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Judgment of the Court in Case C-349/21 | HYA and Others (Grounds for authorising telephone tapping)

### **A decision authorising telephone tapping need not contain individualised reasons**

*The obligation to state reasons is not infringed where the decision is based on a detailed and substantiated request from the competent prosecution authority and the reasons for the authorisation can be easily and unambiguously deduced from a cross-reading of the application and the authorisation*

In 2017, the President of the Bulgarian Specialised Criminal Court, based on reasoned, detailed and substantiated applications from the investigating prosecutor, authorised the telephone tapping of four individuals suspected of committing serious intentional crimes.

In giving reasons for his decisions, the President followed the existing national judicial practice of using a pre-drafted template that did not contain individualised reasons and which, in essence, merely stated that the requirements of the national legislation on telephone tapping, referred to in the template, had been met.

The four individuals were then charged with participation in an organised criminal gang before the Specialised Criminal Court heard the case on its merits.

Since the content of the recorded conversations is of direct importance in establishing the validity of the indictment, the Specialised Criminal Court must first review the legality of the procedure that led to the authorisation of the telephone tapping. In this context, that court asks whether the national practice regarding the reasons given for decisions authorising telephone tapping is compatible with the Directive on privacy and electronic communications<sup>1</sup>, read in the light of the Charter of Fundamental Rights of the European Union. It has therefore referred to the Court for a preliminary ruling.

In today's judgment, the Court notes that, as regards the national practice at issue, the judge authorising the telephone tapping adopts his decision on the basis of a reasoned and detailed application enabling him to determine whether the conditions for granting authorisation have been met. The Court notes that this practice is part of the legislative measures adopted by Bulgaria under the Directive on privacy and electronic communications, which provide for the possibility of adopting reasoned judicial decisions that have the effect of restricting the principle of confidentiality of electronic communications and traffic data, set out in that directive.

The Court then states that it may be deemed that, by signing a pre-drafted text according to a template indicating that the legal requirements have been met, the national judge endorsed the grounds of the detailed application submitted to him by the competent prosecuting authority, while at the same time ensuring that those requirements had been met. In that context, it would be artificial to require that the telephone tapping authorisation should contain a specific and detailed statement of reasons when the application, in respect of which the authorisation is

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<sup>1</sup> 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)

granted, already contains such a statement of reasons under national law.

Furthermore, the Court states that once the person concerned has been informed that he or she has been the subject of telephone tapping, the obligation to state reasons laid down in the Charter of Fundamental Rights requires that both the person concerned and the court responsible for verifying the legality of the authorisation for telephone tapping must be able to understand the reasons for the authorisation. This requires that they should have access not only to the authorisation decision, but also to the application of the authority that requested it.

The Court further specifies that these persons concerned must be able to understand easily and unambiguously, by reading the authorisation and the reasoned application accompanying it, the precise reasons why that authorisation was granted in the light of the factual and legal circumstances characterising the individual case underlying the application. It adds that **when the authorisation decision merely indicates the validity period of authorisation and states that the legal provisions have been met, it is essential that the application should clearly state all the necessary information** so that the persons concerned are in a position to understand that, on the basis of this information alone, the judge who granted the authorisation has, by endorsing the reasoning contained in the application, come to the conclusion that all the legal requirements have been met.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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