected by competent authorities for the purposes set out in Article 1(1) shall not be processed for purposes other than those set out in Article 1(1) unless such processing is authorised by Union or Member State law. Where personal data are processed for such other purposes, [the GDPR] shall apply unless the processing is carried out in an activity which falls outside the scope of Union law.

2. Where competent authorities are entrusted by Member State law with the performance of tasks other than those performed for the purposes set out in Article 1(1), [the GDPR] shall apply to processing for such purposes, including for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, unless the processing is carried out in an activity which falls outside the scope of Union law.

...’

B. National law

*1. Constitution of the Republic of Bulgaria*⁴

14. Article 127 provides that the Public Prosecutor’s Office has exclusive powers to conduct investigations, make formal accusations in respect of offenders, and prosecute before the courts in the case of criminal proceedings subject to public prosecution.

*2. Zakon za zashtita na lichnite danni*⁵

15. Article 1 provides:

‘(1) The present law governs public relationships relating to the protection of natural persons with regard to the processing of their personal data, in so far as these are not governed by the [GDPR].

(2) The present law also lays down rules relating to the protection of natural persons with regard to the processing of personal data by the competent 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.

...’

⁴ DV No 56 of 13 July 1991.

⁵ Law on the Protection of Personal Data, DV No 1 of 4 January 2002. Its provisions have been reproduced in accordance with the version applicable at the material time.

16. Article 17 provides:

‘(1) The Inspectorate at the Supreme Judicial Council ... shall monitor and ensure compliance with the [GDPR], the present law and any normative acts on the subject of the protection of personal data as regards the processing of personal data by:

1. a court, exercising its role as a judicial authority, and
2. the Public Prosecutor’s Office and the investigating authorities in the exercise of their judicial functions, for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

...’

17. Article 42 provides:

‘(1) The rules laid down in the present chapter shall apply where personal data are processed by the competent 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 security and public policy.

(2) Personal data collected for the purposes referred to in paragraph 1 may not be processed for other purposes, unless EU law or the law of the Republic of Bulgaria provide otherwise.

(3) Where the competent authorities process personal data under paragraph 1 for purposes other than those provided for in paragraph 1 and in the cases provided for in paragraph 2, the [GDPR] and the relevant provisions of the present law laying down measures for the implementation of [the GDPR] shall apply.

(4) A competent authority within the meaning of paragraph 1 shall mean any public authority with responsibility for 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 security and public policy.

(5) Unless otherwise provided for in legislation, a controller, within the meaning of the present chapter, who processes personal data for the purposes laid down in paragraph 1, is a competent authority within the meaning of paragraph 4 or the administrative structure of which that authority forms part, which, alone or jointly with other authorities, determines the purposes and the means of processing personal data.’

18. Article 45 provides:

‘ ...

(2) The processing of personal data by a controller who initially collected that data or by another controller for any of the purposes provided for in Article 42(1), other than that for which the personal data were collected, shall be permitted in so far as:

1. the controller is authorised to process personal data for that purpose, in accordance with EU law or the law of the Republic of Bulgaria, and

2. processing is necessary and proportionate to that other purpose in accordance with EU law or the law of the Republic of Bulgaria.

...’

19. Article 47 reproduces Article 6 of Directive 2016/680.

20. Article 49 reads:

‘The processing of personal data shall be lawful if it is necessary for the exercise of powers by a competent authority for the purposes referred to in Article 42(1) and is provided for by EU law or by a normative act which specifies the purposes of the processing and the categories of personal data subject to processing.’

II. Facts, procedure and questions referred for a preliminary ruling

21. Under the direction of the Rayonna prokuratura – Petrich (District Public Prosecutor’s Office, Petrich, Bulgaria) the pre-trial stage of criminal proceedings (No 252/2013 of the Petrich Police)⁶ was initiated in order to investigate certain acts constituting an offence⁷ which took place on 18 April 2013.

22. During that pre-trial stage, personal data were initially collected from VS in his capacity as victim.

23. By decisions of the Public Prosecutor’s Office of 4 and 5 April 2018, formal accusations were made in respect of four individuals (including VS) as regards those acts.

