Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

19 December 2013*

(Area of freedom, security and justice — Regulation (EC) No 810/2009 — Articles 21(1), 32(1) and 35(6) — Procedures and conditions for issuing uniform visas — Obligation to issue a visa — Assessment of the risk of illegal immigration — Intention of the applicant to leave the territory of the Member States before the expiry of the visa applied for — Reasonable doubt — Discretion of the competent authorities)

In Case C-84/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Berlin (Germany), made by decision of 10 February 2012, received at the Court on 17 February 2012, in the proceedings

Rahmanian Koushkaki

v

Bundesrepublik Deutschland,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, L. Bay Larsen (Rapporteur), T. von Danwitz, E. Juhász, A. Borg Barthet, C.G. Fernlund and J.L. da Cruz Vilaça, Presidents of Chambers, A. Rosas, G. Arestis, J. Malenovský, A. Arabadjiev, E. Jarašiūnas and C. Vajda, Judges,

Advocate General: P. Mengozzi,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 29 January 2013,

after considering the observations submitted on behalf of:

— Mr Koushkaki, by T. Kaschubs-Saeedi, Rechtsanwältin,

— the German Government, by T. Henze and J. Möller, acting as Agents,

— the Belgian Government, by T. Materne and C. Pochet, acting as Agents,

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

— the Danish Government, by C. Vang and M. Wolff, acting as Agents,

* Language of the case: German.

— the Estonian Government, by M. Linntam, acting as Agent,

— the Greek Government, by T. Papadopoulou, acting as Agent,

— the Netherlands Government, by M. Bulterman and C. Wissels, acting as Agents,

— the Polish Government, by K. Pawłowska and M. Arciszewski, acting as Agents,

— the Swiss Government, by D. Klingele, acting as Agent,

— the European Commission, by W. Bogensberger and G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 April 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 21(1) and 32(1) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1).

2 The request has been made in proceedings between Mr Koushkaki, an Iranian national, and the Federal Republic of Germany regarding a decision of the competent authorities of the latter refusing to issue him a visa for the purposes of a visit to Germany.

Legal context

European Union law

The Schengen Borders Code

3 Article 5(1) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1), as amended by Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 (OJ 2010 L 85, p. 1) ('the Schengen Borders Code'), that article being headed 'Entry conditions for third-country nationals', provides:

'For stays not exceeding three months per six-month period, the entry conditions for third-country nationals shall be the following:

(a) they are in possession of a valid travel document or documents authorising them to cross the border;

(b) they are in possession of a valid visa, if required pursuant to 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] …;

(c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;

(d) they are not persons for whom an alert has been issued in the SIS [Schengen Information System] for the purposes of refusing entry;

(e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, 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 VIS Regulation

4 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 (VIS Regulation) (OJ 2008 L 218, p. 60), as amended by the Visa Code ('the VIS Regulation'), provides, in Article 12(2) thereof, that, where a decision has been taken to refuse a visa, the competent authority is to indicate in the application file the grounds for refusal of the visa, chosen from a list which corresponds to that reproduced in the standard form set out in Annex VI to the Visa Code.

The Visa Code

5 Recitals 3, 18 and 28 in the preamble to the Visa Code are worded as follows:

'(3) As regards visa policy, the establishment of a "common corpus" of legislation, particularly via the consolidation and development of the *acquis* (the relevant provisions of the Convention implementing the Schengen Agreement of 14 June 1985 … and the Common Consular Instructions …), is one of the fundamental components of "further development of the common visa policy as part of a multi-layer system aimed at facilitating legitimate travel and tackling illegal immigration through further harmonisation of national legislation and handling practices at local consular missions" …

…

(18) Local Schengen cooperation is crucial for the harmonised application of the common visa policy and for proper assessment of migratory and/or security risks. Given the differences in local circumstances, the operational application of particular legislative provisions should be assessed among Member States' diplomatic missions and consular posts in individual locations in order to ensure a harmonised application of the legislative provisions to prevent visa shopping and different treatment of visa applicants.

...

(28) Since the objective of this Regulation, namely the establishment of the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six-month period, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 [TEU]. …'

6 Article 1(1) of the Visa Code provides:

‘This Regulation establishes the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six-month period.’

