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Advocate General's Opinion in Case C-563/22 | Zamestnik-predsedaťel na Darzhavna agentsia za bezhantsite (Refugee status – Stateless person of Palestinian origin)

Advocate General Emiliou: Palestinian applicants for refugee status can claim that UNRWA's protection has 'ceased' in the light of the general living conditions prevailing in the Gaza Strip

Applicants must not be obliged to show that they are specifically targeted or affected by those conditions due to their personal circumstances

SN and LN are two stateless persons of Palestinian origin, who used to live in the Gaza Strip. They are registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). In August 2022, they sought asylum for the second time in Bulgaria, after the Bulgarian authorities rejected their first applications for international protection.

Under the EU Status Directive ¹, stateless persons of Palestinian origin registered with UNRWA are excluded from obtaining refugee status. However, that exclusion no longer applies if UNRWA's protection or assistance has 'ceased'. The Sofia Administrative Court (Bulgaria) referred a series of questions concerning the interpretation of the Status Directive to the Court of Justice.

In today's Opinion, Advocate General Nicholas Emiliou recalls that the Court has found that the cessation of UNRWA's protection or assistance happens not only if that agency ceases to exist, but also if the person concerned has been forced to leave UNRWA's area of operation for reasons unconnected with his or her will ². In their assessment, **competent national authorities must consider not only the reasons that led the applicants to leave UNRWA's area of operation, but also whether it is currently possible for them to return there.**

For people living in the Gaza Strip - where the level of insecurity and the living conditions have been changing rapidly, especially since the events taking place there since 7 October 2023 - that means that precise and up-to-date information as to the general situation *currently* prevailing in that area must be taken into account.

It cannot be excluded that part of UNRWA's area of operation (in this case, the Gaza Strip) may experience systemic deficiencies of such gravity that there is a substantial risk that any person sent back there would find himself or herself in a situation where he or she is unable to meet his or her most basic needs such as access to food, personal hygiene and a place to live and which undermines his or her physical or mental health or puts him or her in a state of degradation incompatible with human dignity contrary to the Charter of Fundamental Rights of the European Union.

In such a situation, evidence of such general living conditions suffices. Applicants cannot be required to demonstrate that those general conditions are 'undignified' for them, in an individualised manner, for example, because of their particular vulnerability. Nor that they are specifically affected by those

conditions due to factors particular to their personal circumstances, such as for example, the fact that their house is located in a street regularly targeted by missiles (as seems to be the case of SN and LN).

However, Advocate General Emiliou notes that the right to refugee status is not unconditional even in such a situation. The person concerned must always apply for international protection. Furthermore, an individual assessment is still required to verify, among other things, whether the individual is not excluded from being a refugee under the EU Status Directive ³.

Advocate General Emiliou also examines the situation when a stateless person of Palestinian origin applies for refugee status for the second time but relies, for the first time, in that application, on the specific regime in the EU Status Directive available to Palestinians registered with UNRWA, as opposed to the general criteria that applies to other asylum-seekers. In such cases, **those authorities are obliged to reassess the factual elements relating to the reasons why the person concerned has left the area of operation of UNRWA, in the light of the requirements specified in that provision.** This assessment must take place even where those elements were already considered in the first rejected application.

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

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¹ [Directive 2011/95/EU](#) of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

² Judgment of 5 October 2023, [C-294/22](#), *Refugee Status of a Palestinian stateless person*.

³ Examples of situations that would exclude an applicant from refugee status would be where the applicant has committed a crime against peace, war crime, or a crime against humanity; or where the applicant has committed a serious non-political crime outside the country of refuge.