Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 7 February 2017 [1]

Case C-638/16 PPU

X,
X
v
État belge
(Request for a preliminary ruling

from the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) (Belgium))

(Reference for a preliminary ruling — Jurisdiction of the Court — Article 25(1)(a) of Regulation (EC) No 810/2009 establishing a Community Code on Visas — Visa with limited territorial validity — Implementation of EU law — Issue of such a visa on humanitarian grounds or because of international obligations — Concept of 'international obligations' — Geneva Convention relating to the Status of Refugees — European Convention for the Protection of Human Rights and Fundamental Freedoms — Charter of Fundamental Rights of the European Union — Obligation for the Member States to issue a humanitarian visa in the event of a genuine risk of infringement of Articles 4 and/or 18 of the Charter of Fundamental Rights)

Introduction

1. This request for a preliminary ruling, made by the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) (Belgium), concerns the interpretation of Article 25(1)(a) of Regulation (EC) No 810/2009 of the Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas ('the Visa Code') [2] and of Articles 4 and 18 of the Charter of Fundamental Rights of the European Union ('the Charter').

2. The request has been made in proceedings between two Syrian nationals and their three young children, who reside in Aleppo (Syria), and the État belge (Belgian State) concerning that state's refusal to grant them a visa with limited territorial validity, for the purposes of Article 25(1)(a) of the Visa Code, sought on humanitarian grounds.

3. As I shall show in this Opinion, notwithstanding the objections put forward by the governments that participated in the hearing of 30 January 2017 and those of the European Commission, this case, first, provides the Court with an opportunity to make clear that a Member State implements EU law when it adopts a decision in relation to an application for a visa with limited territorial validity, which therefore requires the Member State to ensure that the rights guaranteed by the Charter are respected. Second, the present case must, in my opinion, lead the Court to state that respect for those rights,

1 — Original language: French.
2 — OJ 2009 L 243, p. 1.

particularly the right enshrined in Article 4 of the Charter, implies the existence of a positive obligation on the part of the Member States, which must require them to issue a visa with limited territorial validity where there are substantial grounds to believe that the refusal to issue that document will have the direct consequence of exposing persons seeking international protection to torture or inhuman or degrading treatment which is prohibited by that article.

4. It is, in my view, crucial that, at a time when borders are closing and walls are being built, the Member States do not escape their responsibilities, as they follow from EU law or, if you will allow me the expression, *their* EU law and *our* EU law.

5. Striking a particularly alarmist tone, the Czech Government warned the Court at the hearing of the 'fatal' consequences for the EU which would result from a judgment to the effect that the Member States are obliged to issue humanitarian visas under Article 25(1)(a) of the Visa Code.

6. Although the European Union is going through a difficult period, I do not share that fear. It is, on the contrary, as in the main proceedings, the refusal to recognise a legal access route to the right to international protection on the territory of the Member States – which unfortunately often forces nationals of third countries seeking such protection to join, risking their lives in doing so, the current flow of illegal immigrants to EU's borders — which seems to me to be particularly worrying, in the light, inter alia, of the humanitarian values and respect for human rights on which European construction is founded. Need it be recalled that, as Articles 2 and 3 of the EU Treaty state respectively, the Union 'is founded on the values of respect for human dignity … and respect for human rights' and its 'aim is to promote … its values', including in its relations with the wider world?

7. In this respect, it is saddening to note that, despite the length and repetitiveness of the submissions made by the representatives of the 14 governments at the hearing of 30 January 2017, none of them referred to those values in relation to the situation into which the applicants in the main proceedings have been plunged and which has led the Court to trigger the urgent procedure.

8. As I will show later in this Opinion, contrary to what a number of governments suggested at the hearing before the Court, there is no need to wait for a hypothetical modification of the Visa Code in order to recognise a legal access route to the right to international protection, which would follow the amendments submitted by the European Parliament to the proposal currently under discussion. [3]

9. That legal route already exists, namely that of Article 25(1)(a) of the Visa Code, as the rapporteur of the committee on civil liberties, justice and home affairs of the Parliament has indeed acknowledged. [4] For the reasons which will be set out in my analysis below, I invite the Court to find the existence of such a legal route which entails the obligation to issue humanitarian visas, under Article 25(1)(a) of the Visa Code, under certain conditions.

3 — See Report of the European Parliament on the proposal for a regulation of the European Parliament and of the Council on the Union Code on Visas (COM(2014)164), document A8-0145/2016, of 22 April 2016.

4 — In the explanatory statement of the amendments proposed by the Parliament relating to 'humanitarian visas', the rapporteur states (p. 100) that he chose 'a prudent and legally sound approach based on *strengthening and developing existing provisions in the* [current] *text*' of the Visa Code (italics added).

Legal framework

International law

10. Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), entitled 'Obligation to respect human rights', provides that the 'High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention'.

11. Article 3 of the ECHR, entitled 'Prohibition of torture', provides that no one is to be subjected to torture or to inhuman or degrading treatment or punishment.

12. Article 1(A)(2) of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967 ('the Geneva Convention'), provides inter alia that a refugee is any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

13. Article 33(1) of the Geneva Convention provides that no Contracting State is to expel or return 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

14. Article 1 of the Charter states that human dignity is inviolable and must be respected and protected.

15. Article 2(1) of the Charter provides that everyone has the right to life.

16. Article 3(1) of the Charter states that everyone has the right to respect for his or her physical and mental integrity.

17. Article 4 of the Charter provides that no one is to be subjected to torture or to inhuman or degrading treatment or punishment.

18. Article 18 of the Charter provides that the right to asylum is to 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.

19. Article 24(2) of the Charter states that, in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

20. Article 51(1) of the Charter provides that 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.

21. Article 52(3) of the Charter states that, in so far as this Charter contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights are to be the same as those laid down by that convention. This provision is not to prevent Union law providing more extensive protection.

Secondary legislation

22. Recital 29 of the Visa Code states that that code respects fundamental rights and observes the principles recognised in particular by the ECHR and by the Charter.

23. Article 1(1) of the Visa Code provides that that 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.

24. Article 19 of that code, entitled 'Admissibility', provides, in paragraph 4, that, by way of derogation, an application that does not meet the requirements of admissibility may be considered admissible on humanitarian grounds or for reasons of national interest.

25. Article 23 of the Visa Code, entitled 'Decision on the application', specifies, in paragraph 4, that, unless the application has been withdrawn, a decision is to be taken, inter alia, to issue a uniform visa in accordance with Article 24 of the Code, to issue a visa with limited territorial validity in accordance with Article 25 of that code or to refuse a visa in accordance with Article 32 of that code.

26. Article 25 of the Visa Code, entitled '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 in Article [6](1)(a), (c), (d) and (e) of the Schengen Borders Code must be fulfilled; …

   (ii) to issue a visa …

…

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.

3. If the applicant holds a travel document that is … recognised by one or more, but not all Member States, a visa valid for the territory of the Member States recognising the travel document shall be issued. If the issuing Member State does not recognise the applicant's travel document, the visa issued shall only be valid for that 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, by means of the procedure referred to in Article 16(3) of [Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008, concerning the Visa Information System (VIS) and the exchange of data between Member States

on short-stay visas [5]].

5. The data set out in Article 10(1) of [Regulation No 767/2008] shall be entered into the VIS when a decision on issuing such a visa has been taken.'

27. Article 32 of the Visa Code, entitled 'Refusal of a visa', provides:

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

…

(b) if there are reasonable doubts as to the authenticity of the supporting documents submitted by the applicant or the veracity of their contents, the reliability of the statements made by the applicant or his intention to leave the territory of the Member States before the expiry of the visa applied for.'

28. As provided in 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 (recast): [6]

'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. …'

29. 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) [7] provides that, when applying that regulation, Member States are to 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.

30. Article 6 of the Schengen Borders Code, entitled '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, which entails considering the 180-day period preceding each day of stay, 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 …, except where they hold a valid residence permit or a valid long-stay visa;

(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 in the [Schengen Information System] for the purposes of refusing entry;

5 — OJ 2008 L 218, p. 60.

6 — OJ 2013 L 180, p. 60.

7 — OJ 2016 L 77, p. 1.

(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, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.'

The main proceedings, the questions referred and the procedure before the Court

31. The applicants in the main proceedings, a married couple and their three young, minor children, are of Syrian nationality, live in Aleppo (Syria) and claim to be Orthodox Christians. On 12 October 2016, they lodged visa applications with the Belgian Consulate in Beirut (Lebanon), and returned to Syria on 13 October 2016.

32. Those applications seek the rapid issue of visas with limited territorial validity, pursuant to Article 25(1) of the Visa Code. According to the applicants in the main proceedings, the purpose of those visas is to enable them to leave the besieged city of Aleppo in order to make an application for asylum in Belgium. One of the applicants in the main proceedings claims, in particular, to have been taken hostage by a terrorist group, beaten and tortured, and finally released following payment of a ransom. The applicants in the main proceedings maintain, in particular, that the security situation in Syria, and Aleppo in particular, has deteriorated, and that, as Orthodox Christians, they risk persecution on account of their religious beliefs. They add that they are unable to register as refugees in neighbouring countries, in the light, inter alia, of the fact that the border between Lebanon and Syria has in the meantime been closed.

33. Those applications were rejected by decisions of the Office des étrangers (Immigration Office) (Belgium) of 18 October 2016 ('the contested decisions'), pursuant to Article 32(1)(b) of the Visa Code. According to the Immigration Office, by applying for a visa with limited territorial validity in order to lodge an application for asylum in Belgium, the applicants in the main proceedings clearly intended to stay more than 90 days in Belgium. Moreover, the contested decisions of the Immigration Office state, first, that Article 3 of the ECHR cannot be interpreted as requiring signatory States to admit to their territory all persons experiencing a catastrophic situation and, second, that, according to Belgian legislation, Belgian diplomatic posts are not one of the authorities with which a foreign national may submit an application for asylum. Authorising the issue of an entry visa to the applicants in the main proceedings in order to permit them to make their applications for asylum in Belgium would amount to authorising the submission of their applications in a diplomatic post.

34. Having applied to the referring court for suspension of the enforcement of the decisions refusing visas in accordance with the national procedure of extreme urgency, the applicants in the main proceedings submit, in essence, that Article 18 of the Charter provides for 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 the risk of infringement of Article 3 of the ECHR and of Article 4 of the Charter. In that regard, they criticise the failure to take account of the risk invoked of infringement of Article 3 of the ECHR in rejecting their applications for visas. Since the Belgian authorities have themselves considered that the situation of the applicants in the main proceedings is an exceptional humanitarian situation, in the light of the humanitarian grounds and of the international obligations on the Kingdom of Belgium, 'the state of necessity', required by Article 25 of the Visa Code, is fulfilled. Accordingly, the right to the issue of the visas sought by the applicants in the main proceedings is acquired on the basis of EU law. In that regard, the applicants in the main proceedings refer to the judgment of 19 December 2013, *Koushkaki* (C-84/12, EU:C:2013:862).

35. By contrast, the Belgian State, the defendant in the main proceedings, submits that it is in no way required, on the basis of Article 3 of the ECHR or on the basis of Article 33 of the Geneva Convention, to allow into its territory a foreign person, its only obligation in that regard being an obligation of non-refoulement.

36. The referring court states first of all that, according to the case-law of the European Court of Human Rights, in order that the applicants in the main proceedings may rely on Article 3 of the ECHR, they must be subject to Belgian jurisdiction, as is apparent from Article 1 of the ECHR. The European Court of Human Rights has specified that the concept of 'jurisdiction' is principally territorial and is in principle exercised throughout the territory of a Member State. However, the question is whether the implementation of visa policy and the taking of decisions with regard to visa applications may be regarded as the exercise of effective jurisdiction. The same is true of the question whether a right of entry stems, as a corollary of the principle of non-refoulement and of the obligation to take preventive measures, in particular from Article 33 of the Geneva Convention.

37. Next, the referring court observes that the application of Article 4 of the Charter, which contains the same wording as Article 3 of the ECHR, does not depend on the exercise of jurisdiction but the implementation of EU law. Since the visa applications in question were submitted on the basis of Article 25(1) of the Visa Code, the contested decisions were adopted pursuant to an EU regulation and implement EU law. However, the territorial scope of the right of asylum enshrined in Article 18 of the Charter is controversial in the light of Article 3 of Directive 2013/32.