24. On 10 November 2020, the Rayonen sad Petrich (District Court, Petrich, Bulgaria) ordered that the criminal proceedings be discontinued on the grounds that they were time-barred.

25. In 2016 and 2017, following complaints made against VS, the District Public Prosecutor’s Office, Petrich, opened several files⁸ which, in the absence of evidence of a criminal offence, did not result in a pre-trial stage in respect of criminal proceedings being initiated.

26. In 2018, VS brought a civil action⁹ against the Public Prosecutor’s Office of the Republic of Bulgaria before the Okrazhen sad – Blagoevgrad (Regional Court, Blagoevgrad, Bulgaria), seeking damages for the harm caused by the excessive duration of the pre-trial stage in criminal proceedings No 252/2013.

27. For the purpose of mounting a defence against that civil action, the Public Prosecutor’s Office claimed that the court should order the District Public Prosecutor’s Office, Petrich, to produce investigation files No 517/2016 and No 1872/2016.

⁶ Investigation file No 1548/2013 of the District Public Prosecutor’s Office, Petrich.

⁷ According to the order for reference (paragraph 8.1), the criminal offence is laid down in Article 325(1), in conjunction with Article 20(2), of the Nakazatelen kodeks (Criminal Code).

⁸ Investigation files No 517/2016, No 1870/2016, No 1872/2016 and No 2217/2016.

⁹ Civil proceedings No 144/2018.

28. By order of 15 October 2018, the Okrazhen sad – Blagoevgrad (District Court, Blagoevgrad) ordered the District Public Prosecutor's Office, Petrich, to produce copies of the documents contained in investigation files No 517/2016 and No 1872/2016.

29. On 12 March 2020, VS complained to the Inspektorat kam Visshia sadeben savet (Inspectorate at the Supreme Judicial Council; 'IVSS') about what he regarded as the unlawful double processing of his personal data by the Public Prosecutor's Office, which, according to him, had misused:

- data relating to VS collected in relation to his status as a victim and then further processed in relation to his status as an accused person in the pre-trial stage in criminal proceedings No 252/2013;
- data relating to VS collected in investigation files No 517/2016 and No 1872/2016, and then used by the Public Prosecutor's Office in civil proceedings No 144/2018.

30. On 22 June 2020, the IVSS dismissed both of VS' claims.

31. VS contested the decision of the IVSS before the Administrativen sad – Blagoevgrad (Administrative Court, Blagoevgrad, Bulgaria), which has referred the following questions to the Court of Justice 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 [the GDPR] 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 [the GDPR] 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?

III. Procedure before the Court of Justice

32. The request for a preliminary ruling was received at the Registry of the Court of Justice on 23 March 2021.

33. VS, the IVSS, the Bulgarian, Czech and Netherlands Governments and the European Commission entered an appearance and submitted written observations.

34. The Court did not consider it necessary to hold a hearing, such a hearing not having been requested by any of the parties.

IV. Analysis

A. Preliminary considerations on the applicable EU law

35. The GDPR and Directive 2016/680 form a cohesive system in which:

- the role of the GDPR is to lay down *general rules* on the protection of natural persons with regard to the processing of their personal data;
- Directive 2016/680 lays down *specific rules* on the processing of such data in the area of judicial cooperation in criminal matters and police cooperation.

36. The protection afforded by the body of rules established by both provisions is based on the principles of lawfulness, fairness, transparency and, in so far as is relevant for the present purposes, on the principle of the strict limitation of the collection and processing of data to the purposes laid down by law.¹⁰

37. In particular, Article 5(1)(b) of the GDPR provides that data are to be ‘collected for specified, explicit and legitimate purposes and *not further processed in a manner that is incompatible with those purposes*’.¹¹ Article 4(1)(b) of Directive 2016/680, as *lex specialis*, is also worded in those terms.

38. Therefore, personal data may not be collected or processed on a general basis but rather only by reference to certain specified purposes¹² and subject to the conditions of lawfulness stipulated by the EU legislature.

