Reports of Cases

OPINION OF ADVOCATE GENERAL
EMILIOU
delivered on 4 May 2023 [1]

Case C-294/22

Office français de protection des réfugiés et apatrides (OFPRA)
v
SW

(Request for a preliminary ruling from the Conseil d'État (Council of State, France))

(Reference for a preliminary ruling – Area of freedom, security and justice – Asylum – Refugee status or subsidiary protection status – Directive 2011/95/EU – Conditions to be met by third-country nationals or stateless persons claiming refugee status – Stateless persons of Palestinian origin having availed themselves of the assistance of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) – Article 12(1)(a) – Exclusion from being a refugee – Cessation of UNRWA protection or assistance – Conditions to be entitled *ipso facto* to the benefits of Directive 2011/95 – Meaning of 'when such protection or assistance has ceased for any reason')

I. Introduction

1. SW, the applicant in the main proceedings, is a stateless person of Palestinian origin, born in Lebanon, under the protection of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). He left Lebanon due to his critical health condition and is seeking asylum in France, claiming that UNRWA's protection or assistance in respect of him has 'ceased', since it is impossible for him to obtain, in Lebanon, the medical care and treatment that he needs to survive. [2]

[1] Original language: English.

[2] At the end of 2021, 5.8 million Palestinian refugees were under UNRWA's mandate, whilst 21.3 million refugees were under the protection of the United Nations High Commissioner for Refugees (UNHCR) (see UNHCR, 16 June 2022, 'Global displacement hits another record, capping decade-long rising trend', available online at: https://www.unhcr.org/news/press/2022/6/62a9d2b04/unhcr-global-displacement-hits-record-capping-decade-long-rising-trend.html).

2. Within that context, the Court of Justice is called upon to interpret Article 12(1)(a) of Directive 2011/95/EU [3] once again. [4] Specifically, it has the opportunity to determine whether and, if so, in which circumstances, UNRWA's protection or assistance in respect of a stateless person of Palestinian origin can be considered to have 'ceased', within the meaning of that provision, and that person to be entitled *ipso facto* to the benefits of that directive, as a refugee, in a situation where he or she cannot receive the medical care that he or she needs in UNRWA's area of operations.

II. Legal framework

A. International law

1. The Geneva Convention

3. Article 1(D) of the Geneva Convention [5] provides:

'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.'

2. United Nations General Assembly resolutions on UNRWA

4. UNRWA was established by United Nations General Assembly Resolution No 302 (IV) of 8 December 1949. Its mandate has been regularly renewed, and its current mandate expires on 30 June 2023. UNRWA's area of operations covers Lebanon, Syria, Jordan, the West Bank (including East Jerusalem) and the Gaza Strip.

[3] Directive 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 (OJ 2011 L 337, p. 9).

[4] See judgments of 17 June 2010, *Bolbol* (C-31/09, EU:C:2010:351; 'the judgment in *Bolbol*'); of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826; 'the judgment in *Abed El Karem El Kott and Others*'); of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584; 'the judgment in *Alheto*'); of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)* (C-507/19, EU:C:2021:3; 'the judgment in *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*'); and of 3 March 2022, *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)* (C-349/20, EU:C:2022:151; 'the judgment in *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)*'). Several of those judgments concern the interpretation of Article 12(1)(a) of 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), which has been repealed and replaced by Directive 2011/95. However, given that that provision is the same as Article 12(1)(a) of that directive, I will refer to judgments relating to one or the other instrument without making a distinction between them.

[5] The Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, No 2545, 1954, p. 150), entered into force on 22 April 1954. It was supplemented and amended by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967 ('the Geneva Convention').

5. In the light of the nature of its operations, UNRWA must be regarded as an 'organ or agency of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance' within the meaning of Article 1(D) of the Geneva Convention.

6. In accordance with United Nations General Assembly Resolution No 74/83 of 13 December 2019, UNRWA's operations must be carried out having regard to 'the well-being, protection and human development of the Palestine refugees'. Furthermore, it provides 'assistance to meet basic health, education and living needs'.

B. European Union law

7. Pursuant to recital 15 of Directive 2011/95:

'(15) Those third-country nationals or stateless persons who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds fall outside the scope of this Directive.'

8. Article 12 of that directive, entitled 'Exclusion', provides:

'1. A third-country national or a stateless person is excluded from being a refugee if:

(a) he or she falls within the scope of Article 1(D) of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall *ipso facto* be entitled to the benefits of this Directive;

…'

C. National law

9. Directive 2011/95 was transposed into French law by Loi n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile (Law No 2015-925 of 29 July 2015 on the reform of the right to asylum) (JORF No 0174 of 30 July 2015) and Décret n° 2015-1166 du 21 septembre 2015 pris pour l'application de la loi n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile (Decree No 2015-1166 of 21 September 2015 implementing Law No 2015-925 of 29 July 2015 on the reform of the right to asylum) (JORF No 0219 of 22 September 2015).

