
The Court of Justice of the European Union and Palestinian refugees ? Case C-364/11, El Kott

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This article should be read in conjunction with the EDAL case summary, please click [here](#)[1].

In December 2012 the Court of Justice of the European Union (CJEU) reached a decision in an, at first sight, individual case concerning three stateless men of Palestinian origin, which could positively settle the legal position of tens of thousands Palestinian refugees arriving in Europe.

As regards their personal stories, Mr. El Kott lived in the Ein El-Hilweh UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East) refugee camp in Lebanon. He had a job but since he couldn't support his family he started to sell alcohol in the camp. As a consequence, a terrorist group Jund El-Sham set fire to his house and threatened him. He fled from the camp and left Lebanon. Mr. Ismail also lived in the Ein El-Hilweh camp with his family. During armed clashes between the Fatah and the Jund el-Sham, the extremists wanted to use his house. When he refused, he was threatened and suspected as being an "enemy agent"; therefore he had to flee Lebanon. Mr. Radi's home and shop in the Nahr el-Bared UNRWA refugee camp in Lebanon were destroyed as a result of clashes between the Lebanese army and Fatah. Mr. Radi, with his parents and siblings, stayed with an acquaintance in Tripoli. However, Lebanese soldiers insulted, mistreated, arrested, tortured and humiliated them. Mr. Radi left the country with his father.

All three men arrived in Hungary and applied for asylum. The Office of Immigration and Nationality (OIN) refused to grant them refugee status. Two men received tolerated stay and one was granted subsidiary protection. All three men lodged requests for judicial review against the decisions of the OIN, refusing their refugee status.

During the summer of 2011, the Metropolitan Court of Budapest ordered the three cases to be joined and having noted the severity of the problem, decided to address to the CJEU the following two questions regarding Article 12(1)(a) of [Directive 2004/83](#) [2]: in what circumstances can the protection of Palestinians by UNRWA near their former place of residence be considered to have terminated, and whether in cases of cessation of protection, refugee status should be automatically granted.

The Court's decision indirectly concerns the interpretation of Article 1D of the [Geneva Convention](#) [3] which was intended to deal with the situation of the Palestinian refugees after the establishment of the State of Israel and the post-war land occupancies in 1967. These two historical events have led to that rare situation where a UN decision caused displacement of tens of thousands of

Palestinians. The Geneva Convention tried to regularise this particularly serious situation.

The UN wanted to establish an originally *ad hoc* and temporary system for Palestinians in addition to the general refugee protection of the Convention; however they did not want to allow Palestinians the same protection as other refugees in more distant countries (mostly because the Western countries did not want to take responsibility for the problems caused by the influx of refugees). However, they added a rule that if this parallel protection terminates for any reason, Palestinian refugees could automatically be granted refugee status in any Member State of the Convention so that they would not be left without any protection. These special rules concerning Palestinians are not unique in history: similar acts were applied to Korean refugees during the bloody Korean war, but the 'Reconstruction Agency' (UNKRA) has been abolished and these special acts for Koreans were repealed in 1960.

The protection system for persecuted persons and refugees from the State of Israel would have had two pillars: the Palestinian Conciliation Committee of the UN and the UNRWA. However the first one, which was intended for security duties, never began operations and the second can only provide very limited social and humanitarian relief in some countries and regions with Palestinian populations (such as Syria, Lebanon, Jordan, Gaza and West Bank, including East Jerusalem). UNRWA does not have any armed forces or security services; therefore they are not able to control violence in Palestinian refugee camps and cannot protect civilian victims against the military activities of the Israeli army.

