Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

13 June 2024*

(Reference for a preliminary ruling – Telecommunications sector – Processing of personal data and the protection of privacy – Directive 2002/58/EC – Article 15(1) – Restriction of the confidentiality of electronic communications – Judicial decision authorising listening, tapping and storage in respect of telephone conversations of persons suspected of having committed a serious intentional offence – National legislation requiring that that decision must itself contain an express statement of reasons in writing, irrespective of the existence of a reasoned application made by the criminal authorities – Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union – Obligation to state reasons)

In Case C-229/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria), made by decision of 12 April 2023, received at the Court on 12 April 2023, in the criminal proceedings against

**HYA,**

**IP,**

**DD,**

**ZI,**

**SS,**

interested party:

**Sofiyska gradska prokuratura,**

THE COURT (Tenth Chamber),

composed of Z. Csehi, President of the Chamber, E. Regan (Rapporteur), President of the Fifth Chamber, and I. Jarukaitis, Judge,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

* Language of the case: Bulgarian.

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Ireland, by M. Browne, Chief State Solicitor, A. Burke and A. Joyce, acting as Agents, and A. Thuillier, Barrister-at-Law,

– the European Commission, by C. Georgieva, H. Kranenborg, P.-J. Loewenthal and F. Wilman, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37) and of the second paragraph of Article 47, Article 52(1) and Article 53 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in criminal proceedings brought against HYA, IP, DD, ZI and SS for participation in an organised criminal gang.

### Legal context

#### *European Union law*

3 Recital 11 of Directive 2002/58 states:

'Like 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)], this Directive does not address issues of protection of fundamental rights and freedoms related to activities which are not governed by Community law. Therefore it does not alter the existing balance between the individual's right to privacy and the possibility for Member States to take the measures referred to in Article 15(1) of this Directive, necessary for the protection of public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the enforcement of criminal law. Consequently, this Directive does not affect the ability of Member States to carry out lawful interception of electronic communications, or take other measures, if necessary for any of these purposes and in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms[, signed in Rome on 4 November 1950 ("the ECHR")], as interpreted by the rulings of the European Court of Human Rights. Such measures must be appropriate, strictly proportionate to the intended purpose and necessary within a democratic society and should be subject to adequate safeguards in accordance with [the ECHR].'

4 Article 5(1) of Directive 2002/58 provides:

‘Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned, except when legally authorised to do so in accordance with Article 15(1). This paragraph shall not prevent technical storage which is necessary for the conveyance of a communication without prejudice to the principle of confidentiality.’

5 Article 15(1) of that directive is worded as follows:

‘Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1), (2), (3) and (4), and Article 9 of this Directive when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, as referred to in Article 13(1) of [Directive 95/46]. To this end, Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds laid down in this paragraph. All the measures referred to in this paragraph shall be in accordance with the general principles of Community law, including those referred to in Article 6(1) and (2) [TEU].’

### *Bulgarian law*

6 Article 121(4) of the Bulgarian Constitution provides that ‘judicial acts shall state reasons’.

7 Article 34 of the Nakazatelno protsesualen kodeks (Code of Criminal Procedure), in the version applicable to the dispute in the main proceedings (‘the NPK’), provides that ‘any act of the court shall contain … reasons …’.

8 In accordance with Article 105(2) of the NPK, ‘evidence that has not been gathered or prepared under the conditions and in accordance with the arrangements laid down in this Code is not admissible’.

9 Under Article 173(1) of the NPK:

‘In order to make use of special investigative methods in the pre-trial stage of the proceedings, the supervising public prosecutor shall submit to the court a reasoned application in writing. …’

10 Article 174(3) and (4) of the NPK, in the version applicable to the dispute in the main proceedings, provides:

‘(3) The authorisation for the use of special investigative methods in proceedings coming within the jurisdiction of the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) shall be granted in advance by its President. …

(4) The authority referred to in paragraphs 1 to 3 shall issue a decision by way of a written reasoned ruling. …’

11 Article 14(1) of the Zakon za spetsialnite razuznavatelni sredstva (Law on special investigative methods) (DV No 95 of 21 October 1997, p. 2), in the version applicable to the dispute in the main proceedings ('the ZSRS'), provides:

'The use of special investigative methods shall require a reasoned application in writing …'

12 Article 15(1) of the ZSRS, in the version applicable to the dispute in the main proceedings, provides:

'… The Presidents … of the Spetsializiran nakazatelen sad (Specialised Criminal Court) … shall authorise … in writing the use of special investigative methods, stating the reasons for their decisions.'