10. Law No 2015-925 of 29 July 2015 on the reform of the right to asylum inserted Article L711-3 into the Code de l'entrée et du séjour des étrangers et du droit d'asile (Code on the entry and residence of foreign nationals and the right to asylum). The first paragraph of that article, in the version applicable to the dispute, provides:

'Refugee status shall not be granted to a person who is covered by one of the exclusion clauses laid down in Sections D, E or F of Article 1 of the Geneva Convention of 28 July 1951 …'

III. Facts, national proceedings and the questions referred

11. SW is a stateless person of Palestinian origin. He was born in 1976 in Lebanon and, until February 2019, lived in that country, which is part of the area of operations of UNRWA. He is registered with UNRWA and is, thus, eligible to receive protection or assistance from that agency. He left Lebanon in February 2019 and arrived in France in August 2019, where he applied for asylum.

12. SW's application for asylum was rejected by a decision of 11 October 2019 of the Office Français de Protection des Réfugiés et des Apatrides (French Office for the Protection of Refugees and Stateless Persons, France; 'OFPRA') which refused him both refugee status and subsidiary protection.

13. SW appealed that decision before the Cour nationale du droit d'asile (National Court of Asylum, France; 'the CNDA'). The CNDA established the following facts as being relevant.

– All his life, SW has been suffering from a serious form of thalassemia, a genetic disorder affecting haemoglobin production that requires, inter alia, regular blood transfusions.

– Growing up, SW had to resort increasingly to blood transfusions because of his medical condition. He was directed by UNRWA to a Palestinian Red Cross hospital, where he claims he was not, however, able to receive proper healthcare. Thus, SW decided to rely instead on blood transfusions from his father.

– In 2014, SW's father, who had until then supplied SW with blood for the transfusions that he needed to survive, passed away. SW then began relying on blood transfusions from compatible donors, which he solicited himself.

– He was also told by a doctor that he needed to take a particular drug in order to avoid complications of his disease for his liver and his heart, which neither UNRWA, due to a lack of adequate funds, nor any Palestinian aid organisation, due to SW's lack of affiliation to any Palestinian political parties, agreed to provide to him.

– SW did not have enough money to receive medical assistance from any other source and was not able to get access to that drug.

14. By decision of 9 December 2020, the CNDA granted SW refugee status on the ground that it was impossible for UNRWA to provide him with sufficient access to the specialised medical care required by his state of heath. Moreover, UNRWA had failed to guarantee him living conditions commensurate with its mission and had placed his personal safety at a serious risk. SW thus had to be regarded as having been forced to leave Lebanon.

15. OFPRA appealed that decision before the Conseil d'État (Council of State, France) claiming, first, that the CNDA had failed to examine whether SW had left Lebanon because he was forced to leave UNRWA's area of operations in the light of threats to his safety; second, that that court had erred in law when it had found that the impossibility for UNRWA to pay or otherwise provide for SW's healthcare was a ground for considering that the effective protection or assistance of that agency had ceased, and, third, that it had also erred in law when it had

considered that paying for specialised medical care [6] was part of UNRWA's mission. Furthermore, OFPRA alleged that it was not established that SW could not receive appropriate medical care in Lebanon.

16. The Conseil d'État (Council of State) recalled that, under Article 12(1)(a) of Directive 2011/95, a person is excluded from being a refugee if he or she falls within the scope of Article 1(D) of the Geneva Convention, which is the case where the person in question is a stateless person of Palestinian origin who has availed himself or herself of UNRWA's protection or assistance, unless that protection or assistance is deemed to have 'ceased'. Relying on the judgment in *Abed El Karem El Kott and Others*, that court observed that such is the case if the person is forced to leave the area of operations of that agency, because his or her personal safety is at serious risk and it is impossible for UNRWA to guarantee that the person's living conditions will be commensurate with the mission entrusted to it.

17. In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Irrespective of the provisions of national law according to which, under certain circumstances, foreign nationals can be allowed to stay on account of their state of health, and which where necessary protect them from an expulsion order, must Article 12(1)(a) of Directive 2011/95/EU be interpreted as meaning that where a sick [stateless person of Palestinian origin], after actually availing himself [or herself] of UNRWA protection or assistance, leaves the State or territory in the area of operations of that agency in which he had his habitual residence because he [or she] cannot have sufficient access there to the care and treatment required by his [or her] state of health and because that failure to provide care and treatment presents a genuine risk to his [or her] life or physical integrity, there is reason to consider that his [or her] personal safety is at serious risk and that he [or she] is in a situation in which it is impossible for UNRWA to guarantee that his [or her] living conditions will be commensurate with the mission entrusted to it?

(2) If the answer is in the affirmative, what are the criteria for identifying such a situation, concerning for example the seriousness of the illness or the nature of the care needed?'

18. The request for a preliminary ruling, dated 22 March 2022, was registered on 3 May 2022. SW, the Belgian and French Governments, as well as the European Commission submitted written observations. SW, the French Government and the Commission were represented at the hearing that took place on 26 January 2023.

[6] In the request for a preliminary ruling, the term 'tertiary healthcare' is used. That term must be understood, as the parties and interested parties explained at the hearing, as referring to medical care which involves advanced and complex diagnostics, procedures and treatments.

