ECLI:EU:C:2023:102

JUDGMENT OF THE COURT (Third Chamber)

16 February 2023 (*)

(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 the interception, recording and storage of telephone conversations of persons suspected of having committed a serious intentional offence – Practice whereby the decision is drawn up in accordance with a pre-drafted template text that does not contain individualised reasons – Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union – Obligation to state reasons)

In Case C-349/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 3 June 2021, received at the Court on 4 June 2021, in the proceedings

HYA,

IP,

DD,

ZI,

SS,

the other party to the proceedings being:

Spetsializirana prokuratura

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, M. Safjan (Rapporteur), N. Piçarra, N. Jääskinen and M. Gavalec, Judges,

Advocate General: A.M. Collins,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 6 July 2022,

after considering the observations submitted on behalf of:

IP, by H. Georgiev, advokat,

DD, by V. Vasilev, advokat,

the Czech Government, by O. Serdula, M. Smolek and J. Vláčil, acting as Agents,

Ireland, by M. Browne and D. Fennelly, Barrister-at-Law, and by A. Joyce and M. Lane, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 13 October 2022,

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).

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

Directive 2002/58

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 The first paragraph of Article 2 of that directive provides:

‘Save as otherwise provided, the definitions in Directive [95/46] and in Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) [(OJ 2002 L 108, p. 33)] shall apply.’

5 Article 5(1) of that directive 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.’

6 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].’

Regulation (EU) 2016/679

7 Under Article 4(2) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1):

‘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;

…’

8 Article 94(2) of that regulation provides:

‘References to the repealed Directive [95/46] shall be construed as references to this Regulation. References to the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive [95/46] shall be construed as references to the European Data Protection Board established by this Regulation.’

Bulgarian law

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

10 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 …’.

11 Article 172 of the NPK is worded as follows:

‘(1) The authorities responsible for the pre-trial stage of the proceedings may make use of special investigative methods … which shall serve to document the activities of the monitored persons …

(2) Special investigative methods shall be used where that is necessary for the investigation of serious intentional criminal offences under Chapter I, Chapter II, Sections I, II, IV, V, VIII and IX, Chapter III, Section III, Chapter V, Sections I to VII, Chapter VI, Sections II to IV, Chapter VIII, Chapter VIIIa, Chapter IXa, Chapter XI, Sections I to IV, Chapter XII, Chapter XIII and Chapter XIV, and for the criminal offences under Article 219(4), second situation, Article 220(2), Article 253, Article 308(2), (3) and (5), second sentence, Article 321, Article 321a, Article 356k and Article 393 of the Special Part of the Nakazatelen kodeks (Criminal Code), where the establishment of the circumstances in question is impossible in any other way, or is accompanied by exceptional difficulties.’

12 Under Article 173 of the NPK:

‘(1) 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 written request stating reasons. Prior to the submission of the application, the latter shall advise the administrative officer of the public prosecutor’s office concerned.

(2) The application must contain:

1. Information relating to the criminal offence for which the investigation requires the use of special investigative methods;

2. A description of the actions taken and their outcome;

3. Information relating to the persons or premises to which the special investigative methods apply;

4. The operating methods to be applied;

5. The duration of the use requested and the reasons for which that duration is requested;

6. The reasons for which the necessary data cannot be collected otherwise or can be collected only with extreme difficulty.'

13 Article 174(3) and (4) of the NPK state:

'(3) An authorisation for the use of special investigative methods in proceedings 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 rule by reasoned order …'

14 Article 175 of the NPK is worded as follows:

'…

(3) The time period for applying special investigative methods shall not exceed:

1. twenty days in the case of Article 12(1)(4) of the zakon za spetsialnite razuznavatelni sredstva [(Law on special investigative methods)];

2. two months in the other cases.

(4) Where necessary, the time period referred to in paragraph 1 may be extended in accordance with Article 174:

1. by twenty days, but not exceeding sixty days in total in the cases referred to in paragraph 3(1);

2. but not exceeding six months in total in the cases referred to in paragraph 3(2)'.