## The dispute in the main proceedings and the question referred for a preliminary ruling

13 Between 10 April and 23 May 2017, the Spetsializirana prokuratura (Specialised Public Prosecutor's Office, Bulgaria) submitted seven applications to the President of the Spetsializiran nakazatelen sad (Specialised Criminal Court) for authorisation to use special investigative methods for the purpose of listening and tapping, as well as monitoring and tracing, in respect of the telephone conversations of IP, DD, ZI and SS, four persons suspected of having committed serious criminal offences.

14 Each of those telephone tapping applications gave a full, detailed and reasoned description of the subject matter of the application, the name and telephone number of the person concerned, the link between that number and that person, the evidence gathered up to that point and the role allegedly played by the person concerned in the criminal acts. Specific reasons were also given as to why the requested telephone tapping was necessary to gather evidence about the criminal activity under investigation and why and under what conditions it was impossible to gather that information by other means.

15 The President of the Spetsializiran nakazatelen sad (Specialised Criminal Court) granted each of those applications on the same day that they were made and, consequently, issued seven decisions authorising telephone tapping. According to that court, those authorisations correspond to a pre-drafted template text designed to cover all possible cases of authorisation, without any reference to the circumstances of fact and law, other than the length of time for which the use of special investigative methods was authorised. On the basis of those authorisations, some of the conversations of IP, DD, ZI and SS were recorded and stored.

16 On 19 June 2020, the Specialised Public Prosecutor's Office charged those four persons, together with a fifth, HYA, with participating in an organised criminal gang the intention of which, for the purposes of enrichment, was to smuggle third-country nationals across Bulgarian borders, assist them to enter Bulgarian territory illegally, and receive or give bribes in connection with those activities.

17 The referring court initially hearing the merits of the case, namely the Spetsializiran nakazatelen sad (Specialised Criminal Court), taking the view that the content of the recorded conversations is of direct relevance in determining whether the charges brought against IP, DD, ZI and SS are well founded, found that it was required, in advance, to review the validity of the procedure which led to the telephone tapping authorisations.

18 In that context, that court decided, by a decision of 3 June 2021, to make a reference to the Court of Justice for a preliminary ruling in order to ask that Court, as its first question, whether a national practice under which the obligation to state reasons for the judicial decision authorising the use of special investigative methods following a reasoned application by the criminal authorities is satisfied where that decision is drawn up in accordance with a pre-drafted template text which does not contain individualised reasons, merely stating that the requirements laid down by the legislation, to which it refers, have been complied with, is consistent with the last sentence of Article 15(1) of Directive 2002/58, read in the light of recital 11 thereof.

19 By the judgment of 16 February 2023, *HYA and Others (Grounds for authorising telephone tapping)* (C-349/21, EU:C:2023:102; 'the judgment in *HYA and Others I*'), the Court held that Article 15(1) of Directive 2002/58, read in the light of the second paragraph of Article 47 of the Charter, must be interpreted as not precluding such a national practice, provided that the precise reasons why the court with jurisdiction considered that the legal requirements had been complied with, in the light of the factual and legal circumstances characterising the case in question, can be easily and unambiguously inferred from a cross-reading of the decision and the application for authorisation, the latter of which must be made accessible, after the authorisation has been given, to the person against whom the use of special investigative methods has been authorised.

20 In those circumstances, the Court held, in paragraph 66 of that judgment, that the second question referred, by which it was asked whether, if the answer to the first question is in the negative, it is contrary to EU law if the national law is interpreted as meaning that information obtained as a result of such authorisation is used to prove the charges brought, did not require an answer.