IV. Analysis

19. Article 12(1)(a) of Directive 2011/95, which gives effect to, and integrates within EU law, the content of Article 1(D) of the Geneva Convention,[7] contains both an *exclusion clause* and an *inclusion clause*.[8]

20. On the one hand, it provides that, if a person falls within the scope of Article 1(D) of the Geneva Convention – *in casu*, because he or she is a stateless person of Palestinian origin who is placed under the protection or assistance of UNRWA – he or she is excluded from being granted the status of 'refugee' under Directive 2011/95, in the same way that such a person is also excluded from being a 'refugee' under the Geneva Convention.[9]

21. On the other hand, if that protection or assistance can be considered to have 'ceased', such a person 'shall *ipso facto* be entitled to the benefits' of that directive (in the same way that he or she will *ipso facto* also become entitled to the benefits of the Geneva Convention). It follows from that *lex specialis* that the exclusion clause of Article 12(1)(a) of Directive 2011/95 stops applying to a stateless person of Palestinian origin only if UNRWA's protection or assistance can be considered to have 'ceased'. However, when that is the case, the person in question must be regarded as a 'refugee' under that directive – and is entitled to benefit 'as of right' from the regime applicable to refugees under the same directive[10] – without needing to fulfil the requirements that apply to other asylum seekers.[11] As Advocate Mengozzi observed in his Opinion in *Alheto*,[12] persons falling within the scope of Article 12(1)(a) of Directive 2011/95 are *already recognised as refugees* by the international community. The reason why they are subject to the exclusion clause of that provision is that they already benefit from a special programme of protection entrusted to a UN agency or body (*in casu*, UNRWA).

22. By its first question, the referring court is uncertain, in essence, whether the inclusion clause of Article 12(1)(a) of Directive 2011/95 *can apply* to a stateless person of Palestinian origin who was placed under the protection or assistance of UNRWA and is faced with the impossibility of getting access to the medical treatment which his or her state of health requires, in the area of operations of that agency. The second question, which depends on the answer that the Court gives to the first question, calls for guidance on the criteria that the national courts must apply in order to identify, among those situations, the ones to which that clause *actually applies*.

7 Pursuant to recital 3 of Directive 2011/95, the EU asylum system is based on the 'full and inclusive application of the Geneva Convention', and a number of provisions of that directive refer to provisions of that convention or reproduce its content. Moreover, Article 18 of the Charter on Fundamental Rights of the European Union ('the Charter') provides that 'the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention' and, pursuant to Article 78(1) TFEU, the common policy on asylum 'must be in accordance' with that convention. It follows that, although the European Union is not a signatory to the Geneva Convention, the EU legal framework of asylum must be interpreted in a manner consistent with that convention (see, also, in that sense, judgment in *Bolbol*, paragraph 37).

8 See, in that sense, judgment in *Alheto s*, paragraph 87. In that judgment, the Court designated the exclusion clause as the 'ground for exclusion from refugee status' and the inclusion clause as the 'ground for no longer applying that ground for exclusion'. For the sake of simplicity, I prefer to use the terms 'exclusion clause' and 'inclusion clause' instead.

9 The exclusion clause applies only to persons who have *actually* availed themselves of the protection or assistance provided by UNRWA. It cannot cover persons who are, or have been, eligible to receive protection or assistance from that agency, but who have not actually received it (see judgment in *Bolbol*, paragraph 51).

10 See judgement in *Abed El Karem El Kott and Others*, paragraph 71.

11 In particular, the person concerned does not have to demonstrate a well-founded fear of being persecuted, within the meaning of Article 2(d) of Directive 2011/95. However, the national authorities must still verify that he or she does not fall within the scope of any of the grounds for exclusion set out in Article 12(1)(b), Article 12(2) and Article 12(3) of that directive (see, in that sense, judgment in *Alheto*, paragraph 86 and the case-law cited). Furthermore, the person must still submit an application for refugee status. Thus, the fact that the persons concerned are *ipso facto* entitled to the benefits of Directive 2011/95 does *not* entail an unconditional right to refugee status (see judgment in *Abed El Karem El Kott and Others*, paragraph 75).

12 C-585/16, EU:C:2018:327, point 36.

23. I will consider each of those questions in turn.

A. The first question: can the inclusion clause apply?

24. Before I analyse the issue raised by the first question, I would like to make a few preliminary observations of a contextual nature concerning the exceptional legal situation of stateless persons of Palestinian origin who have availed themselves of the protection or assistance of UNRWA.

1. The exceptional legal situation of stateless persons of Palestinian origin who have availed themselves of the protection or assistance of UNRWA

25. To date, and despite the fact that Article 1(D) of the Geneva Convention is formulated in broad terms,[13] it is clear that the exclusion clause contained in that provision – which, by a game of mirrors, is the same as the one included in Article 12(1)(a) of Directive 2011/95 – applies only to the persons who are placed under the protection or assistance of UNRWA, that is, stateless persons of Palestinian origin located in the area of operations of that agency who have actually availed themselves of that protection or assistance.

26. Those persons are subject to a *unique* regime, since they are the only category of persons who are excluded from being granted refugee status under that Convention and that directive by virtue of those respective provisions.

27. As Advocate General Sharpston has stated,[14] Article 1(D) of the Geneva Convention was written against a specific background. It was drafted shortly after the Israeli–Arab conflict of 1948, with a view to, *inter alia*, preventing a mass exodus from the geographical area which used to be Palestine and an overlap of competences between the UNHCR and UNRWA.[15] The exclusion of stateless persons of Palestinian origin from that convention was justified by the fact that those persons were supposed to benefit from an appropriate, and equivalent, level of protection from UNRWA in its area of operations and, as such, had, in principle, no reason to seek reliance on the protection afforded by that instrument.[16]

28. Moreover, the unique treatment of stateless persons of Palestinian origin was initially intended to last only for a limited period. The objective of Article 1(D) of the Geneva Convention was to ensure that such stateless persons continued to receive protection until their position was definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations.[17] However, a solution in that regard has thus far not been found. That is why Article 1(D) of the Geneva Convention is still in force and its content is reflected in Article 12(1)(a) of Directive 2011/95.