39. The principle that the collection and processing of data, on the one hand, must be strictly linked to the purposes that both operations must serve, on the other, is not absolute, since both the GDPR and Directive 2016/680 allow a degree of flexibility, as I shall explain below.

40. In the main proceedings, the administrative court must determine whether the supervisory authority (the IVSS)¹³ acted lawfully in dismissing the complaint by which VS alleged that the Bulgarian Public Prosecutor’s Office had unlawfully processed his personal data.

¹⁰ Recital 39 of the GDPR and recital 26 of Directive 2016/680.

¹¹ Emphasis added.

¹² Article 1(1) of Directive 2016/680 lists these (see footnote 15 below). Outside the scope of Directive 2016/680, the purposes permitted by the GDPR are all those which are potentially lawful. A principle of freedom therefore applies, the limitation of which is determined at the level of the lawfulness of the conditions governing the processing of the data and the rights of the data subject (Chapters II and III of the GDPR).

¹³ In accordance with Article 45(2) of Directive 2016/680, each Member State ‘shall provide for each supervisory authority not to be competent for the supervision of processing operations of courts when acting in their judicial capacity’.

41. As already stated, those data were collected in two different contexts:

- in pre-trial proceedings initiated by the Public Prosecutor's Office in 2013 in relation to acts of which VS was the alleged victim; those data were subsequently used against VS in his capacity as a person under investigation in the same criminal proceedings;
- in other criminal files, in 2016 and 2017, opened by the same Public Prosecutor's Office on the basis of various complaints made, inter alia, against VS, in respect of acts different from those of 2013;¹⁴ in that case, the Public Prosecutor's Office requested (and the court having jurisdiction granted its request) to use the data collected in those files for the purposes of its defence in the civil proceedings for damages brought against it by VS.

42. By the same token, the questions submitted by the referring court encompass:

- the lawfulness of using VS' personal data on two successive occasions in the same criminal proceedings (Question 1 referred for a preliminary ruling);
- the lawfulness of processing VS' personal data, which were collected in the course of criminal files opened by the Public Prosecutor's Office and which the latter is seeking to use in civil proceedings brought against it by VS (Question 2 referred for a preliminary ruling).

43. I agree with the referring court, and with all the parties which have participated in these preliminary ruling proceedings, that the processing of personal data to which Question 1 refers is governed by Directive 2016/680.

44. In accordance with Article 1(1) and Article 2(1) of Directive 2016/680, the directive applies to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences. In the present case, VS' data were collected and processed in the context of a criminal investigation.

45. However, as regards the transmission of personal data for the purposes of the civil proceedings brought against the Public Prosecutor's Office (Question 2), the GDPR will apply if the transmission of those data constitutes data processing for purposes other than those set out in Article 1(1) of Directive 2016/680 but part of an activity coming within the scope of EU law.

¹⁴ Although the information provided by the referring court does not explicitly say so, all the indications are that the acts are indeed different.

B. Question 1 referred for a preliminary ruling: transfer *ad intra* of personal data collected for purposes coming within the scope of Directive 2016/680

46. In accordance with Article 4(2) of Directive 2016/680, processing by the same or another controller for any of the purposes set out in Article 1(1)¹⁵ other than that for which the personal data are collected is to be permitted in so far as:

- (a) the controller is authorised to process such personal data for the new purpose; and
- (b) processing is necessary and proportionate to that other purpose in accordance with EU or Member State law.

47. Directive 2016/680 therefore permits a transfer *ad intra* of personal data collected thereunder. Any data which have been collected for one of the purposes listed in Article 1(1) may also be used, under certain conditions, for one or more other purposes specified in that list.

48. The difficulty raised by Question 1 is whether, following the collection of VS' personal data when he was an alleged victim of the crime under investigation, those data may also be subsequently processed for use against him as a person under investigation or an accused person in the course of the same criminal proceedings.

49. In other words, it is necessary to determine whether VS' personal data were processed for *the same purpose* which warranted their original collection or, rather, for *two different purposes*, but where both purposes come within the scope of Directive 2016/680. In the latter situation, processing should be made subject to the specific conditions set out in Article 4(2) of that directive.