21 Following a legislative amendment which entered into force on 27 July 2022, some criminal proceedings brought before the Spetsializiran nakazatelen sad (Specialised Criminal Court), which was abolished, were transferred to the Sofiyski gradski sad (Sofia City Court), which is the referring court in the present case. Sofiyski gradski sad (Sofia City Court) states, in its request for a preliminary ruling, that it has certain difficulties in applying the judgment in *HYA and Others I*.

22 It states that, in paragraphs 56 to 61 of that judgment, the Court required the referring court to verify whether the statement of reasons for the authorisation to use special investigative methods is accessible and comprehensible, by engaging, to that end, in a cross-reading of the application and the judicial authorisation.

23 According to the referring court, it is true that the entire application was, in the case at hand, attached to the file and is accessible to the defence. In addition, that court states that that application has the content required by national law. Consequently, the referring court asserts that, in the event of a cross-reading of the reasons given in the application and in the judicial authorisation, it is possible to understand, easily and unequivocally, the reasons for the judicial decision authorising listening, tapping and storage in respect of communications without the consent of the users.

24 However, that court finds that the standard for the statement of reasons it considers to have been established by the Court of Justice in the judgment in *HYA and Others I*, consisting, in essence, where the authorisation is drawn up in accordance with a pre-drafted template text which does not contain individualised reasons, in a cross-reading of the authorisation and the application in order to deduce therefrom the precise reasons why the authorisation was granted, is inapplicable under national law in the light of the requirements laid down by that law as regards the procedure

for the issue of judicial decisions authorising listening, tapping and storage in respect of communications without the consent of the users. Article 14(1) of the ZSRS and Article 173(1) of the NPK provide that the application made by the criminal authorities to that end must be in writing and reasoned. Similarly, Article 15(1) of the ZSRS and Article 174(4) of the NPK require the judicial authorisation granted on the basis of such an application to be itself in writing and reasoned.

25 Consequently, the referring court considers that there is a contradiction between the national law and EU law as regards the characteristics of the reasons given for the judicial authorisation. National law requires that the judicial authorisation must itself contain express reasons in writing, whereas under EU law a standard judicial authorisation is sufficient, provided that the authorisation is granted on the basis of an extensively reasoned application to which the court and the defence have access, so that a cross-reading of the judicial authorisation and the application makes it possible to understand the reasons for the decision adopted.

26 In the absence of any possibility of interpreting national law in a manner consistent with EU law, that court asks whether, in accordance with the principle of primacy of EU law, national law should be disapplied, in order to apply the standard for the statement of reasons it considers to have been established by the Court of Justice in the judgment in *HYA and Others I*, even though, according to the referring court, that judgment appears to be contrary not only to the Court's earlier case-law, as set out, in particular, in the judgment of 2 March 2021, *Prokuratuur (Conditions of access to data relating to electronic communications)* (C-746/18, EU:C:2021:152), but also to that of the European Court of Human Rights, as inferred from the judgment of 11 January 2022, *Ekimdzhiev and Others v. Bulgaria* (CE:ECHR:2022:0111JUD007007812).

27 In that regard, the referring court asserts that the standard for the statement of reasons established by the Court of Justice in the judgment in *HYA and Others I* is based on an interpretation of the second paragraph of Article 47 of the Charter.

28 Nevertheless, according to that court, it is doubtful whether that standard for the statement of reasons satisfies the requirements arising, first, from recital 11 of Directive 2002/58, according to which the application of the measures provided for in Article 15(1) of that directive must be consistent with the ECHR and with the interpretation given to it by the European Court of Human Rights, second, from Article 52 of the Charter, according to which any limitation on the exercise of the rights recognised by the Charter must be provided for by law and respect the essence of those rights, while complying with the principle of proportionality, third, from Article 53 of the Charter, which provides that nothing in the Charter should be interpreted as restricting a specific right recognised by the ECHR or by the Constitution of a Member State and, fourth, from the principle of equivalence, according to which a legal situation concerning EU law should not be regulated less favourably, in the national law and case-law, than a similar legal situation that exclusively concerns a domestic legal situation.

29 The question therefore arises as to whether those provisions and principles of EU law preclude the disapplication of national legislation that explicitly requires that judicial decisions be reasoned and does not authorise the standard for the statement of reasons established by the Court of Justice in the judgment in *HYA and Others I*.