15 Article 3(1) of the zakon za spetsialnite razuznavatelni sredstva (Law on special investigative methods) of 8 October 1997 (DV No 95 of 21 October 1997, p. 2), in the version applicable to the dispute in the main proceedings ('the ZSRS'), provides:

'Special investigative methods shall be used where that is necessary to prevent and detect serious intentional criminal offences under Chapter I, Chapter II, Sections I, II, IV, V, VIII and IX, Chapter III, Section III, Chapter V, Sections I to VII, Chapter VI, Sections II to IV, Chapter VIII, Chapter VIIIa, Chapter IXa, Chapter XI, Sections I to IV, Chapter XII, Chapter XIII and Chapter XIV, and for criminal offences under Article 219(4), second situation, Article 220(2), Article 253, Article 308(2), (3) and (5), second sentence, Article 321, Article 321a, Article 356k and Article 393 of the Special Part of the [Criminal Code], where the collection of the necessary information is impossible in any other way, or is accompanied by exceptional difficulties.'

16 Article 6 of the ZSRS provides:

‘In the event of listening, through the use of technical means, aurally or otherwise, the … telephone communications … of the monitored persons shall be intercepted.’

17 Article 11 of the ZSRS is worded as follows:

‘In the application of the modes of operation, evidence shall be provided by means of … audio recording … on a physical medium.’

18 Article 12(1)(1) of the ZSRS provides:

‘Special investigative methods shall be used for persons in respect of whom there is information and reasonable grounds to believe that they are preparing, committing or have committed any of the serious intentional criminal offences referred to in Article 3(1).’

19 Article 13(1) of the ZSRS reads as follows:

‘The following shall be entitled to request the use of special investigative methods and to make use of the information and material evidence gathered by means of those methods, in accordance with their powers:

1. the Directorate-General “National Police”, the Directorate-General “Combating Organised Crime”, the Directorate-General “Border Police”, the Directorate “Internal Security”, the regional directorates of the Ministry of the Interior, the specialised directorates (with the exception of the Directorate “Technical Operations”), the territorial directorates and the autonomous territorial divisions of the State agency “National Security”;

2. the “Military Intelligence” and “Military Police” services (under the Minister for Defence);

3. the State agency “Intelligence”.’

20 Article 14(1)(7) of the ZSRS states:

‘The use of special investigative methods shall require a reasoned written request from the relevant administrative head of the authorities referred to in Article 13(1) or the supervising public prosecutor, or, as the case may be, from the authority referred to in Article 13(3), and in the case of the directorate referred to in Article 13(1)(7), from its director. The application must state … the reasons why the collection of the necessary data is impossible in any other way, or a description of the extreme difficulties accompanying its collection.’

21 Article 15(1) of the ZSRS provides:

‘The heads of the authorities referred to in Article 13(1) or the supervising public prosecutor, and in the case of the directorate referred to in Article 13(1)(7), the President of the Commission for the combating of corruption and for the confiscation of illegally obtained assets, shall submit the application to the Presidents of the Sofiyski gradski sad (Sofia City Court, Bulgaria), the relevant regional or military courts, the Spetsializiran nakazatelen sad (Specialised Criminal Court), or to a Vice-President authorised by them, who shall, within 48 hours, authorise in writing the use of special investigative methods or refuse their use, stating the reasons for their decisions.’

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

22 Between 10 April and 15 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 to and recording, as well as monitoring and tracing, the telephone conversations of IP, DD, ZI and SS, four persons suspected of having committed serious offences ('the telephone tapping applications').

23 It is apparent from the order for reference that 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 this information by other means.

24 The President of the Spetsializiran nakazatelen sad (Specialised Criminal Court) granted each of those applications on the same day that they were brought and, consequently, issued seven decisions authorising telephone tapping ('the telephone tapping authorisations').