7 Article 4(1) to (4) of that code lists the authorities competent to decide on visa applications and to be involved in the examination of applications and decisions thereon.

8 Under Article 14(1) of that code, when applying for a uniform visa, the applicant is to present supporting documents, including, pursuant to Article 14(1)(d), 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.

9 Article 21 of the Visa Code, headed ‘Verification of entry conditions and risk assessment’, provides, in paragraphs 1, 7 and 8 thereof:

‘1. In the examination of an application for a uniform visa, it shall be ascertained whether the applicant fulfils the entry conditions set out in Article 5(1)(a), (c), (d) and (e) of the Schengen Borders Code, and particular consideration shall be given to assessing whether the applicant presents a risk of illegal immigration or a risk to the security of the Member States and whether the applicant intends to leave the territory of the Member States before the expiry of the visa applied for.

...

7. The examination of an application shall be based notably on the authenticity and reliability of the documents submitted and on the veracity and reliability of the statements made by the applicant.

8. During the examination of an application, consulates may in justified cases call the applicant for an interview and request additional documents.’

10 Article 23(4) of the Visa Code is worded as follows:

‘Unless the application has been withdrawn, a decision shall be taken to:

(a) issue a uniform visa in accordance with Article 24;

(b) issue a visa with limited territorial validity in accordance with Article 25;

(c) refuse a visa in accordance with Article 32;

...’

11 Article 32 of that code, headed ‘Refusal of a visa’, states, in paragraphs 1, 2 and 5 thereof:

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

(a) if the applicant:

(i) presents a travel document which is false, counterfeit or forged;

(ii) does not provide justification for the purpose and conditions of the intended stay;

(iii) does not provide proof of sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or is not in a position to acquire such means lawfully;

(iv) has already stayed for three months during the current six-month period on the territory of the Member States on a basis of a uniform visa or a visa with limited territorial validity;

(v) is a person for whom an alert has been issued in the SIS for the purpose of refusing entry;

(vi) is considered to be a threat to public policy, internal security or public health as defined in Article 2(19) of the Schengen Borders Code or to the international relations of any of the Member States, in particular where an alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds; or

(vii) does not provide proof of holding adequate and valid travel medical insurance, where applicable;

or

(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.

2. A decision on refusal and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex VI.

...

5. Information on a refused visa shall be entered into the VIS in accordance with Article 12 of the VIS Regulation.'

12 Article 32(2) and (3) of the Visa Code is applicable, pursuant to Article 58(5) thereof, from 5 April 2011.

13 Article 34 of that code provides:

'1. A visa shall be annulled where it becomes evident that the conditions for issuing it were not met at the time when it was issued, in particular if there are serious grounds for believing that the visa was fraudulently obtained. A visa shall in principle be annulled by the competent authorities of the Member State which issued it. A visa may be annulled by the competent authorities of another Member State …

2. A visa shall be revoked where it becomes evident that the conditions for issuing it are no longer met. A visa shall in principle be revoked by the competent authorities of the Member State which issued it. A visa may be revoked by the competent authorities of another Member State …

...

6. A decision on annulment or revocation of a visa and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex VI.

…'

14 Article 35 of the Visa Code provides:

‘1. In exceptional cases, visas may be issued at border crossing points if the following conditions are satisfied:

...

(b) the applicant has not been in a position to apply for a visa in advance and submits, if required, supporting documents substantiating unforeseeable and imperative reasons for entry; and

...

6. In addition to the reasons for refusing a visa as provided for in Article 32(1) a visa shall be refused at the border crossing point if the conditions referred to in paragraph 1(b) of this Article are not met.

7. The provisions on justification and notification of refusals and the right of appeal set out in Article 32(3) and Annex VI shall apply.’

15 Annex II to the Visa Code sets out a non-exhaustive list of supporting documents to be submitted by visa applicants pursuant to Article 14 of that code.

16 Annex VI to that code consists of a standard form for notifying and stating reasons for the refusal, annulment or revocation of a visa. That form contains, inter alia, a series of eleven boxes which must be used by the competent authority to state reasons for a decision refusing, annulling or revoking a visa.

