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TRIBUNAL DE JUSTICIA DE LA UNIÓN EUROPEA  
SOUDNÍ DVŮR EVROPSKÉ UNIE  
DEN EUROPÆISKE UNIONS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN UNION  
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ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ  
COURT OF JUSTICE OF THE EUROPEAN UNION  
COUR DE JUSTICE DE L'UNION EUROPÉENNE  
CÚIRT BHRÉITHIÚNAIS AN AONTAIS EORPAIGH  
SUD EUROPSKE UNIE  
CORTE DI GIUSTIZIA DELL'UNIONE EUROPEA



LUXEMBOURG

EIROPAS SAVIENĪBAS TIESA  
EUROPOS SĄJUNGOS TEISINGUMO TEISMAS  
AZ EURÓPAI UNIÓ BÍRÓSÁGA  
IL-QORTI TAL-ĠUSTIZZJA TAL-UNJONI EWROPEA  
HOF VAN JUSTITIE VAN DE EUROPESE UNIE  
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ  
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA  
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE  
SÚDNY DVOR EURÓPSKEJ ÚNIE  
SODIŠČE EVROPSKE UNIJE  
EUROOPAN UNIONIN TUOMIOISTUIN  
EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Grand Chamber)  
7 March 2017 \*

(Reference for a preliminary ruling — Regulation (EC) No 810/2009 — Article 25(1)(a) — Visa with limited territorial validity — Issuing of a visa on humanitarian grounds or because of international obligations — Concept of ‘international obligations’ — Charter of Fundamental Rights of the European Union — European Convention for the Protection of Human Rights and Fundamental Freedoms — Geneva Convention — Issuing of a visa where a risk of infringement of Article 4 and/or Article 18 of the Charter of Fundamental Rights is established — No obligation)

In Case C-638/16 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil du Contentieux des Étrangers (Council for asylum and immigration proceedings, Belgium), made by decision of 8 December 2016, received at the Court on 12 December 2016, in the proceedings

**X and X**

v

**État belge,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, T. von Danwitz, J.L. da Cruz Vilaça and M. Berger (Rapporteur), Presidents of Chambers, A. Borg Barthet, A. Arabadjiev, C. Toader, M. Safjan, E. Jarašiūnas, C.G. Fernlund, C. Vajda, S. Rodin and F. Biltgen, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

\* Language of the case: French.

having regard to the written procedure and further to the hearing on 30 January 2017,

after considering the observations submitted on behalf of:

- X and X, by T. Wibault and P. Robert, *avocats*,
- the Belgian Government, by C. Pochet and M. Jacobs, acting as Agents, and by C. L’hoir, M. Van Regemorter and F. Van Dijck, *experts*, and by E. Derriks and F. Motulsky, *avocats*,
- the Czech Government, by M. Smolek, acting as Agent,
- the Danish Government, by N. Lyshøj and C. Thorning, acting as Agents,
- the German Government, by T. Henze, acting as Agent,
- the Estonian Government, by N. Grünberg, acting as Agent,
- the French Government, by E. Armoet, acting as Agent,
- the Hungarian Government, by M.Z. Fehér, acting as Agent,
- the Maltese Government, by A. Buhagiar, acting as Agent,
- the Netherlands Government, by M. de Ree, acting as Agent,
- the Austrian Government, by J. Schmoll, acting as Agent,
- the Polish Government, by M. Kamejsza, M. Pawlicka and B. Majczyna, acting as Agents,
- the Slovenian Government, by V. Klemenc and T. Mihelič Žitko, acting as Agents,
- the Slovak Government, by M. Kianička, acting as Agent, and by I. Pištová, G. Hépalová, L. Szlobodová and V. Šimoňak, *experts*,
- the Finnish Government, by J. Heliskoski, acting as Agent,
- the European Commission, by C. Cattabriga and G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 February 2017,

gives the following

## **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 25(1)(a) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243 p. 1), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 (OJ 2013 L 182, p. 1) ('the Visa Code'), and of Articles 4 and 18 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The reference has been made in proceedings between, on the one hand, X and X, and, on the other, the État belge (the Belgian State) concerning a refusal to issue visas with limited territorial validity.

## **Legal context**

### ***International law***

- 3 Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR'), headed 'Obligation to respect Human Rights', provides:

'The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this [c]onvention.'

- 4 Article 3 of the ECHR, headed 'Prohibition of torture', which is in Section I thereof, provides:

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

- 5 Article 33(1) of the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967 ('the Geneva Convention'), that article being headed 'Prohibition of expulsion or return ("*refoulement*")', provides:

'No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

*EU law*

*The Charter*

- 6 Article 4 of the Charter, headed ‘Prohibition of torture and inhuman or degrading treatment or punishment’, provides:

‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment.’