38. Lastly, in the light of the wording of Article 25(1) of the Visa Code, the referring court raises the question of the extent of the Member States' discretion. In the light of the binding nature of international obligations read in conjunction with the Charter, any margin of discretion may be ruled out in that regard.

39. In those circumstances the referring court decided to stay proceedings and 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) In view of 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 detected? Does the existence of links between the applicant and the Member State to which the visa application has been made (for example, family connections, host families, guarantors and sponsors) affect the answer to that question?'

40. Following the request of the referring court, and in accordance with Article 108(1) of the Rules of Procedure of the Court of Justice, the designated chamber decided that the reference for a preliminary ruling would be dealt with under the urgent procedure. Moreover, pursuant to Article 113(2) of the Rules of Procedure, the designated chamber requested that the case be referred to the Grand Chamber.

41. Written observations on the questions referred for a preliminary ruling were submitted by the applicants in the main proceedings, the Belgian Government and the Commission.

42. Those interested parties as well as the Czech, Danish, German, Estonian, French, Hungarian, Maltese, Dutch, Austrian, Polish, Slovene, Slovak and Finnish Governments presented oral argument at the hearing of 30 January 2017.

Analysis

The Court's jurisdiction

43. The Belgian Government primarily submits that the Court does not have jurisdiction to answer the questions referred for a preliminary ruling, since the situation of the applicants in the main proceedings does not fall within the scope of EU law.

44. That government observes, in the first place, that the Visa Code governs only visas not exceeding three months in any six-month period ('short-stay visas')[8] and that Article 32(1)(b) of that code obliges the Member States to refuse a visa where 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. According to the Belgian Government, Article 25(1) of the Visa Code merely derogates from the obligation to refuse a visa on the basis of Article 32(1) of that code and sets, exhaustively, the grounds for refusal from which the Member States are authorised to derogate. Those grounds for refusal cover only cases in which the visa applicant does not fulfil the entry conditions set by Article 6(1)(a), (c), (d) and (e) of the Schengen Borders Code, to which Article 25(1)(a)(i) of the Visa Code refers, and are set out in Article 32(1)(a)(i), (ii), (iii) and (vi) of that code. It follows, according to the Belgian Government, that, although Article 32 of the Visa Code applies, in accordance with its wording, 'without prejudice to Article 25(1)' of that code, that exclusion does not cover the ground for refusal referred to in Article 32(1)(b) of that code.[9] A visa with limited territorial validity may, therefore, be issued only for a stay not exceeding three months. Referring to the judgments of 8 November 2012, *Iida* (C-40/11, EU:C:2012:691), and of 8 May 2013, *Ymeraga and Others* (C-87/12, EU:C:2013:291), the Belgian Government submits that, since the applicants in the main proceedings do not fulfil the conditions required for the granting of a short-stay visa on the basis of the Visa Code, their situation is not governed by EU law.

45. In the second place, that government contends that neither the provisions relating to asylum nor the provisions of the Charter make it possible to link the situation of the applicants in the main proceedings with EU law. First, the Common European Asylum System applies, in accordance with Article 3(1) and (2) of Directive 2013/32, only to applications made in the territory or at the borders of the Member States, to the exclusion of requests for diplomatic or territorial asylum submitted to representations of Member States. Second, since EU law is not being implemented as regards the situation of the applicants in the main proceedings, the Charter cannot apply. The Belgian Government observes lastly that no legislative act has been adopted by the EU regarding the conditions of entry and stay exceeding three months for nationals of third countries on humanitarian grounds. The Member States have therefore maintained their jurisdiction in the matter.

46. Without pleading that the Court does not have jurisdiction, the Commission puts forward arguments similar to those set out in point 44 of this Opinion. According to the Commission, a visa application for the purpose of reaching the territory of a Member State in order to seek international protection there cannot be understood as an application for a short-stay visa. Such an application should be dealt with as an application for a long-stay visa under national law.

47. Most of the governments which participated at the hearing before the Court endorsed the position of the Belgian Government and of the Commission, contending that the Visa Code is not applicable in the circumstances of the main proceedings.

48. In my view, all those objections should be rejected.

8 — See, to that effect, judgment of 10 April 2012, *Vo* (C-83/12 PPU, EU:C:2012:202, paragraph 36).

9 — The aspect of the Belgian Government's line of argument concerning the relationship between Articles 25(1) and 32 of the Visa Code will be dealt with in point 111 et seq. of this Opinion.

49. It is apparent from the documents in the file provided by the referring court — and which was confirmed by the Belgian Government at the hearing — that the applicants in the main proceedings sought, under the Visa Code, the issue of a short-stay visa with limited territorial validity, namely authorisation to enter Belgium for a total period not exceeding 90 days. It is also apparent from the material in that file that the competent authorities classified, examined and processed the applications of the applicants in the main proceedings, throughout the procedure, as applications for visas *under the Visa Code*. Those applications were necessarily deemed to be *admissible* under Article 19 of that code,[10] since decisions refusing the visas sought were taken in accordance with Article 23(4)(c) of that code. The contested decisions were, moreover, drawn up using an 'application form for a short-stay visa decision' and the refusal to issue the visas was based on one of the grounds stated in Article 32(1)(b) of the Visa Code.

50. The intention of the applicants in the main proceedings to apply for refugee status once they had entered Belgium *cannot alter the nature or purpose of their applications*. In particular, that intention cannot convert them into applications for long-stay visas or place those applications outside the scope of the Visa Code and of EU law, contrary to the submissions of several Member States at the hearing before the Court.

51. Depending on the interpretation that the Court will be led to give of Article 25 of the Visa Code and of its relationship with Article 32 of that code,[11] such an intention could at the very most constitute a *ground for refusal of the applications of the applicants in the main proceedings*, pursuant to the rules of that code, *but certainly not* a ground for not applying that code.

52. It is precisely the legality of such a refusal which constitutes the subject matter of the main proceedings and which lies at the heart of the questions submitted for a preliminary ruling by the referring court, which seek to obtain clarification on the conditions for applying Article 25 of the Visa Code in circumstances such as those of the main proceedings.

53. Furthermore, I note that the applicants in the main proceedings had no need whatsoever to apply for long-stay visas. If they had been allowed to enter Belgian territory, and on the assumption that, having lodged applications for asylum, those applications had not been processed before the expiry of their short-stay visas, their right to remain on that territory beyond 90 days would have stemmed from their status of asylum seekers, under Article 9(1) of Directive 2013/32. Subsequently, that right would have resulted from their status as beneficiaries of international protection.

54. Therefore, the Court clearly does have jurisdiction to answer the questions referred by the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings).

55. The judgments of 8 November 2012, *Iida* (C-40/11, EU:C:2012:691), and of 8 May 2013, *Ymeraga and Others* (C-87/12, EU:C:2013:291), cited by the Belgian Government, cannot support the claims put forward by that government that the Court lacks jurisdiction.

56. First of all, in those judgments, the Court did not state that it lacked jurisdiction, but answered the questions referred to it.

10 — It is not however apparent from the documents in the file whether the applications of the applicants in the main proceedings were deemed admissible 'by way of derogation' 'on humanitarian grounds', pursuant to Article 19(4) of the Visa Code.

11 — On the relationship between those two articles, see point 111 et seq. of this Opinion.

57. Next, the present case clearly differs from the cases which gave rise to those judgments, in which the Court held that the situation of the applicants in the main proceedings which were the subject of those cases was not governed by EU law and had no connection with that law.[12] Specifically, in those judgments, the Court held that those applicants could not be regarded as beneficiaries of Directive 2004/38/EC,[13] nor, as regards the applicants in the main proceedings which gave rise to the judgment of 8 May 2013, *Ymeraga and Others* (C-87/12, EU:C:2013:291), of Directive 2003/86,[14] and, therefore, that those measures *were not applicable to them*.[15]

58. In the present case, however, the applicants in the main proceedings lodged applications for short-stay visas under an EU regulation which harmonises the procedures and conditions for issuing those visas and which *is applicable to them*. Their situation is indeed covered by the Visa Code both *ratione personae* and *ratione materiae*.

59. The Visa Code is to apply, in accordance with Article 1(2) thereof, to 'any third-country national who must be in possession of a visa when crossing the external borders of the Member States pursuant to … Regulation … No 539/2001',[16] which lists inter alia the third countries whose nationals must be in possession of visas. Syria is one of those third countries.[17] As Syrian nationals, the applicants in the main proceedings were, therefore, required to be in possession of a visa in order to enter the territory of the Member States.

60. Moreover, neither Article 1(1) of the Visa Code, which states its objective, nor Article 2(2) thereof, which defines the concept of 'visa', refers to the *grounds* on which the visa is applied for. Those provisions describe such an objective and define such a concept by referring solely to the *duration* of the residence authorisation which may be applied for and granted. The reasons that motivated the visa application are relevant only for the purposes of applying Article 25 of the Visa Code and when assessing the existence of the grounds for refusal provided for in Article 32 of that code, namely at an advanced stage of the processing of the visa application. That interpretation is supported by Article 19 of the Visa Code. As provided in paragraph 2 of that article, the visa application 'is admissible' where the competent consulate finds that the conditions referred to in paragraph 1 of that article have been fulfilled. Those conditions do not include the lodging, by the applicant, of the supporting documents listed in Article 14 of the Visa Code, in particular those referred to in (a) and (d) of that article, namely, respectively, the documents indicating the *purpose* of the journey, and the information enabling an assessment of the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for. It follows that the applications of the applicants in the main proceedings, seeking to obtain a visa for a period limited to 90 days, fall within the material scope of the Visa Code, irrespective of the grounds on which they were submitted and were rightly considered admissible by the Belgian consular authorities under Article 19 of that code.

12 — See judgments of 8 November 2012, *Iida* (C-40/11, EU:C:2012:691, paragraphs 80 and 81), and of 8 May 2013, *Ymeraga and Others* (C-87/12, EU:C:2013:291, paragraph 42).

13 — Directive of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

14 — Council Directive of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

15 — See judgment of 8 May 2013, *Ymeraga and Others* (C-87/12, EU:C:2013:291, paragraphs 24 to 33), in which the Court found, first, that Directive 2003/86 was not applicable to the members of Mr Ymeraga's family on the basis that Mr Ymeraga was a Luxembourg national and, second, that Directive 2004/38 was not applicable to them given that Mr Ymeraga had not exercised his right to freedom of movement. See also, judgment of 8 November 2012, *Iida* (C-40/11, EU:C:2012:691, paragraphs 61 and 65), in which the Court held that Directive 2004/83, relied on by Mr Iida in order to obtain a 'residence card of a family member of a Union citizen' on the basis of German law, did not apply to his situation, since he was neither accompanying nor joining the member of his family, a Union citizen, who exercised her right of freedom of movement.

16 — Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ 2001 L 81, p. 1).

17 — In accordance with Article 1(1) and the list set out in Annex I to Regulation No 539/2001.

61. The situation of the applicants in the main proceedings is thus governed by the Visa Code and, therefore, by EU law, *including* if it were to be held that their applications were rightly refused. As the Court made clear in the judgment of 19 December 2013, *Koushkaki* (C-84/12, EU:C:2013:862), the grounds for refusal of a visa are set exhaustively by the Visa Code [18] and must be applied in compliance with the relevant provisions of that code.

62. That conclusion is not called in question by the Belgian Government's claim, put forward also by the Commission and by a number of Member States at the hearing, that the Visa Code does not make it possible to lodge a visa application based on Article 25 of that code.

63. First of all, such an argument, which is moreover excessively formalistic, is at odds with Article 23(4)(b) of the Visa Code, which includes among the decisions which may be taken in relation to an 'application' for a visa which has been declared admissible under Article 19 of that code a decision to issue a visa with limited territorial validity, in accordance with Article 25 of that code.