30 Furthermore, the referring court is uncertain whether, if that first question is answered in the affirmative, EU law further precludes a rule of national law, such as that laid down in Article 105(2) of the NPK, which requires that recorded communications be excluded from

evidence on account of the judicial authorisations lacking a statement of reasons, where, in accordance with EU law, those judicial authorisations do not need to have their own statement of reasons, provided that the applications are sufficiently reasoned. In that case, there would be no obstacle, in accordance with the second paragraph of Article 47 of the Charter, to using the telephone conversations as evidence. In the opposite case, it would be necessary, pursuant to Article 105(2) of the NPK, to exclude the telephone conversations from evidence where the authorisations are not reasoned, in breach of national law, unless, as the case may be, the Court finds that EU law does not preclude that provision from being interpreted as permitting the use of evidence gathered on the basis of a judicial authorisation without a statement of reasons where the lawfulness of that authorisation has been subsequently established by a court, while observing the defendant's rights of defence.

31 In those circumstances the Sofiyski gradski sad (Sofia City Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 15(1) of Directive 2002/58, read in conjunction with the second paragraph of Article 47 of [the Charter], as interpreted by the Court of Justice of the European Union in the judgment [in *HYA and Others I*,] and in the light of recital 11 of [Directive 2002/58], of Article 52(1) and Article 53 of the Charter and of the principle of equivalence, be interpreted as requiring a national court:

– to disapply provisions of national law (Article 121(4) of [the Constitution], Article 174(4) of [the NPK] and Article 15(2) of [the ZSRS]) and the interpretation of Article 8(2) of [the ECHR] adopted by [the ECtHR] in [the ECtHR judgment of 11 January 2022, *Ekimdzhiev and Others v. Bulgaria* (CE:ECHR:2022:0111JUD007007812)]), according to which a judicial authorisation (to listen to, [tap] and store telecommunications without the consent of the users concerned) must contain an express statement of written reasons, irrespective of the existence of a reasoned application on the basis of which the authorisation was issued, the reason for such disapplication [of the national law and of the interpretation of the European Court of Human Rights] being that a cross-reading of the application and the authorisation makes apparent (1) the precise grounds on which the court, in the factual and legal circumstances of the particular case, arrived at the view that the legal requirements had been met, and (2) the person and the means of communication that formed the subject of the judicial authorisation issued;

– in the context of the examination as to whether the telecommunications at issue must be excluded as evidence, to disapply a provision of national law (Article 105(2) of the NPK), or to interpret it in conformity with EU law, in so far as it requires compliance with the national procedural rules (in this case, Article 174(4) of the NPK and Article 15(2) of the ZSRS), and to apply instead the rule laid down by the Court of Justice in [the judgment in *HYA and Others I*]?'

## Admissibility of the request for a preliminary ruling and the jurisdiction of the Court of Justice

32 The Commission claims that the request for a preliminary ruling is inadmissible. That institution states that that request seeks a ruling from the Court on the conformity, in relation to Bulgarian law, of the national judicial practice which was the subject of the judgment in *HYA and Others I*, according to which judicial decisions authorising the use of special investigative methods, such as telephone tapping, following a reasoned and detailed application from the criminal authorities, are drawn up in accordance with a pre-drafted template text which does not contain individualised

reasons, merely stating, in addition to the validity period of the authorisation, that the requirements laid down by the legislation to which those decisions refer have been complied with. The Commission claims that that question, which concerns the interpretation of national law, falls outside the jurisdiction of the Court.

33 In that regard, it is true that it is apparent from the request for a preliminary ruling, which arises in the context of the same case in the main proceedings as that which gave rise to the judgment in *HYA and Others I*, that, according to the referring court, to which that case was transferred, that national judicial practice is contrary to several provisions of national law, in particular Article 121(4) of the Bulgarian Constitution, which require that any judicial decision authorising the use of listening, tapping and storage in respect of communications, without the consent of the users, must itself contain an express statement of reasons in writing, irrespective of the existence of a reasoned application made by the criminal authorities.

34 It thus appears that that court advocates an interpretation of national law which, as is apparent from paragraphs 47 to 52 of the judgment in *HYA and Others I*, differs from that considered by the national court which was initially responsible for that case and whose order for reference gave rise to that judgment.

