EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 240

May 2020

***M.N. and Others v. Belgium (dec.) [GC]* - 3599/18**
Decision 5.5.2020 [GC]

Article 1

Jurisdiction of States

Refusal to grant visa applications submitted to an embassy in a non-member State on the basis of a risk of ill-treatment: *inadmissible*

Article 6

Enforcement proceedings

Article 6-1

Civil rights and obligations

Non-enforcement of judicial decision concerning administrative refusals to grant visas: *article 6 inapplicable*

Facts – The applicants, Syrian nationals who lived in Aleppo, a city then subject to devastating armed conflict, travelled to Lebanon, from where they applied in August 2016 to the Belgian Embassy in Beirut for short-stay so-called "humanitarian" visas (Article 25 of the Community Code on Visas), indicating that they intended to claim asylum on arrival in Belgium. The application was transferred to the Aliens Office ("the OE"), which held that this intention placed their application outside the scope of the provision relied on.

There followed a series of extremely urgent proceedings before the Belgian administrative courts, in which the applicants complained that this refusal exposed them to risks that were contrary to Article 3 of the Convention. In this context, the OE refused to issue visas on two further occasions. On 20 October 2016 the Aliens Appeals Board (the CCE) instructed the Belgian authorities to issue them with the requested visas within 48 hours.

As the authorities declined to reconsider the refusal, the applicants turned, with success, to the civil courts: on 7 December 2016, finding the persistent refusal to issue the visas to be "an illegal action", the Brussels Court of Appeal ordered that the CCE's decision be executed immediately, failing which 1000 euros were to be paid per day of delay. The State lodged an appeal on points of law against this decision, and those proceedings were still pending.

In the meantime the CCE had sent a request for a preliminary ruling to the Court of Justice of the European Union (CJEU) in a similar case: the CJEU found that the provision of EU law relied upon was not meant to apply to the situation in question; in consequence, the case fell solely within the scope of national law (CJEU, *X and X v. Belgian State*, C-638/16 PPU, 7 March 2017, Information Note 205).

In June 2017 the Brussels Court of Appeal noted that the above-mentioned judgments of 20 October and 7 December 2016 were no longer valid, since in the absence of a request for judicial review the OE's initial refusal to issue the visas had become final before the penalty payment was ordered against the Belgian State.

Law

Article 1 (with regard to the complaints under Article 3): While specifying that its conclusion did not prejudice the endeavours made by the States Parties to facilitate access to asylum procedures through their embassies and/or consular representations (see *N.D. and N.T. v. Spain* [GC], 8675/15 and 8697/15, 13 February 2020, Information Note 237), the Court considered that, for the following reasons, the applicants had not been within Belgium's jurisdiction with regard to the circumstances in respect of which they complained under Article 3 of the Convention; nor, in consequence, under Article 13.

(a) *Absence of a "territorial" jurisdictional link* – The contested decisions had been taken by the central authorities in Belgium, in response to visa applications submitted by the applicants to the consular services of the Belgian Embassy in Lebanon. Those decisions, refusing to grant the visas, had subsequently passed again through the embassy's consular services, which had notified the applicants. Admittedly, in ruling on these applications, the Belgian authorities had taken decisions concerning the conditions for entry to Belgian territory and, in so doing, had exercised a public power. In itself, however, this finding was not sufficient to bring the applicants under Belgium's "territorial" jurisdiction within the meaning of Article 1 of the Convention. The mere fact that decisions taken at national level had had an impact on the situation of persons resident abroad was also not such as to establish the jurisdiction of the State concerned over those persons outside its territory (see *Banković and Others v. Belgium and Others* [GC] (dec.), 52207/99, 12 December 2001).

(b) *Absence of exceptional circumstances capable of creating an "extraterritorial" jurisdictional link* – This was primarily a question of fact, which required the Court to explore the nature of the link between the applicants and the respondent State and to ascertain whether the latter had effectively exercised authority or control over them. In this connection, it was irrelevant that the diplomatic agents had had, as in the present case, merely a "letter-box" role, or to ascertain who had been responsible for taking the decisions, whether the Belgian authorities in the national territory or the diplomatic agents in post abroad.

The applicants had not relied on: (i) any previous presence in the Belgian national territory; (ii) any pre-existing ties of family or private life with that country; (iii) any kind of control exercised by the Belgian authorities in Syrian or Lebanese territory.

Nor were any of the case-law precedents on which they relied relevant.

Firstly, the applicants did not have any of the connecting links which characterised the cases examined by the European Commission of Human Rights concerning the acts and omissions of diplomatic agents. Thus, they were not Belgian nationals seeking to benefit from the protection of their embassy. Further, at no time had the diplomatic agents exercised *de*

facto control over them: the applicants had freely chosen to present themselves at the Belgian Embassy, and to submit their visa applications there, as indeed they could have chosen to approach the embassy of any other State; they had then been free to leave the premises of the Belgian Embassy without any hindrance. As to the administrative control exercised by the State over the premises of its embassies, this criterion could not suffice to bring every person who entered those premises within Belgium's jurisdiction.

Secondly, the present case was fundamentally different from the numerous expulsion or removal cases examined, in which the individuals concerned were, in theory, on the territory of the State concerned, or at its border, and thus clearly fell within its jurisdiction.

Thirdly, the case-law did not support the argument that the fact of having brought proceedings at national level was an exceptional circumstance which was sufficient to trigger, unilaterally, an extraterritorial jurisdictional link. Thus, in the case of *Markovic and Others v. Italy* [GC] (1398/03, 14 December 2006, Information Note 92), concerning civil proceedings for damages brought by the applicants before the Italian courts under national law in respect of the deaths of their relatives as a result of air strikes carried out by the NATO alliance against the Federal Republic of Yugoslavia, the Court had held that no "jurisdiction" existed for all the substantive complaints (that is, those not lodged under Article 6). And in the case of *Güzelyurtlu and Others v. Cyprus and Turkey* [GC] (36925/07, 29 January 2019, Information Note 225), the proceedings which created a jurisdictional link with Turkey with regard to a death which occurred outside its territory were the criminal proceedings opened at the initiative of the Turkish authorities (who had control over the "Turkish Republic of Northern Cyprus"), thus corresponding to action in the context of the procedural obligations under Article 2. This was very different from administrative proceedings brought at the initiative of private individuals who had no connection with the State concerned other than proceedings that they themselves had freely initiated, and without the choice of this State being imposed by any treaty obligation.

On the contrary, in the case of *Khan v. the United Kingdom* (dec.) (11987/11, 28 January 2014, Information Note 171), the Court had clearly stated that the mere fact that an applicant brought proceedings in a State Party with which he had no connecting tie could not suffice to establish that State's jurisdiction over him: to find otherwise would amount to enshrining a near universal application of the Convention on the basis of the unilateral choices of any individual, irrespective of where in the world they found themselves, and therefore to create an unlimited obligation on the Contracting States to allow entry to any individual who might be at risk of ill-treatment contrary to the Convention outside their jurisdiction.

However, if the fact that a State Party ruled on an immigration application was sufficient to bring the individual making the application under its jurisdiction, precisely such an obligation would be created: the individual in question could create a jurisdictional link by submitting an application and thus give rise, in certain scenarios, to an obligation under Article 3 which would not otherwise have existed.

Such an extension of the Convention's scope of application would also have the effect of negating the well-established principle of public international law according to which the States Parties, subject to their treaty obligations, had the right to control the entry, residence and expulsion of aliens (see also the above-cited CJEU judgment).

Conclusion: inadmissible (incompatible *ratione loci*).

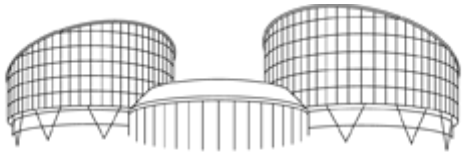
Article 6 § 1: The applicants' complaint concerned the right to enforcement of a judicial decision – specifically, the court of appeal's judgment ordering execution of the CCE's judgment instructing the authorities to issue the requested visas , subject to penalties for non-compliance.

It was not necessary to rule on the "jurisdiction" of the respondent State, since Article 6 was in any event inapplicable in the present case. The contested proceedings did not concern "civil rights and obligations", for the following reasons.

As Belgian law stood, the authorities had, under Article 25 of the Community Code on Visas, a discretionary power of assessment in deciding whether or not to issue short-stay visas. Nonetheless, the applicants had been able to apply to a court (the CCE), which had stayed the execution of the authorities' decisions and had had power to set them aside. In such a situation, while Article 6 § 1 of the Convention could be applicable, it was on condition that the advantage or privilege, once granted, gave rise to a civil right (see *Regner v. the Czech Republic* [GC], 19 September 2017, Information Note 210). However, this would not have been the case with regard to the entry to Belgian territory which would have resulted from the visas being issued. It was settled case-law in respect of all decisions relating to immigration and the entry, residence and removal of aliens that these areas were outside the scope of Article 6.

