Court of Justice of the European Union
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Press and Information

Judgment in Joined Cases C-225/19 and C-226/19
R.N.N.S. and K.A. v *Minister van Buitenlandse Zaken*

A Member State which adopts a decision refusing a 'Schengen' visa because of an objection raised by another Member State must indicate, in that decision, the identity of the Member State concerned and the specific ground for refusal based on that objection, accompanied, where appropriate, by the reasons for that objection

An Egyptian national, living in Egypt (Case C-225/19), and a Syrian national, living in Saudi Arabia (Case C-226/19), applied to the Minister van Buitenlandse Zaken (Minister for Foreign Affairs, Netherlands, 'the Minister') for 'Schengen' visas [1] in order to visit members of their respective families living in the Netherlands. Their applications were refused however and, in accordance with the Visa Code, that refusal was notified to them by means of a standard form, [2] containing 11 boxes to be ticked depending of the reason for the refusal. In this case, since the sixth box was ticked, the refusal of a visa was based on the fact that the persons concerned had been considered to be a threat to public order, internal security, public health or the international relations of one of the Member States. [3] That refusal of a visa was the result of objections raised by Hungary and Germany, which had been consulted beforehand by the Netherlands authorities in the context of the procedure laid down by the Visa Code. [4] However, the forms sent to the persons concerned did not give any indication of the identity of those Member States, the specific ground for refusal out of the four possibilities (threat to public order, internal security, public health or the international relations of one of the Member States) or the reasons they had been considered to be such a threat.

The persons concerned lodged complaints with the Minister, which were rejected. They then brought actions [5] before the Rechtbank Den Haag, zittingsplaats Haarlem (District Court, The Hague, sitting in Haarlem, Netherlands), arguing that they were deprived of effective judicial protection, since they were not able to challenge those decisions as to their substance. That court decided to ask the Court of Justice, first, about the statement of reasons that must accompany a decision refusing a visa, where that refusal is justified by an objection raised by another Member State, and, secondly, about the possibility of reviewing that ground for refusal, in the context of an appeal against a decision refusing a visa, and the scope of such judicial review.

Findings of the Court

In the first place, the Court holds that a Member State which has adopted a decision refusing a visa because of an objection raised by another Member State must indicate, in that decision, the identity of the latter Member State and the specific ground for refusal based on that objection, accompanied, where appropriate, by the essence of the reasons for that objection.

[1] Visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six-month period. That visa is issued by a Member State, in accordance with Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (OJ 2009 L 243, p. 1), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 (OJ 2013 L 182, p. 1) ('the Visa Code').
[2] Form set out in Annex VI of the Visa Code and referred to in Article 32(2) of that code.
[3] Ground for refusal set out in Article 32(1)(a)(vi) of the Visa Code.
[4] Prior consultation procedure laid down in Article 22 of the Visa Code.
[5] Appeal provided for in Article 32(3) of the Visa Code.

In that regard, the Court points out that the characteristics of an appeal against a decision refusing a visa must be determined in accordance with Article 47 of the Charter of Fundamental Rights of the European Union, which guarantees the right to an effective remedy. Under that provision, the person concerned must be able to ascertain the reasons upon which the decision taken against him or her is based, either by reading the decision itself or by requesting and obtaining notification of those reasons. In addition, the Court states that, even though the statement of reasons corresponding to the sixth box on the standard form is predefined, the competent national authority must indicate the necessary information in the section entitled 'Remarks'. Furthermore, the Court notes that there is a new standard form in which the various possible grounds for refusal, which were previously referred to indiscriminately, are now set out separately. [6]

In the second place, the Court holds that the courts of a Member State which has adopted a decision refusing a visa because of an objection raised by another Member State cannot examine the substantive legality of that objection. That is why the Member State which has adopted the decision refusing a visa must also specify, in that decision, the authority which the applicant may contact in order to ascertain the remedies available to that end in the Member State which raised an objection.

In reaching that conclusion, the Court notes, first of all, that the purpose of the judicial review carried out by the courts of the Member State which has adopted the decision refusing a visa is indeed to examine the legality of that decision. However, the competent national authorities enjoy a wide discretion in the examination of visa applications, as regards the conditions for applying the grounds for refusal laid down in the Visa Code and the evaluation of the relevant facts. The judicial review of that discretion is therefore limited to ascertaining whether the contested decision rests on a sufficiently solid factual basis and verifying that it is not vitiated by a manifest error. In that regard, where the refusal of a visa is justified by the fact that another Member State objected to the issuing of that visa, those courts must be able to verify that the procedure for prior consultation of the other Member States described in the Visa Code has been applied correctly and, in particular, to check whether the applicant was correctly identified as the subject of the objection concerned. Moreover, those courts must be able to verify that the procedural guarantees, such as the obligation to state reasons, have been respected. However, the review of the merits of the objection raised by another Member State is a matter for the national courts of that other Member State.

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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[6] Annex III of Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code) (OJ 2019 L 188, p. 25).