

ORDER OF THE PRESIDENT OF THE COURT

1 February 2016 (*)

(Expedited procedure)

In Case C-698/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal (England and Wales) (Civil Division), made by decision of 9 December 2015, received at the Court on 28 December 2015, in the proceedings

Secretary of State for the Home Department

v

David Davis,**Tom Watson,****Peter Brice,****Geoffrey Lewis,**

intervening parties:

Open Rights Group,**Privacy International,****The Law Society of England and Wales,**

THE PRESIDENT OF THE COURT,

having heard the Judge-Rapporteur, T. von Danwitz, and the Advocate General, H. Saugmandsgaard Øe,

makes the following

Order

- 1 This request for a preliminary ruling concerns the interpretation of Articles 7 and 8 of the Charter of Fundamental Rights of the European Union ('the Charter') and the judgment in *Digital Rights Ireland and Others* (C-293/12 and C-594/12, EU:C:2014:238) whereby the Court declared invalid Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54).
- 2 The request was made in proceedings between the Secretary of State for the Home Department, on

the one hand, and Mr Davis, Mr Watson, Mr Brice and Mr Lewis, on the other, concerning whether section 1 of the Data Retention and Investigatory Powers Act 2014 ('DRIPA') is compatible with EU law.

- 3 It is stated in the order for reference that Mr Davis, Mr Watson, Mr Brice and Mr Lewis brought before the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), actions for judicial review of the lawfulness of the data retention regime in section 1 of DRIPA, which empowers the Secretary of State for the Home Department to require public telecommunications operators to retain communications data for a maximum period of 12 months, retention of the content of the communications concerned being excluded.
- 4 By judgment of 17 July 2015, that court held that that regime was not compatible with EU law in that it does not meet the requirements laid down by the judgment in *Digital Rights Ireland and Others* (C-293/12 and C-594/12, EU:C:2014:238), which that court considered to be applicable to the legislation of Member States with respect to the retention of electronic communications data and access to such data. The Secretary of State for the Home Department brought an appeal against that judgment before the referring court.
- 5 The claimants in the main proceedings maintain before the referring court that, inter alia, a national regime which makes provision for the retention of electronic communications data must comply with the requirements stemming from 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 with Articles 7 and 8 of the Charter. Section 1 of DRIPA constitutes, in their opinion, serious interference with the fundamental rights laid down in Articles 7 and 8 of the Charter and is incompatible with those articles in that it does not comply with the requirements laid down by the judgment in *Digital Rights Ireland and Others* (C-293/12 and C-594/12, EU:C:2014:238).
- 6 By its first question, the referring court seeks, in essence, to ascertain whether the judgment in *Digital Rights Ireland and Others* (C-293/12 and C-594/12, EU:C:2014:238) must be interpreted as meaning that it lays down requirements, in the light of Articles 7 and 8 of the Charter, which are applicable to a national regime governing retention of electronic communications data and access to such data. By its second question, the referring court seeks, in essence, to ascertain whether Articles 7 and 8 of the Charter must be interpreted as meaning that the requirements stemming from those articles are stricter than those stemming from Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, as interpreted respectively by the Court of Justice and by the European Court of Human Rights.
- 7 In the order for reference and by a separate document lodged at the Registry of the Court on the same date as that order, the referring court requests a decision by the Court that this reference for a preliminary ruling should be determined pursuant to the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court.
- 8 Article 105(1) of the Rules of Procedure states that, at the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those rules.
- 9 In this case, the referring court argues that it would be desirable to join this request for a preliminary ruling to, or direct that it be heard with, the reference for a preliminary ruling in *Tele2*

Sverige (C-203/15), pending before the Court, made by a Swedish court on the subject of the compatibility, with Article 15(1) of Directive 2002/58 and Articles 7, 8 and 52(1) of the Charter, of Swedish legislation that provides for the retention of electronic communications data. Moreover, as explained by the referring court, DRIPA expires on 31 December 2016 and there is uncertainty as to the scope of the judgment in *Digital Rights Ireland and Others* (C-293/12 and C-594/12, EU:C:2014:238) with regard to any legislation which may be adopted by the Member States in the field of the retention of electronic communications data.

- 10 In that regard, it is clear that national legislation that permits the retention of all electronic communications data and subsequent access to that data is liable to cause serious interference with the fundamental rights laid down in Articles 7 and 8 of the Charter (see judgment in *Digital Rights Ireland and Others*, C-293/12 and C-594/12, EU:C:2014:238, paragraph 37).
- 11 An answer from the Court within a short time might therefore be able to dispel the uncertainty experienced by the referring court as regards the possibility of serious interference with the fundamental rights laid down in Articles 7 and 8 of the Charter and as regards whether there is any justification for that interference.
- 12 Further, it must be observed that the fact that there is a time limit on DRIPA being in force justifies, in the light of the spirit of cooperation that characterises the relationship between the courts of the Member States and the Court, an urgent reply by the Court to the questions put by the referring court.
- 13 Those circumstances are such as to justify this case being dealt with within a short time in accordance with Article 105(1) of the Rules of Procedure.
- 14 Accordingly, it is appropriate to order that Case C-698/15 be determined pursuant to the expedited procedure.

On those grounds, the President of the Court hereby orders:

Case C-698/15 shall be determined pursuant to the expedited procedure provided for in Article 105(1) of the Rules of Procedure of the Court.

Luxembourg, 1 February 2016.

Signature(s)

* Language of the case: English.