Admittedly, in the subsequent proceedings concerning the State's refusal to execute a decision delivered by an administrative court, the court of appeal, in establishing its jurisdiction under domestic law, had held that the dispute before it concerned a "civil" right. Nonetheless, the object of those proceedings had been solely to continue the proceedings to challenge the merits of the authorities' decisions refusing to issue the visas; this had also been the case with regard to the later proceedings to secure execution of the judgment delivered in its turn by the civil court. The underlying proceedings did not become "civil" merely because their execution was sought before the courts and they gave rise to a judicial decision (see *Panjeheighalehei v. Denmark* (dec.), 11230/07, 13 October 2009, Information Note 123). It was irrelevant here that the Belgian courts had not contested the applicability of Article 6; the Convention did not prevent the States Parties from granting more extensive judicial protection in respect of the rights and liberties guaranteed by it (Article 53).

Conclusion: inadmissible (incompatible *ratione materiae*).



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

DECISION

Application no. 3599/18
M.N. and Others
against Belgium

The European Court of Human Rights, sitting on 5 March 2020 as a Grand Chamber composed of:
Linos-Alexandre Sicilianos, *President,*
Robert Spano,
Jon Fridrik Kjølbro,
Angelika Nußberger,
Paul Lemmens,
Helen Keller,
André Potocki,
Krzysztof Wojtyczek,
Iulia Antoanella Motoc,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Pauliine Koskelo,
Georgios A. Serghides,
Marko Bošnjak,
Jovan Ilievski,
Ivana Jelić,
Darian Pavli, *judges,*
and Johan Callewaert, *Deputy Grand Chamber Registrar,*
Having deliberated on 24 April 2019 and 5 March 2020, decides as follows:

PROCEDURE

1. The case originated in an application (no. 3599/18) against Belgium lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 January 2018 by a married couple and their two minor children, all Syrian nationals ("the applicants").

2. The applicants were represented by Mr O. Stein and Ms L. Lambert, lawyers practising in Brussels. The Belgian Government ("the respondent Government") were represented by their Agent, Ms I. Niedlispacher, of the Federal Justice Department.

3. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). On 26 April 2018 a Chamber of that Section gave notice to the Government of the complaints under Articles 3, 6 § 1 (enforcement limb) and 13. The remainder of the application was declared inadmissible pursuant to Rule 54 § 3. On 20 November 2018 the Chamber

relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention).

4. The President of the Section to which the case had been assigned acceded to the applicants' request not to have their names disclosed (Rule 47 § 4).

5. The applicants and the Government both filed observations on the admissibility and the merits of the case. In addition, third-party comments were received from the Governments of Croatia, the Czech Republic, Denmark, France, Germany, Hungary, Latvia, the Netherlands, Norway, Slovakia and the United Kingdom, and from the Human Rights League ("LDH"), the International Federation for Human Rights ("FIDH"), the Centre for Advice on Individual Rights in Europe ("AIRE Centre"), the Dutch Council for Refugees, the European Council on Refugees and Exiles ("ECRE"), the International Commission of Jurists, and the Bar Council of French-speaking and German-speaking Lawyers ("OBFG"), which had been given leave to intervene in the written procedure (Article 36 §§ 2 and 3 of the Convention).

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 24 April 2019 (Rule 59 § 3).

There appeared before the Court:

- *for the respondent Government*

Ms I. Niedlispacher, Agent,
Ms E. Derriks, Counsel,
Ms M. De Sousa,
Mr G. Vanwitzenburg,
Mr A. Paul, Advisers;

- *for the applicants*

Mr O. Stein,
Ms L. Lambert, Counsel,
Mr J. Englebert,
Mr J. Callewaert, Advisers;

- *for the French Government (third party)*

Ms F. Merloz, Co-Agent,
Ms E. Leblond, Adviser;

- *for the Latvian Government (third party)*

Ms K. Līce, Agent,
Ms E. L. Vītola, Adviser;

- *for the Norwegian Government (third party)*

Mr Marius Emberland,Agent;

- *for the United Kingdom Government (third party)*

Mr G. Cox QC, Attorney General,
Sir J. Eadie,
Mr D. Blundell,
Mr C. Murphy,

Ms A. Sornarajah, Advisers,
Mr C. Wickremasinghe, Agent;

- *for the OBFG*

Mr F. Krenc, Counsel.

7. The Court heard addresses by Ms Niedlispacher, Ms Derriks, Mr Stein and Ms Lambert; by Mr Geoffrey Cox QC and Ms Merloz, on behalf of the Governments of the United Kingdom, France, Latvia and Norway, and by Mr Krenc. Ms Derriks, Ms Niedlispacher, Mr Englebert, Ms Lambert, Mr Callewaert and Mr Stein subsequently replied to questions put by the judges.

THE FACTS

A. Administrative phase (visa applications and proceedings before the Aliens Office and the administrative courts)

8. During the administrative phase, the applicants attempted, firstly, to obtain documents that would enable them to enter and reside legally in Belgium for the period required to make a formal asylum claim; secondly, they brought proceedings before the administrative courts to challenge the refusal by the Aliens Office to issue them with visas. For its part, the Belgian State opposed, before the same courts, the granting of visas.

1. Decisions of 13 September 2016 refusing to issue visas

9. On 22 August 2016 the applicant couple, accompanied by one of their children, travelled to the Belgian Embassy in Beirut to submit visa applications for themselves and their two children. Their applications were supported by a letter from their Belgian lawyer, dated 15 July 2016, and related documents.

10. The applicants requested visas with limited territorial validity on the basis of Article 25 of the Community Code on Visas (see paragraph 64 below). With regard to the compelling humanitarian reasons required for application of that provision, the applicants stated that in terms of both security and living conditions they were in a situation of absolute emergency on account of the armed conflict in Syria and, more specifically, the intensive bombardment of Aleppo. They submitted documents in support of their claims. The applicants stated that their house in Aleppo had been destroyed by bombing; that they had taken shelter in the house of an uncle who had fled Syria; that the war situation had made access to food, water and electricity very difficult; and that the children were no longer attending school. In consequence, they wished to leave Aleppo and obtain visas in order to travel to and apply for asylum in Belgium, which had granted international protection status (asylum or subsidiary protection) in 2015 to the vast majority of asylum-seekers arriving from Syria and where they were in contact with a Belgian family which was willing to provide accommodation.

11. On 13 September 2016 the Aliens Office, the administrative body responsible for issuing visas (see paragraph 45 below), refused to grant "humanitarian visas" to the applicants and informed them of its decisions by an email of 29 September 2016, transmitted through the visa department of the Belgian Embassy in Beirut.

12. The Aliens Office indicated that the visas requested by the applicants were intended only for persons wishing to travel for a short period to the territory of a Schengen State for reasons beyond their control, such as the illness or death of a relative, and who had no intention of settling permanently in the State in question. The Aliens Office noted, however, that since the applicants' avowed intention was to lodge an asylum claim on arrival in Belgium, they could not make use of this type of visa. In the view of the Aliens Office, granting a visa on humanitarian grounds to an individual who intended to apply for asylum in Belgium would therefore create a precedent which would derogate dangerously from the exceptional nature of

the procedure for short-stay visas. The Aliens Office added that diplomatic and consular missions were not listed among the authorities before which an asylum claim could be lodged under the Royal Decree of 8 October 1981 on the entry, residence, settlement and expulsion of aliens.

13. Lastly, the Aliens Office invited the applicants to apply for another type of visa, based on the Belgian legislation enabling them to stay in Belgium for more than 90 days. The applicants subsequently submitted such an application, which was rejected by the Belgian authorities in December 2016 (see paragraph 34 below).

14. The applicants lodged an application under the extremely urgent procedure with the Aliens Appeals Board – the judicial appeal body against decisions by the Aliens Office (see paragraph 52 below) –, requesting a stay of execution, under the extremely urgent procedure, of the Aliens Office's decisions of 13 September 2016 (see paragraph 11 above).

15. On 7 October 2016 the Aliens Appeals Board, acting under the extremely urgent procedure, ordered a stay of execution of the refusals by the Aliens Office to grant visas and instructed the Belgian State to take new decisions within 48 hours, giving adequate legal grounds, that is, by giving reasons which took account of the extremely dangerous situation in Syria.

16. On 6 March 2017 the Aliens Appeals Board noted that no application had been brought to have the decisions of 13 September 2016 refusing to issue the visas set aside, and decided in consequence to lift the stay of execution of the visa refusal decisions and the interim measures. It further noted that, since the refusal decisions had not been set aside, they were still operative.

17. On 8 February 2018 the *Conseil d'État* dismissed an appeal on points of law by the applicants against the judgment of 6 March 2017. It held that no departure from the case-law had been made out and dismissed the arguments in which the applicants alleged a breach of the principle of legal certainty and a violation of Articles 3 and 13 of the Convention.

18. On the same date the *Conseil d'État* dismissed an appeal on points of law brought by the Belgian State against the judgment of 7 October 2016 on the grounds that, following the lifting of the stay of execution on 6 March 2017, the contested judgment no longer adversely affected the Belgian State.

