

# ECJ: Individual Reasons Not Necessary for Telecommunications Surveillance

## News

Anna Pinggen

On 16 February 2023, the ECJ ruled on the individualisation of the obligation to state reasons for the judicial authorisation of telephone surveillance measures (Case C-349/21, *HYA and Others*). In the period from 10 April to 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), requesting authorisation to use telecommunication methods to intercept, record, monitor, and trace the telephone conversations of four persons suspected of having committed serious crimes.

The court President granted each of these applications on the day they were submitted and issued seven corresponding decisions authorising telephone tapping (so-called telephone tapping authorisations). On 19 June 2020, the Specialised Public Prosecutor's Office accused those four persons, together with a fifth person, of participating in an organised criminal gang for the purpose of enrichment, smuggling third-country nationals across Bulgarian borders, assisting them in illegally entering Bulgarian territory, and receiving/giving bribes in connection with these activities. The *Spetsializiran nakazatelen sad*, the referring court, decided to stay the proceedings and refer the following questions to the ECJ for a preliminary ruling:

- Is the 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 Art. 15(1) of Directive 2002/58 read in conjunction with Art. 5(1) and recital 11 thereof (Directive on privacy and electronic communications)?
- 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?

The ECJ held that a decision authorising telephone interception need not contain an individualised statement of reasons if the precise reasons why the court considered the legal requirements to have been complied with can be easily and unambiguously inferred from a cross-reading of the decision. In addition, the decision need not contain an individualised statement of reasons if the application for authorisation is made accessible to the person against whom the use of special investigative methods has been authorised after the authorisation has been given.

The Court of Justice of the European Union has already been confronted several times with preliminary references from the *Spetsializiran nakazatelen sad* concerning the compatibility of Bulgarian criminal proced-

### AUTHOR

Anna Pinggen 

Researcher  
Max Planck Institute for the  
Study of Crime, Security and  
Law

ISSN: 1862-6947

<https://eucrim.eu>



ure law with Union law (→ related links). As from 27 July 2022, the *Spetsializiran nakazatelen sad* was dissolved and certain criminal cases (including the one at issue) transferred to the *Sofiyski gradski sad* (Sofia City Court).

---

## About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to [eucrim-subscribe@csl.mpg.de](mailto:eucrim-subscribe@csl.mpg.de) to receive alerts for new releases of issues.

The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



**Co-funded by  
the European Union**