



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-31/09  
Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal

**Advocate General Sharpston considers that Directive 2004/83 offers automatic recognition of refugee status to persons who, as a result of external circumstances beyond their control, have ceased to receive protection or assistance from UN bodies other than the UNHCR**

*This recognition stems from the obligations of international protection found in the 1951 Geneva Convention Relating to the Status of Refugees*

The 1951 Geneva Convention<sup>1</sup> defines who, in what circumstances, is to be treated as a refugee and how they are to be cared for. All EU Member States are signatories to that Convention and, at EU level, their obligations are reflected in the Qualification Directive<sup>2</sup>. Article 1A of the Convention provides that the term 'refugee' shall apply to any person who, owing to well founded fear of persecution, is unwilling to avail himself of the protection of the country of his nationality or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, unwilling to return to it.

Article 1D of the 1951 Convention states that the Convention does not apply to persons receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees (UNHCR), such as the United Nations Relief and Works Agency for Palestinian Refugees in the Near East.<sup>3</sup> However, when such protection or assistance has ceased for any reason, without the position of such persons being definitively settled, they shall automatically be entitled to the benefits of the Convention. Article 12(1)(a) of the Qualification Directive reproduces the provisions of Article 1D in a European law context.

In 2007 Nawras Bolbol, a stateless Palestinian, arrived in Hungary together with her spouse on a visa from the Gaza Strip. She applied to the Hungarian immigration authorities for refugee status because she did not want to return to the Gaza Strip, which she stated was unsafe on account of the conflict between Fatah and Hamas.

Ms Bolbol was not registered with UNRWA whilst in the Gaza Strip but claims to be entitled to its protection and assistance through a family connection. She states that as a Palestinian now residing outside the UNRWA zone, she should be recognised automatically as a refugee.

The Hungarian immigration authorities refused Ms Bolbol's application on the ground that she did not qualify as a refugee under Article 1A of the 1951 Geneva Convention and was not automatically entitled to be treated as such under Article 1D.

<sup>1</sup> Geneva Convention of 28 July 1951 Relating to the Status of Refugees.

<sup>2</sup> 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.

<sup>3</sup> The United Nations established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) with a view to providing assistance and protection to displaced Palestinians in Lebanon, Syria, Jordan, the West Bank and the Gaza Strip. UNRWA's services are available, in principle, to Palestinians living in these territories who have lost both home and means of livelihood on account of the 1948 conflict and who are registered with the agency. Descendants of such persons are likewise eligible for registration. UNRWA also offers aid to certain groups of non-registered persons (such as those living in refugee camps). Today, some 4.6 million displaced Palestinians are eligible for UNRWA services.

Ms Bolbol challenged this decision before the Fővárosi Bíróság (Budapest Metropolitan Court, Hungary), which has asked the Court of Justice to clarify the circumstances under which a person may be recognised as a refugee under Article 1D of the 1951 Geneva Convention and Article 12(1)(a) of the Qualification Directive.

In her Opinion today, Advocate General Eleanor Sharpston notes, first, that only displaced Palestinians resident in the UNRWA zone are entitled to UNRWA's protection and assistance. If such persons actually avail themselves of UNRWA's protection and assistance, they are excluded from the scope of the Convention whilst they are in receipt of that assistance.

The Advocate General emphasises that **persons entitled to seek protection with UNRWA but who did not actually make use of this possibility remain covered by the Geneva Convention**. A displaced Palestinian who is not receiving UNRWA assistance is therefore to be treated like any other applicant for refugee status and is subject to individual assessment under the qualification criteria defined in the Convention, but is not automatically entitled to be treated as a refugee.

Advocate General Sharpston suggests then that a displaced Palestinian who was receiving assistance from UNRWA but who, for whatever reason, can no longer obtain this assistance ceases to be excluded from the scope of the Convention. In this context, she opines that if the person concerned can no longer benefit from UNRWA assistance **as a result of external circumstances** over which he had no control, he has an automatic right to refugee status under the Convention. By contrast, if he can no longer benefit from UNRWA assistance **as a result of his own actions**, he cannot claim automatic refugee status. He is, however, entitled to have an application for refugee status assessed on its merits.

The Advocate General considers that the interpretation of the relevant provisions of the Directive should reflect that of the Convention. In substance, this means that a person comes within the scope of the exclusion set out in Article 12(1)(a) of the Directive if he has actually availed himself of protection or assistance provided by a UN organ or agency other than the UNHCR. If such a person has ceased, otherwise than of his own volition, to benefit from the protection or assistance that he enjoyed immediately previously, he is automatically entitled to refugee status under the Directive. A person not falling within Article 12(1)(a) is still entitled to be assessed for refugee status or given subsidiary protection under the general scheme of the Directive.

As to the question of how to prove receipt of protection or assistance, the Advocate General rejects the standpoint that only actual proof of UNRWA registration would suffice. Although she considers that such evidence would constitute an irrebuttable presumption that an applicant had been in actual receipt of assistance, she recalls that UNRWA sometimes provides assistance without registration. **Registration is thus only a matter of evidence, not of substance** and the practical problems that any displaced person seeking refugee status may face in proving his entitlement have to be taken into consideration when assessing whether a displaced Palestinian was previously under UNRWA's protection.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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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*Unofficial document for media use, not binding on the Court of Justice.*

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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