25 According to the Spetsializiran nakazatelen sad (Specialised Criminal Court), the referring court, the telephone tapping authorisations correspond to a pre-drafted template designed to cover all possible cases of authorisation, irrespective of the various circumstances of fact and law, other than the length of time during which the use of special investigative methods was authorised.

26 In particular, those authorisations merely state that the statutory provisions to which they refer have been complied with, without identifying the authority which made the telephone tapping applications and without indicating the name and telephone number of each person concerned, the offence or offences referred to in Article 172(2) of the NPK and Article 3(1) of the ZSRS, the evidence leading to the suspicion of the commission of one or more of those offences or even the categories of persons and premises, referred to in Article 12 of the ZSRS, for which the use of special investigative methods has been authorised. Furthermore, the referring court states that those authorisations do not set out the arguments of the Specialised Public Prosecutor's Office demonstrating, on the basis of Article 172 of the NPK and Article 14 of the ZSRS, that it is impossible to gather the information sought by any means other than telephone tapping, nor do they specify, with regard to Article 175 of the NPK, whether the period specified for the use of those methods is set for the first time or whether it is an extension of the time limit and on the basis of what assumptions and arguments that time limit has been decided.

27 On foot of those authorisations, some of the conversations conducted by IP, DD, ZI and SS were recorded and stored in accordance with Article 11 of the ZSRS.

28 On 19 June 2020, the Specialised Public Prosecutor's Office accused those four persons, together with a fifth, HYA, of participating in an organised criminal gang for the purpose of enrichment, smuggling third-country nationals across Bulgarian borders, assisting them to enter Bulgarian territory illegally and receiving or giving bribes in connection with those activities. The accused include three agents of the Sofia airport border police.

29 The referring court, hearing the merits of the case, states 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.

30 It explains that it is required, in advance, to review the validity of the procedure which led to the telephone tapping authorisations. In that context, it might be considered that the fact that those authorisations were drawn up in accordance with a pre-drafted template text that does not contain individualised reasons does not enable it to ascertain the reasons specifically relied on by the judge who granted those authorisations. Conversely, it would also be possible to take the view that, by acceding to the request of the Specialised Public Prosecutor's Office, the judge who granted the telephone tapping authorisations accepted the reasons for those applications in full and endorsed them.

31 While not doubting that the national legislation on telephone tapping, as it results in particular from the provisions of the NPK and the ZSRS, is compatible with Article 15(1) of Directive 2002/58, the referring court is uncertain whether a national practice such as that at issue in the main proceedings, according to which the obligation to state the reasons for the judicial decision authorising the use of special investigative methods following a reasoned request by the criminal authorities is satisfied where that decision, drawn up in accordance with a pre-drafted template which does not contain individualised reasons, merely states that the requirements laid down by that legislation, to which it refers, have been complied with, is compatible with the last sentence of Article 15(1) of that directive, read in the light of recital 11 thereof.

32 In particular, that court points out that judicial decisions such as telephone tapping authorisations limit, with regard to the natural persons concerned, the rights and freedoms guaranteed in Articles 7, 8 and 11 of the Charter of Fundamental Rights of the European Union ('the Charter'). It also has doubts as to whether such a practice complies with the right to effective judicial protection, enshrined in Article 47 of the Charter, and the principle of proportionality as a general principle of EU law.

33 If the answer is in the negative, the referring court asks whether EU law precludes an interpretation of national legislation such that recordings of telephone conversations authorised by a judicial decision which does not contain a statement of reasons may nevertheless be used as evidence in criminal proceedings.

34 In those circumstances, the Spetsializiran nakazatelen sad (Specialised Criminal Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

(1) Is a practice of national courts in criminal proceedings whereby the court authorises the interception, recording and storage of telephone conversations of suspects by means of a pre-drafted, generic text template in which it is merely asserted, without any individualisation, that the statutory provisions have been complied with compatible with Article 15(1) of Directive 2002/58 … read in conjunction with Article 5(1) and recital 11 thereof?