64. Next, I note that, in Annex I to the Visa Code, there is a single harmonised application form. The heading of that application form refers generically to an 'Application for Schengen Visa', without specifying the type of visa, among those governed by that code – namely uniform visa, transit visa or visa with limited territorial validity –, in respect of which an application has been lodged. It is only by filling out point 21 of that application form, entitled 'Main purpose(s) of the journey', in which several boxes appear, each one corresponding to a reason for the journey (study, tourism, official visit, medical reasons, etc.), that the applicant provides details on the type of visa applied for (for example, by ticking the box 'airport transport' if he is applying for a visa of that type). Since that list of grounds is not exhaustive (the last box contains the section 'Other (please specify)'), it is entirely open to the applicant, as was the case with the applicants in the main proceedings, to state that his application is based on humanitarian grounds under Article 25 of the Visa Code. That is indeed confirmed by the fact that, in the part of the application form for official use only, under the heading 'Visa decision', the issue of a visa with limited territorial validity also appears as one of the possible options in the event of a positive decision.

65. More generally, I would point out that nothing in the Visa Code prohibits a visa applicant from invoking, when lodging his application, the application in his favour of Article 25 of that code, where he does not satisfy one of the entry conditions laid down in Article 6(1)(a), (c), (d) and (e) of the Schengen Borders Code or where he considers that his situation is covered by Article 25 of the Visa Code.

66. With respect to the circumstances of the main proceedings, I note that it is apparent from the material in the file provided by the referring court, which was confirmed by the Belgian Government at the hearing, that the applicants in the main proceedings submitted their applications for visas in accordance with the requirements of the Visa Code, by lodging both a harmonised application form of the type set out in Annex I to that code and the supporting documents which must accompany that application form.

67. Lastly, even if, as inter alia the Belgian Government and the Commission submit, the Visa Code does not allow a visa application to be submitted under Article 25 of that code, such a circumstance does not suffice to place the applicants in the main proceedings outside the scope of the Visa Code, since they sought the issue of a visa whose procedures and conditions for the granting thereof are governed by that code and their applications were dealt with and rejected on the basis of the provisions of that code.

18 — See judgment of 19 December 2013, *Koushkaki* (C-84/12, EU:C:2013:862, paragraph 65).

68. In view of the foregoing considerations, it is not necessary to reply to the arguments of the Belgian Government set out in point 45 of this Opinion, relating to the lack of relevance of the provisions relating to asylum in the light of the facts at issue in the main proceedings.[19]

69. On the other hand, the arguments of the Belgian Government, together with those of the Commission and of the Member States which were present at the hearing, concerning the applicability of the Charter in the circumstances of the main proceedings will be examined in the context of the analysis of the first question referred. In that regard, I wish to make clear that it is essentially for the sake of clarity, and even if this means repeating myself somewhat, that I have preferred to deal separately with the arguments alleging the Court's lack of jurisdiction and the inapplicability of the Visa Code from those, which overlap to a large extent with the first set of arguments, relating to the applicability of the Charter and to the implementation of EU law.

70. It follows from all the foregoing observations that, contrary to the submission of the Belgian Government, the situation of the applicants in the main proceedings does indeed fall within the scope of EU law. Accordingly, the Court has jurisdiction to answer the questions referred by the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings).

The first question referred for a preliminary ruling

71. The first question consists of two parts. By the first part, the referring court asks the Court, in essence, whether the expression 'international obligations', which appears in Article 25(1)(a) of the Visa Code, covers the rights guaranteed by the Charter and, in particular, those set out in Articles 4 and 18 of the Charter. By the second part, the referring court wishes to know whether that expression covers obligations which bind the Member States in the light of the ECHR and Article 33 of the Geneva Convention.

72. There is not much doubt in my mind as to the reply to be given to the first part of the question.

73. The Union has its own legal order, which is separate from international law. In accordance with the first subparagraph of Article 6(1) TEU, the Charter is part of EU primary law and is, therefore, a source of EU law. Where the conditions for its application are fulfilled, the Member States are bound to comply with the Charter by reason of their accession to the EU. The requirements stemming from the Charter are not therefore among the 'international obligations' covered by Article 25(1)(a) of the Visa Code, irrespective of the meaning to be given to that expression.

74. That is not to say however that decisions that the Member States adopt on the basis of that provision are not required to be taken in compliance with the requirements of the Charter.

75. The scope of the Charter, in so far as the action of the Member States is concerned, is defined in Article 51(1) thereof, under which the provisions of the Charter are addressed to the Member States when they are implementing EU law. The fundamental rights guaranteed by the Charter must therefore be complied with where national legislation – and, more generally, the action of the Member State concerned – falls within the scope of EU law.[20]

19 — In that regard, I would merely observe that, contrary to what that government appears to suggest, the applicants in the main proceedings did not lodge requests for diplomatic asylum, which, as provided in Article 3(2) of Directive 2013/32, fall outside the scope of that directive and that of the Common European Asylum System. By contrast, those applicants claim infringement of their right to asylum, as guaranteed by Article 18 of the Charter, on account of the Belgian authorities' refusal to grant them entry, a refusal which deprives them of a legal access route to the international protection granted under that system. It cannot therefore be ruled out that the situation of the applicants in the main proceedings may be regarded as being connected with EU law also on account of their status of potential beneficiaries of such protection.

20 — See, to that effect, judgment of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105, paragraph 21).

76. It is therefore necessary to ascertain whether a Member State which adopts, in circumstances such as those of the main proceedings, a decision by which it refuses to issue a visa with limited territorial validity sought on humanitarian grounds under Article 25(1)(a) of the Visa Code implements EU law for the purposes of Article 51(1) of the Charter.

77. In that regard, it should be pointed out, in the first place, that the conditions for issuing such visas, and the set of rules to which they are subject, are laid down in an EU regulation, whose purpose is to contribute to the development, in the form of a 'common corpus' of legal rules, of a common visa policy aimed at 'facilitating legitimate travel and tackling illegal immigration through further harmonisation of national legislation and handling practices at local consular missions'. [21]

78. Under its Article 1(1) and (2), 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 90 days in any 180-day period' and, as I have already pointed out above, is to apply to any third-country national who must be in possession of a visa when crossing the external borders of the Member States pursuant to Regulation No 539/2001. [22]

79. As provided in Article 2(2)(a) of the Visa Code, the concept of a 'visa', for the purposes of that code, is defined as 'an authorisation issued by a Member State' with a view to 'transit through or an intended stay in the territory of the Member States of a duration of no more than 90 days in any 180-day period from the date of first entry in the territory of the Member States'. That concept also covers a 'visa with limited territorial validity', which is governed by Article 25 of the Visa Code. Leaving aside its conditions of issue (and of refusal to issue), that visa differs from the 'uniform visa', defined in Article 2(3) of that code, only as regards the territorial scope of the authorisation to enter and stay that it grants, that authorisation being limited, as Article 2(4) thereof specifies, to the territory of one or more Member States.

80. It follows that, by issuing or refusing to issue a visa with limited territorial validity on the basis of Article 25 of the Visa Code, the authorities of the Member States adopt a decision concerning a document authorising the crossing of the external borders of the Member States, which is subject to a *harmonised set of rules* and act, therefore, *in the framework of and pursuant to EU law*.

81. That conclusion cannot be called in question by the possible recognition that the Member State concerned has discretion in applying Article 25(1)(a) of the Visa Code.

82. The fact that an EU regulation recognises that Member States have discretion does not preclude, as the Court made clear in the judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraphs 68 and 69), acts adopted in the exercise of that discretion falling within the scope of the implementation of EU law, for the purposes of Article 51(1) of the Charter, where it is apparent that that discretion forms an integral part of the system of rules established by the regulation in question and must be exercised in compliance with the other provisions of that regulation. [23]

83. Even if Article 25(1)(a) of the Visa Code leaves Member States discretion regarding the issue of visas on humanitarian grounds — an issue which will be examined in the context of the analysis of the second question referred — it must be stated that such visas are part of the common visa policy and are governed by an EU regulation, which sets the rules on jurisdiction, the conditions and

21 — In accordance with The Hague Programme: strengthening freedom, security and justice in the European Union (OJ 2005 C 53, p. 1). See recital 3 of the Visa Code.

22 — See point 59 above.

23 — See to that effect, also, judgment of 26 September 2013, *IBV & Cie* (C-195/12, EU:C:2013:598, paragraphs 48, 49 and 61).

detailed rules on issuing, the scope and the grounds for invalidity or abrogation of such visas.[24] Accordingly, decisions taken by the competent authorities of the Member States on the basis of that provision constitute implementation of procedures laid down in the Visa Code and any discretion that those authorities are called on to exercise when adopting those decisions forms an integral part of the system of rules established by that code.

84. Accordingly, it must be concluded that, by adopting a decision under Article 25 of the Visa Code, the authorities of a Member State implement EU law for the purposes of Article 51(1) of the Charter and are, therefore, required to respect the rights guaranteed by the Charter.

85. Such a conclusion stems, moreover, from the wording itself of the Visa Code, recital 29 of which makes that code subject to the fundamental rights and the principles of the Charter.[25] In the foreword to its Handbook for the processing of visa applications and the modification of issued visas[26] – which aims to ensure a harmonised application inter alia of the provisions of the Visa Code – the Commission confirms that requirement of respect for fundamental rights, by emphasising that those rights, as enshrined inter alia in the Charter, must be guaranteed to any person applying for a visa and that 'the processing of visa applications should … fully comply with the prohibition of inhuman and degrading treatments and the prohibition of discrimination enshrined, respectively, in Articles 3 and 14 of the [ECHR] and in Articles 4 and 21 of the [Charter]'.

86. As regards, in the second place, the circumstances of the main proceedings, I have already had occasion to observe that it is apparent from the documents in the file provided by the referring court that the applicants in the main proceedings sought, when lodging their visa applications, the application in relation to them of Article 25(1)(a) of the Visa Code, that the contested decisions are based on the ground for refusal of a visa laid down in Article 32(1)(b) *in fine* of the Visa Code and that that rejection decision was taken after it had been found that the conditions for issuing humanitarian visas under Article 25 of that code, in particular the exceptional nature of the procedure and the temporary nature of the intended stay, were not satisfied.

87. It is therefore common ground that, in the main proceedings, the matter was brought before the Belgian authorities and they acted on the basis of and pursuant to the provisions of the Visa Code.

88. Consequently, the contested decisions constitute an implementation of that code and, thus, of EU law, for the purposes of Article 51(1) of the Charter. In adopting those decisions, those authorities were required to respect the rights guaranteed by the Charter.

89. It should also be pointed out that the fundamental rights recognised by the Charter, which any authority of the Member States must respect when acting within the framework of EU law, are guaranteed to the addressees of the acts adopted by such an authority *irrespective of any territorial criterion*.

24 — Regarding the scope of the harmonisation pursued with the Visa Code, see judgments of 10 April 2012, *Vo* (C-83/12 PPU, EU:C:2012:202, paragraph 42), and of 19 December 2013, *Koushkaki* (C-84/12, EU:C:2013:862, paragraphs 49 and 50).

25 — As provided in recital 29 of the Visa Code, that code 'respects fundamental rights and observes the principles recognised in particular by the [ECHR] and by the Charter'.

26 — Consolidated Version based on the Commission's Decision of 19 March 2010, establishing the Handbook for the processing of visa applications and the modification of issued visas (C(2010) 1620 final) and the Commission's Implementing Decisions of 4 August 2011, (C(2011) 5501 final) and of 29 April 2014, C(2014) 2727. That manual contains instructions (guidelines, best practices and recommendations) for the performance of tasks of Member States' consular staff and staff of other authorities responsible for examining and taking decisions on visa applications, as well as tasks of staff of the authorities responsible for modifying issued visas.

90. As I have demonstrated in points 49 to 70 and 76 to 88 of this Opinion, the situation of the applicants in the main proceedings *falls within* the scope of EU law and the acts adopted in relation to them constitute implementation of that law for the purposes of Article 51(1) of the Charter. The situation of the applicants in the main proceedings therefore falls within the scope of the Charter, irrespective of the circumstance that they are not in the territory of a Member State and of the fact that they do not have any connection with such a territory.