2. Decisions of 10 October 2016 refusing to issue visas

19. As required by the order of the Aliens Appeals Board (see paragraph 15 above), the Aliens Office issued new decisions, dated 10 October 2016, refusing to grant the visas; however, it provided the same reasons as in the previous refusals. In the notification email sent to the applicants' lawyer, it stated that "Article 3 of the Convention [could] not be interpreted as requiring States to admit to their territory all persons living in catastrophic situations, at the risk of requiring the developed countries to accept entire populations from the developing world, countries at war or those ravaged by natural disasters".

20. By a judgment of 14 October 2016 the Aliens Appeals Board, acting under the extremely urgent procedure, again ordered a stay of execution of the decision of 10 October 2016 refusing to issue the visas, and instructed the Aliens Office to take new decisions, this time giving adequate legal grounds, within 48 hours.

21. The Aliens Appeals Board held that it was unable to accept the State's argument that Article 3 of the Convention could not reasonably entail an obligation for the member States of the Council of Europe to admit all populations confronted with situations of chaos or great danger in their own countries. It also reiterated the *res judicata* nature of its judgments, in particular that of 7 October 2016, which had nonetheless not been executed. Lastly, using the same terms as in its judgment of 7 October 2016, the Aliens Appeals Board stated that the Aliens Office had not met the formal requirement to provide reasons, by failing to take into consideration the alarming situation in Syria and the very serious risk of a violation of Article 3 of the Convention.

22. The applicants brought proceedings before the Aliens Appeals Board to have the Aliens Office's decisions of 10 October 2016 set aside. On 24 March 2017 the Aliens Appeals Board dismissed the application to have those decisions set aside, finding that the Aliens Office's decisions of 13 September 2016 (see paragraph 11 above) had become final and that, in consequence, the applicants no longer had standing to challenge the subsequent decisions.

23. An administrative appeal on points of law lodged by the applicants against that judgment was dismissed by the *Conseil d'État* on 17 May 2018. It based its decision on the interpretation given by the Court of Justice of the European Union ("CJEU") to Articles 1 and 25 of the Visa Code; the CJEU had found on 7 March 2017 that the Visa Code applied only to visits of less than 90 days, and that it could not therefore be applied in the context of an asylum request necessarily implying a longer stay (see paragraphs 71-73 below).

3. Decisions of 17 October 2016 refusing to issue visas

24. On 17 October 2016 the Aliens Office again took decisions refusing to issue the visas, citing the same reasons as in the previous refusals.

25. By a judgment of 20 October 2016 the Aliens Appeals Board, essentially reiterating the substance of its previous judgments, ordered a stay of execution of the refusal decisions of 17 October 2016. In addition, in view of the imminent danger faced by the applicants, the Belgian State's persistent refusal to comply with *res judicata* authority and the importance of ensuring that the remedy was effective, it considered that it was justified to direct the State to issue the applicants, within 48 hours, with *laissez-passers* or visas, valid for three months.

26. By a judgment of 24 March 2017 the Aliens Appeals Board dismissed the application to have the decisions set aside and ordered that the stay of execution in respect of the visa refusal decisions be lifted, together with the interim measures, based on the same reasoning as that set out in its first judgment of the same date (see paragraph 22 above).

27. An appeal on points of law against this judgment was dismissed by the *Conseil d'État* in a judgment of 17 May 2018, on the same grounds as those set out in the above-cited judgment of the same date (see paragraph 23 above).

B. Judicial phase (proceedings before the civil courts concerning execution of the Aliens Appeals Board's judgment of 20 October 2016)

28. For the applicants, the purpose of the judicial phase was to obtain execution of the Aliens Appeals Board's judgment of 20 October 2016 – by virtue of which they had obtained the right to travel legally to Belgium, since the Belgian Government had been ordered to grant them leave to enter and remain in the country for 3 months –, and subsequently of the Brussels Court of Appeal's judgment of 7 December 2016. For its part, the Belgian State sought to counter the execution of the above-cited decisions; it secured this aim through the court of appeal's judgment of 30 June 2017.

1. Proceedings brought by the applicants before the urgent-applications judge

29. The applicants sent a formal notice, served by bailiff, to the Belgian authorities seeking execution of the Aliens Appeals Board's judgment of 20 October 2016 (see paragraph 25 above). That approach having proved unsuccessful, the applicants brought a unilateral application before the President of the Brussels French-language Court of First Instance ("TPI").

30. By an order of 25 October 2016, considering that the failure by the Aliens Office to comply with a judgment of the Aliens Appeals Board, notwithstanding the fact that it had been immediately enforceable, constituted "an unacceptable illegal action", the acting president of the French-language TPI ordered the State, as an urgent measure, to comply with the Board's judgment of 20 October 2016, that is, to issue the applicants with visas or *laissez-passers*, and made the order subject to a penalty payment of 1,000 euros (EUR) per day of delay and per applicant.

31. In compliance with a condition imposed by the president ruling on the unilateral application, the applicants brought an *inter partes* action against the State in order to have the order of 25 October 2016 confirmed. On 7 November 2016 another judge acting as president of the French-language TPI declared their application admissible but unfounded, considering that the Belgian authorities could not be criticised for failing voluntarily to comply with a judgment by the Aliens Appeals Board, even one that was immediately enforceable, if these same authorities intended to challenge the legality of the judgment by pursuing an appeal procedure provided for by law. The judge also held that, since the legislature had not given the Aliens Appeals Board powers to impose penalty payments, the TPI in turn did not have such powers in the case under examination.

32. On an appeal by the applicants, the Brussels Court of Appeal delivered a judgment on 7 December 2016 varying the order of 7 November 2016. It held that the applicants could rely on the binding and enforceable nature of the contested judgment and on their subjective right to seek compliance and obtain an end to the harm sustained by them as a result of non-execution of the judgment, which constituted "an illegal action" and manifest fault. It also considered that, despite the absence of any proceedings to have the decisions of 13 September 2016 refusing the visas set aside, the appeal lodged with it was not wholly devoid of purpose.

33. In consequence, the court of appeal ordered the Belgian State to execute the Aliens Appeals Board's judgment of 20 October 2016, which had instructed the Belgian authorities to issue visas or *laissez-passers*, held that this order was immediately enforceable and, lastly, ruled that the State was to pay a penalty of EUR 1,000 per day of delay and per applicant.

34. In correspondence of 12 and 13 December 2016, the lawyers to the Belgian State informed the applicants that the Belgian authorities were refusing to issue the *laissez-passers* or long-stay visas requested by them as an alternative solution to granting the so-called "humanitarian" visas. They advised the applicants to approach the Lebanese authorities with a request for visas and urged them not to pursue the execution of the court of appeal's judgment of 7 December 2016, in view of a similar case that was pending before the CJEU (see paragraphs 71-73 below).

35. The applicants stated that they were unable to follow the advice of the Belgian Government and intended to seek enforcement of the Brussels Court of Appeal's judgment, in view of the urgency of their personal situation and the disastrous humanitarian conditions prevailing for Syrians in Lebanon. On 13 December 2016 a payment order in respect of the penalties accrued was served on the Belgian State.

36. On 27 February 2017 the Belgian State lodged an appeal on points of law against the court of appeal's judgment of 7 December 2016. Those proceedings are currently pending.

2. Proceedings lodged by the Belgian State before the urgent-applications judge

37. The Belgian State, which sought for its part a stay of execution of the Brussels Court of Appeal's judgment of 7 December 2016, lodged a unilateral action to that effect with the President of the Brussels Dutch-speaking TPI on 13 December 2016, but was unsuccessful (order of the same date). However, on an appeal by the Belgian State, the court of appeal varied the decision of the first-instance court in a judgment of 14 December 2016. It noted the Belgian State's intention to raise the difficulties of complying with the judgment of 7 December 2016 with the enforcement judge ("*le juge des saisies*") and ordered the applicants not to pursue further enforcement proceedings pending a decision by the enforcement judge who was to rule on the validity of the enforcement procedure and the State's right to restrict the amounts due in respect of penalty payments.

3. Proceedings concerning the difficulties involved in executing the court of appeal's judgment of 7 December 2016 (attachment of property)

38. On 15 December 2016 the applicants brought an action against the Belgian State before the enforcement judge at the Brussels French-language TPI, seeking to ensure that the payment order of 13 December 2016 was executed.

39. On the same date the Belgian State brought proceedings against the applicants before the enforcement judge at the Brussels Dutch-language TPI, seeking a stay of execution of the principal sentence (*condamnation principale*) resulting from the Aliens Appeals Boards' judgment of 20 October 2016 (obligation to issue visas or *laissez-passers*) and/or a stay of execution of the court of appeal's judgment of 7 December 2016, and/or to prevent other enforcement measures, such as penalty payments. In the alternative, the State requested a finding that the conditions for a judicial deposit arrangement ("*cantonnement*") had been met.

40. Those two sets of proceedings, brought before different courts, gave rise to disputes concerning the jurisdiction of each court and to diverging decisions. It was ultimately the action lodged by the Belgian State (see paragraph 37 above) which was the first to be examined by the Brussels Court of Appeal. By a judgment of 30 June 2017 a Dutch-language division of the Court of Appeal held that the Aliens Appeals Boards' judgment of 20 October 2016 was no longer operative, given that the applicants had not lodged an application to have the visa refusal decisions of 13 September 2016 set aside. The court of appeal's judgment of 7 December 2016 was thus no longer operative, given that the Aliens Office's refusal decisions of 13 September 2016 had become final and irrevocable before the penalty payment was issued against the Belgian State.