50. The referring court's first question is worded somewhat ambiguously as regards the subject matter of the proceedings. The referring court asks, literally, whether Article 1(1) of Directive 2016/680 is 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'.

51. In the light of the referring court's presentation, it would perhaps be helpful to reformulate its first question, as the parties and interveners in these preliminary ruling proceedings have proposed. Rather than focusing on the abstract relationship between general purpose and specific purpose, what really matters (and that is what VS' complaint actually concerns) is whether, in the context of criminal proceedings governed by Directive 2016/680, the purpose which led to collection of a person's data in his or her capacity as the alleged victim of an offence continues to exist if those data result in formal accusations subsequently being made in the same proceedings in respect of that person.

¹⁵ Article 1(1) of Directive 2016/680 provides that such purposes are '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 security'. The Spanish version of that provision diverges from the other official languages with regard to the term 'enjuiciamiento'. The French version uses the noun 'poursuites', equivalent to 'prosecution' in the English version, 'perseguitamento' in the Italian, 'Verfolgung' in the German and 'vervolging' in the Dutch. Those and other versions (apart from the Spanish) refer to an activity which precedes the 'enjuiciamiento' (judicial proceedings) in the strict sense, the latter being the exclusive preserve of the courts.

52. The literal interpretation of Article 1(1) of Directive 2016/680 indicates that three types of purpose can be identified under the directive, which reflect different points in time and different activities:

- first, the purpose of ‘prevention’, including prevention aimed at countering threats to public security;
- second, the purpose of ‘investigation’ (in the broad sense) of acts having criminal implications, which includes the detection and investigation of those acts in the strict sense, and the prosecution of offences;
- lastly, the purpose of ‘execution of criminal penalties’.

53. From a systematic or contextual point of view, Article 4(2) of Directive 2016/680 opts to treat each of those purposes as separable. Otherwise, as the Netherlands Government has observed, that provision would be deprived of substance, since it refers to ‘purposes set out in Article 1(1) other than that for which the personal data are collected ...’

54. On that basis, I shall endeavour to explain why, in this case, the data at issue were collected and processed for one of the purposes (that of ‘investigation’) referred to in Article 1(1) of Directive 2016/680, which means that that directive is applicable and that the processing is therefore lawful.

55. In the alternative, if the data were collected and processed for two of the purposes referred to in Article 4(2) of Directive 2016/680, the lawfulness of that collection and processing cannot be called into question either.

1. A single purpose

56. In the context of criminal files, it is not always possible to determine at the outset the procedural *status* of the individuals involved. In many cases, such files are aimed at identifying and, therefore, ‘categorising’ individuals who appear *prima facie* as perpetrators, victims or witnesses of the acts.

57. During that preparatory stage, it is logical that there will be a degree of fluidity in the *categorisation*. Through the results it produces, that investigation must lead to the exact identification of the capacity in which those persons will act when the offences are tried.

58. That is particularly the case in situations like the one in these proceedings. According to the referring court, a number of individuals assaulted one another. Formal accusations were eventually made in respect of one such individual, as a perpetrator of one of those assaults, who had initially appeared as a victim.

59. Against that background, the activity carried out as a whole is in line with the concept of ‘investigation’ in Article 1(1) of Directive 2016/680. That activity therefore had a single aim which is consistent with one of the ‘purposes’ for which personal data may be processed.

60. However, the referring court has doubts whether that interpretation of Article 1(1) of Directive 2016/680 is compatible with recital 31 thereof.¹⁶

61. I agree with the view put forward by the majority of the parties to the effect that that recital, like Article 6 of Directive 2016/680, which reproduces it, is not relevant in order to determine whether the change of purpose to which Article 4(2) of that directive refers has occurred.

62. In accordance with Article 6 of Directive 2016/680, a *clear distinction* between the personal data of different categories of data subjects is to be made only ‘where applicable and as far as possible’. For the reasons already stated, it is difficult in initial files opened in respect of acts like those which occurred in this case for ‘different categories of data subjects’ to be identified clearly from the outset. Moreover, the same participant in those acts may have the status of victim and perpetrator of the assaults.