91. The Court is very clear in that regard in its case-law: 'The applicability of EU law entails applicability of the fundamental rights guaranteed by the Charter' and 'situations cannot exist which are covered … by European Union law without those fundamental rights being applicable'.[27] There is, therefore, a parallelism between EU action, whether by its institutions or through its Member States, and application of the Charter. When questioned in that regard by the Court at the hearing, the Commission aligned itself with such a conclusion.[28]

92. If it were to be considered that the Charter does not apply where an institution or a Member State implementing EU law acts extraterritorially, that would amount to claiming that situations covered by EU law would fall outside the scope of the fundamental rights of the Union, undermining that parallelism. It is clear that such an interpretation would have consequences that would go beyond the field of visa policy alone.

93. Moreover, and to consider that field in isolation, if application of the Charter were made conditional on a criterion of *territorial connection with the EU* (or rather one of its Member States), in addition to the criterion of *connection with EU law*, the implementation of all the common visa rules prescribed by the Visa Code would probably escape the requirement of respect for the rights provided for in the Charter, which would infringe not only the principle governing the application of the Charter, but also the clear intention of the EU legislature, as expressed in recital 29 of the Visa Code, at a time when the Charter did not yet have binding effect.

94. For the same reasons, nor does the application of the Charter to the situation of the applicants in the main proceedings depend on the exercise in any form whatsoever of authority and/or scrutiny by the Belgian State in relation to them, contrary to what is provided, in respect of the ECHR, in Article 1 thereof, according to which the Contracting Parties to that convention are to secure 'to everyone within their jurisdiction' the rights and freedoms defined in Section I thereof.[29]

95. According to the Belgian Government's line of argument — which several Member States endorsed at the hearing — a provision similar to Article 1 of the ECHR would also be applicable in the scheme of the Charter, at least in relation to the Charter rights which correspond to those guaranteed by the ECHR. The Belgian Government observes that, in accordance with Article 52(3) of the Charter, read in the light of the explanations relating to that article,[30] where the rights of that charter correspond to rights guaranteed by the ECHR, the meaning and scope of those rights are to be the same as those laid down by that convention, including the accepted limitations. According to that government, the

27 — See judgments of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105, paragraph 21), and of 30 April 2014, *Pfleger and Others* (C-390/12, EU:C:2014:281, paragraph 34).

28 — It goes without saying that, if such parallelism is respected, there can be no question of the Charter creating new EU powers or a modification of the existing powers, for the purposes of Article 51(2) of the Charter.

29 — On the interpretation of Article 1 of the ECHR, see, inter alia, ECtHR, 12 December 2001, *Bankovic and Others v. Belgium and Others* (CE:ECHR:2001:1212DEC005220799, paragraphs 61 and 67), ECtHR, 29 March 2010, *Medvedyev and Others v. France and Spain* (CE:ECHR:2010:00329JUD000339403, paragraphs 63 and 64), ECtHR, 7 July 2011, *Al-Skeini and Others v. United Kingdom* (CE:ECHR:2011:0707JUD005572107), and ECtHR, 23 February 2012 (version corrected on 16 November 2016), *Hirsi Jamaa and Others v. Italy* (CE:ECHR:2012:0223JUD002776509, paragraph 72).

30 — Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17). In accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, those explanations must be taken into consideration for the purpose of interpreting the Charter. See, also, judgment of 15 February 2016, *N.* (C-601/15 PPU, EU:C:2016:84, paragraph 47 and the case-law cited).

principle enshrined in Article 1 of the ECHR is one of those limitations and circumscribes the scope, inter alia, of Article 4 of the Charter, which corresponds to Article 3 of the ECHR. It follows that, as the applicants are not under the jurisdiction of the Belgian State, their situation is not covered by that provision.

96. Several reasons militate against the interpretation proposed by the Belgian Government.

97. First, Article 1 of the ECHR contains a 'jurisdiction clause' which operates as a criterion for activating the liability of the States that are parties to the ECHR in respect of any infringements of the provisions of that convention. Such a clause does not appear in the Charter. As I have already pointed out above, the only criterion affecting the application of the Charter, with regard to the action of the Member States, is laid down in Article 51(1) thereof. Furthermore, although that clause affects the application of the ECHR, it does not however concern the 'meaning' and 'scope' to be given to its provisions, to which Article 52(3) of the Charter refers.

98. Second, the reference, made in the explanations relating to Article 52(3) of the Charter, to the 'limitations' of the rights provided for by the Charter, must be understood as meaning that EU law cannot apply to the rights of the Charter which correspond to those of the ECHR limitations which would not be accepted in the scheme of the ECHR.[31] In other words, that provision enshrines the rule that the law of the ECHR prevails where it guarantees protection of the fundamental rights at a higher level.

99. Third, Article 52(3) *in fine* of the Charter specifies that the equivalence of meaning and scope between the rights of the Charter and the corresponding rights of the ECHR 'shall not prevent Union law providing more extensive protection'. It follows that the level of protection afforded by the ECHR constitutes only a minimum threshold, below which the EU may not descend; the EU may, on the other hand, give the rights guaranteed by the Charter which correspond to those of the ECHR a broader scope.[32] The Belgian Government's line of argument amounts, in essence, to claiming that the EU *is required* to apply to those rights the same limitations as those which are accepted in the scheme of the ECHR in respect of the rights guaranteed by that convention. Clearly, such an argument would render the last sentence of Article 52(3) of the Charter redundant.

100. Fourth, no limitation regarding the territorial or legal situation of the persons to which Article 4 of the Charter relates may be inferred from the wording of that article, which is expressed in broad terms.

101. Lastly, the interpretation proposed by the Belgian Government is the result of confusion between the question of the *applicability* of the Charter as a parameter of the legality of action taken by the Member State under Article 25(1)(b) of the Visa Code and that of the *content* and *scope of the obligations* of that Member State under the provisions of the Charter in the processing of a visa application from the perspective of that provision.[33]

102. I turn, at this stage, to the second part of the first question referred, by which the referring court invites the Court to clarify whether the expression 'international obligations', which appears in Article 25(1)(a) of the Visa Code, covers obligations which bind the Member States in the light of the ECHR and Article 33 of the Geneva Convention.

31 — The explanations relating to Article 52(3) of the Charter specify that 'the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR'.

32 — The explanations relating to Article 52(3) of the Charter specify, in this respect, that the accepted limitations to the rights provided for by the ECHR 'are … made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union'.

33 — That question will be examined in the context of the analysis of the second question referred.

103. I am of the view that it is not useful for the resolution of the main proceedings that the Court adopt a position on that point. Irrespective of the meaning and scope to be given to that expression, it is indisputable that the ECHR and the Geneva Convention constitute both a parameter of interpretation of EU law on entry, stay and asylum and a parameter of the action of the Member States in implementing that law.

104. The referring court nevertheless has doubts as to the applicability of both the ECHR and the Geneva Convention to the situation of the applicants in the main proceedings, given their failure to satisfy the territorial criterion which would appear to be a precondition for the application of those conventions.[34] In their written observations, both the Belgian Government and the Commission submit that they are inapplicable.

105. The considerations set out during the examination of the first part of that first question referred lead me to conclude that there is no need for the Court to adjudicate on that point.

106. It is apparent from those considerations that, when they adopted the contested decisions, the Belgian authorities were required to comply with the provisions of the Charter, inter alia, Articles 4 and 18 thereof, raised by the referring court.

107. Given that Articles 4 and 18 of the Charter guarantee protection which is at least equivalent to that afforded by Article 3 of the ECHR and Article 33 of the Geneva Convention, it is not necessary to examine whether those conventions are applicable to the situation of the applicants in the main proceedings.

108. On the basis of all the foregoing considerations, I propose that the answer to the first question referred by the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) should be that Article 25(1)(a) of the Visa Code must be interpreted as meaning that the expression 'international obligations' which appears in the wording of that provision does not cover the Charter, but that the Member States must comply with the Charter when examining, on the basis of that provision, a visa application in support of which humanitarian grounds are invoked, and when adopting a decision in relation to such an application.

The second question referred for a preliminary ruling

109. By its second question, whilst accepting that the Member State before which an application has been lodged for the issue of a humanitarian visa pursuant to Article 25(1)(a) of the Visa Code has some discretion when assessing the circumstances of each case, the referring court raises the question whether, in a situation where there is a genuine risk of infringement of Article 4 and/or of Article 18 of the Charter, that Member State is required to issue that visa. It also raises the question whether the existence of links between the person who seeks the application of Article 25(1)(a) of the Visa Code and the Member State to which the visa application has been made (for example, family connections, host families, guarantors and sponsors) affects the answer to that question.

110. For the reasons set out below, I consider that that question should be answered in the affirmative, irrespective of whether or not there are links between the person and the Member State applied to.

34 — The Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) states that it is apparent from the case-law of the European Court of Human Rights that the concept of 'jurisdiction' for the purposes of Article 1 of the ECHR is principally territorial, the scope of that convention, save in exceptional circumstances, being limited *ratione loci* to the territories of the Contracting States (see, inter alia, ECtHR, 12 December 2001, *Bankovic and Others v. Belgium and Others* (CE:ECHR:2001:1212DEC005220799, paragraphs 61 and 67), ECtHR, 29 March 2010, *Medvedyev and Others v. France and Spain* (CE:ECHR:2010:00329JUD000339403, paragraphs 63 and 64), ECtHR, 7 July 2011, *Al-Skeini and Others v. United Kingdom* (CE:ECHR:2011:0707JUD005572107), and ECtHR, 23 February 2012 (version corrected on 16 November 2016), *Hirsi Jamaa v. Italy* (CE:ECHR:2012:0223JUD002776509, paragraph 72)). A territoriality condition also allegedly applies, according to the referring court, to Article 33 of the Geneva Convention.

111. As provided in Article 25(1)(a) of the Visa Code, a visa with limited territorial validity is to be issued exceptionally when, on humanitarian grounds, the Member State concerned considers it necessary to derogate from the principle that the entry conditions laid down in Article 6(1)(a), (c), (d) and (e) of the Schengen Borders Code must be fulfilled. [35]

112. As I have already indicated, the Belgian Government submits that that provision makes it possible, a priori, only to derogate, in essence, from the grounds for refusing a visa set out in Article 32(1)(a)(i), (ii), (iii) and (vi) of the Visa Code and not from the grounds listed in Article 32(1)(b) of that code. It infers from this that Article 25(1)(a) of the Visa Code cannot permit the issue of a visa which is territorially limited to nationals who do not intend to leave its territory before the expiry of the visa applied for.

113. That objection must, in my view, be rejected.

114. As the Belgian Government concedes, it is apparent from the wording of Article 32(1) of the Visa Code that that provision applies 'without prejudice' to Article 25(1) of that code. Consequently, the ground for refusal of a visa, stated in Article 32(1)(b) of the Visa Code, does not itself preclude a Member State applying Article 25(1) of the Visa Code.

115. That is logical. Article 32(1)(b) of the Visa Code concerns the case of a refusal to issue a visa where there are 'reasonable doubts as to the authenticity of the supporting documents submitted by the applicant or the veracity of their contents, the reliability of the statements made by the applicant or his intention to leave the territory of the Member States before the expiry of the visa applied for'. There is no need to state expressly that Article 25(1)(a) of the Visa Code makes it possible to derogate from a case of refusal to issue a visa based on 'reasonable doubts as to the authenticity of the supporting documents' when that article already expressly authorises a Member State to issue a territorially limited visa where the applicant is not even in possession of a valid travel document authorising its holder to cross the border (condition of Article 6(1)(a) of the Schengen Borders Code). Similarly, if a Member State is empowered to apply Article 25(1)(a) of the Visa Code even though the third-country national concerned does not in any way justify the purpose and conditions of the intended stay (see the condition of Article 6(1)(c) of the Schengen Borders Code and ground for refusal referred to in Article 32(1)(a)(ii)), or even though the third-country national is inter alia considered to be a threat to public policy or public security (see the condition of Article 6(1)(e) of the Schengen Borders Code and the ground for refusal referred to in Article 32(1)(a)(vi)), I see no reason why it would have been necessary to state in that article that that derogation also includes cases where there are 'reasonable doubts' as to the reliability of the statements made by the applicant or his intention to leave the territory of the Member States before the expiry of the visa applied for. In short, it is a question of the application of the maxim 'he who can do most can also do least'.