41. The applicants did not appeal on points of law against the Brussels Court of Appeal's judgment of 30 June 2017, on the grounds that the lawyer at the Court of Cassation assigned to their case by the Legal Aid Board had informed them such an appeal would have no reasonable prospect of success.

42. On 20 December 2017 the French-language enforcement judge, examining the action brought by the applicants on 15 December 2016, found that the case had become devoid of purpose following the Brussels Court of Appeal's judgment of 30 June 2017.

LEGAL FRAMEWORK AND PRACTICE

A. Domestic law and practice

1. Issuing of visas

(a) Legislative framework

43. Section 2/1 of the Aliens (Entry, Residence, Settlement and Expulsion) Act of 15 December 1980 ("the Aliens Act") provides for two types of visa: short-term visas, for a maximum duration of 90 days ("C-type visas") and long-term visas, for a period of more than 90 days ("D-type visas"). It does not refer to the possibility of issuing a specific visa for humanitarian reasons.

44. Visas are entered in passports by the Belgian diplomatic and consular missions abroad. Embassies and consulates do not have authority to refuse to issue a visa. In consequence, where a visa application requires more in-depth scrutiny, it is sent to the Aliens Office (see paragraph 45 below).

45. The decision on whether or not to grant a visa falls within the discretionary powers of the Minister (at the relevant time, the State Secretary with responsibility for asylum and migration), and his or her representative, an authorised civil servant from the Aliens Office. The Aliens Office is the administrative body, under the supervision of the minister, which has responsibility in practice for all decisions concerning the entry, residence, settlement and expulsion of aliens.

46. Short-term visas are governed by the Community Code on Visas, which is directly applicable in Belgium (see paragraphs 62-65 below). This type of visa, which is in principle

valid through the Schengen area, may, exceptionally, be issued "with limited territorial validity", for example "on humanitarian grounds" (Article 25 of the Visa Code, see paragraph 71 below).

47. Long-term visas – which fall outside the scope of EU law (see paragraphs 71-73 below) – are governed by sections 9 to 13 of the Aliens Act. Section 9 (1) provides that "to remain in the Kingdom beyond the period laid down in section 6 [namely for more than 90 days] an alien who is not in one of the cases provided for in section 10 [cases where an alien is automatically granted leave to remain for more than three months] must be authorised to do so by the Minister or his or her representative". Section 13 § 1 provides that, except where expressly provided otherwise, long-term leave to remain is granted for a limited duration. Under section 13 § 2, this authorisation may be extended by the Minister or his or her representative.

(b) Practice

48. The Belgian Federal Centre for the analysis of migration flows, protection of the fundamental rights of aliens and action against trafficking in human beings, or "Myria" – an independent public institution –, carried out research in 2017 and 2019 into the practice of issuing visas on humanitarian grounds.

49. Myria stressed that, given the discretionary nature of the powers exercised by the Minister and the Aliens Office, and in the absence of criteria for granting or refusing a so-called "humanitarian" visa, it was impossible to indicate with precision the situations which had justified granting this type of visa. Nonetheless, it was able to distinguish the broad outlines of the policy in place.

50. Until the CJEU's judgment of 7 March 2017 (see paragraphs 71-73 below) short-stay visas could be issued on humanitarian grounds to individuals in disturbing medical or humanitarian circumstances; to aliens entitled, at the invitation of the Belgian authorities, to submit an asylum claim in Belgium; to beneficiaries of resettlement programmes run by the Office of the United Nations High Commissioner for Refugees and, in Belgium, by the Commissioner-General's Office for Refugees and Stateless Persons; and to asylum-seekers who had been involved in an exceptional rescue operation, on the instruction of the Secretary of State for Immigration and Asylum Policy.

51. The majority of so-called "humanitarian" visas were issued to family members who did not meet the legal requirements for family reunion. Since the CJEU's judgment of 7 March 2017, only long-stay visas are issued to persons applying for visas who wish to claim asylum in Belgium.

(c) Appeals

52. If the Aliens Office refuses to issue a visa, the requesting party may apply to the Aliens Appeals Board to have the Aliens Office's decision set aside. The Aliens Appeals Board is an administrative court which rules in a collegial formation or as a single judge.

53. An action to have a decision by the Aliens Office set aside does not suspend it. For this reason, section 39/82 of the Aliens Act provides for the possibility of submitting a request for a stay of execution either under an "ordinary" procedure or under the "extremely urgent" procedure. In principle, requests for suspension and for setting aside must be submitted in the same application, except in cases of extreme urgency. In the latter case, the request for a stay of execution may be submitted separately from the action to have the decision set aside. However, the latter must be submitted within 30 days of notification of the decision to refuse the visa, failing which the stay of execution and any other interim measures ordered prior to submission of the action to have the decision set aside will be lifted. A stay of execution may be ordered only if the grounds relied on are sufficiently serious to warrant setting aside the impugned decision, and if immediate enforcement of the decision is liable to cause serious damage that it would be difficult to repair.

54. Under section 39/67 of the Aliens Act, an appeal on points of law against the decisions of the Aliens Appeals Board lies to the *Conseil d'État*.

2. Judicial proceedings

55. Under Articles 144 and 145 of the Constitution, the courts have competence to examine disputes relating to subjective rights.

56. Article 584 of the Judicial Code provides for the possibility of applying to the president of the court of first instance by means of an urgent application or by an *ex parte* application:

> "The President of the Court of First Instance shall, in respect of all matters except those which the law excludes from the jurisdiction of the courts of justice, give a provisional ruling in cases which he recognises as being urgent.
>
> ...
>
> The matter shall be brought before the President by means of an urgent application or, in cases of absolute necessity, an *ex parte* application.
>
> ...."

57. An appeal lies against decisions taken at first instance, and an appeal on points of law may be lodged against judgments given on appeal.

58. In the event of difficulties in executing a judgment containing an order to pay penalties, any interested party can apply to the enforcement judge ("*juge des saisies*") on the basis of Article 1498 of the Judicial Code, without, however, such an application having suspensive effect.

B. International and European Union law

1. International law

59. Article 1, Section A, paragraph 2, of the Convention on the Status of Refugees, signed at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967 ("the Geneva Convention"), provides in particular that a refugee is any person who, owing to a 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, unwilling to avail himself of the protection of that country.

60. Article 33 § 1 of the Geneva Convention provides that no Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. European Union law

(a) Charter of Fundamental Rights

61. The Charter of Fundamental Rights of the European Union contains, *inter alia*, the following provisions:

- Article 18, which 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 establishing the European Union ("EU") and the Treaty on the Functioning of the EU;
- Article 51 § 1, which provides that the provisions of the Charter are addressed to the EU's institutions, bodies, offices and agencies with due regard for the principle of subsidiarity, and to the Member States only when they are implementing EU law; and
- Article 52 § 3, which states that, in so far as the Charter contains rights which correspond to rights guaranteed by the Convention, their meaning and scope are to be the same as those laid down by the Convention, although this provision does not prevent EU law from providing more extensive protection.

(b) Secondary legislation

(i) Visa Code

62. Under Article 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"), which is directly applicable in the Member States of the EU, the 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 (90 days) in any six-month period (180 days). Article 2 (2) (a) and (b) of the Code define the concept of "visa" as "an authorisation issued by a Member State" with a view to, respectively, "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" and "transit through the international transit areas of airports of the Member States".

63. Article 23 (4) of the Visa Code, headed "Decision on the application", states 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 the Code or to refuse a visa in accordance with Article 32 of the Code.

64. Article 25 of the Visa Code, headed "Issuing of a visa with limited territorial validity", is worded as follows:

> "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 5(1)(a), (c), (d) and (e) of the Schengen Borders Code must be fulfilled;
>
> (ii) to issue a visa ...
>
> ... "

65. Article 32 of the Visa Code, headed "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."

(ii) Schengen Borders Code

66. 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) provides that, where they apply this Regulation, the Member States are to act in full compliance with the relevant EU law provisions, including the Charter, of applicable international law, including the Geneva Convention, their obligations with regard to access to international protection, in particular the principle of *non-refoulement*, and fundamental rights.

67. Article 6 of the Schengen Borders Code, entitled "Entry conditions for third-country nationals", provides as follows:

> "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;

(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."

(iii) Dublin Regulation

68. Article 1 of Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (the "Dublin Regulation"), provides as follows:

"This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ..."

69. Under Article 3 § 1 of the Dublin Regulation:

"Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones ..."

(iv) Asylum Procedures Directive

70. 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) is worded as follows:

"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 ..."

(c) Case-law of the CJEU

71. A request for a preliminary ruling was submitted to the CJEU in a judgment delivered by the general assembly of the Aliens Appeals Board on 8 December 2016, in a case bearing some similarities to the present case (*X and X v. Belgium*, C-638/16 PPU). This case followed a rejection by the Aliens Office of a request for a visa with limited territorial validity, lodged on the basis of Article 25 § 1 (a) of the Visa Code by a Syrian family at the Belgian Embassy in Beirut. Having received an application for a stay of execution under the extremely urgent procedure, the Aliens Appeals Board asked the CJEU to clarify the scope of the international obligations referred to in Article 25 of the Visa Code.