German law

17 Paragraph 6 of the Law on the residence, economic activity and integration of foreigners in the federal territory (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz)), of 30 July 2004 (BGB1. 2004 I, p. 1950) provides:

‘(1) The following visas may be issued to foreigners in accordance with [the Visa Code]:

1. a visa for transit through or intended stays in the territory of the Schengen States of a duration of no more than three months within a six-month period from the date of first entry (Schengen visa).

...’

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

18 On 7 November 2010 Mr Koushkaki applied for the issue of a uniform visa at the German embassy in Tehran (Iran).

19 That application was rejected on the ground that Mr Koushkaki had not proved that he had sufficient means of subsistence either for the duration of the stay envisaged or to return to his country of origin.

20 Following the appeal brought by Mr Koushkaki against that first rejection decision, on 5 January 2011 the German embassy in Tehran replaced that decision and rejected the visa application once again on the ground that examination of all the relevant circumstances raised significant doubt as to the

applicant's intention to return to his country of origin before the expiry of the visa applied for. In that second rejection decision, it was held in particular that it had not been shown that Mr Koushkaki had any economic ties to his country of origin.

21 On 8 February 2011 Mr Koushkaki brought proceedings before the referring court seeking an order that the Federal Republic of Germany be required to rule again on his application and to issue him a uniform visa.

22 The referring court considers that the applicant in the main proceedings meets the entry conditions set out in Article 5(1)(a), (c) and (d) of the Schengen Borders Code, to which Article 21(1) of the Visa Code refers.

23 According to the Verwaltungsgericht Berlin, the only point at issue is whether Mr Koushkaki constitutes a threat to public policy within the meaning of Article 5(1)(e) of the Schengen Borders Code due to a possible risk of illegal immigration. In that regard, the referring court raises the question of whether the condition for the issue of a visa in relation to there being no public policy risk is met where the court is convinced that the applicant will leave the territory of the Member States before the date of expiry of the visa applied for or whether it is sufficient that there is no reasonable doubt as regards the intention of that applicant to leave that territory in good time.

24 The referring court also raises the issue of the legal consequences which should follow, where necessary, from the finding that the conditions set out in Article 21(1) of the Visa Code are satisfied and that there is no ground for refusal based on Article 32(1) of that code.

25 In those circumstances, the Verwaltungsgericht Berlin decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. In order for the court to direct the defendant to issue a Schengen visa to the applicant, must the court be convinced that, pursuant to Article 21(1) of the Visa Code, the applicant intends to leave the territory of the Member States before the expiry of the visa applied for, or is it sufficient if the court, after the examination referred to in Article 32(1)(b) of the Visa Code, has no reasonable doubt, based on specific circumstances, as to the applicant's stated intention to leave the territory of the Member States before the expiry of the visa applied for?

2. Does the Visa Code establish a mandatory right to the issue of a Schengen visa if the entry conditions, in particular those of Article 21(1) of the Visa Code, are satisfied and there are no grounds for refusing the visa pursuant to Article 32(1) of the Visa Code?

3. Does the Visa Code preclude a provision of national law whereby a foreigner may, in accordance with [the Visa Code], be issued with a visa for transit through or an intended stay in the territory of the Schengen States of no more than three months within a six-month period from the date of first entry (Schengen visa)?'

Consideration of the questions referred

The second question

26 By its second question, which may be examined first, the referring court asks, in essence, whether the competent authorities of a Member State can refuse to issue a uniform visa to an applicant who satisfies the entry conditions referred to in Article 21(1) of the Visa Code and in relation to whom

none of the grounds for refusal of a visa listed in Article 32(1) of the Visa Code apply. It also seeks to ascertain whether those authorities have some discretion in the examination of the application for a uniform visa.

27 At the outset, it is important to point out that, as its heading indicates, the purpose of Article 21 of the Visa Code is to determine general rules for the verification of entry conditions and risk assessment during the examination of an application for a uniform visa.

28 Thus, Article 21(1) sets out the factors which must be verified or to which particular consideration must be given before any decision on an application for a uniform visa is taken, without thereby drawing up a precise list of the conditions for the issue of such a visa. The other paragraphs of that article, for their part, set out the methods which the competent authorities of the Member State concerned must use to verify the entry conditions and perform the risk assessment, depending on the situations with which they are faced.