29. Having made those clarifications, I note that, within the context of the application of Directive 2011/95, the unique regime to which stateless persons of Palestinian origin are subject concerns only the possibility for them to be granted refugee status, not subsidiary protection.[18]

[13] Article 1(D) of the Geneva Convention does not refer, specifically, to UNRWA. Instead, it mentions, more generally, the 'organs or agencies of the United Nations other than the [UNHCR]'.

[14] See Opinion of Advocate General Sharpston in *Bolbol* (C-31/09, EU:C:2010:119, point 41).

[15] Ibid., point 43.

[16] See point 21 above.

[17] See judgment in *Abed El Karem El Kott and Others*, paragraph 62.

[18] Ibid., paragraph 68.

30. Against that background, I recall that the Geneva Convention and Directive 2011/95 require that persons who actually obtain refugee status under those respective instruments be granted a number of rights by their host State and/or Member State. Those rights must be granted at the same level as that which is guaranteed to nationals of that State or Member State or, at least, at the same level as that which is guaranteed to foreigners in the same State or Member State. [19] With regard to healthcare, I note that Article 30 of Directive 2011/95 provides that 'beneficiaries of international protection', that is, both 'refugees' and 'beneficiaries of subsidiary protection' within the meaning of that directive, are entitled to have access to healthcare under the *same* eligibility conditions as nationals of the Member States.

31. Stateless persons of Palestinian origin who have availed themselves of the protection or assistance of UNRWA are not, because of their special legal situation, entitled to rely on that provision *unless and until* it is established that UNRWA's protection or assistance in respect of them has 'ceased' within the meaning of Article 12(1)(a) of that directive, or they are granted subsidiary protection.

2. When UNRWA's protection or assistance must be regarded as having 'ceased': the Court's case-law

32. The Court has already clarified several questions concerning the interpretation of Article 12(1)(a) of Directive 2011/95. In particular, it has stated that UNRWA's 'protection or assistance', within the meaning of that provision, must be considered to have 'ceased' in all situations where it is *impossible* for it to carry out its mission. [20] In that regard, it is sufficient that that cessation occurs for 'any reason', as Article 12(1)(a) of that directive itself indicates.

33. Elaborating on the meaning of those words ('any reason'), the Court has held that they do not refer only to events affecting UNRWA directly (for example, the dissolution of that agency). Indeed, the reason why such protection or assistance has ceased may also be attributable, more broadly, to circumstances which have forced the person concerned to leave UNRWA's area of operations and which are beyond that person's control. [21]

34. In that connection, the Court has further indicated that a person must be regarded as having been forced to leave UNRWA's area of operations if, based on an assessment, on an individual basis, of all the relevant evidence, [22] it becomes evident that his or her personal safety is at serious risk (first criterion) and if it is impossible for UNRWA to guarantee that his or her living conditions in that area will be commensurate with the mission entrusted to that agency (second criterion). [23]

[19] See, for example, freedom of religion (Article 4 of the Geneva Convention); access to courts, legal assistance, and exemption from the requirement to give security for costs in court proceedings (Article 16); public relief (Article 23); and labour legislation and social security (Article 24(1)).

[20] See judgement in *Abed El Karem El Kott and Others*, paragraph 56.

[21] Ibid., paragraphs 58 and 59. For the sake of completeness, I add that the Court has stated that, of course, mere absence from such an area or a mere voluntary decision to leave it cannot be regarded as cessation of protection or assistance.

[22] In that regard, account must be taken of the relevant circumstances as they exist not only at the time of that person's departure from UNRWA's area of operations, but also at the time when the competent administrative or judicial authorities consider an application for refugee status or a decision refusing to grant such status (see judgment in *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)*, paragraph 58).

[23] See judgement in *Abed El Karem El Kott and Others*, paragraph 63.

35. All the parties in the main proceedings and interested parties in the present case agree that those two criteria are those against which the situation in the main proceedings must be assessed, in order to determine whether UNRWA's protection or assistance to SW has 'ceased' within the meaning of Article 12(1)(a) of Directive 2011/95 and, thus, whether he must be granted refugee status. I note that the same criteria are mentioned by the referring court, in its first question, as being the relevant benchmarks against which that assessment must be performed.

3. Application of the inclusion clause to cases concerning the impossibility of getting access to medical treatment in UNRWA's area of operations

(a) The first criterion: serious risk to personal safety

36. It is clear, in my view, that the first criterion, namely whether the person's safety is at serious risk, *can* be satisfied in certain cases where it is impossible for him or her to get access to medical treatment in UNRWA's area of operations.