116. By the same reasoning, it should also be observed that, under Article 32(1) of the Visa Code, a Member State may apply Article 25(1) of that code notwithstanding the ground for refusal set out in Article 32(1)(a)(iv) of that code, that is to say notwithstanding the circumstance that the person concerned has already stayed for 90 days during a period of 180 days on the territory of the Member States. If the Member States are authorised to apply Article 25(1) of the Visa Code in a situation where the person has already stayed more than 90 days during a period of 180 days, they must, a fortiori, be empowered to issue a visa with limited territorial validity to a third-country national in respect of whom there are reasonable doubts as to his intention of leaving the territory before the expiry of the visa.

35 — It is entirely logical that Article 25(1)(a)(i) of the Visa Code does not refer to Article 6(1)(b) of the Schengen Borders Code, which requires third-country nationals to be in possession of a valid visa.

117. As I have already pointed out, that does not change the nature of the visa issued, which remains a short-stay visa, in accordance with the Visa Code.[36] That visa does not confer an automatic right of entry, as Article 30 of the Visa Code states.

118. Moreover, the Commission itself concedes in its Handbook for the processing of visa applications and the modification of issued visas[37] that Article 25(1) of the Visa Code constitutes the legal basis which authorises the Member States, during a single 180-day period, to issue a visa with limited territorial validity for 90 days following the issue of a uniform visa and thus to mitigate the rigorous application of the grounds for refusal laid down in Article 32(1) of the Visa Code.

119. Consequently, Article 25(1) of the Visa Code enables the Member States, in the specific conditions that it lays down, namely, inter alia, on humanitarian grounds, to preclude all the grounds for refusal listed in Article 32(1)(a) and (b) of that code. The intention of the EU legislature, as reflected in those provisions, is clear. The expression 'without prejudice to Article 25(1)', set out in Article 32 of the Visa Code can have only one meaning, namely that, specifically, of authorising the application of Article 25(1)(a) of the Visa Code and thus the issue of a visa with limited territorial validity, *notwithstanding* the grounds for refusal listed in Article 32(1)(a) and (b) of that code.

120. That having been clarified, it is now necessary to enquire whether Article 25(1)(a) of the Visa Code must be interpreted as meaning that it provides for a mere option for the Member States to preclude the grounds for refusal listed in Article 32(1)(a) and (b) of the Visa Code or whether, under certain circumstances, it may go as far as imposing such a measure and, accordingly, result in their issuing a visa with limited territorial validity on humanitarian grounds.

121. For the reasons that I will set out below, I am of the opinion that EU law precludes an interpretation of Article 25(1)(a) of the Visa Code to the effect that it merely empowers the Member States to issue such visas. My position is based both on the wording and scheme 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 they apply those provisions.

122. It is apparent from Article 23(4) of the Visa Code that that code governs exhaustively the types of measures that must be adopted where a visa application is submitted to the Member States. This means, in the main proceedings, either a decision to issue a visa with limited territorial validity, in accordance with Article 25 of that code, or to refuse to issue such a visa, in accordance with Article 32 of that code.

123. Just as decisions to refuse to issue a visa must be taken within the framework established by Article 32 of the Visa Code,[38] decisions to issue a visa with limited territorial validity must be taken within the framework established by Article 25(1) of that code.

124. It follows, also in the light of the relationship between Article 25(1) and Article 32(1) of the Visa Code which I highlighted above, that a Member State which has received an application from a third-country national to issue that national a visa with limited territorial validity on humanitarian grounds cannot exempt itself from the obligation to examine the reasons invoked which might preclude the application of the grounds for refusal listed in Article 32(1) of the Visa Code.

36 — See points 49 to 51 of this Opinion.

37 — Cited in footnote 26, point 9.1.2, p. 80.

38 — See judgment of 19 December 2013, *Koushkaki* (C-84/12, EU:C:2013:862, paragraph 37).

125. That interpretation is supported by the wording of Article 25(1) of the Visa Code which specifies that a visa with limited territorial validity 'shall be issued' where the conditions of that provision are satisfied. In that case, such wording, which is to be found in the other language versions of Article 25(1) of the Visa Code,[39] requires the Member State to grant the visa with limited territorial validity applied for.

126. At this stage of the reasoning, it therefore seems clear to me that the Visa Code requires, as a minimum, a Member State to examine the humanitarian grounds which are invoked by a third-country national in order to preclude the application of the grounds for refusal referred to in Article 32(1) of the Visa Code and aimed at granting that national the benefit of the application of Article 25(1)(a) of that code.

127. If, at the end of that examination, the Member State considers that those humanitarian grounds are well founded, the Visa Code *requires* that it issue that national a visa with limited territorial validity.

128. It is true that it cannot be denied that, in the light of the wording of Article 25(1)(a) of the Visa Code, the Member State applied to retains a discretion as regards the humanitarian grounds which make it necessary to preclude the application of the grounds for refusal listed in Article 32(1) of the Visa Code, and, accordingly, to issue a visa with limited territorial validity.

129. However, as I have already had occasion to state,[40] falling as it does within the scope of the provisions of the Visa Code, that discretion is necessarily circumscribed by EU law.

130. On the one hand, the definition and the scope of the actual expression 'humanitarian grounds' cannot, in my view, be left entirely to the discretion of the Member States. Although that expression is not defined by the Visa Code, it is a concept of EU law, since no reference is made in Article 25(1) of that code to the national law of the Member States. Moreover, the fact that the visa issued under Article 25(1) of the Visa Code is, in principle, solely valid on the territory of the issuing Member State[41] does not mean that the humanitarian grounds must be exclusive to that Member State. It must be acknowledged that the expression 'humanitarian grounds' is very broad and, in particular, cannot, in my view, be limited to cases of medical assistance or health care for the third-country national concerned or for a close relative of that national, of the type set out in the contested decisions in the main proceedings and raised by the Belgian Government at the hearing before the Court. The wording of Article 25(1) of the Visa Code does not support such an interpretation and it would be extremely narrow-minded merely to reduce humanitarian grounds to a poor state of health or to illness. Without claiming to determine such grounds in this Opinion, I consider, at this stage, that there is not, in any event, a shadow of doubt that the grounds set out by the applicants in the main proceedings before the Belgian authorities, relating to the need to flee the armed conflict and indiscriminate violence raging in Syria, in particular Aleppo, and to escape the alleged acts of torture and persecution, in particular on account of their belonging to a religious minority, fall within the scope of humanitarian grounds, also for the purposes of Article 25(1)(a) of the Visa Code. If that were not the case, that expression would be rendered meaningless. Moreover, if one were to subscribe to the 'minimalist' argument of the Belgian Government, that would lead to the paradoxical consequence that the more blatant the humanitarian grounds are, the less likely they would be to fall within the scope of Article 25(1)(a) of the Visa Code.

39 — See, inter alia, the versions of that article in German ('wird … erteilt'), Spanish ('se expedirá'), Italian ('sono rilasciati'), Portuguese ('é emitido'), Finnish ('myönnetään'), Swedish ('ska … utfärdas') and French ('est délivré').

40 — See points 82 and 83 of this Opinion.

41 — I would point out that, in accordance with Article 25(2) of the Visa Code, that visa may also, exceptionally, be recognised as valid for the territory of more than one Member State.

131. Moreover, as I made pointed out above, where a Member State finds it necessary to adopt a decision in order to refuse to issue a visa with limited territorial validity on the ground that the humanitarian grounds stated by the interested person do not necessitate precluding the grounds for refusal listed in Article 32(1) of the Visa Code, that Member State undoubtedly implements EU law. The discretion of the Member State applied to must therefore be exercised with respect for the rights guaranteed by the Charter.

132. In other words, to remain within the limits of its discretion, the Member State applied to must reach the conclusion that, by refusing to grant the application of Article 25(1)(a) of the Visa Code, despite the humanitarian grounds stated by the third-country national concerned, it does not thereby infringe the rights set out in the Charter. If the Member State reaches the opposite conclusion, it must preclude the grounds for refusal listed in Article 32(1) of the Visa Code and issue the visa with limited territorial validity, in accordance with Article 25(1)(a) of that code.

133. The requirement of respect for the rights guaranteed by the Charter does not in principle pose any particular problem where the Member State decides to activate the procedure provided for in Article 25(1)(a) of the Visa Code in the light of the humanitarian grounds of the situation on which it must adjudicate.

134. That might not be the case where the grant of the visa is refused and, consequently, one or more grounds for refusal listed in Article 32(1) of the Visa Code are applied.

135. In that situation, it is a matter of determining whether the absence of, or refusal to take into consideration, the humanitarian grounds specific to a given situation or the refusal to issue a visa with limited territorial validity results in the infringement by the Member State of its obligations under the Charter.

136. It must be stressed that that requirement does not deprive the Member State of all discretion. Therefore, it seems to me that it can be ruled out that a refusal to grant a request to attend the funeral of a close relative who has died on the territory of a Member State, however painful that may be for the person concerned, may result in an infringement of a right guaranteed by the Charter.

137. The situation is different, in my view, if, in the light of the circumstances and the humanitarian grounds in question, the refusal to issue the visa exposes the applicant to a genuine risk of infringement of the rights enshrined in the Charter, particularly the rights of an absolute nature, such as those relating to human dignity (Article 1 of the Charter), the right to life (Article 2 of the Charter), the integrity of the person (Article 3 of the Charter) and the prohibition of torture and inhuman and degrading treatment (Article 4 of the Charter)[42] and, moreover, where there is a risk that those rights will be infringed in relation to particularly vulnerable persons, such as young, minor, children whose best interests must be a primary consideration in all actions taken by public authorities, in accordance with Article 24(2) of the Charter. I would point out indeed in that regard that, in the judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraphs 94 to 98), concerning the determination of the Member State responsible for processing an application for asylum, the Court has already accepted that a mere option for a Member State, provided for in an act of secondary EU law, may turn into an actual obligation on that Member State in order to ensure compliance with Article 4 of the Charter.

42 — The absolute nature of the right enshrined in Article 4 of the Charter, which is closely connected to that of respect for human dignity, has been noted by the Court. See, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 85), and of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraph 56).

138. If one therefore merely examines Article 4 of the Charter, which is specifically referred to in the second question put by the referring court, it should be recalled, as I did above, that the right set out in that article corresponds to the right which is guaranteed by Article 3 of the ECHR, whose wording is identical. [43] Both those provisions enshrine one of the fundamental values of the Union and its Member States, which is why the Charter and the ECHR prohibit, under any circumstances, torture and inhuman or degrading treatment or punishment. [44] It follows that the prohibition laid down in Article 4 of the Charter applies even in the most difficult circumstances, such as the fight against terrorism and organised crime, [45] or in the face of the pressures of an increasing flow of migrants to, and of persons seeking international protection in, the territory of the Member States, in a context also marked by the economic crisis. [46]

139. By analogy with the case-law of the European Court of Human Rights on Article 3 of the ECHR, Article 4 of the Charter imposes on the Member States, when implementing EU law, not only a negative obligation with respect to individuals, that is to say that it prohibits the Member States from using torture and inhuman or degrading treatment, but also a *positive obligation*, that is to say that it requires them to take measures designed to ensure that those individuals are not subjected to torture and inhuman or degrading treatment, in particular in the case of vulnerable individuals, including where such ill-treatment is administered by private individuals. [47] The liability of a Member State may therefore be incurred inter alia where its own authorities have not taken reasonable steps to avoid a risk of torture or inhuman or degrading treatment about which they knew or ought to have known. [48] In its judgments of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraphs 94, 106 and 113), and of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 90 and 94), the Court already held that, like Article 3 of the ECHR, Article 4 of the Charter imposes a positive obligation on the Member States under certain circumstances.

140. In examining whether a State has failed to fulfil its positive obligation to adopt reasonable steps to avoid exposing a person to a genuine risk of treatment prohibited by Article 4 of the Charter, it is necessary, in my view, to ascertain, by analogy with the case-law of the European Court of Human Rights relating to Article 3 of the ECHR, what the foreseeable consequences of that omission or that refusal to act with regard to the person concerned are. [49] In that context, and in the light of the measures sought in the main proceedings, account should be taken of the general conditions in the country of origin of the person concerned and/or of the situation of the country in which that person might find it necessary to remain, together with the personal circumstances of the interested person. [50] If an examination of those situations and those circumstances in the light of Article 4 of the Charter is

43 — See, to that effect, the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) and judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 86).

