



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 162/13
Luxembourg, 19 December 2013

Judgment in Case C-84/12
Rahmanian Koushkaki v Federal Republic of Germany

A ‘Schengen visa’ may be refused only on the grounds expressly provided for in the EU Visa Code

However, the national authorities have a broad discretion for determining whether one of those grounds of refusal applies to the applicant.

The EU Visa Code¹ establishes the procedures and conditions for issuing ‘Schengen visas’. These are uniform visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six-month period.

The Verwaltungsgericht Berlin (Berlin Administrative Court, Germany) requested the Court of Justice to state the conditions for the refusal of such a visa.

The administrative court must rule on an action brought by Mr Koushkaki, an Iranian national, against Germany, whose embassy in Tehran refused to issue him a ‘Schengen visa’ for the purposes of a visit to Germany. According to the embassy, there was significant doubt as to Mr Koushkaki’s intention to return to Iran before the expiry of the visa applied for.

By today’s judgment, the Court states that **the authorities of a Member State cannot refuse to issue a ‘Schengen visa’ to an applicant unless one of the grounds for refusal, listed in the Visa Code, can be applied to that applicant.**

According to the Court, decisions refusing to issue a uniform visa must be adopted under Article 32 of the Visa Code, which establishes a list of specific grounds on which visas are refused and which provides that the reasons for the refusal decision must be stated using the standard form set out in Annex VI to that code.

The Court also states that the system established by the Visa Code presupposes that the conditions for the issue of uniform visas are harmonised, which rules out there being differences between the Member States as regards the determination of the grounds for refusal of such visas. It observes, moreover, that the aim of facilitation of legitimate travel would be jeopardised if a Member State could decide, at its discretion, to refuse a visa to an applicant who meets all the conditions for issue set by the Visa Code by adding a ground for refusal to those listed in that code, even though the European Union legislature had not considered that such a ground might be relied upon to prevent third country nationals obtaining a uniform visa. Furthermore, the implementation of such a practice by a Member State would encourage visa applicants to address their applications as a priority to other Member States in order to obtain a uniform visa. The Visa Code is intended precisely to prevent such ‘visa shopping’. Likewise, the objective of preventing different treatment of visa applicants could not be achieved were it possible for the criteria for the issue of a uniform visa to vary depending on the Member State where the visa application is submitted.

However, in the examination of a visa application, the national authorities have a wide discretion so far as concerns the conditions for the application of those grounds and

¹ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1).

assessing the relevant facts, with a view to ascertaining whether one of those grounds for refusal can be applied to the applicant.

Such an assessment entails complex evaluations based, inter alia, on the personality of that applicant, his integration in the country where he resides, the political, social and economic situation of that country and the potential threat posed by the entry of that applicant to public policy, internal security, public health or the international relations of any of the Member States. Such complex evaluations involve, inter alia, predicting the foreseeable conduct of that applicant.

The Visa Code provides, inter alia, that **a visa is to be refused where there is reasonable doubt as to the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for.**

The Court points out in that regard **that there is no requirement that the competent authorities must, in order to determine whether they are required to issue a visa, be certain as regards whether or not the applicant intends to leave the territory of the Member States before the expiry of the visa applied for.** It is, however, their task to determine whether there is a reasonable doubt as regards that intention. The competent authorities must carry out an individual examination of the visa application which takes into account the general situation in the applicant's country of residence and the applicant's individual characteristics, inter alia, his family, social and economic situation, whether he may have previously stayed legally or illegally in one of the Member States and his ties in his country of residence and in the Member States. Particular consideration must be given to the risk of illegal immigration which, where identified, must lead the competent authorities to refuse the visa on the basis of the existence of a reasonable doubt as regards the applicant's intention to leave the territory of the Member States before the expiry of the visa.

So far as concerns the provision of the German legislation which provides that, where the conditions for issue of a visa provided for by the Visa Code are satisfied, the competent authorities have the power to issue a uniform visa to the applicant, but does not state that they are obliged to do so, the Court holds that the Visa Code does not preclude such a provision, in so far as it can be interpreted as meaning that the competent authorities cannot refuse to issue a uniform visa to an applicant unless one of the grounds for refusal of a visa provided for in the Visa Code can be applied to that applicant.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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