

# **LTV (Asylum) Visas as an Obligation under EU Law**

*Case PPU C-638/16 X, X v État belge*

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# FACTUAL BACKGROUND

## ▪ Personal circumstances :

- Couple with 2 minor kids of young age
- Prior torture (release upon ransom)
- Risk of persecution on religious grounds (Christians in Aleppo)
- Syrians = 98% recognition rate EU-28 / Aleppo 'synonym for hell' (Ban Ki-Moon)

## ▪ General situation :

LEBANON	JORDAN	TURKEY
Total refugees = 25% of own population (registered)	0.5 million (registered)	3 million (registered)
Registration programme discontinued + poor reception + expulsion plans	'ejection campaign'	Abuse at border (shootings) + bombings + <i>refoulement</i>
Not a party to CSR51	Not a party to CSR51	Not a party to CSR51

≠ STC (Art 38 APD) / FCA (Art 35 APD)

# Case PPU C-638/16 X, X v État belge

## QUESTIONS REFERRED

1. Do '*international obligations*' in Art 25(1)(a) CCV cover all **CFR** rights including, Arts 4 and 18 + Art 3 ECHR / 33 CSR51 ?

2.a) In such case, does Art 25(1)(a) CCV mean that a MS to which **LTV** application has been made *must* issue it, if risk of violation ?

2.b) Does existence of *links* (family, etc.) applicant - MS affect the answer ?

## ISSUES

- **Applicability** of **CCV** to X and X
- Applicability of **CFR** (extraterritorially)
- **Impact** of *non-refoulement* (Art 4 CFR) and asylum (Art 18 CFR)

# APPLICABILITY OF CCV

- **Purpose** (Art 1 CCV)

= procedures / conditions for issuing short-term visas under EU law to 'any TCN who must be in possession of a visa when crossing into MS'

- **Motives / intentions** (Art 21 CCV)

≠ determine scope of Reg. / only relevant to make decisions under CCV

- **Criteria** (Art 21(1) CCV)

= Schengen Art 6 SBC entry criteria [*intention to return by deadline*]

- **Definition** of visa (Art 2(2) CCV)

= **authorisation** for transit / stay for 3 months in any 6 month period

- *Koushkaki* , para 63 > **NO complete discretion**

“MS **cannot refuse...to issue** visa unless one of the grounds for refusal...listed in [Art 32 CCV] can be applied to that applicant”

# APPLICABILITY OF LTVs

- **Refusals** (Art 32 CCV)

= when conditions NOT met, but '*without prejudice to Art 25(1)*'.

- **Exception** > LTV visas (Art 25(1) CCV)

“A LTV **shall** be issued **exceptionally** when...MS **considers it necessary** for humanitarian grounds, for reasons of national interest or **because of international obligations**”



MARGIN OF APPRECIATION ? > LTVs ≈ discretionary

SCOPE OF OBLIGATION ? > LTVs ≈ compulsory

IN LIGHT OF CFR ? > LTVS ≈ result of prohibition of *refoulement*

# APPLICABILITY OF CFR

- **Conformity with CFR = explicitly foreseen**

Preamble § 29: “Regulation respects fundamental rights and observes the principles recognised in particular ECHR and CFR.”

- **Conformity with CFR = constitutionally scheduled**

“MS must...make sure they do not rely on an interpretation of...secondary legislation which would be in conflict with ... FR ”

*Ordre des Barreaux* , para 28

- **Scope of application of CFR → Art 51(1) CFR**

“Charter addressed to the [EU] and MS only when they are implementing Union law. They *shall* therefore respect the rights, observe the principles and promote application thereof within respective powers...”

**= Scope of application of EU law → *Fransson*, para 21**

“...situations cannot exist which are covered...by EU law without [CFR] being applicable. The applicability of EU law entails applicability of the fundamental rights guaranteed by the Charter”.

# LTVs & Non-Refoulement

- *Non-refoulement* ≈ General Principle of EU law (*Elgafaji*)
- *Non-refoulement* ≈ Primary law (Art 4 + 19(2) CFR)
- *Non-refoulement* ≈ Secondary law (Art 4 SBC)

<i>Ratione loci</i>	A-territorial (Art 51 CFR + <i>Fransson</i> )
<i>Ratione personae</i>	Everyone (regardless of Art 33(2) CSR51)
<i>Ratione materiae</i>	Any measure 'the effect of which is to prevent migrants from reaching the borders of the MS [concerned]' if it exposes applicant to ill-treatment ( <i>Hirsi</i> )  = including denial of LTV

- Limitations on Art 3 ECHR / 33 CSR51 NOT applicable (*Bank Saderat*) > ECHR + CSR51 = minimum floor of protection
- Positive obligation (*Caldararu*) to *avoid* refoulement

# Conclusions

1. Do '*international obligations*' in Art 25(1)(a) CCV cover all **CFR** rights including, Arts 4 and 18 + Art 3 ECHR / 33 CSR51 ?

= NO, CFR is part of *INTERNAL* primary law sources

= compliance with CFR constitutionally scheduled (Art 6 TEU / 51 CFR)

= where EU law applies (CCV) CFR does as well (*Fransson*)

2.a) In such case, does Art 25(1)(a) CCV mean that a MS to which **LTV** application has been made **must** issue it, if risk of violation ?

= YES, LTV provisions need interpretation in light of CFR

= Non-refoulement requires positive action to avoid risk of ill-treatment (*Caldararu*)

= Where visa denial exposes to *refoulement*, LTV **MUST** be issued

2.b) Does existence of **links** (family, etc.) applicant - MS affect the answer ?

= NO, *non-refoulement* is absolute / cannot be conditioned on additional criteria





**THANK YOU !**

FOR FURTHER REFERENCES:

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