44 — Judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 87).

45 — See, judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 87), and, by analogy ECtHR, 13 December 2012, *El-Masri v. The former Yugoslav Republic of Macedonia* (CE:ECHR:2012:1213JUD003963009, paragraph 195 and the case-law cited).

46 — See, by analogy ECtHR, 23 February 2012 (version corrected on 16 November 2016), *Hirsi Jamaa and Others v. Italy* (CE:ECHR:2012:0223JUD002776509, paragraph 122).

47 — See inter alia, by analogy ECtHR, 28 March 2000, *Mahmut Kaya v. Turkey* (CE:ECHR:2000:0328JUD002253593, paragraph 115), ECtHR, 13 December 2012, *El-Masri v. The former Yugoslav Republic of Macedonia*, (CE:ECHR:2012:1213JUD003963009, paragraph 198), ECtHR, 25 April 2013, *Savriddin Dzhurayev v. Russia* (CE:ECHR:2013:0425JUD007138610, paragraph 179), and ECtHR, 23 February 2016, *Nasr and Ghali v. Italy* (CE:ECHR:2016:0223JUD004488309, paragraph 283).

48 — See inter alia, by analogy, ECtHR, 28 March 2000, *Mahmut Kaya v. Turkey* (CE:ECHR:2000:0328JUD002253593, paragraph 115), ECtHR, 13 December 2012, *El-Masri v. The former Yugoslav Republic of Macedonia* (CE:ECHR:2012:1213JUD003963009, paragraph 198), and ECtHR, 23 February 2016, *Nasr and Ghali v. Italy* (CE:ECHR:2016:0223JUD004488309, paragraph 283).

49 — See, inter alia, to that effect ECtHR, 13 December 2012, *El-Masri v. The former Yugoslav Republic of Macedonia* (CE:ECHR:2012:1213JUD003963009, paragraph 213). See, also ECtHR, 23 February 2016, *Nasr and Ghali v. Italy* (CE:ECHR:2016:0223JUD004488309, paragraph 289).

50 — See inter alia, to that effect, ECtHR, 13 December 2012, *El-Masri v. The former Yugoslav Republic of Macedonia* (CE:ECHR:2012:1213JUD003963009, paragraph 213), and ECtHR, 23 February 2016, *Nasr and Ghali v. Italy* (CE:ECHR:2016:0223JUD004488309, paragraph 289).

unavoidable in order to determine whether, in a specific case, the Member State has failed to fulfil the positive obligation imposed on it by that article, there is however no question of adjudicating on or establishing the responsibility of the third countries concerned or groups or other entities acting in those countries on the basis of general international law or on another basis. [51]

141. In assessing the existence of the risk of exposing a person to treatment prohibited by Article 4 of the Charter resulting from the omission or refusal of a Member State to take reasonable steps in a context such as that of the main proceedings, I consider that the Court should rely on the evidence provided by the referring court and refer primarily to the facts which were known or ought to have been known to the Member State at the time that it decided to apply the grounds for refusal provided for in Article 32(1) of the Visa Code; subsequent information may, as the case may be, support or cast doubt on the manner in which the Member State assessed whether the fears of the person concerned were well founded. [52]

142. Since Article 267 TFEU is based on a division of jurisdiction between the referring court and the Court, it is for the former to assess the evidence which was known or ought to have been known to the Belgian State when it adopted the contested decisions. To do so, and in order to examine the general conditions in the country of origin or of the country in which the person concerned might find it necessary to remain and the genuine risk faced by that person, I consider that that court should attach importance to information from reliable and objective sources, such as the EU institutions, the bodies and agencies of the United Nations or governmental sources and non-governmental organisations (ONGs) with a responsible reputation, in particular information in recent reports from independent international associations for the protection of human rights, such as Amnesty International or Human Rights Watch. [53] In assessing the reliability of those reports, the relevant criteria are the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources. [54]

143. It is however necessary, in my opinion, to take account of the many difficulties faced by governments and NGOs gathering information in dangerous and volatile situations. It will not always be possible for investigations to be carried out in the immediate vicinity of a conflict. In such cases, information provided by sources with first-hand knowledge of the situation may have to be relied on, [55] such as correspondents of press organisations.

51 — See, by analogy, to that effect, ECtHR, 13 December 2012, *El-Masri v. The former Yugoslav Republic of Macedonia*, (CE:ECHR:2012:1213JUD003963009, paragraph 212 and the case-law cited).

52 — See, to that effect, by analogy, ECtHR, 13 December 2012, *El-Masri v. The former Yugoslav Republic of Macedonia* (CE:ECHR:2012:1213JUD003963009, paragraph 214).

53 — See, inter alia, by analogy to that effect, ECtHR, 28 February 2008, *Saadi v. Italy* (CE:ECHR:2008:0228JUD003720106, paragraphs 131 and 143), ECtHR, 17 July 2008, *M.S.S. v. Belgium and Greece*, (CE:ECHR:2011:0121JUD003069609, paragraphs 227 and 255), ECtHR, 23 February 2012 (version corrected on 16 November 2016), *Hirsi Jamaa and Others v. Italy* (CE:ECHR:2012:0223JUD002776509, paragraphs 116 and 118), and ECtHR, 23 August 2016, *J.K. and Others v. Sweden* (CE:ECHR:2016:0823JUD005916612, paragraph 90). In another context, see also, to that effect, judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraph 59 and the case-law cited).

54 — See, by analogy, ECtHR, 3 July 2014, *Georgia v. Russia (I)*, (CE:ECHR:2014:0703JUD001325507, paragraph 138), and ECtHR, 23 August 2016, *J.K. and Others v. Sweden* (CE:ECHR:2016:0823JUD005916612, paragraphs 88 and 90).

55 — See, by analogy, ECtHR, 23 August 2016, *J.K. and Others v. Sweden* (CE:ECHR:2016:0823JUD005916612, paragraph 89).

144. Without depriving the referring court of its task of examining in more detail that information in the light of the reliable and objective sources mentioned above, it appears to me important — in the light of the well-known nature of certain facts and of the easily accessible nature of a large number of sources relating to the situation in Syria, to that of the Syrian population and to that of the countries neighbouring that State, and in order to give the referring court a useful and swift answer and to guide the Court in its judgment to be delivered — to set out the main evidence which was known to or ought to have been known to the Belgian State when it adopted the contested decisions. [56]

145. It is apparent first of all from the order for reference itself that the Belgian State has in no way disputed the substantiated description made by the applicants in the main proceedings of the high-intensity, indiscriminate violence raging in Syria, the acts of violence and the serious human rights violations committed in that country and, in particular, Aleppo, the city which they are from. The competent Belgian authorities could certainly not have been unaware of the apocalyptic, or 'catastrophic' nature – according to the expression used in the contested decisions – of the general situation in Syria, especially since, as the applicants in the main proceedings also observed before the referring court, that court had already highlighted, before the contested decisions were adopted, that it was 'common knowledge' that the security situation in Syria was terrible in the light of all the alarming evidence before it. [57]

146. If any further proof were needed of the well-known nature of the humanitarian tragedy and of the apocalyptic situation endured by the civilian population in Syria, it is corroborated by abundant information and official documents. Thus, in a document released in September 2016, [58] that is approximately one month before the adoption of the contested decisions, the Commission observed itself that the Syria conflict had 'triggered the world's largest humanitarian crisis since World War II' and noted that the humanitarian situation was continuing to deteriorate in Syria given the intensification in fighting, the worsening violence, the general failure to comply with international rules and the serious violations of human rights. The Commission also deplored the extreme vulnerability of the Syrian population, civilians being the primary victims of practices which have become 'commonplace', such as 'rape and other sexual violence, enforced disappearances, forcible displacement, recruitment of child soldiers, summary executions and deliberate targeting of [civilians]'. Moreover, with respect to Aleppo, the Commission stated that the intensity of the bombardments and clashes had resulted in countless civilian victims and left more than two million people without water or electricity, in fear of being besieged and subjected, to continuous airstrikes.

147. A few weeks later, the United Nations Security Council stated that it was 'alarmed by the continued deterioration of the devastating humanitarian situation in Aleppo', [59] expressed outrage 'at the unacceptable and escalating level of violence and the killing of … tens of thousands of child[ren]' and 'gravely distressed by the continued deterioration of the devastating humanitarian situation in Syria, and by the [number of persons] needing urgent humanitarian assistance, including medical assistance'. [60] The United Nations Security Council also stressed the need to 'ceas[e] all attacks against civilians and civilian objects, including those involving attacks on schools, medical facilities, …

56 — In the judgment of 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609, paragraph 366), the European Court of Human Rights held that the Kingdom of Belgium had infringed the positive obligation laid down in Article 3 of the ECHR after finding that, at the time of adopting the measure in question in that case, the 'facts were well known … and were freely ascertainable from a wide number of sources'.

57 — See Conseil du contentieux des étrangers (Council for asylum and immigration proceedings), judgment No 175973 du 7 October 2016, X/III v. the Belgian State, p. 8. See, also Conseil du contentieux des étrangers (Council for asylum and immigration proceedings), judgment No 176363 of 14 October 2016, X/I v. the Belgian State, p. 8.

58 — See European Commission, Humanitarian Aid and Civil Protection, ECHO Factsheet, Syria crisis, September 2016, available at http://ec.europa.eu/echo/files/aid/countries/factsheets/syria_en.pdf#view=fit.

59 — Resolution 2328 (2016) adopted by the United Nations Security Council on 19 December 2016.

60 — Resolution 2332 (2016) adopted by the United Nations Security Council on 21 December 2016.

indiscriminate shelling by mortars, car bombs, suicide attacks … the use of starvation of civilians as a method of combat, including by the besiegement of populated areas, and the widespread use of torture, ill-treatment, arbitrary executions, … enforced disappearances, sexual … violence, as well as all grave violations and abuses committed against children'. [61]

148. Next, at the time that the Belgian State was due to adopt the contested decision, the Belgian authorities were not only informed about the general situation of the extreme vulnerability of Syrian civilians described above, but could not reasonably have been unaware, as is apparent from the material in the file of the main proceedings, of the specific circumstances of the applicants in the main proceedings. It is common ground that the five applicants in the main proceedings (a) were all resident in the besieged city of Aleppo, [62] three of them being young children, the eldest sibling being only 10 years old, (b) that they are of Christian faith, the children having been baptised as Orthodox Christians, and that, accordingly, the applicants belong to a group of persons in relation to whom there are substantial grounds to believe that it is targeted and has been targeted, if not persecuted, by various armed groups in Syria [63] and (c) that they submitted documents in support of their visa application, which were not disputed before the referring court, specifically substantiating the fact that the family had been the victim of various acts of violence by armed groups operating in Aleppo, in particular that the father of the family was taken hostage by one of those armed groups, during which he was beaten and tortured, before finally being released following payment of a ransom.

149. In the light of that evidence, it cannot be denied that the applicants in the main proceedings were exposed in Syria, at the very least, to genuine risks of inhuman treatment of an extremely grave nature clearly falling within the scope of the prohibition laid down in Article 4 of the Charter.

150. Moreover, in adopting the contested decisions, the Belgian State knew or ought to have known that the foreseeable consequences of that decision left the applicants in the main proceedings only the choice between exposing themselves to the dangers, suffering and inhuman treatment mentioned previously, liable even to result in their deaths, or to submit themselves to other types of equivalent treatment, in attempting to reach illegally the territory of a Member State in order to lodge their application for international protection there. It is very well documented that Syrian nationals, including those seeking international protection, who manage, in desperation, to somehow negotiate, [64]

61 — Resolution 2332 (2016) adopted by the United Nations Security Council on 21 December 2016.