- 7 Under Article 18 of the Charter, headed ‘Right to asylum’:

‘The right to asylum shall be guaranteed with due respect for the rules of the [Geneva Convention] and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union ...’

- 8 Article 51(1) of the Charter, that article being headed ‘Field of application’, provides:

‘The provisions of [the] Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law ...’

*The Visa Code*

- 9 Recital 29 of the Visa Code states:

‘This Regulation respects fundamental rights and observes the principles recognised in particular by the [ECHR] and the [Charter].’

- 10 Article 1(1) of the Visa Code, that article being headed ‘Objective and Scope’, states:

‘This Regulation establishes the procedures and conditions for issuing visas for transit through or intended stays on the territory of the Member States not exceeding 90 days in any 180-day period.’

- 11 Article 2 of that code provides:

‘For the purpose of this Regulation the following definitions shall apply:

...

2. “visa” means an authorisation issued by a Member State with a view to:
- (a) transit through or an intended stay on the territory of the Member States of a duration of no more than 90 days in any 180-day period;

- (b) transit through the international transit areas of airports of the Member States;

...’

12 Article 25 of the Visa Code, headed ‘Issuing of a visa with limited territorial validity’, provides:

‘1. A visa with limited territorial validity shall be issued exceptionally, in the following cases:

- (a) when the Member State concerned considers it necessary on humanitarian grounds, for reasons of national interest or because of international obligations,
  - (i) to derogate from the principle that the entry conditions laid down [by Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1)] must be fulfilled;
  - (ii) to issue a visa despite an objection by the Member State consulted in accordance with Article 22 to the issuing of a uniform visa; or
  - (iii) to issue a visa for reasons of urgency ...

or

- (b) when for reasons deemed justified by the consulate, a new visa is issued for a stay during the same 180-day period to an applicant who, over this 180-day period, has already used a uniform visa or a visa with limited territorial validity allowing for a stay of 90 days.

2. A visa with limited territorial validity shall be valid for the territory of the issuing Member State. It may exceptionally be valid for the territory of more than one Member State, subject to the consent of each such Member State.

...

4. When a visa with limited territorial validity has been issued in the cases described in paragraph 1(a), the central authorities of the issuing Member State shall circulate the relevant information to the central authorities of the other Member States without delay ...

5. The data ... shall be entered into the [Visa Information System] when a decision on issuing such a visa has been taken.’

13 Article 32(1)(b) of the Visa Code, that article being headed ‘Refusal of a visa’, provides:

‘Without prejudice to Article 25(1), a visa shall be refused:

...

(b) 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.’

*Regulation (EU) 2016/399*

14 Article 4 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1, ‘the Schengen Borders Code’), headed ‘Fundamental Rights’, is worded as follows:

‘When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the [Charter], relevant international law, including the [Geneva Convention], obligations related to access to international protection, in particular the principle of *non-refoulement*, and fundamental rights. In accordance with the general principles of Union law, decisions under this Regulation shall be taken on an individual basis.’

15 Article 6 of the Schengen Borders Code, headed ‘Entry conditions for third-country nationals’, provides:

‘1. For intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period ..., the entry conditions for third-country nationals shall be the following:

- (a) they are in possession of a valid travel document ...
- (b) they are in possession of a valid visa, if required ...
- (c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence ...
- (d) they are not persons for whom an alert has been issued ... for the purposes of refusing entry ...
- (e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States ...

...

5. By way of derogation from paragraph 1:

...

(c) third-country nationals who do not fulfil one or more of the conditions laid down in paragraph 1 may be authorised by a Member State to enter its

territory on humanitarian grounds, on grounds of national interest or because of international obligations ...’

*Directive 2013/32/EU*

- 16 Article 3 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60) provides:

‘1. This Directive shall apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection.

2. This Directive shall not apply to requests for diplomatic or territorial asylum submitted to representations of Member States.

...’

*Regulation (EU) No 604/2013*

- 17 Article 1 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31), headed ‘Subject matter’, provides:

‘This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ...’

- 18 Article 3(1) of Regulation No 604/2013 provides:

‘Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones ...’

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 19 The applicants in the main proceedings — a married couple — and their three young, minor children are Syrian nationals and live in Aleppo (Syria). On 12 October 2016 they submitted, at the Belgian Embassy in Beirut (Lebanon), on the basis of Article 25(1)(a) of the Visa Code, applications for visas with limited territorial validity, before returning to Syria on the following day.