(2) If not, is it 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?'

35 By letter of 5 August 2022, the Sofiyski gradski sad (Sofia City Court) informed the Court that, following a legislative amendment which entered into force on 27 July 2022, the Spetsializiran nakazatelen sad (Specialised Criminal Court) had been dissolved and that certain criminal cases brought before that court, including the case in the main proceedings, had been transferred to it as from that date.

Consideration of the questions referred

The first question

36 As a preliminary point, it should be recalled that, when Member States implement, on the basis of Article 15(1) of Directive 2002/58, legislative measures derogating from the principle of confidentiality of electronic communications enshrined in Article 5(1) of that directive, the protection of data subjects falls within the scope of that directive only in so far as the measures at issue impose processing obligations on providers of such communications services, within the meaning of Article 4(2) of Regulation 2016/679, made applicable by Article 2 of Directive 2002/58, read in conjunction with Article 94(2) of that regulation (see, to that effect, judgment of 6 October 2020, *La Quadrature du Net and Others*, C-511/18, C-512/18 and C-520/18, EU:C:2020:791, paragraphs 96 and 104 and the case-law cited).

37 Under the latter provisions, the concept of processing includes, inter alia, for such providers, granting access to communications and data or transmitting them to the competent authorities (see, to that effect and by analogy, judgment of 6 October 2020, *Privacy International*, C-623/17, EU:C:2020:790, paragraphs 39 to 41 and the case-law cited).

38 In the present case, it is for the referring court to ascertain whether the special investigative methods used in the main proceedings and, in particular, the interception referred to in Article 6 of the ZSRS, had the effect of imposing such processing obligations on the providers concerned and whether, therefore, the main proceedings fall within the scope of Directive 2002/58. It must therefore be clarified that the Court will answer the first question only in so far as the case in the main proceedings falls within the scope of that directive, in particular Article 15(1) thereof.

39 In the light of those preliminary clarifications, it must be held that, by its first question, the referring court asks, in essence, 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 a national practice under which judicial decisions authorising the use of special investigative methods, following a reasoned request by the criminal authorities, are drawn up in accordance with a pre-drafted text and without individualised reasons, merely stating, apart from the validity period of those authorisations, that the requirements laid down by that legislation, to which those decisions refer, have been complied with.

40 Article 5(1) of that directive 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.

41 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.

42 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 (see, to that effect, judgment of

2 March 2021, *Prokuratuur (Conditions of access to data relating to electronic communications)*, C-746/18, EU:C:2021:152, paragraph 49 and the case-law cited).

43 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 (see, to that effect, judgment of 6 October 2020, *La Quadrature du Net and Others*, C-511/18, C-512/18 and C-520/18, EU:C:2020:791, paragraph 113 and the case-law cited).

44 In particular, the procedural conditions referred to in paragraph 42 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) ECHR. That right requires that all judgments must state the reasons on which they are based (see, to that effect, judgment of 6 September 2012, *Trade Agency*, C-619/10, EU:C:2012:531, paragraphs 52 and 53 and the case-law cited).

45 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.

46 Indeed, as the Advocate General noted in point 38 of his Opinion, 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 (see, by analogy, judgment of 24 November 2020, *Minister van Buitenlandse Zaken*, C-225/19 and C-226/19, EU:C:2020:951, paragraph 43 and the case-law cited).

47 In the present case, it is apparent from the explanations provided by the referring court that, pursuant to national legislative measures adopted pursuant to Article 15(1) of Directive 2002/58, in particular Article 34 and Article 174(4) of the NPK and Article 15(1) of the ZSRS, read in conjunction with Article 121(4) of the Constitution, reasons must be given for any judicial decision authorising the use of special investigative methods.