62 — According to information published on 20 October 2016 by the French section of Amnesty International, between 19 September and 16 October 2016, Alep was subjected to at least 600 airstrikes, during which hundreds of civilians were killed, thousands were injured and tens of key infrastructure items were destroyed or damaged: See, Amnesty International: https://www.amnesty.fr/conflits-armes-et-populations/actualites/alep--de-nouvelles-preuves-de-crimes-de-guerre

63 — See, among the various sources, Rand, S., 'Syria: Church on Its Knees', Open Doors Advocacy Report, May 2012, available at https://www.opendoorsuk.org/pray/documents/Syria_Advocacy_Report.pdf, Eghdamian, K., 'Religious Plurality and the Politics of Representation in Refugee Camps: Accounting for the Lived Experiences of Syrian Refugees Living in Zaatari', *Oxford Monitor of Forced Migration*, No 1, 2014, p. 38, and the comments of the representative of the United Nations High Commissioner for Refugees in April 2016: http://www.thewhig.com/2016/04/03/syrian-christian-refugees-persecuted. In the chapter relating to Syria of its 2016 annual report, the United States Commission for International Religious Freedom (USCIRF) recalls that it found in December 2015 that the armed group Daesch/Islamic State was committing a genocide against several religious minorities, including Syrian Christians: See http://www.uscirf.gov/sites/default/files/USCIRF_AR_2016_Tier1_2_Syria.pdf

64 — According to a 2016 study of the International Organisation for Migration (IOM), regarding over 6000 Syrian and Iraqi nationals who had arrived in Europe, the price of passage to Europe ranged between approximately USD 1000 and USD 5000 per person: see http://migration.iom.int/docs/Analysis_Flow_Monitoring_Surveys_in_the_Mediterranean_and_Beyond_8_December_2016.pdf

with the help of unscrupulous traffickers, a sea crossing to the European Union risking their lives in the process are — if they do not drown or die from other causes — beaten, attacked and/or abandoned in drifting makeshift vessels [65] until, in the best-case scenario, they are rescued by coastguards or by NGOs which have chartered search and rescue vessels. [66]

151. There can be no doubt, in my view, that such treatment is prohibited by Article 4 of the Charter.

152. Accordingly, there were serious grounds to believe that the refusal by the Belgian State to issue a visa with limited territorial validity would directly encourage the applicants in the main proceedings, unless they stayed in Syria, to have to expose themselves, in desperation, to physical and mental pain, risking their lives in doing so, in order to exercise the right to international protection to which they lay claim. [67] That a Member State could, in such circumstances, refrain from taking the measures within its power to avoid exposing third-country nationals seeking international protection to such risks also constitutes, in my view, an infringement of Article 4 of the Charter.

153. In the circumstances of the main proceedings, that assessment does not appear to me to be in any way undermined by the argument that the applicants in the main proceedings could have found refuge in neighbouring Lebanon, where the consulate of the Kingdom of Belgium with which they sought the application of Article 25(1) of the Visa Code is located.

154. It is true that, since the beginning of the conflict in Syria, over one million Syrians have been registered by the United Nations High Commissioner for Refugees (HCR) as refugees in Lebanon. [68] However, in May 2015, the Lebanese Government notified the HCR that registration of new Syrian refugees would be suspended. [69] That suspension was still applicable at the time that the Belgian State was due to adopt the contested decisions, as the applicants in the main proceedings pointed out before the referring court. Lebanon is not a contracting party to the Geneva Convention [70] and new, unregistered refugees, deprived of the possibility of obtaining the status of asylum seekers in that country, ran the risk of being arrested and detained for staying illegally, [71] as the applicants in the main proceedings submitted indeed before both the referring court and the Court. That group of persons, to which the applicants in the main proceedings were thus likely to belong if they went to Lebanon in breach of Lebanese legislation, are therefore in a more precarious situation than registered refugees, who very often live in basic shelter, such as garages or mere tents, in a country where there is

65 — Often mere rubber dinghies.

66 — According to the NGO Médecins Sans Frontières (MSF), almost 5 000 men, women and children died in 2016 while trying to cross the Mediterranean Sea. Those data are mere estimates since numerous bodies have never been recovered. MSF chartered three vessels in 2015 and 2016 for maritime search and rescue missions and most of those saved came from Syria: see http://www.msf.fr/actualite/dossiers/operations-recherche-et-sauvetage-migrants-en-mediterranee. According to the UN High Commissioner for Refugees, between January and November 2016, over 350 000 persons arrived by sea in Greece and Italy, most of them Syrian nationals. Estimates of the number of deaths and disappearances in the Mediterranean Sea are approximately the same as those of MSF. See the documents accessible at: http://data.unhcr.org/mediterranean/regional.php. In its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the European Parliament observed that 'criminal networks and smugglers exploit the desperation of people trying to enter the Union while fleeing persecution or war', 'safe and legal routes for refugees to access the Union are limited, and many continue to take the risk of embarking on dangerous routes': see http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0102+0+DOC+XML+V0//FR

67 — In a report of 8 May 2015 (Doc. A/HRC/29/36, paragraph 34), the United Nations Special Rapporteur on the human rights of migrants stated that the refusal to ensure legal entry into the European Union constituted in itself a 'key driver' of the 'root causes' of individuals seeking international protection using smugglers to escape a humanitarian crisis: see www.ohchr.org/EN/HRBodies/HRC/.../A_HRC_29_36_FRE.DOCX.

68 — See https://data.unhcr.org/syrianrefugees/country.php?id= 122.

69 — See HCR, *Vulnerability Assessment of Syrian Refugees in Lebanon*, 2016, p. 13. Those measures are expressly intended to reduce the flow of refugees to Lebanon: see http://www.lemonde.fr/proche-orient/article/2015/01/05/le-liban-regule-l-entree-des-refugies-Syrian-en-leur-imposant-d-obtenir-un-visa_4549504_3218.html.

70 — So far as this point is relevant, I would point out that, even if a third State has ratified the Geneva Convention, that would not mean that there is a conclusive presumption that that country observes that convention and fundamental rights as regards individuals seeking international protection and asylum seekers: see judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraphs 102 to 104).

71 — See, inter alia, Human Rights Watch, *World Report*, 2016, Lebanon, https://www.hrw.org/world-report/2016/country-chapters/lebanon. See, also, Janmyr, M., 'Precarity in Exile: the Legal Status of Syrian Refugees in Lebanon', *Refugee Survey Quaterly*, No 4, 2016, pp. 58 to 78.

no official camp,[72] and whose access to food and water, healthcare and education is extremely difficult if not precarious.[73] Moreover, the international press and several NGOs reported during 2016 repeated acts of violence against Syrian refugees resulting notably from the growing tensions with the local population, particularly in the poorest regions of the country.[74] Certain human rights observers even stated in 2016 that the situation in all the host countries neighbouring Syria had become so untenable that many Syrians were returning to Syria, risking their lives in doing so, including in areas where fighting continued to rage.[75] Lastly, as regards particularly the situation of Christians, like the applicants in the main proceedings, representatives of intergovernmental organisations and NGOs echoed the fears of ostracism, intimidation and serious violence as regards that religious minority both in Lebanon and other neighbouring countries, such as Jordan, including even in refugee camps.[76]

155. In the light of those circumstances, which the Belgian State knew or ought to have known about when it adopted the contested decisions, that Member State could not therefore invoke a hypothetical argument that it was under no obligation to issue a visa with limited territorial validity on the ground that the applicants in the main proceedings could have exercised their right to seek and obtain international protection in Lebanon. It is clearly apparent in my view that such a right could not be exercised specifically and actually in that country by Syrians who fled Syria after May 2015. Accordingly, even if the Belgian State had pleaded that it was possible for the applicants in the main proceedings to go to Lebanon, I consider that, in the light of the available information on the situation in that country, the Belgian State would not have been entitled to conclude that it was exempt from satisfying its positive obligation under Article 4 of the Charter.[77]

156. At the time of adopting the contested decisions, the Belgian State should therefore have reached the conclusion that, by refusing to recognise the need to issue a visa with limited territorial validity on the humanitarian grounds invoked by the applicants in the main proceedings and by applying the grounds for refusal listed in Article 32(1) of the Visa Code, there were very substantial grounds to believe that it was exposing the applicants in the main proceedings to a genuine risk of suffering treatment prohibited by Article 4 of the Charter.

157. Frankly, what alternatives did the applicants in the main proceedings have? Stay in Syria? Out of the question. Put themselves at the mercy of unscrupulous smugglers, risking their lives in doing so, in order to attempt to reach Italy or Greece? Intolerable. Resign themselves to becoming illegal refugees in Lebanon, with no prospect of international protection, even running the risk of being returned to Syria? Unacceptable.

72 — See European Commission, Humanitarian Aid and Civil Protection, ECHO Factsheet, Syria crisis, September 2016, available at http://ec.europa.eu/echo/files/aid/countries/factsheets/syria_en.pdf#view=fit.

73 — According to the HCR study, *Vulnerability Assessment of Syrian Refugees in Lebanon*, pp. 3 and 35, 42% of families have shelter that does not meet minimum humanitarian standards, while nearly half of children between aged 6 and 14 do not attend school and suffer numerous illnesses and infections. Only 15% of Syrian children in Lebanon receive enough food to meet the World Health Organisation's standards.

74 — See, inter alia, http://observers.france24.com/fr/20160708-tensions-latentes-entre-libanais-syriens-camp-refugie-incendie and http://www.al-monitor.com/pulse/originals/2016/09/lebanon-plan-return-syrian-refugees.html. See, also, Balouziyeh, J.M.B., *Hope and Future. The Story of Syrian Refugees*, Time Books, 2016, pp. 56 and 57.

75 — See Amnesty International, 'Five Years of Crisis, Five Million Syrian Refugees', 30 March 2016, https://www/amnesty.org/en/latest/news/2016/03.

76 — Eghdamian, K., 'Religious Plurality and the Politics of Representation in Refugee Camps: Accounting for the Lived Experiences of Syrian Refugees Living in Zaatari', *Oxford Monitor of Forced Migration*, No 1, 2014, p. 38, and Johnston, G., 'Syrian Christian refugees persecuted', 3 April 2016, http://www.thewhig.com/2016/04/03/syrian-christian-refugees-persecuted.

77 — See, to that effect, ECtHR, 23 February 2012 (version corrected on 16 November 2016), *Hirsi Jamaa and Others v. Italy* (CE:ECHR:2012:0223JUD002776509, paragraphs 146 to 158), establishing the liability of the Italian State under Article 3 of the ECHR for having failed to ensure that nationals expelled to an intermediary third county, which has not ratified the Geneva Convention, enjoyed sufficient guarantees to avoid the risk that they would be arbitrarily returned to their countries of origin, having regard in particular to the fact that there was no asylum procedure in the intermediary third county and that it was impossible to have the status of refugee granted by the HCR recognised by the authorities of that country.

158. To paraphrase the European Court of Human Rights, the purpose of the Charter is to protect rights which are not theoretical or illusory, but real and effective. [78]

159. It cannot be denied, in the light of the information in the file in the main proceedings, that the applicants in the main proceedings would have obtained the international protection that they seek if they had succeeded in overcoming the obstacles of an illegal journey, which would have been as dangerous as it was exhausting, and managed in spite of everything to reach Belgium. [79] The refusal to issue the visa sought thus has the direct consequence of encouraging the applicants in the main proceedings to put their lives at risk, including those of their three young children, to exercise their right to international protection.

160. In view of the Visa Code and the commitments undertaken by the Member States, that consequence cannot be tolerated. At the very least, it is contrary to the right guaranteed by Article 4 of the Charter. [80]

161. In the light of the absolute nature of that right, it is clear that the absence of family links or of any other nature of the applicants in the main proceedings in Belgium is a factor which does not affect the answer to be given to the second question referred.

162. Whilst not ruling out that the refusal of the Belgian authorities to grant the protection sought by the applicants in the main proceedings also infringes the right enshrined in Article 18 of the Charter, I consider, in the light of all the foregoing considerations, that it is not necessary to adjudicate on that question.

163. Accordingly, I propose that the Court answer the second question submitted by the referring court as follows: Article 25(1)(a) of the Visa Code must be interpreted as meaning that, in the light of the circumstances of the main proceedings, the Member State applied to by a third-country national in order to issue that national a visa with limited territorial validity on humanitarian grounds is required to issue such a visa if there are substantial grounds to believe that the refusal to issue that document will have the direct consequence of exposing that national to treatment prohibited by Article 4 of the Charter, by depriving that national of a legal route to exercise his right to seek international protection in that Member State.

