

[Home](#) > UK - Court of Appeal, 26 July 2002, El-Ali v Secretary of State for the Home Department [2002] EWCA Civ 1103

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Country of Decision:

United Kingdom

Country of Applicant:

Lebanon

Palestinian Territory

Date of Decision:

26-07-2002

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[2002] EWCA Civ 1103

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Court Name:

Court of Appeal

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Relevant Legislative Provisions:

International Law > [1951 Refugee Convention](#) [1] > [Art 1](#) [2]

International Law > [1951 Refugee Convention](#) [1] > Art 2

International Law > [1951 Refugee Convention](#) [1] > [Art 3](#) [3]

International Law > [1951 Refugee Convention](#) [1] > Art 4

International Law > [1951 Refugee Convention](#) [1] > Art 13

International Law > [1951 Refugee Convention](#) [1] > Art 15

International Law > [1951 Refugee Convention](#) [1] > Art 16

International Law > [1951 Refugee Convention](#) [1] > Art 17

International Law > [1951 Refugee Convention](#) [1] > Art 21

International Law > [1951 Refugee Convention](#) [1] > Art 22

International Law > [1951 Refugee Convention](#) [1] > Art 24

International Law > [1951 Refugee Convention](#) [1] > Art 26

International Law > [1951 Refugee Convention](#) [1] > Art 27

International Law > [1951 Refugee Convention](#) [1] > [Art 28](#) [4]

International Law > [1951 Refugee Convention](#) [1] > [Art 31](#) [5]

International Law > [1951 Refugee Convention](#) [1] > [Art 32](#) [6]

International Law > [1951 Refugee Convention](#) [1] > [Art 33](#) [7]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8] > [Art 12](#) [9]

Headnote:

Art 1D of the 1951 Refugee Convention only applies to Palestinians who met two criteria. First of all, they had to have been in receipt of United Nations Relief and Works Agency for Palestinian Refugees in the Near East (?UNRWA?) protection or assistance on or before 28 July 1951 which was the date that the Convention was adopted. Secondly, whilst UNRWA?s mandate continued, if such Palestinians had left UNRWA?s field of operation they would have to show that they were in ?exceptional circumstance?; for example if they were prevented from returning to UNRWA?s field of operation.

Facts:

El-Ali was a Palestinian who was born in Kuwait but had lived nearly all his life in the Lebanon, where he was registered with UNRWA. His parents came from a village near Tiberius in Israel. He came to the UK on 21 September 1998 and claimed asylum. He argued, amongst other things that he should gain the benefit of Art 1D of the 1951 Refugee Convention.

Diaz, the second applicant, was also a Palestinian from the Lebanon who came to the UK on 7 June 1998. His asylum claim was based upon a fear of Hezbollah in Lebanon. However, the Tribunal in his case found that he did not have a well-founded fear of persecution. He also argued that he should gain the benefit of Art 1D of the 1951 Refugee Convention.

Decision & Reasoning:

The Court considered the correct interpretation of Art 1D of the 1951 Refugee Convention, before the Qualification Directive came into force. It provides that:

"This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance."

"When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.?"

It held that the object of this provision was Palestinian refugees and that it had the purpose of making special provision for them, given that they enjoyed United Nations assistance and protection provided by UNWRA. The Court made findings on three questions.

First, it held that only Palestinians who had been in receipt of UNRWA assistance when the Refugee Convention was adopted on 28 July 1951 fell within the scope of Art 1D.

Secondly, the words ?such protection or assistance has ceased for any reason? in Art 1D could only mean ?the cessation of UNRWA assistance? overall, that is to say when United Nations decides to end that Agency?s mandate. It did not include the cessation of assistance consequent

on a Palestinian refugee leave a territory in which he or she is registered and receiving assistance except in 'exceptional circumstance?', for example where the refugee is actually prevented from returning there by the relevant authorities.

Thirdly, if an individual passed the first two limbs of the test of the phrase, 'these persons shall ipso facto be entitled to the benefit of the Convention' is automatic and, thus, they should be entitled to the benefits of the Convention. This finding justified the restrictive interpretation to the other elements of the definition because 'so great a parcel of rights would not likely be conferred...unless the class of its recipients were clear and certain...?.'

Outcome:

Appeal dismissed.

Observations/Comments:

The decision in El-Ali has been criticised in the leading academic text on international refugee law (Goodwin-Gill and McAdam 'The Refugee in International Law, 2nd Edition, 2007) and is inconsistent with UNHCR's position (See UN High Commissioner for Refugees, UNHCR Revised Statement on Art 1D of the 1951 Convention, October 2009, available at:

<http://www.unhcr.org/refworld/docid/4add79a82.html> [10].

The Court of Justice of the European Union held in Bolbol [2010] EUECJ C31-09, in interpreting Art 12 that:

'Contrary to the line of argument developed by the United Kingdom Government, it cannot be maintained, as an argument against including persons displaced following the 1967 hostilities within the scope of Art 1D of the Geneva Convention, that only those Palestinians who became refugees as a result of the 1948 conflict who were receiving protection and assistance from UNWRA at the time when the original version of the Geneva Convention was concluded in 1951 are covered by Art 1D of that convention, and therefore, by Art 12(1)(a) of the Directive.'

It concluded that:

'...for the purposes of the first sentence of Art 12(1)(a) of the Directive 2004/83, a person receives protection or assistance from an agency of the United Nations other than UNHCR, when that person has actually availed himself of that protection or assistance.'

Consequently the Court of Appeal's finding on the first issue should not be applied in the UK.

Attachment(s):

 [Judgement.pdf](#)[11]

Other sources cited:

Takkenberg, The Status of Palestinian Refugees in International Law (Clarendon Press 1998, Grahl-Madsen).

The Status of Refugees in International Law, Sijthoff-Leyden 1966.

Hathaway The Law of Refugee Status, Butterworths.

Links:

- [1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>
- [2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>
- [3] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#3>
- [4] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#28>
- [5] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#31>
- [6] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#32>
- [7] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#33>
- [8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [9] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 12 QD>
- [10] <http://www.unhcr.org/refworld/docid/4add79a82.html>
- [11] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Judgement_0.pdf