29 That interpretation finds support in the structure of the Visa Code.

30 Article 21 is included in Title III, Chapter III of that code, which governs the various stages of the examination of an application for a uniform visa, rather than in Chapter IV of that title, which, as Article 23(4) of the Visa code indicates, determines the conditions under which the competent authorities can take the decision on whether or not to issue a uniform visa or, as appropriate, to issue a visa with limited territorial validity.

31 On the other hand, it is clear that Article 32(1) of the Visa Code establishes a list of grounds on which an application for a uniform visa must be rejected.

32 It follows from the foregoing that, while Article 21(1) of the Visa Code requires the competent authorities to verify or assess certain factors, Article 32(1) of that code determines the conclusions which must be drawn from the result of that verification and that assessment, in the light of the grounds for refusal listed in the latter article.

33 Consequently, it is necessary, in order to answer the second question asked by the referring court, to ascertain whether the competent authorities of a Member State can refuse to issue a uniform visa to an applicant in relation to whom none of the grounds for refusal of a visa listed in Article 32(1) of the Visa Code apply.

34 In this connection, it is apparent from the Court's settled case-law that, in interpreting a provision of European Union law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (Case C-466/07 *Klarenberg* [2009] ECR I-803, paragraph 37, and Case C-11/12 *Maatschap L.A. en D.A.B. Langestraat en P. Langestraat-Troost* [2012] ECR, paragraph 27).

35 As regards, first, the wording of Article 32(1) of the Visa Code, it must be noted that, pursuant to that provision, a visa is to be refused where one of the conditions listed in Article 32(1)(a) applies or if there are reasonable doubts as regards one of the factors set out in Article 32(1)(b).

36 However, it cannot be ascertained from the wording of Article 32(1) alone whether the list of grounds of refusal which that provision lays down is exhaustive or whether, on the contrary, the competent authorities of the Member States have the power to refuse to issue a uniform visa by relying on a ground not provided for in the Visa Code.

37 As regards, secondly, the context in which Article 32(1) of the Visa Code appears, Article 23(4)(c) of that code states that a decision to refuse a visa is to be taken 'in accordance with Article 32' of that code, which implies that decisions to refuse to issue a uniform visa must be taken within the framework established by the latter article.

38 The fact that Article 32 of that code establishes a list of specific grounds on the basis of which a decision to refuse a visa is to be taken, while providing, in Article 32(2), that the reasons on which that decision is based must be notified to the applicant by means of the standard form set out in Annex VI to the Visa Code, is a factor supporting the interpretation that the list of grounds of refusal in Article 32(1) is exhaustive.

39 The standard form provided for in Annex VI indeed contains ten boxes which the competent authorities are to tick for the purpose of notifying the visa applicant of the reasons for the refusal of his visa application. The first nine boxes each correspond to one of the reasons for refusal listed in Article 32(1) of the Visa Code. The tenth, for its part, refers to the reason for refusal specifically provided for in Article 35(6) of that code, read in conjunction with Article 35(1)(b), which states that a visa application submitted without supporting documents at a border crossing point is to be rejected.

40 Moreover, Article 32(5) of that code obliges the Member States to enter information on refused visas into the visa information system (VIS) in accordance with Article 12 of the VIS Regulation.

41 It is apparent from Article 12(2) of the VIS Regulation that, when that information is entered in the VIS, the competent authority which refused the visa must add the ground or grounds for the refusal of the applicant's visa application to the application file. That same provision sets out a list of grounds of refusal from which the ground or grounds for refusal entered in the VIS must be chosen. That list corresponds to that provided for in Articles 32(1) and 35(6) of the Visa Code, which is reproduced in the standard form set out in Annex VI to that code.

42 In addition, in so far as Article 34(6) of the Visa Code states that decisions on annulment or revocation of a visa must also be notified to the applicant by means of the standard form set out in Annex VI to that code, it is apparent that the competent authority must indicate to the applicant whose visa is annulled or revoked which condition for the issue of a visa is not or is no longer satisfied by referring to one of the reasons for refusal provided for in Article 32(1) and Article 35(6) of that code, reproduced in Annex VI thereto.