The Court found that because Article 1D of the Geneva Convention 'simply excludes from the scope of the Convention persons who 'are at present receiving' protection or assistance,' mere absence or voluntary departure from UNRWA's area of operations is not enough to indicate cessation of such protection or assistance. [1] Since, according to the CJEU, the fact alone that an applicant for refugee status has departed from UNRWA's area of operations cannot, regardless of the reasons for the departure, end the exclusion from refugee status laid down in the first sentence of Article 12(1)(a) of [Directive 2004/83](#) [2], it is necessary to identify the conditions under which the assistance provided by UNRWA may be regarded as having ceased within the meaning of the second sentence of Article 12 (1) (a). [2]

However, if the person was forced to leave, it may lead to a finding that the assistance of UNRWA has ceased. According to the CJEU, protection will be deemed to have terminated, not only if UNRWA ceases to exist or stops functioning, but also if the refugee can live safely in a particular territory (for example in a Lebanese refugee camp) or if UNRWA can no longer provide support and services pursuant to its mandate. Although the Court found that being forced to leave UNRWA's area of operations is enough to constitute cessation of assistance, it left it to the discretion of national authorities to decide whether the applicant's departure was due to reasons beyond his control. [3] The CJEU also noted as guidance for national authorities that 'as regards the examination, in an individual case, of the circumstances giving rise to the departure from the UNRWA area of operations, the national authorities must take account of the objective of Article 1D of the Geneva Convention, to which Article 12(1)(a) of [Directive 2004/83](#) [2] refers, namely to ensure that Palestinian refugees continue to receive protection, as Palestinian refugees, until their position has been definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations.' [4]

Nonetheless, the Court stated that 'a Palestinian refugee must be regarded as having been forced to leave UNRWA's area of operations if his personal safety is at serious risk and if it is impossible for that agency to guarantee that his living conditions in that area will be commensurate with the mission entrusted to that agency.' [5] According to the CJEU, if the safety of a refugee is at serious risk 'due to, for example, civil war, military operations or gang warfare in refugee camps ?

and UNRWA cannot perform its tasks pursuant to its mandate, the protection of refugees should be considered terminated. This means that, following an individual assessment taking into account all relevant individual factors, the above listed examples of serious human rights violations ? especially related to Articles 2, 3 and 5 of the [European Convention of Human Rights](#) [4] ? may be regarded as compelling reasons to leave UNRWA?s area of operations.

The Court found that "the fact that the persons concerned are *ipso facto* entitled to the benefits of [Directive 2004/83](#) [2] within the meaning of Article 12(1)(a) does not entail an unconditional right to refugee status." [6] In such a case, the applicant "is not necessarily required to show that he has a well-founded fear of being persecuted within the meaning of Article 2(c) of the [Directive](#) [2], but must nevertheless submit an application for refugee status, which must be examined by the competent authorities of the Member State responsible. In carrying out that examination, those authorities must verify not only that the applicant actually sought assistance from UNRWA, and that the assistance has ceased but also that the applicant is not caught by any of the grounds for exclusion laid down in Article 12(1)(b) or (2) and (3) of the [Directive](#) [2]." [7]

The decision of the CJEU therefore implies that Palestinians have options other than protection ?on their own territory? which ? through no fault on their part ? has never become a complete reality and which has never provided the same safe and peaceful life as for other refugees who fled their country due to persecution.

Hungarian Helsinki Committee

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(This journal entry is an expression of the Hungarian Helsinki Committee?s own views, and not those of EDAL. If you would like to share any comments, you can contact us [here](#) [5].)

[1] C-364/11, Mostafa Abed El Karem El Kott and Others v Bevándorlási és Állampolgársági Hivatal, 19 December 2012, 49.

[2] Ibid. 55.

[3] Ibid. 61.

[4] Ibid. 62.

[5] Ibid. 63.

[6] Ibid. 75.

[7] Ibid. 76.

Keywords:

Cessation of protection

Exclusion from protection

Personal circumstances of applicant

Actors of protection

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Stateless person
Serious harm

Tags:

CJEU
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Links:

- [1] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-36411-mostafa-abed-el-karem-el-kott-chadi-amin-radi-hazem-kamel-ismail-v-bevandorlasi>
- [2] <https://www.asylumlawdatabase.eu/en/content/en-qualification-directive-directive-200483ec-29-april-2004>
- [3] <https://www.asylumlawdatabase.eu/en/content/en-refugee-convention-28-july-1951>
- [4] <https://www.asylumlawdatabase.eu/el/node/195>
- [5] <http://www.asylumlawdatabase.eu/en/content/contact-us>