37. In that regard, I can readily accept that the concept of 'personal safety' appears, at first sight, to refer to situations involving threats that are external, rather than internal, to a person. It seems easier to imagine that personal safety is at serious risk in a situation involving a natural disaster (such as a flood or an earthquake), or where, as the Belgian and French Governments argue, harm is *intentionally inflicted* by another person, entity or force,[24] as opposed to where the primary cause of the person's harm is a *naturally occurring* medical condition. However, in my view, and as the Commission submits, that concept is broad enough to also cover such situations of an internal nature, where a person is subject to harm that is not intentionally inflicted or externally caused, but naturally occurring, and is only exacerbated by external factors (for example, UNRWA's inability to guarantee decent material conditions or provide adequate medical care).[25]

38. Indeed, the Court has already suggested that personal safety may be at serious risk in a situation where a person claims that he or she cannot get access to the education or medical assistance appropriate to his or her needs, given the serious disability that he or she was born with.[26] The concept of 'personal safety' has therefore already been applied to cases where the *primary or original cause* of the person's harm is not external, but linked to a disability or a medical condition that is congenital or, more broadly speaking, naturally occurring, and is purely

[24] For example, in the situations at hand in the proceedings that led to the judgment in *Abed El Karem El Kott and Others*, the persons concerned had been insulted, mistreated, arbitrarily arrested, tortured or humiliated by Lebanese soldiers, and their home had been set fire to or damaged and/or they had received death threats.

[25] I understand that the Belgian Government considers that, in principle, only threats or deficiencies that affect stateless persons of Palestinian origin *as a group* or those that are of a systemic nature (as opposed to individual or isolated threats) are relevant. Such a restrictive interpretation is, in my view, incorrect. Indeed, if that government's approach were followed, then the individual assessment that national authorities must perform would become pointless. Moreover, the Court has already confirmed that it is sufficient to establish that UNRWA's assistance or protection has in fact ceased for any reason, which includes 'objective reasons or reasons relating to the person's individual situation' (see judgment in *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)*, paragraph 72).

[26] Ibid., paragraphs 24 and 50.

internal to that person,[27] and where only the *exacerbating cause* of that harm, the impossibility of getting access to medical care or treatment, is linked to elements that are *external* to the person concerned.[28]

39. In that regard, it is clear that not only may the *primary cause* of the person's harm be purely internal, but also, more broadly, the *external reason* for which that harm is exacerbated (that is, the external reason as to why the person cannot get access to the required medical care or treatment in UNRWA's area of operations) is immaterial. That access may have intentionally been withdrawn, or the required medical care or treatment may have simply become unavailable because of a lack of material resources or funds on the part of UNRWA, or for any other reason (except, again, those over which the person concerned has control and which are not external to him or her). Contrary to what the Belgian and French Governments have argued, it is not necessary to establish that UNRWA or the State in whose territory it operates intended to inflict harm on that person by depriving him or her of the required medical care, by act or omission.[29] Such a consideration is not a prerequisite.[30]

40. Of course, in addition to the existence of threats to personal safety, it is clear to me that two more requirements must be fulfilled. First, the threats must be such that a 'serious risk' to personal safety can be established and, second, the level of harm which the person would suffer if he or she were to remain in UNRWA's area of operations must be severe (otherwise, it is not possible to consider such threats as being serious enough to affect 'personal safety'). As to the first of those requirements, namely whether a 'serious risk' exists, it is clear to me that the term 'serious risk' relates to the *genuineness of the risk* that the relevant threats to personal safety will actually materialise, and that the person's safety will be affected if he or she is to stay in UNRWA's area of operations. To be clear, I agree with the applicant in the main proceedings that the threats cannot be merely hypothetical. They must be sufficiently *real*, so that they give rise to a serious risk that his or her personal safety will be affected.

41. As to the second of those requirements, namely whether the level of harm suffered is severe enough that it is possible to consider that the threats affect 'personal safety', I will outline in more detail the threshold that is required in that regard in my answer to the second question below. However, suffice it to say, for now, that at least *some* cases involving the impossibility of getting access to the required medical treatment, in particular those where, in the absence of that treatment, the person concerned finds himself or herself in a life-or-death situation, will, in my view, reach that threshold of severe harm.

42. In that regard, I note that the Commission considers, for example, SW's situation to be one of those cases. I recall that SW suffers from a serious genetic disorder. Subject to the verification of the national courts, it appears, and is in fact not disputed by the parties in the main proceedings,

[27] As the applicant in the main proceedings pointed out, 'health' and 'disability' are listed among the 'Personal circumstances' which may make a stateless person of Palestinian origin entitled to obtain refugee status, in the UNHCR Guidelines on International Protection No 13, point 24.

[28] In my view, it is important that the person's state of health be exacerbated by such external factors. Matters are, in my view, different, when there is absolutely no medical treatment or care which could alleviate the person's pain or suffering, or if he or she simply refuses to take the required medical treatment (in which case the exacerbating factor is internal, not external).

[29] See judgment in *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)*, paragraphs 70 and 71.

[30] I add that the Court's case-law on which those governments base their arguments, which states, in essence, that a person suffering from a serious illness does not have to be granted international protection on the mere ground that he or she cannot get appropriate treatment in his or her country of origin, unless he or she is *intentionally* deprived of such treatment (see judgment of 18 December 2014, *M'Bodj* (C-542/13, EU:C:2014:2452, paragraph 36)), does not concern stateless persons of Palestinian origin, but other asylum seekers. As I have stated in points 26 to 28 above, stateless persons of Palestinian origin are not in the same situation or subject to the same requirements as other asylum seekers.

that, if SW does not get access to the required medical treatment, his life expectancy and chances of survival will be significantly reduced. Surely, in such circumstances, the level of harm suffered must be considered severe.