43 Furthermore, the fact that, pursuant to Article 34 of the Visa Code, the grounds for refusal of a visa are the same as those which justify its annulment or revocation, implies that if it were accepted that a Member State might provide that its competent authorities must refuse a visa on a ground not set out in that code it would therefore also have to be accepted that that State might provide that those authorities are required to annul or revoke visas on an equivalent ground, so as to ensure the coherence of a system in which the fact that a condition for the issue of a visa is not met precludes that visa from being valid.

44 However, it is apparent from Article 34(1) and (2) of that code that a visa can be annulled or revoked by the competent authorities of a Member State other than the State which issued the visa.

45 Such a system presupposes that the conditions for the issue of uniform visas are harmonised, which rules out there being differences between the Member States as regards the determination of the grounds for refusal of such visas.

46 In the absence of such harmonisation, the competent authorities of a Member State whose legislation provides for grounds for refusal, annulment and revocation which are not provided for in the Visa Code would be required to annul uniform visas issued by another Member State by relying on a ground which the competent authorities of the issuing Member State, when examining the visa application, could not apply to the applicant.

47 An analysis of the context in which Article 32(1) of the Visa Code appears therefore indicates that the competent authorities of the Member States cannot refuse to issue a uniform visa by relying on a ground not provided for in that code.

48 Thirdly, it is clear that the objectives pursued by that code support that interpretation.

49 It is apparent from recital 28 in the preamble to the Visa Code and Article 1(1) thereof that that code aims, inter alia, to establish the conditions for the issue of uniform visas, which cannot be sufficiently achieved by the Member States and can therefore be better achieved at European Union level.

50 The interpretation that the Visa Code does no more than govern the procedures for the issue of visas and oblige the Member States to refuse to issue visas in certain specific situations, without thereby harmonising the conditions for the issue of visas, is therefore incompatible with the very objective of that code.

51 Moreover, the Court has already held that the Visa Code governs the conditions for issuing, annulling and revoking uniform visas (see, to that effect, Case C-83/12 PPU *Vo* [2012] ECR, paragraph 42).

52 In addition, the facilitation of legitimate travel, which is referred to in recital 3 in the preamble to the Visa Code, would be jeopardised if a Member State could decide, according to its discretion, to refuse a visa to an applicant who meets all the conditions for issue set by the Visa Code by adding a ground for refusal to those listed in Articles 32(1) and 35(6) of that code, even though the European Union legislature did not consider that such a ground was sufficient to prevent third country nationals obtaining a uniform visa.

53 Furthermore, the implementation of such a practice by a Member State would encourage visa applicants to address their applications as a priority to other Member States in order to obtain a uniform visa. The objective set out in recital 18 in the preamble to the Visa Code to ensure a harmonised application of the legislative provisions to prevent 'visa shopping' therefore also precludes such an interpretation of Article 32(1) of that code.

54 Likewise, the objective of preventing different treatment of visa applicants, which is also mentioned in recital 18, could not be achieved were it possible for the criteria for the issue of a uniform visa to vary depending on the Member State where the visa application is submitted.

55 It follows from those various factors that the competent authorities cannot refuse to issue a uniform visa unless one of the grounds for refusal listed in Article 32(1) and Article 35(6) of the Visa Code applies to the applicant.

56 However, it is important to point out that the assessment of the individual position of a visa applicant, with a view to determining whether there is a ground for refusal of his application, entails complex evaluations based, inter alia, on the personality of that applicant, his integration in the country where he resides, the political, social and economic situation of that country and the potential threat posed by the entry of that applicant to public policy, internal security, public health or the international relations of any of the Member States.

57 Such complex evaluations involve predicting the foreseeable conduct of that applicant and must be based on, inter alia, an extensive knowledge of his country of residence and on the analysis of various documents, the authenticity and the veracity of whose content must be checked, and of statements by the applicant, the reliability of which must be assessed, as is provided by Article 21(7) of the Visa Code.

58 In that respect, the diversity of the supporting documents on which the competent authorities may rely, a non-exhaustive list of which is set out in Annex II to that code, and the variety of methods available to those authorities, including interviewing the applicant as provided for in Article 21(8) of that code, confirm the complex nature of the examination of visa applications.