- 20 In support of their visa applications, the applicants in the main proceedings stated that the purpose of the visas they were seeking to obtain was to enable them to leave the besieged city of Aleppo in order to apply for asylum in Belgium. One of the applicants in the main proceedings claimed, *inter alia*, to have been abducted by a terrorist group, then beaten and tortured, and finally released following the payment of a ransom. The applicants in the main proceedings emphasised, in particular, the precarious security situation in Syria in general and in Aleppo especially, and the fact that, being Orthodox Christians, they were at risk of persecution on account of their religious beliefs. They added that it was impossible for them to register as refugees in neighbouring countries, having regard, *inter alia*, to the closure of the border between Lebanon and Syria.
- 21 By decisions of 18 October 2016, which were communicated to the applicants in the main proceedings on 25 October 2016, the Office des Étrangers (Immigration Office, Belgium) rejected their applications. The Immigration Office stated, *inter alia*, that the applicants intended to stay more than 90 days in Belgium, that Article 3 of the ECHR did not require States that are parties to the convention to admit into their respective territories ‘victims of a catastrophic situation’ and that Belgian diplomatic posts were not among the authorities to which a foreign national could submit an application for asylum. According to the Immigration Office, authorising the issue of an entry visa to the applicants in the main proceedings in order for them to be able to lodge an application for asylum in Belgium would amount to allowing such an application to be submitted to a diplomatic post.
- 22 The referring court, before which the applicants in the main proceedings challenge those decisions, explains that the applicants requested the implementation of those decisions to be suspended under the so-called ‘emergency’ national procedure. Since it is unclear whether that request is admissible under the applicable national provisions, the referring court decided to bring the matter before the Cour constitutionnelle (Constitutional Court, Belgium) for a ruling on that issue. Pending an answer from the Cour constitutionnelle (Belgian Constitutional Court), consideration of the main proceedings by the referring court continues under the emergency procedure.
- 23 Before the referring court, the applicants in the main proceedings claim, essentially, that Article 18 of the Charter imposes a positive obligation on the Member States to guarantee the right to asylum and that the granting of international protection is the only way to avoid any risk that Article 3 of the ECHR and Article 4 of the Charter will be infringed. In the present case, since the Belgian authorities have themselves taken the view that the applicants in the main proceedings are in a situation that is exceptional from a humanitarian point of view, the latter assert that, having regard to the international obligations of the Kingdom of Belgium, the conditions for applying Article 25(1)(a) of the Visa Code were satisfied, and they conclude therefore that they should have been issued, on humanitarian grounds, with the visas that they were seeking to obtain.

- 24 For its part, the Belgian State is of the opinion that it is under no obligation, whether on the basis of Article 3 of the ECHR or that of Article 33 of the Geneva Convention, to admit a third-country national into its territory, and that its only obligation in that regard is to refrain from deportation.
- 25 The referring court argues that it is apparent from Article 1 of the ECHR, as interpreted by the European Court of Human Rights, that the applicants in the main proceedings may rely on Article 3 of the ECHR only if they are within Belgian ‘jurisdiction’. However, the referring court asks whether the implementation of the visa policy may be regarded as the exercise of jurisdiction in that sense. Moreover, the referring court asks whether a right of entry could follow, as a corollary to the obligation to take preventative measures and to the principle of *non-refoulement*, from Article 3 of the ECHR and, *mutatis mutandis*, Article 33 of the Geneva Convention.
- 26 In addition, the referring court notes that the implementation of Article 4 of the Charter, unlike Article 3 of the ECHR, does not depend on the exercise of jurisdiction but on the application of EU law. However, it does not follow either from the Treaties or from the Charter that that implementation is territorially limited.
- 27 With regard to Article 25 of the Visa Code, the referring court notes that it provides, *inter alia*, that a visa must be issued when a Member State ‘considers’ it to be necessary because of international obligations. The referring court, however, questions the extent of Member States’ discretion in that respect and is of the opinion that, having regard to the binding nature of international obligations and those arising from the Charter, any such discretion can be ruled out in that respect.
- 28 In those circumstances, the Conseil du Contentieux des Étrangers (Council for asylum and immigration proceedings, Belgium) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Do the “international obligations” referred to in Article 25(1)(a) of the Visa Code cover all the rights guaranteed by the Charter, including, in particular, those guaranteed by Articles 4 and 18, and do they also cover obligations which bind the Member States, in the light of the ECHR and Article 33 of the Geneva Convention?
- (2) (a) Depending on the answer given to the first question, must Article 25(1)(a) of the Visa Code be interpreted as meaning that, subject to its discretion with regard to the circumstances of the case, a Member State to which an application for a visa with limited territorial validity has been made is required to issue the visa applied for, where a risk of infringement of Article 4 and/or Article 18 of the Charter or another international obligation by which it is bound is established?
- (b) Does the existence of links between the applicant and the Member State to which the visa application was made (for example, family

connections, host families, guarantors and sponsors) affect the answer to that question?’