43. Having made those clarifications and explained why I believe that personal safety may be at serious risk in a situation where a person claims that he or she cannot get access to the medical assistance appropriate to his or her needs in UNRWA's area of operations, I will provide two further remarks.

44. First, I am of the view, again contrary to what the Belgian and French Governments have argued, that, in order to establish that personal safety is at serious risk, it is not necessary to assess whether a person such as SW has a 'well-founded fear of being persecuted' or faces 'a real risk of suffering serious harm', within the meaning of Article 5(1) and Article 6 of Directive 2011/95. The requirement that one's personal safety be at serious risk is not related, as the Commission has explained, to the existence of such a 'well-founded fear of being persecuted or a real risk of suffering serious harm', within the meaning of those provisions, which, among other things, concern only the persecution or serious harm inflicted by certain actors.

45. Otherwise, a stateless person of Palestinian origin such as SW would need to show, in order to fall within the scope of the inclusion clause in Article 12(1)(a) of that directive, that he or she fulfils the same conditions as the persons who do not come within the ambit of that provision. That would defeat the point of the *lex specialis* contained in that provision, pursuant to which someone covered by that provision shall *ipso facto* be entitled to 'refugee' status, if he or she can establish that UNRWA's protection or assistance in respect of him or her has 'ceased', without having to satisfy the general conditions listed in that directive which apply only to other asylum seekers. [31] Besides, it would, in essence, conflate those two very distinct legal issues.

46. Second, I would also like to clarify that, in order to establish that the person's personal situation is at serious risk, it is not necessary to systematically assess whether such a serious risk exists, for the person concerned, in each of the territories in which UNRWA operates. That would be wholly unreasonable. Rather, it is only necessary to consider *all* the fields of UNRWA's area of operations which the person concerned has a *concrete* possibility of accessing and remaining safely therein. [32]

(b) The second criterion: whether it has become impossible for UNRWA to guarantee that the person's living conditions in the area of operations of that agency will be commensurate with the mission entrusted to it

47. As to the second criterion, namely whether it has become impossible for UNRWA to guarantee that the person's living conditions in the area of operations of that agency will be commensurate with the mission entrusted to it, I note that the exchange of arguments between the parties in the main proceedings and interested parties in the present case have focused on how UNRWA's 'mission' must be understood, generally (1), and, with regard to medical or health needs, specifically (2).

[31] See point 21 above.

[32] See judgment in *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, paragraph 67.

48. The French Government considers, in that regard, that UNRWA's mission includes *only* the provision of primary, basic medical care, and excludes the provision of specialised, more complex medical treatments, such as those that SW requires. In its view, UNRWA's mission cannot be considered to have 'ceased', within the meaning of Article 12(1)(a) of Directive 2011/95, in a situation where a stateless person of Palestinian origin is faced with the impossibility of securing access to medical treatments that are relatively uncommon and/or complex and go beyond such basic medical care.

49. I will explain below why I disagree.

(1) UNRWA's mission, generally

50. To begin with, I recall that UNRWA is mostly funded by voluntary contributions from UN Member States. As a result, its *operational capacity* varies depending on the periodic decisions taken by those Member States, which may, of course, change over time, depending on budget constraints and a host of other factors. In my view, that fact does not mean, however, that UNRWA's mission itself varies, concomitantly with that operational capacity. Indeed, the two are very different: the 'operational capacity' relates to the 'means' available, whereas the 'mission' concerns the 'core purpose' (or *raison d'être*) of UNRWA. Broadly speaking, the means to do something can often change, but the core purpose is supposed to be somehow fixed in time and is supposed to be durable.

51. In my view, it was that core purpose or *raison d'être* of UNRWA, which is fixed in time and durable, that the Court intended to capture when it referred to UNRWA's 'mission' as a relevant element to determine whether it has become impossible for UNRWA to guarantee that the person's living conditions in the area of operations of that agency will be commensurate to the *mission* entrusted to it' and, consequently, whether the inclusion clause of Article 12(1)(a) of Directive 2011/95 comes into play. Whether UNRWA has sufficient material means available to it and its operational capacity relate not to the scope of the mission itself, but to the (im)possibility for that agency to carry out that mission.

52. Against that background, I recall that, as the Commission has pointed out, UNRWA's mission (that is to say, its core purpose) is not set out in any statute, but stems from the relevant resolutions of the UN General Assembly. Thus, that mission cannot be inferred from a single source. Moreover, the wording used in the various UN General Assembly resolutions in that regard is rather broad. In particular, in accordance with UN General Assembly Resolution No 74/83 of 13 December 2019, UNRWA is to perform its operations 'for the well-being, protection and human development of the Palestine refugees' in general.

53. That wording has been relied upon by the Court, in its case-law, in which it has noted that UNRWA was established to protect and assist the persons that are registered with it 'in the interests of [their] well-being as [refugees]'.[33]

54. The Court has also stated that, as is apparent from a reading of various UN General Assembly resolutions, the objective behind the specific regime that applies to stateless persons of Palestinian origin is to ensure that that group of persons continues to receive protection and that those persons are afforded *effective* protection or assistance, not simply that they are guaranteed the

[33] See judgments in *Alheto*, paragraph 84, and in *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, paragraph 48.

existence of a body or agency whose task is to provide such assistance or protection.[34] Consequently, it would appear that the Court understands UNRWA's mission to include the provision of effective (and not merely abstract) protection or assistance to the persons registered with it, with a view to promoting their 'well-being'.