35 It must be borne in mind that, according to settled case-law, the Court does not have jurisdiction to interpret the internal law of a Member State (judgment of 26 January 2021, *Hessischer Rundfunk*, C-422/19 and C-423/19, EU:C:2021:63, paragraph 31 and the case-law cited).

36 That being said, it must be stated that, by that new request for a preliminary ruling, the referring court is seeking not to determine whether that national judicial practice is in conformity with the provisions of national law, but to establish whether EU law precludes provisions of national law that prohibit such a practice, by requiring that any judicial decision authorising the use of listening, tapping and storage in respect of communications, without the consent of the users, must itself contain an express statement of reasons in writing, irrespective of the existence of a reasoned application made by the criminal authorities. That question, which concerns the interpretation of EU law, comes within the jurisdiction of the Court.

37 Consequently, an answer must be given to the present request for a preliminary ruling.

## Consideration of the question referred

38 By its question, the referring court seeks, in essence, to ascertain whether Article 15(1) of Directive 2002/58, read in the light of the second paragraph of Article 47 of the Charter, must be interpreted as precluding provisions of national law which require that a judicial decision authorising listening, tapping and storage in respect of communications, without the consent of the users concerned, must itself contain an express statement of reasons in writing, irrespective of the existence of a reasoned application made by the criminal authorities. If so, the referring court asks whether that provision of Directive 2002/58 precludes a rule of national law which requires that recorded conversations be excluded from evidence on the ground that the judicial authorisation is not reasoned, even though a cross-reading of the judicial authorisation and the application makes it possible to understand, easily and unequivocally, the reasons for that authorisation.

39 As a preliminary point, it must be stated that the referring court verified that the measures at issue in the main proceedings come within the scope of Directive 2002/58. Following the request, made by the Court in paragraph 38 of the judgment in *HYA and Others I*, to ascertain whether the special investigative methods used in the main proceedings had the effect of imposing processing obligations on the providers of electronic communication services concerned, the referring court stated in its request for a preliminary ruling that that is indeed the case, since the providers concerned are legally responsible for intercepting data and transmitting it to the police authorities.

40 As regards the question referred, it should be noted at the outset that that question is based, as is apparent from paragraphs 24 to 29 above, on the premiss that it follows from the judgment in *HYA and Others I* that EU law, in particular Article 15(1) of Directive 2002/58, read in the light of the second paragraph of Article 47 of the Charter, requires the Bulgarian courts to adopt the national judicial practice examined in that judgment, with the result that those courts should disapply as incompatible with EU law provisions of national law which, contrary to the standard for the statement of reasons allegedly established by the Court in that judgment, require that any judicial decision authorising listening, tapping and storage in respect of communications, without the consent of the users concerned, must itself contain an express statement of reasons in writing.

41 However, that premiss is incorrect.

42 It must be borne in mind that, in allocating jurisdiction between the EU Courts and the national courts, the Court must take account of the factual and regulatory context surrounding the questions referred for a preliminary ruling, as defined by the order for reference, with the result that the examination of a reference for a preliminary ruling must be carried out in the light of the interpretation of national law provided by the referring court (see, inter alia, judgment of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448, paragraph 42 and the case-law cited).

43 In accordance with that case-law, the Court ruled, in the judgment in *HYA and Others I*, on the conformity with EU law of the national judicial practice that had been described by the Spetsializiran nakazatelen sad (Specialised Criminal Court) in its request for a preliminary ruling. As has already been noted in paragraph 19 above, the Court thus ruled, by the judgment in *HYA and Others I*, that Article 15(1) of Directive 2002/58, read in the light of the second paragraph of Article 47 of the Charter, must be interpreted as not precluding such a national judicial practice, provided that the precise reasons why the court with jurisdiction considered that the legal requirements had been complied with, in the light of the factual and legal circumstances characterising the case in question, can be easily and unambiguously inferred from a cross-reading of the decision and the application for authorisation, the latter of which must be made accessible, after the authorisation has been given, to the person against whom the use of special investigative methods has been authorised.