48 That being the case, the first question is raised not in the light of the legislative provisions of the NPK and the ZSRS adopted under Article 15(1) of Directive 2002/58, but of a national judicial practice implementing those legislative provisions, under which decisions to authorise the use of special investigative methods are reasoned by means of a pre-drafted template text intended to cover all possible cases of authorisation, and that does not contain individualised reasons. Such decisions are adopted in a specific procedural context.

49 It should be noted that, under Bulgarian law, the decision authorising the use of special investigative methods is adopted following a procedure designed to make it possible, with regard to a person in respect of whom there are reasonable grounds to believe that person is preparing, committing or have committed a serious intentional criminal offence, to secure the effective and rapid collection of data which could not be collected by means other than the special investigative methods requested or which could only be collected with extreme difficulty.

50 In the context of that procedure, the authorities empowered to request the use of such methods, within the meaning of Article 173(1) and (2) of the NPK and Article 13(1) of the ZSRS, must, in accordance with Article 173(2) of the NPK and Article 14(1)(7) of the ZSRS, submit in writing to the court having jurisdiction a reasoned and detailed application setting out the offence which is the subject of the investigation, the measures taken in the context of that investigation and the results thereof, data identifying the person or premises targeted by the application, the operating methods to be applied, the expected duration of the surveillance and the reasons why this duration is requested, as well as the reasons why the use of those methods is essential to the investigation.

51 It is apparent from the legal rules governing that procedure that the court which grants authorisation to use special investigative methods takes its decision on the basis of a reasoned and detailed application, the content of which, provided for by law, must enable it to ascertain whether the conditions for the grant of such authorisation have been met.

52 Thus, that practice forms part of legislative measures, adopted under Article 15(1) of Directive 2002/58, which provide for the possibility of taking reasoned judicial decisions which have the effect of restricting the principle of confidentiality of electronic communications and traffic data, laid down in Article 5(1) of that directive. In that regard, it is deemed to implement the obligation to state reasons laid down by those legislative measures in accordance with the requirements of the second paragraph of Article 47 of the Charter referred to in the last sentence of Article 15(1) of that directive with the reference to Article 6(1) and (2) TEU.

53 In that regard, since, in the context of that procedure, the court having jurisdiction examined the grounds of a detailed application such as that referred to in paragraph 50 of the present judgment, and it considers, at the end of its examination, that that application is justified, it must be held that, by signing a pre-drafted text in accordance with a template indicating that the legal requirements have been complied with, that court endorsed the grounds of the application while ensuring compliance with the legal requirements.

54 As the European Commission states in its written observations, it would be artificial to require that the authorisation to use special investigative methods should contain a specific and detailed statement of reasons, whereas the application in respect of which that authorisation is granted already contains such a statement of reasons under national law.

55 On the other hand, once the person concerned has been informed that special investigative methods have been applied to him or her, the obligation to state reasons referred to in the second paragraph of Article 47 of the Charter requires that that person be, in accordance with the case-law referred to in paragraph 46 of the present judgment, in a position to understand the reasons why the use of those methods has been authorised, in order to be able, where appropriate, to challenge that authorisation appropriately and effectively. That requirement also applies to any court, such as, inter alia, the trial court, which, in accordance with its powers, must examine, of its own motion or at the request of the person concerned, the lawfulness of that authorisation.

56 It will therefore be for the referring court to determine whether, in the context of the practice referred to in paragraph 39 above, compliance with that provision of the Charter and Directive 2002/58 is guaranteed. To that end, it will have to determine whether the person to whom special investigative methods have been applied and the court responsible for reviewing the legality of the authorisation to use those methods are both in a position to understand the reasons for that authorisation.

57 While that verification is solely a matter for the referring court, the Court, when giving a preliminary ruling on a reference, may, in appropriate cases, nonetheless give clarifications to guide the national court in its decision (judgment of 5 May 2022, *Victorinox*, C-179/21, EU:C:2022:353, paragraph 49 and the case-law cited).