59 Lastly, it must be noted that the examination carried out by the competent authorities of a Member State to whom a visa application has been submitted must be all the more scrupulous since any issue of a uniform visa allows the applicant to enter the territory of the Member States within the limits fixed by the Schengen Borders Code.

60 It follows from the foregoing that the competent authorities listed in Article 4(1) to (4) of the Visa Code have, when examining visa applications, a wide discretion which relates to the conditions for the application of Articles 32(1) and 35(6) of that code and also to the assessment of the relevant facts in order to determine whether the grounds set out in those provisions preclude the issue of the visa applied for.

61 The intention of the European Union legislature to leave a wide discretion to those authorities is apparent, moreover, from the very wording of Articles 21(1) and 32(1) of that code, provisions which oblige those authorities to '[assess] whether the applicant presents a risk of illegal immigration' and to give 'particular consideration' to certain aspects of his situation and to determine whether there are 'reasonable doubts' as regards certain factors.

62 It follows that the competent authorities can use that discretion, particularly where they assess whether there is a reasonable doubt as regards the intention of the applicant to leave the territory of the Member States before the expiry of the visa sought, with a view to determining whether the last of the grounds for refusal provided for in Article 32(1)(b) of the Visa Code should be applied to that applicant.

63 It follows from the foregoing considerations that the answer to the second question is that Articles 23(4), 32(1) and 35(6) of the Visa Code must be interpreted as meaning that the competent authorities of a Member State cannot refuse, following the examination of an application for a uniform visa, to issue such a visa to an applicant unless one of the grounds for refusal of a visa listed in those provisions can be applied to that applicant. Those authorities have a wide discretion in the examination of that application so far as concerns the conditions for the application of those provisions and the assessment of the relevant facts, with a view to ascertaining whether one of those grounds for refusal can be applied to the applicant.

The first question

64 By its first question, the referring court asks, in essence, whether Article 32(1) of the Visa Code, read in conjunction with Article 21(1) thereof, must be interpreted as meaning that the obligation on the competent authorities of Member State to issue a Schengen visa to the applicant is subject to the condition that they are convinced that the applicant intends to leave the territory of the Member States before the expiry of the visa applied for or whether it is sufficient that there is no reasonable doubt as regards the applicant's intention in that regard.

65 It follows from the answer to the second question that the competent authorities set out in Article 4(1) to (4) of the Visa Code cannot refuse to issue a uniform visa unless one of the grounds for refusal listed in Articles 32(1) and 35(6) of that code can be applied to the applicant.

66 Among those grounds for refusal, it is important to distinguish the ground based on the threat which the applicant may present to the public policy, internal security or public health of one of the Member States, as provided for in Article 32(1)(a)(vi) of that code, from that relating to a possible lack of intention on the part of the applicant to leave the territory of the Member States before the expiry of the visa applied for, as provided for in Article 32(1)(b).

67 So far as concerns the latter ground for refusal of a visa, Article 32(1)(b) of the Visa Code provides, inter alia, that a visa is to be refused where there is reasonable doubt as to the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for.

68 There is thus no requirement that the competent authorities must, in order to determine whether they are required to issue a visa, be certain as regards whether or not the applicant intends to leave the territory of the Member States before the expiry of the visa applied for. It is, however, their task to determine whether there is a reasonable doubt as regards that intention.

69 To that end, the competent authorities must carry out an individual examination of the visa application which, as the Advocate General observed in point 35 of his Opinion, takes into account the general situation in the applicant's country of residence and the applicant's individual characteristics, inter alia, his family, social and economic situation, whether he may have previously stayed legally or illegally in one of the Member States and his ties in his country of residence and in the Member States.

70 In this connection, as Article 21(1) of the Visa Code states, particular consideration must be given to the risk of illegal immigration which, where identified, must lead the competent authorities to refuse the visa on the basis of the existence of a reasonable doubt as regards the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for.

71 It is important, moreover, to point out that, under Article 14(1)(d) of the Visa Code, it is for the applicant, when he submits an application for a uniform visa, to submit information enabling his intention to leave the territory of the Member States before the expiry of the visa applied for to be assessed.

