



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-638/16 PPU
X and X v État Belge

According to Advocate General Mengozzi, Members States must issue a visa on humanitarian grounds where substantial grounds have been shown for believing that a refusal would place persons seeking international protection at risk of torture or inhuman or degrading treatment

It is irrelevant whether or not there are ties between the person concerned and the requested Member State

On 12 October 2016, a Syrian couple and their three young children, Syrian nationals living in Aleppo (Syria), applied to the Belgian Embassy in Beirut (Lebanon) for visas. They returned to Syria on 13 October 2016. Their applications were for visas with limited territorial validity, pursuant to the EU Visa Code,¹ to enable the family to leave the besieged city of Aleppo, with a view to making an asylum application in Belgium. One of the applicants claims, inter alia, to have been taken by an armed group, beaten and tortured and finally released on payment of a ransom. The couple maintains that the security situation in Syria in general, and in Aleppo in particular, has deteriorated and point out that, as Orthodox Christians, they are at risk of persecution on account of their religious beliefs. They add that it is impossible for them to register as refugees in the neighbouring countries because, among other reasons, the border between Lebanon and Syria has in the meantime been closed.

On 18 October 2016, the Office des étrangers (Aliens' Office) (Belgium) refused those applications. It took the view that, by applying for a visa with limited territorial validity with a view to making an asylum application in Belgium, the Syrian family in question clearly intended to stay for more than 90 days in Belgium.² Moreover, the Office claims in particular that Member States are not obliged to admit into their territory all persons finding themselves in a catastrophic situation.

The Syrian family brought proceedings before the Conseil du contentieux des étrangers (Belgian Asylum and Immigration Board) seeking suspension of operation of the decisions refusing to grant visas. That court decided that it was necessary, as a matter of urgency, to make a reference to the Court of Justice concerning the interpretation of the Visa Code and of Articles 4 (prohibiting torture and inhuman or degrading treatment) and Article 18 (the right to asylum) of the Charter of Fundamental Rights of the European Union.

In today's Opinion, Advocate General Paolo Mengozzi first of all reaches the conclusion that the situation of the Syrian family in question is governed by the Visa Code and, therefore, by EU law.

He also takes the view that, by adopting a decision under the Visa Code, the authorities of a Member State are implementing EU law and are therefore required to respect the rights guaranteed by the Charter.

¹ Regulation (EC) No 810/2009 of 13 July 2009 establishing a Community Code on Visas, in particular Article 25(1)(a) of the regulation.

² According to Article (1) and (2) thereof, the Visa Code 'establishes the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six-month period'. Under Article 32(1)(b) of the code, a visa is refused if there are reasonable doubts as to the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for.

Advocate General Mengozzi states in that regard that the benefit of the fundamental rights laid down in the Charter, which all Member State authorities acting in the context of EU law are required to observe, is enjoyed by the addressees of the measures adopted by such an authority, irrespective of any territorial criterion.

The Advocate General considers that a Member State is required to issue a visa on humanitarian grounds in a situation where there is a serious risk of breach of Article 4 of the Charter in particular, irrespective of whether there are any links between the person concerned and the requested Member State.

The Advocate General does not accept an interpretation of the Visa Code to the effect that the code merely empowers Member States to issue such visas. His position is based both on the wording and structure of the provisions of the Visa Code and on the need for the Member States, in the exercise of their discretion, to respect the rights guaranteed by the Charter when applying those provisions.

In that context, the discretion enjoyed by the Member States must necessarily be exercised within the framework of EU law.

In the view of the Advocate General, there is no doubt that the applicants were exposed in Syria, at the very least, to a genuine risk of extremely serious inhuman treatment which clearly falls within the scope of the prohibition laid down in Article 4 of the Charter. In the light, inter alia, of the information available on the situation in Syria, the Belgian State was not entitled to conclude that it was exempted from its positive obligation under Article 4 of the Charter.

Accordingly, Advocate General Mengozzi proposes that the answer that the Court should give to the Conseil du contentieux des étrangers is that a Member State to which a third country national has applied for a visa with limited territorial validity on humanitarian grounds is required to issue such a visa if substantial grounds have been shown for believing that a refusal to issue such a document would have the direct consequence of exposing that national to treatment prohibited by Article 4 of the Charter, by depriving that person of a legal remedy to exercise his right to seek international protection in that Member State.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 EU 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](#) of the Opinion is published on the CURIA website on the day of delivery.

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