58 In that regard, since authorisation to use special investigative methods is granted on the basis of a reasoned and detailed application from the competent national authorities, it must be verified that the persons referred to in paragraph 56 of the present judgment can have access not only to the authorisation decision but also to the application of the authority which requested that authorisation.

59 Furthermore, in order to comply with the obligation to state reasons under the second paragraph of Article 47 of the Charter, it is important, as the Advocate General observed, in essence, in point 41 of his Opinion, that those same persons should be able to understand easily and unambiguously, by means of a cross-reading of the authorisation to use special investigative methods and of the accompanying reasoned application, the precise reasons why that authorisation was granted in the light of the factual and legal circumstances characterising the individual case underlying the application, just as it is imperative that such a cross-reading should reveal the validity period of the authorisation.

60 Where, as in the present case, the authorisation decision merely indicates the validity period of the authorisation and states that the legal provisions to which they refer have been complied with, it is essential that the application should clearly state all the necessary information so that both the person concerned and the court responsible for verifying the legality of the authorisation granted are able to understand that, on the basis of this information alone, the judge who granted the authorisation has, by endorsing the reasoning set out in the application, come to the conclusion that all legal requirements have been met.

61 If a cross-reading of the application and subsequent authorisation does not make it possible to understand, easily and unequivocally, the reasons for that authorisation, it must be held that the obligation to state reasons which follows from Article 15(1) of Directive 2002/58, read in the light of the second paragraph of Article 47 of the Charter, has not been complied with.

62 It should also be added that, in accordance with Article 52(3) of the Charter, the rights contained in the Charter have the same meaning and scope as the corresponding rights guaranteed by the ECHR, which does not preclude EU law from affording more extensive protection.

63 In that regard, it is apparent from the case-law of the European Court of Human Rights that the statement of reasons, albeit succinct, constitutes an essential safeguard against abuse of surveillance in that only such a statement makes it possible to ensure that the judge has correctly examined the application for authorisation and the evidence provided and has genuinely verified whether the surveillance requested constitutes a justified and proportionate interference in the exercise of the right to respect for private and family life guaranteed in Article 8 ECHR. The European Court of Human Rights has nevertheless recognised, with regard to two judgments of the Spetsializiran nakazatelen sad (Specialised Criminal Court), that the lack of individualised reasoning cannot automatically lead to the conclusion that the judge who issued the authorisation did not properly review the application (see, to that effect, ECtHR, 11 January 2022, *Ekimdzhiev and Others v. Bulgaria* (CE:ECHR:2022:0111JUD007007812, §§ 313 and 314 and the case-law cited).

64 It should also be noted that the judgment of the ECtHR of 15 January 2015, *Dragojević v. Croatia* (CE:ECHR:2015:0115JUD006895511), referred to by the referring court, cannot call into

question the considerations set out in paragraphs 58 to 61 of the present judgment. Indeed, in reaching the conclusion that Article 8 ECHR had been infringed, the European Court of Human Rights did not, in that judgment of 15 January 2015, examine the question whether the person concerned could, by a cross-reading of the authorising decisions and the application for surveillance, understand the reasons relied on by the investigating judge, but rather the separate question of whether the lack or inadequacy of the statement of reasons given for the authorising decisions could be remedied a posteriori.

65 In the light of the foregoing grounds, the answer to the first question 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 meaning that it does not preclude a national practice under which judicial decisions authorising the use of special investigative methods following a reasoned and detailed application from the criminal authorities, are drawn up by means of a pre-drafted text which does not contain individualised reasons, but which merely states, 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, 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.

The second question

66 In view of the answer given to the first question, the second question does not require an answer.

Costs

67 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Third 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,

is to be interpreted as meaning that it does not preclude a national practice under which judicial decisions authorising the use of special investigative methods following a reasoned and detailed application from the criminal authorities, are drawn up by means of a pre-drafted text which does not contain individualised reasons, but which merely states, 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, 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.

[Signatures]

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* Language of the case: Bulgarian.