63. Even if the controller of data obtained in the criminal files managed to differentiate clearly, *at the start of and throughout the investigation*, between victims, suspects and witnesses, the underlying purpose (investigation) of the collection and processing of those data would not change.

64. In other words, the successive attribution of one or other status (victim, witness, implicated person) to persons concerned by a criminal investigation does not necessarily amount to a change of purpose pursuant to Article 4(2) of Directive 2016/680.

2. Two concurrent purposes

65. In the alternative, should the situation provided for in Article 4(2) of Directive 2016/680 exist, the processing of the personal data at issue will be compatible with the conditions of lawfulness laid down by the directive. This was argued by the Bulgarian and Czech Governments, with whose view I agree.

66. Although it is a matter for the referring court to verify, there appears to be no doubt that the Bulgarian Public Prosecutor’s Office is, pursuant to national law, the authority responsible for processing VS’ personal data ‘for any of the purposes set out in Article 1(1) other than that for which the personal data are collected’. The first condition, laid down in Article 4(2)(a) of Directive 2016/680, is therefore satisfied.

67. As regards the second condition, laid down by Article 4(2)(b) (that ‘processing [be] necessary and proportionate to that other purpose’), I believe that:

- the need for the processing is justified by the uncertainty and indeterminate nature characteristic of initial criminal investigations;
- the assessment of whether the processing is proportionate must be carried out by the referring court, which must weigh up whether the processing was confined to what was strictly necessary for meeting the purpose arising subsequently.

¹⁶ ‘It is inherent to the processing of personal data in the areas of judicial cooperation in criminal matters and police cooperation that personal data relating to different categories of data subjects are processed. Therefore, a clear distinction should, *where applicable and as far as possible*, be made between personal data of different categories of data subjects ...’. Emphasis added.

68. Applied to this case, the conditions laid down in Article 4(2) of Directive 2016/680 are of minor importance and the single nature of the purpose inherent in the collection of the personal data at issue is confirmed: there is a logical continuity between the initial processing of the data and the processing which subsequently led to formal accusations being made against the person involved.

69. Therefore, it is not necessary to confirm the competence of a new controller (who would remain the same); nor is there any difficulty in establishing the need for the further processing (carried out in the course of the same proceedings), where the criterion of proportionality is common to all processing, as is apparent from the principles set out in Article 4(1) of Directive 2016/680.

C. Question 2 referred for a preliminary ruling: transfer *ad extra* of the personal data collected

70. Article 9(1) of Directive 2016/680 provides for the possibility that personal data collected thereunder may be transferred *ad extra*.

71. Proceeding on the basis that, as a rule, such data ‘shall not be processed for purposes other than those set out in Article 1(1) [thereof]’, Article 9(1) of Directive 2016/680 lays down the exception to the effect that EU or Member State law may authorise the processing of data for purposes other than those set out in Article 1(1). In that situation, the GDPR will apply (provided that the activity comes within the scope of EU law).

72. By its second question, the referring court asks:

- whether the GDPR applies to a situation in which the information collected in criminal files opened by the Public Prosecutor’s Office is used subsequently as a means of defence by the Public Prosecutor’s Office itself in civil proceedings brought against it by the data subject;
- whether, assuming that question is answered in the affirmative, the expression ‘legitimate interests’ in point (f) of the first subparagraph of Article 6(1) of the GDPR includes the provision of the data at issue for the purposes of the defence of the Public Prosecutor’s Office in the civil proceedings referred to.

1. Admissibility of the question

73. The IVSS submits that, since VS’ complaint was dismissed at the relevant time for being out of time, the second question is inadmissible.

74. I disagree with that argument.

75. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.¹⁷

¹⁷ Judgment of 27 September 2017, *Puškár* (C-73/16, EU:C:2017:725, paragraph 50).

