



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-638/16 PPU  
X and X v État belge

**Member States are not required, under EU law, to grant a humanitarian visa to persons who wish to enter their territory with a view to applying for asylum, but they remain free to do so on the basis of their national law**

*EU law establishes only the procedures and conditions for issuing visas for transit through or intended stays on the territory of the Member States not exceeding 90 days*

On 12 October 2016 a Syrian couple and their three young, minor children, living in Aleppo (Syria), submitted applications for humanitarian visas at the Belgian embassy in Beirut (Lebanon) before returning to Syria on the following day. The purpose of the applications was to obtain visas with limited territorial validity, on the basis of the EU Visa Code,<sup>1</sup> in order to enable them to leave the besieged city of Aleppo with a view to applying for asylum in Belgium. One of them claims, *inter alia*, to have been abducted by an armed terrorist group, then beaten and tortured, and finally released following the payment of a ransom. They emphasise, in particular, the deteriorating security situation in Syria in general, and in Aleppo especially, and on the fact that, being Orthodox Christians, they are at risk of persecution on account of their religious beliefs.

On 18 October 2016 the Office des Étrangers (Immigration Office, Belgium) rejected those applications. It takes the view that, by seeking to obtain a visa with limited territorial validity in order to apply for asylum in Belgium, the Syrian family in question clearly intended to stay more than 90 days in Belgium, which is contrary to the EU Visa Code. In addition, the Office points out that authorising an entry visa to be issued to that family in order for them to lodge an application for asylum in Belgium would amount to allowing them to make an asylum application to a diplomatic post.

The Syrian family has challenged the refusal decision before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings (CCE), Belgium). They submit that the EU Charter of Fundamental Rights and the European Convention of Human Rights (ECHR) impose a positive obligation on the Member States to guarantee the right to asylum. They also claim that the granting of international protection is the only way to avoid any risk that the prohibition of torture and inhuman or degrading treatment or punishment will be infringed.<sup>2</sup> In those circumstances, the CCE decided, as a matter of urgency, to refer the matter to the Court of Justice. It notes that the Visa Code provides, *inter alia*, that a visa is to be issued when a Member State 'considers' it necessary because of international obligations, and questions the extent of Member States' discretion in that respect.

In today's judgment, the Court notes, first of all, that the Visa Code was adopted on the basis of a provision of the EC Treaty,<sup>3</sup> pursuant to which the Council is to adopt measures on visas for intended stays of no more than three months. Consequently, the Visa Code 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. The Syrian family, however,

<sup>1</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (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).

<sup>2</sup> Art. 3 of the ECHR and Art. 4 of the Charter.

<sup>3</sup> Art. 62(2)(a) and (b)(ii) of the EC Treaty (now Art. 77 TFEU).

submitted applications for visas on humanitarian grounds with a view to applying for asylum in Belgium and, accordingly, for a residence permit not limited to 90 days.

**It follows that, even if those applications were formally submitted on the basis of the Visa Code, they fall outside its scope.**

The Court states, furthermore, that no measure has been adopted, to date, by the EU legislature with regard to the issuing by Member States of long-term visas and residence permits to third-country nationals on humanitarian grounds. **Accordingly, the applications of the Syrian family fall solely within the scope of national law.**

Consequently, since the situation in question is not governed by EU law, the provisions of the Charter do not apply.

The Court also states that the defining feature of the Syrian family's situation is not the existence of doubts as to their intention to leave the territory of the Member States before the expiry of the visa, but the fact that the purpose of the application differs from that of a short-term visa.

According to the Court, allowing third-country nationals to lodge applications for visas in order to obtain international protection in the Member State of their choice would undermine the general structure of the system established by the Union for determining the Member State responsible for examining an application for international protection.<sup>4</sup>

The Court concludes that an application for a visa with limited territorial validity made on humanitarian grounds by a third-country national, on the basis of the Visa Code, at 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, accordingly, to staying in that Member State for more than 90 days in an 180-day period, does not fall within the scope of that code but, as EU law currently stands, within that of national law alone.

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**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 judgment is published on the CURIA website on the day of delivery.

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<sup>4</sup> 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 (recast) (OJ 2013 L 180, p. 31).