44 However, that judgment cannot in any way be interpreted as having established a standard for the statement of reasons that requires the Bulgarian authorities to adopt such a practice by placing them under an obligation to disapply, on the ground of being incompatible with EU law, the provisions of national law which require that a judicial decision authorising the use of special investigative methods, such as listening, tapping and storage in respect of communications, must itself contain an express statement of reasons in writing.

45 On the contrary, it is apparent from the grounds of the judgment in *HYA and Others I* that EU law does not in any way preclude such provisions of national law.

46 In that regard, it must be borne in mind that Article 5(1) of Directive 2002/58 enshrines the principle of the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services. That principle is reflected in the prohibition on listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data without the consent of the users concerned, except in the situations provided for in Article 15(1) of that directive (judgment in *HYA and Others I*, paragraph 40).

47 The latter article thus provides that Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5 of that directive, in particular when such a restriction constitutes a necessary, appropriate and proportionate measure within a democratic society, to ensure the prevention, investigation, detection and prosecution of criminal offences. It also states that all those legislative measures must be in accordance with the general principles of EU law, including the rights, freedoms and principles set out in the Charter (judgment in *HYA and Others I*, paragraph 41).

48 In that regard, the legislative measures governing access by the competent authorities to the data referred to in Article 5(1) of Directive 2002/58 cannot be confined to requiring that such access serve the purpose pursued by the legislative measures themselves, but must also lay down the substantive and procedural conditions governing that processing (judgment in *HYA and Others I*, paragraph 42 and the case-law cited).

49 Such measures and conditions must be in accordance with the general principles of EU law, including the principle of proportionality, and with the fundamental rights guaranteed by the Charter, as follows from Article 15(1) of Directive 2002/58, which refers to Article 6(1) and (2) TEU (judgment in *HYA and Others I*, paragraph 43 and the case-law cited).

50 In particular, the procedural conditions referred to in paragraph 48 above must be in accordance with the right to a fair trial, enshrined in the second paragraph of Article 47 of the Charter, which corresponds, as is apparent from the explanations relating to that article, to Article 6(1) of the ECHR. That right requires that all judgments must state the reasons on which they are based (judgment in *HYA and Others I*, paragraph 44 and the case-law cited).

51 Therefore, where a legislative measure adopted under Article 15(1) of Directive 2002/58 provides that restrictions to the principle of confidentiality of electronic communications laid down in Article 5(1) of that directive may be adopted by means of judicial decisions, Article 15(1), read in conjunction with the second paragraph of Article 47 of the Charter, requires Member States to provide that such decisions must state the reasons on which they are based (judgment in *HYA and Others I*, paragraph 45).

52 The right to an effective judicial review, guaranteed by Article 47 of the Charter, requires that the person concerned must be able to ascertain the reasons for a decision taken in relation to him or her, either by reading that decision or by being informed of those reasons, so as to enable him or her to defend his or her rights in the best possible conditions and to decide in full knowledge of the facts whether or not to refer the matter to the court with jurisdiction to review the lawfulness of that decision (judgment in *HYA and Others I*, paragraph 46 and the case-law cited).

53 It follows that national legislation which requires that any judicial decision authorising listening, tapping and storage in respect of communications, without the consent of the users concerned, must itself contain an express statement of reasons in writing necessarily complies with the requirements to state reasons under EU law. National courts are therefore under no obligation to disapply such legislation.

54 Consequently, the answer to the first part of the question referred is that Article 15(1) of Directive 2002/58, read in the light of the second paragraph of Article 47 of the Charter, must be interpreted as not precluding provisions of national law which require that a judicial decision authorising listening, tapping and storage in respect of communications, without the consent of the users concerned, must itself contain an express statement of reasons in writing, irrespective of the existence of a reasoned application made by the criminal authorities.

55 Having regard to the answer to the first part of the first question, there is no need to answer the second part thereof.

## Costs

56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

**Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), read in the light of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union,**

**must be interpreted as not precluding provisions of national law which require that a judicial decision authorising listening, tapping and storage in respect of communications, without the consent of the users concerned, must itself contain an express statement of reasons in writing, irrespective of the existence of a reasoned application made by the criminal authorities.**

[Signatures]