76. The argument put forward by the IVSS concerns a matter which comes within the exclusive jurisdiction of the referring court. It is for that court alone to define, under its own responsibility, the factual and legislative context of the question referred to the Court of Justice.¹⁸

77. Both the IVSS' argument that the complaint is time-barred and the relevance of that for the purposes of the proceedings are matters for the referring court alone to assess. In this case, the referring court has stated that the question is relevant for the purposes of the resolution of the main proceedings, despite the argument put forward by the IVSS that the complaint is time-barred.¹⁹

78. That assessment may not be reviewed by the Court of Justice, which must follow, in principle, the interpretation and application of national law, both procedural and substantive, adopted by the national court when defining the context in which the reference for a preliminary ruling takes place.

2. *The substance*

79. In the light of the reasons provided by the referring court for the reference of the second question for a preliminary ruling, what that court really seeks is for the Court of Justice to determine whether the transfer of the data at issue constitutes 'data processing' for the purposes of Article 4(1) and (2) of the GDPR²⁰ and whether that processing was lawful in accordance with Article 6 of the GDPR.

(a) *Existence of data processing*

80. Article 4(1) and (2) of the GDPR and Article 3(1) and (2) of Directive 2016/680 define the concepts of 'personal data' and 'processing' in the same terms.

81. In accordance with those definitions, I conclude that the Public Prosecutor's Office sought to use in its defence in the civil courts 'information relating to an identified ... natural person', which included VS' 'personal data'.

82. When those personal data were transferred to the civil proceedings, a number of the 'operations' which constitute 'data processing' took place without the data subject's consent. At the very least, it would have been necessary for the Public Prosecutor's Office itself to *consult* the data in order to assess their possible usefulness in defending its position in the civil proceedings. Also, presumably, the data were *organised, structured, adapted or altered* and, naturally, *disclosed* and *disseminated*, albeit only minimally, for the same purpose, when the request was made for their production in the civil proceedings.²¹

83. Ultimately, by recording those data, including them in its archives, and storing and consulting them, and by requesting the civil court to admit as evidence the information held in the criminal files, the Public Prosecutor's Office carried out *processing* of VS' personal data.

¹⁸ Judgment of 17 July 2014, *YS and Others* (C-141/12 and C-372/12, EU:C:2014:2081, paragraph 63).

¹⁹ Paragraph 34.12, third subparagraph, of the order for reference.

²⁰ As stated in paragraph 34.12, first subparagraph, of the order for reference.

²¹ The application for the admission as evidence of the data in the Public Prosecutor's Office's investigation file involved a *transmission* of information relating to VS's person, since the application had to be based on the relevance of those data, appreciable, even indicatively, in the light of their content.

84. The IVSS and the Commission argue that the Public Prosecutor's Office may be a 'controller' only in so far as it is the competent authority for the purposes, of a criminal nature, included in the scope of Directive 2016/680.

85. To my mind, that does not mean that the second question referred for a preliminary ruling is devoid of purpose, as the IVSS claims. Rather, it means that the lawfulness of the processing, pursuant to Article 9(1) of Directive 2016/680, will have to be verified in the light of the GDPR.

86. The court with jurisdiction to rule in the civil proceedings will be the controller in those proceedings when those data are produced in them. That court's decisions are excluded from the scrutiny of the supervisory authority, pursuant to Article 55(3) of the GDPR, in so far as those decisions are adopted by the court acting in its judicial capacity.²²

87. The referring court confines its question to the applicability of the GDPR at the time when the Public Prosecutor's Office sought to use the information it collected as 'controller', within the meaning of Directive 2016/680, for the purposes of its defence in the civil proceedings.

88. For the reasons I have set out above, I believe that the GDPR is applicable because the purposes referred to in Article 1(1) of Directive 2016/680 do not include the defence of the Public Prosecutor's Office in civil proceedings.