55. In the light of those considerations, I shall now analyse, specifically, what UNRWA's 'mission' includes with regard to the medical or health needs of such persons.

(2) UNRWA's mission with regard to medical or health needs, specifically

56. Given that UNRWA's mission to provide effective protection or assistance to the persons who are registered with it is not clearly defined and cannot be inferred from a single source, the Court asked the parties and interested parties, at the hearing, to clarify what UNRWA's mission entails in so far as the medical or health needs of such persons are concerned.

57. In their answers, the parties and interested parties all referred to what is included in UN General Assembly Resolution No 74/83 of 13 December 2019, from which they deduce that UNRWA's mission consists of *effective* 'assistance to meet basic health … needs'. However, the parties and interested parties understood those terms differently.

58. Indeed, on the one hand, the applicant in the main proceedings, with which the Commission agrees, emphasised that it is not important to consider whether a given type of medical treatment is included in, or excluded from, UNRWA's mission in general. One must adopt a purposive approach, focusing instead on the degree of protection or assistance that must be granted to stateless persons of Palestinian origin in UNRWA's area of operations, and assess, in each individual case, whether the specific medical or health needs of the person concerned are met, in the light of that level. The type of medical treatment, even if highly specialised, is irrelevant.

59. On the other hand, the French Government argued, as I have already stated in point 48 above, that 'assistance to meet basic health … needs' includes only the provision of basic, primary medical care.[35] That government considers that UNRWA is not responsible for providing medical treatment that is more complex or specialised.

60. I do not share that view. It seems to me that the French Government is confusing UNRWA's mission of *effective* assistance to meet basic *medical or health needs* (which is designed to ensure, on the basis of an ends-orientated, rather than means-orientated, approach, that the basic medical or health needs of the persons that are registered with UNRWA are met, whatever the means necessary to that end might be) with a duty to provide basic *healthcare*, that is to say, a duty to make certain minimal medical resources available to those same persons (for example, by providing first aid kits or basic medication, which is not complex or specialised).

61. In that regard, I am of the view that, of course, UNRWA cannot guarantee access to every type of drug or medical treatment available. However, pursuant to its mission of 'assistance to meet basic health … needs', it must *effectively* assist the persons registered with it with getting access to the medical care or treatments necessary to meet their basic health or medical needs –

[34] See, to that effect, judgment in *Abed El Karem El Kott and Others*, paragraph 60.

[35] I note that, according to the UNRWA letter of 22 September 2021 to UNHCR describing the UNRWA mandate and services (available at the following address: https://www.unrwa.org/resources/about-unrwa/UNRWA_letter_to_UNHCR), it appears that UNRWA's services include the provision of, inter alia, basic education and primary healthcare. At first glance, tertiary medical care thus does not appear to be included but, in my view, that gap does not necessarily lead to a negative answer to the first question.

especially when that care or treatment is essential to combat a medical condition which, without it, might unfortunately result in death. I will elaborate on the level of seriousness or gravity required in that regard, to set out what counts as a basic health or medical need, in section B below, as part of my answer to the second question. However, I can already state, at this stage, that if a person is in a life-or-death situation, as seems to be the case for SW,[36] because UNRWA cannot, or does not, effectively assist him or her in getting access to the medical care or treatment required for his or her illness or condition, then it must be considered that it is impossible for UNRWA to guarantee that the person's basic health or medical needs will be met and, thus, that his or her living conditions in the area of operations of that agency will be commensurate with the mission entrusted to it.

62. To be clear, I can readily accept that the medical treatment that SW needs to have access to is somewhat complex and/or specialised. The information provided in the case file indicates that SW needs not only blood transfusions, but also to take a specialised drug, which is only available at a certain cost (which UNRWA claims that it cannot bear). Yet, in my view, the complexity of the treatment, its expensiveness or its specialised nature is not relevant to the scope of UNRWA's mission itself, but rather to whether or not it is possible for that agency to fulfil its mission.[37]

63. In that regard, I recall that, in order to determine whether it has become impossible for UNRWA to guarantee that the person's living conditions in the area of operations of that agency will be commensurate with the mission entrusted to it, the competent administrative or judicial authorities must assess whether or not the person concerned will in fact able to receive the required protection or assistance.[38] The fact that UNRWA is not able to provide the required protection or assistance to meet the basic medical or health needs of the person concerned at all, or that it can do so, but not effectively (for example, because the drug or treatment is not easily accessible or UNRWA lacks the finances or budget) is relevant to whether such an impossibility can be established, but it does not take the situation out of the scope of UNRWA's mission.[39]

4. Conclusion on the first question

64. In the light of the findings which I have just made, I am of the view that the two criteria, set out in point 34 above, used to determine whether UNRWA's protection or assistance has 'ceased' within the meaning of Article 12(1)(a) of Directive 2011/95, *may* be satisfied in a situation where a stateless person of Palestinian origin, who has availed himself or herself of the protection or assistance of UNRWA, is faced with the impossibility of getting access to the medical treatment which his or her state of health requires, in the area of operations of that agency. Consequently, such a situation may fall within – and is not excluded from – the scope of the inclusion clause laid down in that provision.