164. It goes without saying that this proposal has been carefully considered.

165. First of all, it turns out, in my view, to be the only proposal befitting the 'universal values of the inviolable and inalienable rights of the human person' [81] on which European construction is founded and which the European Union and its Member States defend and promote, both on their territory and in their relations with third countries. [82] In its case-law, the Court has made a significant contribution to the strengthening of those values, often placing itself in a role of guardian of the fundamental rights of individuals, particularly those of the most vulnerable, including third-country

78 — See, inter alia, recent case-law recalling this, ECtHR, 1 June 2010 (version corrected on 3 June 2010), *Gäfgen v. Germany* (CE:ECHR:2010:0601JUD002297805, paragraph 123), and ECtHR, 26 April 2016, *Murray v. Netherlands* (CE:ECHR:2016:0426JUD001051110, paragraph 104).

79 — Relying on information from the Commissariat général aux réfugiés et aux apatrides (Commissioner General for Refugees and Stateless Persons) in Belgium, the applicants in the main proceedings claimed before the referring court, without being contradicted by the Belgian State, that, in 2015, nearly 98% of the decisions of the Commissariat général aux réfugiés et aux apatrides resulted in the granting of international protection. It appears that the vast majority arrived illegally.

80 — See, to that effect, by analogy, the concurring opinion of Judge Pinto De Albuquerque delivered in the judgment of the ECtHR, 23 February 2012 (version corrected on 16 November 2016), *Hirsi Jamaa and Others v. Italy* (CE:ECHR:2012:0223JUD002776509, paragraph 73).

81 — Preamble to the EU Treaty.

82 — I would point out that, as provided in Article 3(1) and (5) TEU 'the Union's *aim* is to promote peace [and] its *values* …', and that it 'uphold[s] and *promote[s] its values*', 'in its relations with the wider world', by contributing to 'the protection of human rights, in particular the rights of the child …' (italics added). As provided in Article 4 TEU, the Member States are to take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties and are to refrain from any measure which could jeopardise the attainment of the Union's objectives.

nationals needing international protection.[83] Those values must have meaning, be given concrete expression and guide the application of EU law where the latter provides the conditions to honour those values, as is the case here in respect of Article 25(1)(a) of the Visa Code. In my view, it is the credibility of the Union and of its Member States which is at stake.

166. One thing struck me whilst re-reading the case-law of the European Court of Human Rights for the purposes of dealing with the present case: the findings of that court relating to the situations — always horrible and tragic — in which the liability of a contracting party to the ECHR has been established for failure to fulfil its positive obligation under Article 3 of the ECHR, are systematically findings made *ex post*, most often where the treatment in question has been fatal for the victims. That is probably connected, at least in part, with the nature of the procedure before the European Court of Human Rights and the need, before a case is referred to it, to exhaust domestic remedies. The fact remains that, in those cases, preventive measures were never adopted and the irreparable was unfortunately committed.

167. On the contrary, in the present case — and this is obviously one of the reasons that led the Court to trigger the urgent preliminary ruling procedure — all hope for the applicants in the main proceedings has not, thus far, been lost. The proposal that I have just submitted to the Court demonstrates indeed that there is a humanitarian path, within the framework of EU law, which requires the Member States to prevent manifest infringements of the absolute rights of persons seeking international protection before it is too late.

168. The Court thus has the opportunity not only to restate, I hope vigorously, respect for the humanitarian values and human rights that the EU and its Member States have committed themselves to honouring, but also, and above all, to offer the applicants in the main proceedings the hope of being spared further suffering and inhuman treatment.

169. That guidance does not mean, to relay the argument of the Belgian State set out in the contested decisions, that the Member States are forced to admit into their territory 'all persons experiencing a catastrophic situation', which would amount to authorising the entry of 'all people from developing countries and those at war or ravaged by natural catastrophes'.

170. It is, on the contrary, and I insist, a matter *of honouring*, in the noblest sense of that term, on indisputable humanitarian grounds, the obligations which stem from Article 25(1)(a) of the Visa Code and from Article 4 of the Charter, in order to enable the applicants in the main proceedings, including, I recall, three young children, to exercise their right to international protection, failing which they would be directly exposed to treatment prohibited by Article 4 of the Charter, treatment that the Member State in question knew about or ought to have known about when adopting the decisions not to issue the visa applied for.

171. Admittedly, the circle of persons concerned may prove to be wider than that which is currently the case in the practice of the Member States. That argument is however irrelevant in the light of the obligation to respect, in all circumstances, fundamental rights of an absolute nature, including the right enshrined in Article 4 of the Charter. The exceptional nature of a procedure is not, in terms of principles, inconsistent with an influx — even a significant one — of individuals. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof,[84] provides an illustration of

83 — See, in particular, judgment of 17 February 2009, *Elgafaji* (C-465/07, EU:C:2009:94), as regards access to subsidiary protection of a national from a country where an internal armed conflict is raging which generates indiscriminate violence, judgments of 5 September 2012, *Y and Z* (C-71/11 and C-99/11, EU:C:2012:518), and of 7 November 2013, *X and Others* (C-199/12 to C-201/12, EU:C:2013:720), concerning access to refugee status for third-country nationals in relation to whom it is established that the return to their country of origin will expose them to a genuine risk of persecution because of their religious practice or their homosexuality.

84 — OJ 2001 L 212, p. 12.

this. The mechanism that that directive establishes also constitutes a procedure 'of exceptional character' aimed at providing persons fleeing areas of armed conflict or victims of systematic or generalised violations of human rights with immediate and temporary protection in the territory of the Member States. [85]

172. Moreover, the spectre, raised by a large number of the governments which participated at the hearing before the Court, of the Member States' consular representations being overwhelmed by an uncontrolled flood of applications for humanitarian visas lodged on the basis of the Visa Code must, in my view, be nuanced. Apart from the fact that that argument is clearly not of a legal nature, the practical obstacles to lodging such applications must certainly not be underestimated, even if I not do not condone them. The situation of the applicants in the main proceedings provides a remarkable illustration of this. They were obliged to obtain an appointment at the consulate of the Kingdom of Belgium in Lebanon, a prerequisite for being granted safe passage of 48 hours on the Lebanese territory after May 2015, [86] travel hundreds of kilometres in a country at war and in chaos to arrive in Beirut and present themselves in person at that consulate, in order to satisfy the requirement of the latter [87] and, finally, to return to Syria to wait for the decision of the Belgian authorities! Moreover, although it is highly probable that that the applicants in the main proceedings applied to the consulate of the Kingdom of Belgium in Beirut after becoming aware of the highly-publicised operation during which, in the summer of 2015, several hundred Syrian nationals, of Christian faith and from Aleppo, were issued visas with limited territorial validity by the Belgian authorities, [88] the Belgian Government has not reported a massive influx of applications of that type, overwhelming its diplomatic representations in the States neighbouring Syria, following that operation.

173. Next, the proposal that I made in point 163 of this Opinion is also entirely consistent with the objectives of fighting against the smuggling and trafficking of human beings, the prevention of illegal immigration and organised crime networks. [89] By offering a legal access route to international protection under certain circumstances, under the supervision of the authorities of the Member States, my interpretation of Article 25(1)(a) of the Visa Code makes it possible, at least partially, to prevent persons seeking such protection, including in particular women and children, being snatched and exploited by criminal networks smuggling and trafficking migrants. [90] Conversely, as I have already highlighted, refusing to issue a visa with limited territorial validity in the circumstances of the main proceedings ultimately amounts to directly encouraging the applicants in the main proceedings, in order to be able to claim the right to international protection on the territory of a Member State, to trust their lives with those against whom the EU and its Member States are currently deploying, particularly in the Mediterranean, considerable operational and financial efforts to curb and dismantle criminal activities!

85 — The fact that the procedure provided for in Directive 2001/55 has not been triggered for Syrian nationals, however surprising that may seem, is not decisive in terms of the legal argument that has just been set out.

86 — On those conditions, see, inter alia, https://www.refugees-lebanon.org/en/news/35/qa-on-new-entry--renewal-procedures-for-syrians-in-lebanon

87 — It is apparent from the material in the file that the initial application made on behalf of the applicants in the main proceedings by their lawyer with the consulate of the Kingdom of Belgium in Lebanon was considered inadmissible to the extent that the applicants in the main proceedings had not travelled in person to that consulate.

88 — On that operation, see, inter alia, http://www.lesoir.be/930953/article/actualite/ belgique/2015-07-08/belgique-secouru-244-chretiens-alep and http://www.myria.be/fr/donnees-sur-la-migration/asile-et-protection-internationale/visas-humanitaires

89 — Those objectives appear in Articles 79 and 83 TFEU, respectively.

90 — In its communication of 10 February 2016 to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration (COM(2016) 85 final), the Commission states (p. 2) that 'we must move beyond dealing with the consequences of unmanaged and irregular flows of persons, to real preparedness to manage such flows and towards managed and legal means of entry [into the European Union] for those in need of protection …'. Similarly, in its resolution of 12 April 2016 (point R) on the situation in the Mediterranean and the need for a holistic EU approach to migration, the Parliament specifically highlights the fact that ensuring that asylum seekers and refugees are able to use 'safe and legal routes' to access the Union may enable the Union and the Member States to 'undermine the business model of the smugglers'. See, to that effect, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0102+0+DOC+XML+V0//EN.

174. Lastly, the interpretation advocated here of Article 25(1)(a) of the Visa Code ensures, all things considered, respect for 'the principle of solidarity and fair sharing of responsibility … between the Member States', which must govern all Union policies on border checks, asylum and immigration, in accordance with Article 80 TFEU.[91] In that regard, and to restrict myself to a single point, the objection of the Belgian Government, that to accept that a Member State is required under certain circumstances to issue a visa under Article 25(1)(a) of the Visa Code would amount to authorising a person to choose the Member State in which that person wants his application for protection to be examined, seems to me frankly uncalled for. In extreme conditions such as those that the applicants in the main proceedings have endured, their option to choose is as limited as the option of the Member States of the Mediterranean Basin to turn themselves into landlocked countries. In any event, the Belgian Government's argument cannot prevail over the absolute nature of the right guaranteed by Article 4 of the Charter and the positive obligation which that article imposes on the Member States.

175. Before concluding, allow me to draw your attention to how much the whole world, in particular here in Europe, was outraged and profoundly moved to see, two years ago, the lifeless body of the young boy Alan, washed up on a beach, after his family had attempted, by means of smugglers and an overcrowded makeshift vessel full of Syrian refugees, to reach, via Turkey, the Greek island of Kos. Of the four family members, only his father survived the capsizing. It is commendable and salutary to be outraged. In the present case, the Court nevertheless has the opportunity to go further, as I invite it to, by enshrining the legal access route to international protection which stems from Article 25(1)(a) of the Visa Code. Make no mistake: it is not because emotion dictates this, but because EU law demands it.

Conclusion

176. In the light of all the foregoing considerations, I propose that the Court answer the questions referred by the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) (Belgium) as follows:

(1) Article 25(1)(a) of Regulation (EC) No 810/2009 of the Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas must be interpreted as meaning that the expression 'international obligations' which appears in the wording of that provision does not cover the Charter of Fundamental Rights of the European Union. When examining, on the basis of Article 25(1)(a) of Regulation No 810/2009, a visa application in support of which humanitarian grounds are invoked, and when adopting a decision in relation to such an application, the Member States must comply with the provisions of the Charter of Fundamental Rights.

(2) Article 25(1)(a) of Regulation No 810/2009 must be interpreted as meaning that a Member State applied to by a third-country national in order to issue that national a visa with limited territorial validity on humanitarian grounds is required to issue such a visa if, in the light of the circumstances of the case, there are substantial grounds to believe that a refusal to issue that document will have the direct consequence of exposing that national to treatment prohibited by Article 4 of the Charter of Fundamental Rights, by depriving that national of a legal route to exercise his right to seek international protection in that Member State. The fact that such a national does not have family links or links of another nature with the Member State applied to does not affect that answer.

91 — See judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraph 93).