72. In a judgment of 7 March 2017, the CJEU reiterated that under Article 1 of the Visa Code, the Code concerned visas for stays not exceeding 90 days. In the case in question, however, the visa applications had been lodged for the purpose of claiming asylum and therefore

of being issued with a residence permit with a validity that was not restricted to 90 days. The CJEU thus concluded that those applications, although formally submitted on the basis of Article 25 of the Visa Code, fell outside the scope of the Code, in particular of Article 25 (1) (a). Furthermore, as no measure had been adopted by the EU legislature with regard to the conditions governing the issue by Member States of long-term visas and residence permits on humanitarian grounds, the applications at issue fell solely within the scope of national law.

73. The CJEU indicated that to conclude otherwise would undermine the general structure of the system established by the European Union to determine the Member State responsible for examining a request for international protection and would imply that the Visa Code required the States to permit third-country nationals to submit applications for international protection to the diplomatic or consular missions of Member States that were within the territory of a third country. However, this was not the aim of the Visa Code, which was not intended to harmonise the laws of Member States on international protection.

COMPLAINTS

74. The applicants complained that the Belgian authorities' refusal to issue them with the so-called "humanitarian" visas had exposed them to a situation incompatible with Article 3 of the Convention (prohibition of torture and of inhuman or degrading treatment) with no possibility of remedying it effectively, as required by Article 13 (right to an effective remedy).

75. The applicants further alleged a violation of Article 6 § 1 (right to a fair hearing) and Article 13 of the Convention, in that it was impossible for them to pursue the execution of the Brussels Court of Appeal's judgment of 7 December 2016 ordering the Belgian State to execute the Aliens Appeals Board's judgment of 20 October 2016, which had instructed the Belgian authorities to issue them with the visas they had requested under Article 3 of the Convention.

THE LAW

A. Articles 3 and 13 of the Convention

76. Article 3 of the Convention provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

77. Article 13 of the Convention provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

78. The respondent Government submitted that the complaints alleging a violation of Articles 3 and 13 were inadmissible *ratione loci,* on the grounds that the applicants did not fall within their jurisdiction within the meaning of Article 1 of the Convention, which is worded as follows:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

1. The parties' submissions on jurisdiction

(a) The Respondent Government

79. The Belgian Government pointed out that it was well-established case-law that Article 1 of the Convention reflected the ordinary and essentially territorial understanding of the States' jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case and the relevant rules of international law, without losing sight of the general context. In the present case, the applicants had not been

territorially under the jurisdiction of the Belgian State, given that they were not in its national territory and that, in accordance with the Vienna Convention of 18 April 1961 on diplomatic relations, an embassy was not considered to be part of the national territory of the country it represented. Nor did the present case fall within the exceptional scenarios for extraterritorial exercise of Belgium's jurisdiction as identified by the Court in the case of *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, ECHR 2001-XII).

80. According to the Government, there was, in particular, no question of acts which had produced effects outside the territory, as the only effect of the decision not to issue the applicants with short-term visas had been to prevent them from entering Belgian territory for a short stay, with no impact on their situation in Lebanon or Syria. The scenario of acts performed abroad by diplomatic or consular agents could also not be accepted. In contrast to the other cases involving such acts that the Court had already examined, the diplomatic agents in the present case had not exercised any form of authority or control over the first applicant, who had been free to come and go, and they had not performed any act affecting him.

81. Lastly, relying on the cases of *Abdul Wahab Khan v. the United Kingdom* ((dec.), no. 11987/11, 28 January 2014) and *Markovic and Others v. Italy* ([GC], no. 1398/03, ECHR 2006 XIV), the Government argued that the fact that the applicants had had access to Belgian administrative and judicial proceedings in order to have their visa requests examined and to challenge the decisions taken had no influence on Belgium's jurisdiction over them. To conclude otherwise would imply a virtually universal application of the Convention, as the States Parties had embassies all over the world and any foreign national could apply to them for a visa.

(b) The applicants

82. The applicants argued that the Belgian courts had found on various occasions that although they were outside Belgian territory the applicants had been under Belgium's jurisdiction, and these courts had accordingly applied Article 3 of the Convention. Indeed, the Court's case-law clearly indicated that the responsibility of the States could be engaged on account of acts by their authorities which produced effects outside the national territory.

83. In the present case, the Belgian State bodies which dealt with the applicants' visa applications had reached decisions in their capacity as agents of the Aliens Office or as diplomatic agents, under the supervision of the Belgian authorities. In reaching their decisions these agents were exercising a State function of border control. When a State laid down the conditions of entry into its territory and the conditions of residence and settlement there, just as when it exercised its authority in this area and made decisions on visa applications, it was acting by virtue of what were in substance national powers, recognised in international law. This was necessarily a manifestation of its jurisdiction, which entered into play regardless of where it was exercised, regardless of which authorities, territorial or consular, implemented them, and regardless of whether or not the authorities involved exercised *de facto* or physical control over the individuals concerned.

84. The applicants then drew attention to the case-law on removal, established since the *Soering v. the United Kingdom* judgment (7 July 1989, Series A no. 161), which had found that a State Party to the Convention could be held responsible for the extraterritorial consequences of decisions taken by it in the event of a risk of torture or ill-treatment, or of failures, attributable to it, to take measures with a view to avoiding or preventing exposure to such risks.

85. Lastly, the applicants considered that the above-cited case of *Abdul Wahab Khan* was not applicable to the present situation. The applicant in that case had been seeking to establish the jurisdictional link of his complaint under Article 3 on the sole basis of the domestic proceedings before the Special Immigration Appeals Commission ("SIAC"), although, firstly, that appeal procedure had had a different purpose, in that it concerned the withdrawal of leave to remain, decided on the basis of a finding that he posed a threat to national security, and,

secondly, the exclusively extraterritorial impact of the contested decision had not been attributable to the United Kingdom but to the applicant, on account of his activities and his decision to return to Pakistan. In contrast to the *Abdul Wahab Khan* case, the jurisdictional link between Belgium and the applicants in the present case arose not only from the extraterritorial effects of the decisions taken by Belgium, but also and especially from the fact that these decisions concerned their entry to Belgium territory and the exercise of the related rights, an area in which Belgium had had full, exclusive and uninterrupted authority.

2. Observations of the third-party interveners on jurisdiction

(a) The Czech Republic, Croatia, Denmark, France, Germany, Hungary, Latvia, the Netherlands, Norway, Slovakia and the United Kingdom

86. The intervening third-party States disagreed that Belgium had exercised its jurisdiction. In their view, it was necessary to proceed from the principles established in the above-cited *Banković and Others* decision with regard to Article 1 of the Convention: the Convention was a regional instrument, the concept of jurisdiction was primarily a territorial one, and no "cause-and-effect" notion of jurisdiction could be contemplated. They further argued that the exceptional circumstances of control or authority recognised by the Court's case-law as providing grounds for extraterritorial jurisdiction within the meaning of Article 1 of the Convention, set out in the *Al-Skeini and Others v. the United Kingdom* judgment ([GC], no. 55721/07, ECHR 2011-IV), had not been met in this case.

87. In particular, the intervening third-party Governments submitted that none of the Court's previous judgments recognising the exercise of extraterritorial jurisdiction by virtue of the actions and omissions of diplomatic agents were transposable, given that the present case did not involve the connecting links which characterised these previous cases. In any event, this exception could not be extended to the scenario of examining issues of asylum or immigration, for several reasons.

88. Firstly, the applicants had not been on the territory of the State Party. Nor had they been under the Embassy's control or authority, since they had been free to come and go and the decision to issue or refuse a visa did not imply any form of physical control or authority over a person, irrespective of where the relevant request was made. Further, assenting to the applicants' argument would mean accepting that a jurisdictional link could be self-generated by an individual submitting an immigration-related request, wherever he or she was in the world, without any act of authority or exercise of jurisdiction on the part of the State to create this link. Nor could it reasonably be accepted that the mere submission of an application or a mere decision in the area of immigration was sufficient to bring the individual in question under the jurisdiction of the State concerned. Thus, in the same way that an online or postal visa application did not create jurisdiction, that fact that an application or even a decision concerning immigrant status was made at a foreign embassy or consulate could not create a jurisdictional link.

89. It was also to be noted that none of the cases involving diplomatic or consular staff were comparable to the present one; nor did they provide any support for extending the scope of Article 1 of the Convention. Apart from the fact that those cases predated those of *Banković and Others* and *Al-Skeini and Others* by many years, the jurisdiction of the States in question had been established on the basis of the specific facts of each case. Furthermore, the Court had always maintained that immigration control was a matter for the States Parties' sovereign jurisdiction. If the applicants' arguments were to be accepted, however, the well-established principle of international law to the effect that a State is under no general obligation to admit aliens to its territory would become meaningless, and would give way to an unlimited obligation on the States Parties to authorise entry to their territory to individuals who were at risk of treatment in breach of Article 3 anywhere in the world. The Court had expressly objected to such an extension, as it had stated in *Abdul Wahab Khan*.