### **The urgent procedure**

- 29 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court.
- 30 In support of its request, the referring court relied, *inter alia*, upon the serious armed conflict in Syria, the young age of the children of the applicants in the main proceedings, their particular vulnerability, associated with their belonging to the Orthodox Christian community and, in any event, the fact that the matter was brought before it in the course of an ‘emergency’ suspension procedure.
- 31 The referring court explained, in that respect, that the present reference for a preliminary ruling had the effect of staying the proceedings before it.
- 32 In that regard, it should be noted, in the first place, that the present reference for a preliminary ruling, which concerns the interpretation of Article 25(1)(a) of the Visa Code, raises questions in the areas covered by Title V of Part Three of the TFEU, which relates to the area of freedom, security and justice. It may therefore be dealt with under the urgent preliminary ruling procedure, in accordance with Article 107(1) of the Rules of Procedure.
- 33 In the second place, it is not disputed that, at least at the time when the request that the present reference for a preliminary ruling should be dealt with under the urgent preliminary ruling procedure was examined, the applicants in the main proceedings were facing a real risk of being subjected to inhuman and degrading treatment, which must be regarded as an element of urgency justifying the application of Article 107 *et seq.* of the Rules of Procedure.
- 34 Taking the foregoing into account, the Fifth Chamber of the Court decided, on 15 December 2016, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, to grant the referring court’s request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure. It also decided to request that the Court assign the case to the Grand Chamber.

### **Consideration of the questions referred**

#### ***The jurisdiction of the Court***

- 35 The Court’s jurisdiction to answer the questions put by the referring court is disputed, in particular, by the Belgian Government on the ground that

Article 25(1) of the Visa Code, in respect of which interpretation is sought, does not apply to the applications at issue in the main proceedings.

- 36 Nevertheless, it is plain from the order for reference that the applications at issue were submitted on humanitarian grounds on the basis of Article 25 of the Visa Code.
- 37 As to whether that code applies to applications, such as those at issue in the main proceedings, that are intended to enable third-country nationals to lodge applications for asylum on the territory of a Member State, that question is inextricably linked to the answers to be given to the present request for a preliminary ruling. In those circumstances, the Court has jurisdiction to answer that request (see, to that effect, judgment of 10 September 2015, *Wojciechowski*, C-408/14, EU:C:2015:591, paragraph 26 and the case-law cited).

***Consideration of the questions referred***

- 38 By its first question the referring court asks, in essence, whether Article 25(1)(a) of the Visa Code must be interpreted as meaning that the international obligations referred to in that article include compliance by a Member State with all the rights guaranteed by the Charter, in particular, in Articles 4 and 18 thereof, by the ECHR and by Article 33 of the Geneva Convention. By its second question it asks, in essence, whether, depending on the answer given to its first question, Article 25(1)(a) of the Visa Code must be interpreted as meaning that the Member State to which an application for a visa with limited territorial validity was made is required to issue the visa applied for, where a risk of infringement of Article 4 and/or Article 18 of the Charter or another international obligation by which it is bound is established. If necessary, the referring court also seeks to ascertain whether the existence of links between the applicant and the Member State to which the visa application was made has any bearing in that regard.
- 39 It should be recalled at the outset that the Court has consistently held that the fact that a question submitted by the referring court refers only to certain provisions of EU law does not mean that the Court may not provide the national court with all the guidance on points of interpretation that may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to those points in its questions. It is, in this regard, for the Court to extract from all the information provided by the referring court, in particular from the grounds of the decision to make the reference, the points of EU law which require interpretation in view of the subject matter of the dispute (see, inter alia, judgment of 12 February 2015, *Oil Trading Poland*, C-349/13, EU:C:2015:84, paragraph 45 and the case-law cited).
- 40 In the present case, it is important to note that the Visa Code was adopted on the basis of Article 62(2)(a) and (b)(ii) of the EC Treaty, pursuant to which the Council of the European Union is to adopt measures concerning visas for intended

stays of no more than three months, including the procedures and conditions for issuing visas by Member States.