(b) Lawfulness of the processing in the light of the GDPR

89. The conditions of lawfulness for the processing of personal data are listed in Article 6(1) of the GDPR: 'Processing shall be lawful only if and to the extent that at least one of the following [conditions] applies', which are set out below. That list of conditions is exhaustive.²³

90. In my view, the conditions which are not satisfied are the condition relating to the data subject's consent (point (a)), the condition relating to the performance of a contract (point (b)), the condition relating to compliance with a legal obligation (point (c)),²⁴ and the condition relating to protection of the *vital interests* of the data subject or a third party (point (d)).

91. According to the referring court, the condition set out in point (f) of the first subparagraph of Article 6(1) of the GDPR is satisfied. However, as the Commission has submitted, the final subparagraph of that paragraph excludes point (f) in this case because that condition 'shall not apply to processing carried out by public authorities in the performance of their tasks'.²⁵

92. In reply to a question put by the Court of Justice, the Bulgarian Government, supported on that point by the Czech and Netherlands Governments, maintained that the condition laid down in point (f) of the first subparagraph of Article 6(1) of the GDPR is applicable. The Bulgarian

²² On the interpretation of that provision, see the judgment of 24 March 2022, *Autoriteit Persoonsgegevens* (C-245/20, EU:C:2022:216, paragraph 23 et seq.).

²³ See, in relation to the similar wording of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31), judgment of 24 November 2011, *ASNEF and FECEMD* (C-468/10 and C-469/10, EU:C:2011:777).

²⁴ The Public Prosecutor's Office is not legally *obliged* to seek the provision of the data at issue in the civil proceedings.

²⁵ In accordance with recital 47 of the GDPR, 'given that it is for the legislator to provide by law for the legal basis for public authorities to process personal data, that legal basis should not apply to the processing by public authorities in the performance of their tasks'.

Government submitted that it is necessary to have regard to ‘the nature of the activity carried out by the Public Prosecutor’s Office’, which, although it is a public body, may participate in civil proceedings as an ‘equal party’.²⁶

93. However, the ‘legitimate interests’ which the Public Prosecutor’s Office defends as a public authority, in proceedings in which it is sued in relation to the procedural steps it has taken, are excluded from the case provided for in point (f) of the first subparagraph of Article 6(1) of the GDPR because the final subparagraph of that paragraph explicitly stipulates as much.

94. For authorities acting in the performance of the tasks entrusted to them by law (in this case, bringing prosecutions and representing the State against actions for damages), the relevant interest, for the purposes of Article 6(1) of the GDPR, is the public interest which they serve, in accordance with point (e) of the first subparagraph of Article 6(1).

95. The condition laid down in point (f) concerns the satisfaction of legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data.

96. Therefore, rather than the public authority’s possibilities of defending itself – which could be based on point (e) of the first subparagraph of Article 6(1) – that provision is concerned with the fact that the interests, rights and freedoms of the data subject may prevail as against the controller or a third party. It applies, rather, to conflicts between (private) parties whose interests are not public in nature.

97. Since, by definition, the Public Prosecutor’s Office acts in its capacity as a State institution, it is necessary to examine whether the processing at issue is covered by point (e) of the first subparagraph of Article 6(1) of the GDPR.

98. That would be the case if that processing were ‘necessary for the performance of a task carried out in the public interest or in the exercise of official authority’ vested in the controller.

99. I shall deal with the first of those two purposes, without it being necessary to consider the second,²⁷ in order to determine whether the involvement of the Public Prosecutor’s Office in the civil proceedings in which it is being sued for damages in respect of its conduct is consistent with the performance of a task carried out in the public interest.

100. In accordance with national law,²⁸ it falls to the Public Prosecutor’s Office to represent the State in proceedings for non-contractual liability for damage caused by delay on the part of the State. By the same token, the Public Prosecutor’s Office also acts in defence of the State’s general (financial) interests and, therefore, in the performance of a task carried out in the public interest.²⁹

²⁶ Paragraphs 45 and 49 of the Bulgarian Government’s written reply to a question put by the Court of Justice.

²⁷ As the Netherlands Government states, the defence of the State’s interests in civil proceedings does not constitute, in itself and separately, the exercise of *official authority*, to which the second part of point (e) of the first subparagraph of Article 6(1) of the GDPR refers.

