



Press and Information

Court of Justice of the European Union

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Judgment in Case C-364/11

El Karem El Kott and Others v Bevándorlási és Állampolgársági Hivatal

A Palestinian who has been forced to leave the UNRWA area of operations in which he is no longer able to benefit from assistance provided by that agency may qualify as a refugee without being required to show fear of persecution

Where such a person has left the UNRWA area of operations voluntarily, he cannot be granted refugee status without being required to show fear of persecution

The United Nations established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in order to provide aid and assistance to displaced Palestinians in Lebanon, Syria, Jordan, the West Bank and the Gaza Strip. UNRWA services are, in principle, available to Palestinians and their descendants living in those territories when they have lost both their home and livelihood as a result of conflict in the region.

The Geneva Convention¹ defines the term ‘refugee’ as applying, inter alia, to any person with a ‘well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion’. It also identifies the circumstances in which a person may qualify as a refugee. In the EU, the obligations under the convention are set out in Directive 2004/83².

Referring to the Geneva Convention, the directive provides that persons who are currently receiving protection or assistance from United Nations organs or agencies other than the United Nations High Commissioner for Refugees, such as UNRWA, are excluded from being refugees. However, where such protection or assistance has ceased for any reason, without the position of such persons being definitely settled, those persons are *ipso facto* entitled to protection under the directive.

A number of stateless persons of Palestinian origin were forced to leave UNRWA refugee camps in Lebanon as a result of the destruction of their homes during clashes between armed groups or as a result of death threats. Subsequently, they went to Hungary, where they applied for refugee status. Although the Hungarian authorities rejected their applications for asylum, they permitted the applicants to remain in Hungary.

The Palestinian applicants for refugee status have brought proceedings before the Fővárosi Bíróság (Budapest Municipal Court, Hungary), which asks the Court of Justice whether, in those circumstances, those persons should automatically be recognised as refugees in the EU.

By its judgment today, the Court points out, first, that persons who are at present receiving assistance from UNWRA cannot qualify as refugees. Moreover, **the fact that such persons are merely absent or have voluntarily departed from UNRWA’s area of operations is not sufficient to end the exclusion from refugee status.**

The Court sets out, second, the circumstances in which assistance from UNRWA may be deemed to have ceased in such a way that Palestinian applicants for asylum are *ipso facto* entitled to the

¹ The Geneva Convention of 28 July 1951 relating to the Status of Refugees.

² Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12).

refugee status conferred by the directive. Accordingly, UNRWA assistance ceases **not only as a result of the abolition of that agency but also where it is impossible for it to carry out its mission**. Similarly, **assistance may also cease as a result of circumstances which have forced the person concerned to leave the UNRWA area of operations as they are beyond that person's control**. That interpretation is consistent with the objective of ensuring that Palestinian refugees continue to receive protection by means of effective protection or assistance.

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.

Third, the Court states that, where UNRWA assistance has ceased, the persons who have lost that protection are *ipso facto* entitled to the protection conferred by the directive. Consequently, **it cannot be said that the only right available for the persons concerned where UNRWA assistance has ceased and the ground for exclusion is no longer applicable is that of applying for refugee status**.

Lastly, the Court points out that the fact that the persons concerned are *ipso facto* entitled to the protection conferred by the directive **does not, however, entail an unconditional right** to refugee status. While they are not necessarily required to show that they have a well-founded fear of being persecuted, they must nevertheless submit, as in the present case, an application for refugee status, which must be examined by the competent authorities. 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 the directive. Those grounds exclude from refugee status, *inter alia*, persons who have committed a crime against peace, a war crime, a crime against humanity or a serious non-political crime and persons who have been guilty of acts contrary to the purposes and principles of the United Nations.

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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