- 41 As set out in Article 1 of the Visa Code, the objective thereof is to establish the procedures and conditions for issuing visas for transit through or intended stays on the territory of the Member States not exceeding 90 days in any 180-day period. In Article 2(2)(a) and (b) of the code the concept of ‘visa’ is defined, for the purpose of the code, as meaning ‘an authorisation issued by a Member State’ with a view, respectively, to ‘transit through or an intended stay on the territory of the Member States for a duration of no more than 90 days in any 180-day period’ and to ‘transit through the international transit areas of airports of the Member States’.
- 42 However, it is apparent from the order for reference and from the material in the file before the Court that the applicants in the main proceedings submitted applications for visas on humanitarian grounds, based on Article 25 of the Visa Code, at the Belgian embassy in Lebanon, with a view to applying for asylum in Belgium immediately upon their arrival in that Member State and, thereafter, to being granted a residence permit with a period of validity not limited to 90 days.
- 43 In accordance with Article 1 of the Visa Code, such applications, even if formally submitted on the basis of Article 25 of that code, fall outside the scope of that code, in particular Article 25(1)(a) thereof, the interpretation of which is sought by the referring court in connection with the concept of ‘international obligations’ mentioned in that provision.
- 44 In addition, since, as noted by the Belgian Government and the European Commission in their written observations, no measure has been adopted, to date, by the EU legislature on the basis of Article 79(2)(a) TFEU, with regard to the conditions governing the issue by Member States of long-term visas and residence permits to third-country nationals on humanitarian grounds, the applications at issue in the main proceedings fall solely within the scope of national law.
- 45 Since the situation at issue in the main proceedings is not, therefore, governed by EU law, the provisions of the Charter, in particular, Articles 4 and 18 thereof, referred to in the questions of the referring court, do not apply to it (see, to that effect, *inter alia*, judgments of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 19, and of 27 March 2014, *Torralbo Marcos*, C-265/13, EU:C:2014:187, paragraph 29 and the case-law cited).
- 46 The foregoing conclusion is not called into question by the fact that, under Article 32(1)(b) of the Visa Code, the existence of ‘reasonable doubts as to ... [the applicant’s] intention to leave the territory of the Member States before the expiry of the visa applied for’ is a ground for refusal of a visa and not a reason not to apply that code.
- 47 Indeed, the defining feature of the situation at issue in the main proceedings is not the existence of such doubts, but the fact that the purpose of the application differs from that of a short-term visa.

- 48 It should be added that, to conclude otherwise, when the Visa Code is intended for the issuing of visas for stays on the territories of Member States not exceeding 90 days in any 180-day period, would be tantamount to allowing third-country nationals to lodge applications for visas on the basis of the Visa Code in order to obtain international protection in the Member State of their choice, which would undermine the general structure of the system established by Regulation No 604/2013.
- 49 It is also important to note that to conclude otherwise would mean that Member States are required, on the basis of the Visa Code, de facto to allow third-country nationals to submit applications for international protection to the representations of Member States that are within the territory of a third country. Indeed, whereas the Visa Code is not intended to harmonise the laws of Member States on international protection, it should be noted that the measures adopted by the European Union on the basis of Article 78 TFEU that govern the procedures for applications for international protection do not impose such an obligation and, on the contrary, exclude from their scope applications made to the representations of Member States. Accordingly, it is apparent from Article 3(1) and (2) of Directive 2013/32 that that directive applies to applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, but not to requests for diplomatic or territorial asylum submitted to the representations of Member States. Similarly, it follows from Articles 1 and 3 of Regulation No 604/2013 that that regulation only imposes an obligation on Member States to examine any application for international protection made on the territory of a Member State, including at the border or in the transit zones, and that the procedures laid down in that regulation apply exclusively to such applications for international protection.
- 50 In those circumstances, the Belgian authorities were wrong to describe the applications at issue in the main proceedings as applications for short-term visas.
- 51 In the light of the foregoing, the answer to the questions referred is that Article 1 of the Visa Code must be interpreted as meaning that an application for a visa with limited territorial validity made on humanitarian grounds by a third-country national, on the basis of Article 25 of the code, to the representation of the Member State of destination that is within the territory of a third country, with a view to lodging, immediately upon his or her arrival in that Member State, an application for international protection and, thereafter, to staying in that Member State for more than 90 days in a 180-day period, does not fall within the scope of that code but, as European Union law currently stands, solely within that of national law.

### **Costs**

- 52 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that

court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

**Article 1 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, must be interpreted as meaning that an application for a visa with limited territorial validity made on humanitarian grounds by a third-country national, on the basis of Article 25 of the code, to the representation of the Member State of destination that is within the territory of a third country, with a view to lodging, immediately upon his or her arrival in that Member State, an application for international protection and, thereafter, to staying in that Member State for more than 90 days in a 180-day period, does not fall within the scope of that code but, as European Union law currently stands, solely within that of national law.**

[Signatures]