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From:	Legal Service
To:	Permanent Representatives Committee (Part 2)
Subject:	Humanitarian visas - Reference for a preliminary ruling on the interpretation of Article 25(1)(a) of the Visa Code (Case C-638/16 PPU, <i>X and X v. Belgium</i>)

I. INTRODUCTION

1. On 7 March 2017, the Court of Justice (Grand Chamber) gave its judgment in Case C-638/16 PPU, *Humanitarian visas*. It concerns the interpretation of Article 25(1)(a) of Regulation 810/2009 (Visa Code) and of Articles 4 (on prohibition of torture and inhuman or degrading treatment) and Article 18 (on right to asylum) of the Charter of Fundamental Rights, and more particularly the question of whether Member States were obliged by the Charter to deliver visas of limited territorial validity under Article 25(1)(a) of the Visa Code to a family of Syrian nationals having requested such visas at the Belgian consulate in Lebanon with a view to apply for international protection in Belgium. As the preliminary ruling was about the interpretation of the Visa Code, and not about its validity, the Council did not intervene. This Case had raised a lot of concern among Member States, 14 of which intervened in support of Belgium.

2. Contrary to the conclusions of the Advocate General delivered on 7 February 2017, the Court ruled that an application for a visa for the purpose of seeking asylum in a Member State falls outside the scope of the Visa Code and is not regulated by EU law and therefore that the Charter does not apply. Such an application falls solely within the scope of national law.

II. MAIN ELEMENTS OF THE JUDGMENT

3. The Court, first of all, noted that the Visa Code was adopted on the basis of Article 62(2)(a) and (b)(ii) of the EC Treaty (now Article 77(2)(a) and (b) TFEU), pursuant to which the Council is to adopt measures concerning visas for intended stays of no more than three months (short-stay visas), including the procedures and conditions for issuing visas by Member States (points 40 and 41 of the judgment).
4. The Court then stated that, while the objective of the Visa Code is to establish the procedures and conditions for issuing short-stay visas (for transit through or intended stays on the territory of the Member States not exceeding 90 days in any 180-day period), the applicants submitted applications for visas on humanitarian grounds with a view to applying for asylum in the Member State immediately upon their arrival and, thereafter, to being granted a residence permit with a period of validity longer than a short-stay (point 42).
5. The Court therefore found that the visa applications which had been made at the Belgian consulate in Lebanon did not fall within Article 25 of the Visa Code, which relates only to short-stay visas, but fell solely within the scope of national law which regulates long-term visas. As such application fell outside the scope of the Visa Code, the situation at issue was therefore not governed by EU law and the provisions of the Charter did not apply to it (points 43 and 45).

6. The Court noted that 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, notably on humanitarian grounds (point 44).
7. The Court also stated that to conclude otherwise would undermine the Dublin system (Regulation 604/2013), as third country nationals would effectively be able to seek international protection in a Member State of their choice and to submit an asylum application while still in the territory of a third country, whereas the Asylum Procedures Directive (2013/32) applies only in the territory of the Member States (including at the border, in the territorial waters or in the transit zones), but not to requests for diplomatic or territorial asylum submitted to the representations of Member States located in third countries. Such requests fall outside the scope of the EU asylum *acquis* (points 48 and 49).
8. One can draw from this judgment that should the EU decide to adopt harmonising legislation regarding the issuance of long-term visas or the examination of asylum or international protection applications submitted in the territory of third countries, the relevant authorities of the representations of Member States in these countries would fall within the scope of EU law and therefore within the scope of the Charter of Fundamental Rights.
