

Request for a preliminary ruling from the Riigikohus (Estonia) lodged on 29 November 2018 — H. K. v Prokuratuur

(Case C-746/18)

(2019/C 54/13)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Appellant: H.K.

Other party: Prokuratuur

Questions referred

1. Is Article 15(1) of Directive 2002/58/EC⁽¹⁾ of the European Parliament and of the Council of 12 July 2002, in conjunction with Articles 7, 8, 11 and 52(1) of the Charter of Fundamental Rights of the European Union, to be interpreted as meaning that in criminal proceedings the access of State authorities to data making it possible to establish the start and end point, the date, the time and the duration, the type of communications service, the terminal used and the location of use of a mobile terminal in relation to a telephone or mobile telephone communication of a suspect constitutes so serious an interference with the fundamental rights enshrined in those articles of the Charter that that access in the area of prevention, investigation, detection and prosecution of criminal offences must be restricted to the fighting of serious crime, regardless of the period to which the retained data to which the State authorities have access relate?
2. Is Article 15(1) of Directive 2002/58/EC, on the basis of the principle of proportionality expressed in the judgment of the Court of Justice of 2 October 2018 in Case C-207/16, paragraphs 55 to 57, to be interpreted as meaning that, if the amount of data mentioned in the first question, to which the State authorities have access, is not large (both in terms of the type of data and in terms of its temporal extent), the associated interference with fundamental rights is justified by the objective of prevention, investigation, detection and prosecution of criminal offences generally, and that the greater the amount of data to which the State authorities have access, the more serious the criminal offences which are intended to be fought by the interference must be?
3. Does the requirement mentioned in the judgment of the Court of Justice of 21 December 2016 in Joined Cases C-203/15 and C-698/15, second point of the operative part, that the data access of the competent State authorities must be subject to prior review by a court or an independent administrative authority mean that Article 15(1) of Directive 2002/58/EC must be interpreted as meaning that the public prosecutor's office which directs the pre-trial procedure, with it being obliged by law to act independently and only being bound by the law, and ascertains the circumstances both incriminating and exonerating the accused in the pre-trial procedure, but later represents the public prosecution in the judicial proceedings, may be regarded as an independent administrative authority?

⁽¹⁾ 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).