



Q&A on the case *M.N. and Others v. Belgium*¹

This document is a tool for the press, issued in the context of notification of the above judgment. It does not bind the Court.

What does the case concern?

The case concerns a Syrian family who complained about the Belgian authorities' refusal to grant them the short-term visas that they had requested from the Belgian Embassy in Beirut. They lived in Aleppo (Syria) and wished to obtain authorisation to enter Belgian territory, in order to claim asylum once in that country.

Is this the first time that the European Court of Human Rights has examined this kind of case?

Yes. This is the first case addressing this issue.

Which of the Court's judicial formations ruled on this application?

The Belgium Government was given notice of the application on 26 April 2018². At the end of the communication procedure, the case was assigned to a Chamber, which relinquished jurisdiction in favour of the Grand Chamber on 20 November 2018. It is therefore the Grand Chamber which has ruled for the first time on the case.

What were the applicants' complaints?

The applicants relied on Articles 3 (prohibition of torture and of inhuman or degrading treatment) and Article 13 (right to an effective remedy) of the Convention. In their view, the Belgian authorities' refusal to issue them with so-called "humanitarian" visas exposed them to a situation in breach of Article 3.

They also relied on Article 6 § 1 (right to a fair hearing), and complained about the failure to execute a judgment delivered in their favour by the Brussels Court of Appeal concerning their visa applications.

Why was the application dismissed?

The applicants' complaints were all declared inadmissible because they fell outside the scope of the Convention.

Is this decision final?

Yes.

Why does the Convention not apply to the applicants' complaints concerning the risk of ill-treatment (Articles 3 and 13)?

▪ **Limit on the scope of application of the Convention**

Article 1 (Obligation to respect human rights) of the Convention limits its scope to "persons" within the jurisdiction of the States Parties. Exercise of jurisdiction is a threshold criterion for a respondent State to be held responsible for acts or omissions which give rise to an alleged breach of the Convention.

¹ See press release.

² In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges may decide to bring to the attention of a Convention State's Government that an application against that State is pending before the Court (the so-called "communications procedure"). Further information about the procedure after a case is communicated to a Government can be found in the Rules of Court.

- ***Were the applicants in the present case within the jurisdiction of the Belgian State?***

No, the applicants did not come within the jurisdiction of the Belgian State in respect of the events which they complained about under Articles 3 and 13 of the Convention.

The applicants were not in the territory of the Belgian State or any area over which that State exercised elements of governmental authority or control (particularly in Syrian or Lebanese territory). Nor did they have any pre-existing ties of family or private life with Belgium. Furthermore, the applicants did not allege that they had been subjected to treatment in breach of the Convention by the staff of the Belgian embassy in Beirut. Equally, the embassy staff had never exercised *de facto* control over the applicants.

- ***Do the visa applications and procedures conducted before the Belgian authorities not bring the applicants within the Belgian State's jurisdiction?***

No. The mere fact that an applicant initiates a procedure (in the present case, a visa application) in a State Party to the Convention with which he or she has no connecting tie is not sufficient to bring him or her within the jurisdiction of that State. Otherwise, this would amount to enshrining a near-universal application of the Convention on the basis of the unilateral choices of an individual, irrespective of where in the world they find themselves, and thus to create an unlimited obligation on the Contracting States to allow entry to any person who might be at risk of ill-treatment contrary to the Convention outside their jurisdiction.

Why does the right to a fair hearing not apply in this case?

Entry to the territory of a State and the granting of visas are not “civil” rights, a fact which excludes them from the scope of Article 6 § 1 of Convention. The Court is not therefore competent to examine the applicants’ complaint concerning the failure to execute the Brussels Court of Appeal’s judgment.

Are there any other important points to note in this decision?

The Court specifies that its conclusion in the present case does not prejudice the endeavours being made by the States Parties to facilitate access to asylum procedures through their embassies and/or consular representations.