90. The third-party interveners raised a further important point which was, in their view, crucial: the complex factors surrounding asylum and immigration required international cooperation and control. This control was essential to enable the protection systems to operate effectively, in the interests of those persons requiring international protection. It was clear that the situation in Syria elicited deep compassion and made the smooth functioning of this system all the more important. However, it was also important to protect those who might need to seek refuge from persecution and not to disrupt the system by introducing the factors of disorder and instability that would inevitably result from a decision by the Court to accede to the applicants' claims.

(b) The AIRE Centre, the Dutch Council for Refugees, ECRE and the International Commission of Jurists

91. The third-party intervening organisations pointed out that the extraterritorial jurisdiction of States Parties had long been recognised by the Convention organs and could be engaged, in particular, as a result of acts or omissions by State agents or bodies operating outside its territory and affecting individuals under their authority or their control. In the above-cited case of *Banković and Others*, the Court had recognised that other instances of extraterritorial exercise of jurisdiction by a State could exist in cases concerning acts or omissions by diplomatic or consular agents where they were exercising a governmental function. According to the Vienna Convention, consular functions consisted, in particular, in issuing visas and appropriate documents to persons wishing to travel to the sending State. This corresponded to a prerogative of government power in the field of immigration control, which fell within the jurisdiction of the sending State and had to be exercised, in the case of the States Parties to the Convention, in accordance with the rights and freedoms recognised by it, as was already apparent from the extensive case-law of the former Commission. This case-law was consistent with that of other international bodies (the International Court of Justice, the United Nations Human Rights Committee, the Inter-American Court of Human Rights). In addition, the Court had recognised in the above-cited *Soering* judgment that, even in the absence of effective control over part of its territory or on foreign territory, the States Parties to the Convention could have a positive obligation under Article 1 of the Convention to take the measures within their power in order to ensure respect for the rights guaranteed by the Convention.

(c) The Human Rights League and the International Federation for Human Rights

92. The LDH and the FIDH stressed that the Court had accepted under "other bases of jurisdiction" a situation where the State exercised an element of governmental authority, whether this was in the exercise of jurisdictional competence as recognised by international law, whether it was jurisdiction granted by a third State within its own territory or whether it arose from factual circumstances (they referred to *Banković and Others*, cited above, §§ 70-71, and *Al-Skeini and Others v. the United Kingdom* [GC], cited above, § 135). Thus, when a State ruled on the granting of a visa, or the entry, residence or settlement of individuals on its territory, it was exercising an element of governmental authority even when dealing with those matters in respect of foreign nationals who were not present on its territory and the decision produced its effect abroad, whether by virtue of an international agreement (they referred to *X and Y v. Switzerland*, nos. 7289/75 and 7349/76, Commission decision of 14 July 1977, D.R. 9, p. 76) or factual circumstances (they cited *Nada v. Switzerland* [GC], no. 10593/08, ECHR 2012).

93. Moreover, it was clear from the Court's case-law and particularly the above-cited *Al-Skeini* judgment (§§ 134-135) that the fact that a State acted in whole or in part through its diplomatic or consular agents abroad did not preclude the jurisdiction of the States Parties, provided that such agents exercised authority and control over others and that, in the exercise of their functions under a rule of customary, conventional or other international law, the facts in dispute were attributable to them and not to the territorial State. The "function" exercised by the diplomatic or consular agents in the context of performing acts which fell within the competence

of embassies and consulates abroad, such as issuing passports to their nationals, had been recognised as forming grounds for the exercise of jurisdiction (the third-party interveners referred to *X v. Germany*, no. 1611/62, Commission decision of 25 September 1965, Yearbook 8, pp. 158 and 169). The third-party intervening organisations submitted that the same conclusion ought to apply with regard to entry or residence permits issued to foreign nationals, given that this power fell within the exclusive authority of the State in respect of whose territory the requesting party was applying for a residence permit. In this connection, the CJEU had held that requests of this type were not governed by EU law and fell "solely" within the scope of the national law of the State to which a request had been made through its foreign embassy (see paragraphs 71-73 above).

94. Jurisdiction having been established, the State should, in exercising it, secure to the persons who came within its jurisdiction the rights and freedoms of the Convention, and could be held responsible, in accordance with the Court's case-law since the above-cited *Soering* case, for the extraterritorial consequences of acts or omissions attributable to it which might have exposed the individuals concerned to treatment contrary to Article 3.

(d) Bar Council of French-speaking and German-speaking Lawyers of Belgium

95. The OBFG emphasised that it was clear from the Court's case-law, in particular the case of *Hirsi Jamaa and Others v. Italy* ([GC], no. 27765/09, §§ 74 and 75, ECHR 2012) and, even earlier, from the Commission's case-law (*M. v. Denmark*, decision, no. 17392/90, 14 October 1992, Decisions and Reports 73, p. 199), that a State Party to the Convention exercised its jurisdiction within the meaning of Article 1 of the Convention via its consular or diplomatic agents in post outside the territory of that State where the latter exercised their authority in respect of other persons. Any other solution would have the effect of absolving a State's authorities and officials from their duty to ensure compliance with Convention rights.

3. The Court's assessment as to jurisdiction

(a) Recapitulation of the applicable case-law

96. The Court reiterates that Article 1 of the Convention limits its scope to "persons" within the "jurisdiction" of the States Parties to the Convention.

97. The exercise of jurisdiction by a respondent State is a condition *sine qua non* in order for that State to be held responsible for acts or omissions attributable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (see *Al-Skeini and Others*, cited above, § 130, and *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, § 178, 29 January 2019). The question of whether that State is effectively liable for the acts or omissions at the origin of the applicants' complaints under the Convention is a separate issue which belongs to the merits phase of the case (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, §§ 61 and 64, Series A no. 310, and *Güzelyurtlu and Others*, cited above, § 197).

98. As to the meaning to be given to the concept of "jurisdiction" for the purposes of Article 1 of the Convention, the Court has emphasised that, from the standpoint of public international law, a State's jurisdictional competence is primarily territorial (see *Güzelyurtlu and Others*, cited above, § 178; see also *Banković and Others*, cited above, §§ 59-61). It is presumed to be exercised normally throughout the territory of the State concerned (see *Assanidze v. Georgia* [GC], no. 71503/01, § 139, ECHR 2004-II).

99. In line with Article 31 § 1 of the Vienna Convention on the Law of Treaties of 1969, the Court has interpreted the words "within their jurisdiction" by ascertaining the ordinary meaning to be given to the phrase in its context and in the light of the object and purpose of the Convention. However, while international law does not exclude a State's extraterritorial exercise of its jurisdiction, the suggested bases of such jurisdiction (including nationality and flag) are, as a general rule, defined and limited by the sovereign territorial rights of the other relevant States (see *Banković and Others*, decision cited above, §§ 56 and 59).

100. This territorial notion of the States Parties' jurisdiction is supported by the *travaux préparatoires* of the Convention (see *Banković and Others*, cited above, §§ 19-21 and 63). The text prepared by the Committee on Legal and Administrative Questions of the Consultative Assembly of the Council of Europe initially provided, in what became Article 1 of the Convention, that the "member States shall undertake to ensure to all persons residing within their territories the rights ...". However, the reference to "all persons residing within their territories" was replaced with a reference to persons "within their jurisdiction", since the concept of residence was considered too restrictive and open to different interpretations depending on the national legislation concerned.

101. The Court has recognised that, as an exception to the principle of territoriality, acts of the States Parties performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 of the Convention. This is well-established case-law (see, among other authorities, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 314, ECHR 2004-VII; *Medvedyev and Others v. France* [GC], no. 3394/03, § 64, ECHR 2010; *Al-Skeini and Others*, cited above, § 131; and *Güzelyurtlu and Others*, cited above, § 178).

102. In each case, it was with reference to the specific facts that the Court assessed whether there existed exceptional circumstances justifying a finding by it that the State concerned was exercising jurisdiction extraterritorially (see *Banković and Others*, cited above, § 61; *Al-Skeini and Others*, cited above, § 132; *Hirsi Jamaa and Others*, cited above, § 172; and *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 103, ECHR 2012 (extracts)).

103. An exception to the principle that jurisdiction under Article 1 is limited to a State Party's own territory occurs where that State exerts effective control over an area outside its national territory. The obligation to secure the rights and freedoms set out in the Convention in such an area derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration (for a summary of the case-law on these situations, see *Al-Skeini and Others*, cited above, §§ 138-140 and 142; for more recent applications of this case-law, see *Catan and Others*, cited above, §§ 121-122; *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 186, ECHR 2015; *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, §§ 110-111, 23 February 2016; and *Sandu and Others v. the Republic of Moldova and Russia*, nos. 21034/05 and 7 others, §§ 36-38, 17 July 2018).