72 It follows that it is for the visa applicant to provide information, the credibility of which must be established by means of relevant and reliable documents, capable of dispelling doubts as regards his intention to leave the territory of the Member States before the expiry of the visa applied for, which may arise as a result of, inter alia, the general situation in his country of residence or the existence of well-known migration flows between that country and the Member States.

73 In the light of the foregoing, the answer to the first question is that Article 32(1) of the Visa Code, read in conjunction with Article 21(1) thereof, must be interpreted as meaning that the obligation of the competent authorities of a Member State to issue a uniform visa is subject to the condition that there is no reasonable doubt that the applicant intends to leave the territory of the Member States before the expiry of the visa applied for, in the light of the general situation in the applicant's country of residence and his individual characteristics, determined in the light of information provided by the applicant.

The third question

74 By its third question the referring court asks, in essence, whether the Visa Code must be interpreted as precluding a provision of national legislation, such as that at issue in the main proceedings, which provides that, where the conditions for issue of a visa provided for by that code are satisfied, the competent authorities have the power to issue a uniform visa to the applicant, but does not state that they are obliged to issue that visa.

75 It must be observed in that regard that, according to the Court's settled case-law, it is for the national court, as far as possible, to interpret domestic law in conformity with the requirements of European Union law (see, to that effect, Case C-60/02 *X* [2004] ECR I-651, paragraph 59, and Case C-208/05 *ITC* [2007] ECR I-181, paragraph 68).

76 The principle that national law must be interpreted in conformity with European Union law – which is inherent in the Treaty system in that it enables the national court to ensure, for matters within its jurisdiction, the full effectiveness of European Union law when it determines the dispute before it – requires the national court to consider national law as a whole in order to assess to what extent it may be applied so as not to produce a result contrary to that sought by European Union law (Case C-239/09 *Seydaland Vereinigte Agrarbetriebe* [2010] ECR I-13083, paragraph 50 and the case-law cited).

77 It follows that, in the light of the answer to the second question, it is for the referring court, as far as possible, to interpret the national provision at issue in the main proceedings in a way that is in conformity with Articles 23(4), 32(1) and 35(6) of the Visa Code, to the effect that the competent authorities cannot refuse to issue a uniform visa to an applicant unless one of the grounds for refusal of a visa provided for in those articles can be applied to the applicant.

78 Having regard to the foregoing, the answer to the third question is that the Visa Code must be interpreted as not precluding a provision of the legislation of a Member State, such as that at issue in the main proceedings, which provides that, where the conditions for the issue of a visa provided for by that code are satisfied, the competent authorities have the power to issue a uniform visa to the applicant, but does not state that they are obliged to issue that visa, in so far as such a provision can be interpreted in a way that is in conformity with Articles 23(4), 32(1) and 35(6) of that code.

Costs

79 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

1. **Articles 23(4), 32(1) and 35(6) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) must be interpreted as meaning that the competent authorities of a Member State cannot refuse, following the examination of an application for a uniform visa, to issue such a visa to an applicant unless one of the grounds for refusal of a visa listed in those provisions can be applied to that applicant. Those authorities have a wide discretion in the examination of that application so far as concerns the conditions for the application of those provisions and the assessment of the relevant facts, with a view to ascertaining whether one of those grounds for refusal can be applied to the applicant.**

2. **Article 32(1) of Regulation No 810/2009, read in conjunction with Article 21(1) thereof, must be interpreted as meaning that the obligation on the competent authorities of a Member State to issue a uniform visa is subject to the condition that there is no reasonable doubt that the applicant intends to leave the territory of the Member States before the expiry of the visa applied for, in the light of the general situation in the applicant's country of residence and his individual characteristics, determined in the light of information provided by the applicant.**

3. **Regulation No 810/2009 must be interpreted as not precluding a provision of legislation of a Member State, such as that at issue in the main proceedings, which provides that, where the conditions for the issue of a visa provided for by that regulation are satisfied, the competent authorities have the power to issue a uniform visa to the applicant, but does not state that they are obliged to issue that visa, in so far as such a provision can be interpreted in a way that is in conformity with Articles 23(4), 32(1) and 35(6) of that regulation.**

[Signatures]