²⁸ *Zakon za otgovornostta na darzhavata i obshtinita za vredi* (Law on liability of the State and of municipalities for damage; DV No 60 of 5 August 1988). In reply to a question put by the Court of Justice, the Bulgarian Government explained that the legal basis on which the Public Prosecutor’s Office was sued in the civil courts is Article 2b of that law, which governs the conditions for and the detailed rules on the incurrence of non-contractual liability on the part of the State where the right to be tried within a reasonable time is infringed.

²⁹ In accordance with Bulgarian law, actions for damages must be brought against the authorities which are alleged to have committed the damage. Those authorities have the status of defendants in the relevant civil proceedings. Quite apart from those procedural rules, the fact is that the claim for damages is ultimately brought against the State as a whole, defended in each case by whichever of its bodies was the direct source of the (alleged) damage claimed.

101. Article 9(1) of Directive 2016/680 makes the transfer *ad extra* of data collected in investigation files subject to the requirement that processing of that data is authorised by EU or Member State law. In so far as is important for the present purposes, it is for the referring court to verify the existence of that authorisation, in the light of fulfilment of the public interest remit assigned to the Public Prosecutor's Office for the purposes of the protection of the State's assets.

102. In accordance with Article 6(3) of the GDPR, the legal basis for the processing referred to in point (e) of the first subparagraph of Article 6(1) thereof 'may contain specific provisions to adapt the application of rules' of the GDPR.³⁰ If that legal basis is laid down by the law of the Member State which is applicable to the controller, it is for the national court to identify it.³¹

103. Lastly, even if the referring court failed to identify the relevant legal basis, the compatibility of the processing at issue with the purpose for which the data at issue were collected must be determined in accordance with Article 6(4) of the GDPR. To that end, account must be taken, inter alia, of any relationship between the original purposes and the purpose arising subsequently, the context in which the personal data were collected and the nature of those data, the possible consequences of the further processing for the data subject and the existence of adequate guarantees.

V. Conclusion

104. In the light of the foregoing considerations, I propose that the Court of Justice answer the Administrativen sad – Blagoevgrad (Administrative Court, Blagoevgrad, Bulgaria) as follows:

- (1) Article 4(2) 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, is to be interpreted as meaning that data which are collected from a person in his or her capacity as an alleged victim of a criminal offence, in the course of criminal proceedings, are processed for the same purpose as that which warranted their collection where formal accusations are later made in the same criminal proceedings in respect of that person.
- (2) Article 9(1) of Directive 2016/680 is to be interpreted as meaning that 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, applies to the use by the public prosecutor's office, for the purposes of its defence in civil proceedings, of information obtained in the context of criminal files.

³⁰ Those provisions may concern 'the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific processing situations as provided for in Chapter IX'.

³¹ In reply to a question put by the Court of Justice, the Bulgarian Government argued that the legal basis must be sought in the context of the Public Prosecutor's Office's twofold role: defender of the State in civil proceedings, on the one hand, and issuer of an official document that is of legal significance to the proceedings, on the other. There is, therefore, a dual legal basis: that of point (c) of the first subparagraph of Article 6(1) of the GDPR, as regards the Public Prosecutor's Office's capacity as 'issuer of an official document' within the meaning of Article 179, in conjunction with Article 186, of the *Grazhdanski protsesualen kodeks* (Code of Civil Procedure); and that of point (e) of the first subparagraph of Article 6(1) of the GDPR, as regards the Public Prosecutor's Office's capacity as a party to proceedings in the exercise of its legal obligations (paragraphs 31 and 32 of the Bulgarian Government's written reply).

- (3) The disclosure of personal data collected in connection with criminal files, preceded by the recording, storage and consultation of those data, for the purposes of mounting the defence of the public prosecutor's office in civil proceedings in which it is being sued for damages as a result of its conduct in the performance of its duties constitutes 'processing of personal data' for the purposes of Article 4(1) of Regulation 2016/679.
- (4) The lawfulness of that processing may, in principle, come within the scope of point (e) of the first subparagraph of Article 6(1) of Regulation 2016/679.