104. Thus, the Commission and subsequently the Court concluded that a State was exercising its jurisdiction extraterritorially when, in an area outside its national territory, it exercised public powers such as authority and responsibility in respect of the maintenance of security (see *X. and Y. v. Switzerland*, cited above; *Drozd and Janousek v. France and Spain*, 26 June 1992, §§ 91-98, Series A no. 240; *Gentilhomme, Schaff-Benhadji and Zerouki v. France*, nos. 48205/99 and 2 others, § 20, 14 May 2002; *Al-Skeini and Others*, cited above, §§ 143-150; and *Al-Jedda v. the United Kingdom* [GC], no. 27021/08, §§ 75-96, ECHR 2011).

105. Further, the use of force by a State's agents operating outside its territory may, in certain circumstances, bring persons who thereby find themselves under the control of the State's authorities into the State's Article 1 jurisdiction (for a summary of the case-law in respect of these situations, see *Al-Skeini and Others*, cited above, § 136). The same conclusion has been reached where an individual is taken into the custody of State agents abroad (see *Öcalan v. Turkey* [GC], no. 46221/99, § 91, ECHR 2005-IV). Equally, extraterritorial jurisdiction has been recognised as a result of situations in which the officials of a State operating outside its territory, through control over buildings, aircraft or ships in which individuals were held, exercised power and physical control over those persons (see *Issa and Others v. Turkey*, no. 31821/96, §§ 72-82, 16 November 2004; *Al-Saadoon and Mufdhi v. the United Kingdom* (dec.), no. 61498/08, §§ 86-89, 30 June 2009; *Medvedyev and Others*, cited above,

§§ 62-67; *Hirsi Jamaa*, cited above, §§ 76-82; and *Hassan v. the United Kingdom* [GC], no. 29750/09, §§ 75-80, ECHR 2014).

106. As the Court reiterated in the *Al-Skeini and Others* judgment (cited above, § 134), a State Party's jurisdiction may arise from the actions or omissions of its diplomatic or consular officials when, in their official capacity, they exercise abroad their authority in respect of that State's nationals or their property (see *X. v. Germany*, cited above; *X v. the United Kingdom*, no. 7547/76, Commission decision of 15 December 1977, Decisions and Reports 12, p. 73.; and *S. v. Germany*, no. 10686/83, Commission decision of 5 October 1984, *D.R.* 40, p. 191), or where they exercise physical power and control over certain persons (see *M. v. Denmark*, cited above, p. 193).

107. Lastly, specific circumstances of a procedural nature have been used to justify the application of the Convention in relation to events which occurred outside the respondent State's territory. Thus, with regard to civil proceedings for damages brought by the applicants before the Italian courts under national law in respect of the deaths of their relatives as a result of air strikes carried out by the NATO alliance against the Federal Republic of Yugoslavia, the Court held, in spite of the extraterritorial nature of the events at the origin of the action, that those proceedings fell within the jurisdiction of Italy, which was accordingly required to secure, in those proceedings, respect for the rights protected by Article 6 of the Convention (see *Markovic and Others v. Italy*, (dec.), no. 1398/03, 12 June 2003, and *Markovic and Others v. Italy* [GC], cited above, §§ 49-55). More recently, with regard to deaths which occurred outside the territory of the respondent State, the Court found that the fact that the State in question had begun a criminal investigation into those events established a jurisdictional link for the purposes of Article 1 between that State and the victim's relatives, entailing an obligation on the State to meet the procedural requirements of Article 2 (see *Güzelyurtlu and Others*, cited above, § 188).

108. In contrast, in the above-cited *Abdul Wahab Khan* case, the Court dismissed the argument relying on the proceedings brought by the applicant, a Pakistani national resident in Pakistan, before the SIAC to challenge the decision to withdraw his leave to remain in the United Kingdom. The Court held that, in the absence of other criteria of attachment, the fact that the applicant had brought those proceedings was not sufficient to establish the United Kingdom's jurisdiction with regard to the risk, alleged by the applicant, that he would be subjected in Pakistan to treatment contrary to Article 3 of the Convention (see *Abdul Wahab Khan*, cited above, § 28).

109. By way of comparison, the Court emphasises that the above-cited cases are to be distinguished from those in which the facts contained an international element but which did not involve extraterritoriality for the purposes of Article 1 of the Convention. This was the situation with regard to cases under Article 8, concerning decisions taken with regard to individuals, irrespective of whether they were nationals, who were outside the territory of the respondent State but in which the question of that State's jurisdiction had not arisen, given that a jurisdictional link resulted from a pre-existing family or private life that this State had a duty to protect (see *Nessa and Others v. Finland* (dec.), no. 31862/02, 6 May 2003; *Orlandi and Others v. Italy*, no. 26431/12, 14 December 2017; and *Schembri v. Malta* (dec.), no. 66297/13, 19 September 2017).

(b) Application in the present case

110. The Court notes, firstly, that the contested decisions were taken by the Belgian authorities in Belgium. They were issued in response to visa applications submitted by the applicants to the consular services of the Belgian Embassy in Beirut, with a view to obtaining authorisation to enter Belgium so that they could claim asylum in that country and avoid treatment in breach of Article 3 of the Convention to which they alleged that they were exposed in Aleppo. The decisions refusing to grant the requested visas subsequently passed through the embassy's consular services, which notified the applicants.

111. The applicants have submitted that in the present case the question of "jurisdiction" within the meaning of Article 1 of the Convention does not arise solely in terms of the extraterritorial scope of the contested decisions. In their view, in processing their visa applications the Belgian authorities had ruled on the issue of the conditions for entry to the national territory. In so doing, those authorities had taken national decisions in respect of the applicants, bringing them under Belgium's jurisdiction.

112. The Court accepts that in ruling on the applicants' visa applications, the Belgian authorities took decisions concerning the conditions for entry to Belgian "territory" and, in so doing, exercised a public power. In itself, however, this finding is not sufficient to bring the applicants under Belgium's "territorial" jurisdiction within the meaning of Article 1 of the Convention. The mere fact that decisions taken at national level had an impact on the situation of persons resident abroad is also not such as to establish the jurisdiction of the State concerned over those persons outside its territory (see *Banković and Others*, cited above, § 75).

113. In order to determine whether the Convention applies to the present case, the Court must examine whether exceptional circumstances existed which could lead to a conclusion that Belgium was exercising extraterritorial jurisdiction in respect of the applicants. As it has pointed out previously (see paragraph 102), this is primarily a question of fact, which requires it to explore the nature of the link between the applicants and the respondent State and to ascertain whether the latter effectively exercised authority or control over them.

114. In this connection, it is irrelevant that the diplomatic agents had, as in the present case, merely a "letter-box" role, or to ascertain who was responsible for taking the decisions, whether the Belgian authorities in the national territory or the diplomatic agents in post abroad.

115. The Court notes at the outset that the applicants have never been within Belgium's national territory and that they do not claim to have any pre-existing ties of family or private life with that country.

116. Further, it is not alleged before the Court that the jurisdictional link arose from any kind of control exercised by the Belgian authorities in Syrian or Lebanese territory.

117. The Court also notes that the applicants contest the outcome of the procedures for examining their visa applications, rather than acts or omissions on the part of the diplomatic agents at the Belgian Embassy in Beirut. Nonetheless, they perceive the consular functions of receiving and issuing visas as a form of control or authority, exercised in their respect under a public-authority prerogative, and they attempt on this basis to find support in the case-law of the Commission, which recognised the exercise of extraterritorial jurisdiction as a result of the acts and omissions of diplomatic agents.

118. In this connection, the Court accepts the argument of the respondent Government, supported by the third-party intervening Governments, that none of the case-law precedents cited in paragraph 106 above are applicable to the present case, given that it contains none of the connecting links which characterised the above-mentioned cases. Firstly, the applicants are not Belgian nationals seeking to benefit from the protection of their embassy. Secondly, at no time did the diplomatic agents exercise *de facto* control over the applicants. The latter freely chose to present themselves at the Belgian Embassy in Beirut, and to submit their visa applications there – as indeed they could have chosen to approach any other embassy; they had then been free to leave the premises of the Belgian Embassy without any hindrance.

119. Even supposing, in the alternative, that an argument can be made from the administrative control exercised by the Belgian State over the premises of its embassies, the foregoing case-law (see paragraph 105) indicates that this criterion is not sufficient to bring every person who enters those premises within Belgium's jurisdiction.

120. Furthermore, the Court reiterates, in response to the comparison made by the applicants with the above-cited *Soering* judgment, that the present case is fundamentally different from the numerous expulsion cases which it has examined since that judgment and in which it accepted that a State Party's responsibility could be engaged under Article 3 of the Convention when a State's decision to remove an individual exposed him or her to a genuine risk of being subjected

to treatment in breach of Article 3 in the country of destination. Unlike the applicants, individuals in cases involving removal from a State's territory are, in theory, on the territory of the State concerned – or at its border (see *M.A. and Others v. Lithuania*, no. 59793/17, § 70, 11 December 2018, and, *mutatis mutandis*, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, §§ 104-111, 13 February 2020) – and thus clearly fall within its jurisdiction (see *Banković and Others*, cited above, §§ 68 and 77).

