



Humanitarian Visa

Fact of the case

A married couple and their three young, minor children are Syrian nationals who live in Aleppo (Syria). In 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.

The applicants 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, due to the closure of the border between Lebanon and Syria.

The Office des Étrangers (Immigration Office, Belgium) rejected their applications and the couple appealed.

Legal Framework

International law

Geneva Convention

Article 33(1)

‘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.’

European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 1

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

Article 3



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

Relevant European Law

The Visa Code

Recital 29

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

Article 1(1)

‘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.’

Article 2

‘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;

...’

Article 25

‘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.'

Article 32(1)(b)

'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

Article 4

'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.'

Article 6

'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

Article 3

'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

Article 1

'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 ...'

Article 3(1)

'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 ...'

Questions

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?
2. In your view, does a Member State to which an application for a visa with limited territorial validity has been made is required to issue the visa if there is a risk of infringement of Article 4 and/or Article 18 of the Charter?