121. Lastly, the applicants argue that they placed themselves under the Belgian State's "jurisdiction" by bringing proceedings at domestic level with a view to securing their entry to Belgium, and that in the course of these proceedings the relevant national bodies exercised their full and complete authority (see paragraph 82) above. The Court has already rejected this argument in so far as it seeks to establish territorial jurisdiction over the applicants on Belgium's part (see paragraph 112 above). However, it must still ascertain whether the fact of having brought proceedings at national level was capable of creating an exceptional circumstance which was sufficient to trigger, unilaterally, an extraterritorial jurisdictional link between the applicants and Belgium within the meaning of Article 1 of the Convention.

122. In the Court's opinion, this approach is not supported by the case-law. In this connection, it points out that in the above-cited case of *Markovic and Others* (see paragraph 107 above), it declared inadmissible, for lack of jurisdiction, the applicants' substantive complaints under the Convention provisions other than Article 6 (see *Markovic and Others* (dec.), cited above, and *Markovic and Others* [GC], cited above, §§ 4 and 49-50; see also, *mutatis mutandis*, *Banković and Others*, cited above, §§ 83-84). Nor can the proceedings giving rise to Turkey's jurisdiction in the above-cited *Güzelyurtlu and Others* case (see paragraph 107 above) be compared to the administrative proceedings brought by the applicants in the present case. The relevant proceedings in the *Güzelyurtlu and Others* case – which created a jurisdictional link with Turkey – were criminal proceedings opened at the initiative of the Turkish authorities (who had control over the "Turkish Republic of Northern Cyprus"). They thus corresponded to action by a Contracting State in the context of its procedural obligations under Article 2. This is very different from administrative proceedings brought at the initiative of private individuals who have no connection with the State concerned except for proceedings which they themselves freely initiated, and without the choice of this State, namely Belgium, being imposed by any treaty obligation.

123. In contrast, the submissions of the respondent Government and the third-party intervening Governments are supported by the decision adopted in the case of *Abdul Wahab Khan*. The Court made clear in that decision that the mere fact that an applicant brings proceedings in a State Party with which he has no connecting tie cannot suffice to establish that State's jurisdiction over him (see *Abdul Wahab Khan*, cited above, § 28). The Court considers that to find otherwise would amount to enshrining a near-universal application of the Convention on the basis of the unilateral choices of any individual, irrespective of where in the world they find themselves, and therefore to create an unlimited obligation on the Contracting States to allow entry to an individual who might be at risk of ill-treatment contrary to the Convention outside their jurisdiction (ibid., § 27). If the fact that a State Party rules on an immigration application is sufficient to bring the individual making the application under its jurisdiction, precisely such an obligation would be created. The individual in question could create a jurisdictional link by submitting an application and thus give rise, in certain scenarios, to an obligation under Article 3 which would not otherwise exist.

124. Such an extension of the Convention's scope of application would also have the effect of negating the well-established principle of public international law, recognised by the Court, according to which the States Parties, subject to their treaty obligations, including the Convention, have the right to control the entry, residence and expulsion of aliens (see, among many other authorities, *N. v. the United Kingdom* [GC], no. 26565/05, § 30, ECHR 2008, and *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 125, 21 November 2019). In this context, the Court notes that the CJEU ruled in a case similar to the present one that, as EU law

currently stands, the issuing of long-stay visas falls solely within the scope of the Member States' national law (see paragraphs 71-73 above).

125. In conclusion, the Court considers that the applicants were not within Belgium's jurisdiction as regards the circumstances in respect of which they complain under Article 3 of the Convention. Having regard to that conclusion, the same finding applies as regards the complaint under Article 13.

126. Lastly, the Court notes that this conclusion does not prejudice the endeavours made by the States Parties to facilitate access to asylum procedures through their embassies and/or consular representations (see *N.D. and N.T. v. Spain*, cited above, § 222).

B. Articles 6 and 13 of the Convention

127. The applicants alleged that there had been a violation of Article 6 § 1 of the Convention in that it was impossible for them to pursue the execution of the Brussels Court of Appeal's judgment of 7 December 2016, ordering the Belgian State to execute the Aliens Appeals Board's judgment of 20 October 2016, which had instructed the Belgian authorities to issue the visas requested by them under Article 3 of the Convention. They considered that this also amounted to a violation of the right to an effective remedy within the meaning of the above-cited Article 13.

128. The relevant parts of Article 6 § 1 of the Convention provide:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

129. The Court considers that the applicants' grievance must be analysed as a complaint concerning the right to have a judicial decision enforced for the purposes of Article 6 of the Convention. In this connection, it reiterates that the requirements of Article 6 are stricter than, and absorb, those of Article 13 (see *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI).

130. As a preliminary point, the respondent Government raised a number of objections to the admissibility of this part of the application, on the grounds of the incompatibility *ratione materiae* of the complaints under Article 6 § 1 and of failure to exhaust the domestic remedies.

131. The question arises whether Belgium exercised jurisdiction over the applicants within the meaning of Article 1 of the Convention in respect of the proceedings brought on its national territory. The Court considers, however, that it is not required to rule on this question, given its findings as to the applicability of Article 6 § 1 (see paragraph 141 below).

132. In this connection, the respondent Government submitted that the applicants' complaint, which formally concerned the failure to comply with the judgment of 7 December 2016 ordering the Belgian State to execute, subject to daily penalties, the Aliens Appeals Board's judgment of 20 October 2016, in reality concerned the decisions on whether to grant the visas and, in consequence, a political right to which Article 6 § 1 of the Convention did not apply.

133. The applicants submitted that their complaint concerned a subjective civil right, recognised by the Brussels Court of Appeal's judgment of 7 December 2016, namely the right to secure the enforcement of a binding and enforceable judgment and to have the damage resulting from its non-execution brought to an end. They considered that the appeal court's order – and the accompanying penalties for non-compliance – concerned exclusively the "illegal action" committed by the State in failing to execute a binding decision delivered by an administrative court. As this "illegal action" was a fault within the meaning of the Belgian Civil Code, the court of appeal's instruction concerned a civil obligation to provide compensation in kind for the State's fault.

134. As it is common ground that there was a "dispute" (*contestation*), the Court's task is confined to determining whether it was over "civil rights and obligations".

135. As emphasised in this case by the Brussels Court of Appeal in its judgment of 7 December 2016 (see paragraph 32 above), and having regard to the state of Belgian law, the Belgian authorities – specifically in this case the Deputy Minister for Asylum and Migration and the Aliens Office – had, under Article 25 of the Community Code on Visas, a discretionary power of assessment in deciding whether or not to issue short-stay visas. Nonetheless, the applicants were able to apply to a court, namely the Aliens Appeals Board, which, by its judgment of 20 October 2016, stayed the execution of the authorities' decisions and had power to set them aside.

136. In such a situation, while Article 6 § 1 of the Convention may be applicable, it is on condition, however, that the advantage or privilege, once granted, gives rise to a civil right (see *Regner v. the Czech Republic* judgment ([GC], no. 35289/11, § 105, 19 September 2017).

137. As regards the nature of the right in question in the present case, the Court, like the Belgian Government, considers that the entry to Belgian territory which would have resulted from the visas being issued does not engage a civil right within the meaning of Article 6 § 1 of the Convention, as is also the case in respect of every other decision relating to immigration and the entry, residence and removal of aliens. It is settled case-law that these areas are outside the scope of Article 6 of the Convention (see, among other authorities, *Maaouia v. France* [GC], no. 39652/98, § 40, 5 October 2000, and *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 82-83, 4 February 2005).

138. Admittedly, the proceedings subsequently pursued by the applicants in the ordinary courts – in this case the Brussels Court of Appeal – in order to secure execution of the Aliens Appeals Board's judgment of 20 October 2016 concerned the State's refusal to execute a decision delivered by an administrative court, and the court of appeal, in establishing its jurisdiction under domestic law, held that the dispute before it concerned a civil right. That being stated, the Court considers that the object of those proceedings was solely to continue the proceedings challenging the merits of the authorities' decisions refusing to issue the visas.

139. In any event, the Court considers that the underlying proceedings do not become "civil" merely because their execution is sought before the courts and they give rise to a judicial decision. Equally, the proceedings to secure execution of the Brussels Court of Appeal's judgment of 7 December 2016 shared the same nature as the procedure for granting the visas requested by the applicants (see, *mutatis mutandis*, *Pierre-Bloch v. France*, 21 October 1997, § 51, *Reports* 1997-VI, and *Panjeheighalehei v. Denmark* (dec.), no. 11230/07, 13 October 2009).

140. Accordingly, Article 6 § 1 of the Convention is not applicable in the present case. This conclusion is not affected by the fact that the Belgian courts did not contest the applicability of Article 6 to the proceedings in issue. The Convention does not prevent the States Parties from granting more extensive judicial protection in respect of the rights and liberties guaranteed therein than that implemented by it (Article 53).

141. This part of the application must therefore be declared incompatible *ratione materiae* with the provisions of the Convention and, as such, inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

142. In any event, this finding that Article 6 is inapplicable makes it unnecessary to conduct any preliminary examination of whether jurisdiction exists within the meaning of Article 1 taken together with Article 6 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and French and notified in writing on 5 May 2020.

Johan CallewaertLinos-Alexandre Sicilianos
Deputy to the RegistrarPresident