65. Practical considerations reinforce that interpretation, in my view. Indeed, if the Court were to decide differently, then not only would a person in SW's situation not be *ipso facto* entitled to the benefits of that directive (by virtue of the inclusion clause of Article 12(1)(a) of Directive 2011/95), he or she would also be prevented from claiming 'refugee' status under *any* of the other provisions of Directive 2011/95, since he or she would be excluded from that directive as a whole, in

[36] Of course, that is for the national courts to verify.

[37] See points 51 and 52 above.

[38] See judgment in *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, paragraphs 55 and 56.

[39] Indeed, otherwise, as the Commission pointed out, considerations linked to, for example, budget constraints – which are relevant to assess whether UNRWA is *in* fact able to provide effective protection or assistance – would become the very reason why that same protection or assistance cannot be regarded as having 'ceased', within the meaning of Article 12(1)(a) of Directive 2011/95.

application of the exclusion clause contained therein. That person would, in other words, find himself or herself in a situation less favourable than that which other asylum seekers (those to which Article 12(1)(a) of Directive 2011/95 does not apply) enjoy because those other persons would at least be able to rely on those general conditions so as to claim refugee status, whilst he or she would not be able to. That solution would, in my view, clearly run counter to the objective of Article 1(D) of the Geneva Convention, which I recalled in point 27 above, and which is to guarantee protection and assistance to stateless persons of Palestinian origin.

66. That said, I believe that an answer in the affirmative to the first question does not mean that all stateless persons of Palestinian origin merely complaining about the medical care they receive (or do not receive) in UNRWA's area of operations are entitled *ipso facto* to be recognised as refugees under Directive 2011/95. I shall now address that matter in more detail, with regard to the second question.

B. The second question: when does the inclusion clause apply in medical situations?

67. By the second question, the referring court is uncertain what criteria national courts must apply to determine which situations – among those where a stateless person of Palestinian origin, who has availed himself or herself of UNRWA's 'protection or assistance', claims that he or she is faced with the impossibility of getting access to the medical care or treatment required by his or her state of health, in the area of operations of UNRWA – fall within the scope of the *inclusion clause* in Article 12(1)(a) of Directive 2011/95.

68. From the outset, I will make three important remarks.

69. First, I wish to say a few words on the solution proposed by the French Government. According to that government, a case such as the one at hand in the main proceedings should *not* be resolved by having regard to the inclusion clause in Article 12(1)(a) of Directive 2011/95, but rather by relying only on the national provisions[40] which grant, in certain limited circumstances, third-country nationals or stateless persons the possibility to remain in the territories of the Member States, on account of, inter alia, their health.

70. In support of that conclusion, the French Government refers to recital 15 of Directive 2011/95, which recalls that Member States can allow such persons to remain in their territories on a discretionary basis, on compassionate or humanitarian grounds. The same recital indicates that individuals who benefit from that possibility do not fall within the scope of that directive, but fall outside of it.

71. In my view, and contrary to what that government argues, that recital cannot be understood to mean that a person must be excluded from the scope of Directive 2011/95 whenever he or she might have the opportunity to rely on national provisions granting a right to stay on compassionate or humanitarian grounds. Rather, it merely states that, if a person has indeed been granted such a right to stay, he or she is excluded from the scope of that directive. It follows that, save in that specific set of circumstances, the competent administrative or judicial authorities must verify, first, whether the person concerned is entitled to international protection (or, if he or she is a stateless person of Palestinian origin, whether he or she falls within the scope of the inclusion clause in Article 12(1)(a) of Directive 2011/95) and, only if he or she is not, should they

[40] The French Government referred, in that regard, to Article L425-9 of the Code on the entry and residence of foreign nationals and the right to asylum.

then consider whether he or she may benefit from protection on compassionate or humanitarian grounds by virtue of national law. I therefore see no reason why the latter type of protection should take precedence, as the French Government suggests, over the former type of protection.

72. Second, in order to ascertain whether UNRWA's protection or assistance has 'ceased' within the meaning of Article 12(1)(a) of Directive 2011/95, both a factual and a legal assessment must be carried out. For the factual assessment, I recall that, as I have already stated in point 34 above, it is necessary to perform that assessment on an individual basis, taking into account all the relevant circumstances, which may be linked to the person concerned (such as his or her state of health, the treatment that he or she needs and, with the help of experts, the actual consequences for him or her, if he or she does not receive that treatment) or which are of a contextual nature, including, in particular, whether the required medical care or treatment would be available in the Member States and the specific situation of the State or States in which UNRWA operates. [41] That is, in my view, quite an important point. Indeed, in a situation such as that in the present case, the living conditions to which stateless persons of Palestinian origin are subject in Lebanon as a whole, along with those with which SW is confronted, individually, are relevant to the question of whether UNRWA's protection or assistance has 'ceased'.

73. *In casu*, it means that, in order to assess whether SW is entitled to the benefits of Directive 2011/95, account must be taken of the medical treatment from which he can benefit both directly from UNRWA and from the Lebanese healthcare system with the assistance of that agency, given that he is registered with UNRWA in Lebanon. On a broader level, it is impossible to isolate UNRWA's actions (or lack thereof) from the context in which that body operates. [42]

74. Third, in so far as the legal assessment is concerned, I agree with the Belgian and French Governments that not every health issue or medical condition for which treatment is unavailable in the area in which UNRWA operates can lead to a conclusion that that body's 'protection or assistance' has ceased. A threshold of severity is required, and only exceptional situations may, in my view, allow movements from one area of protection (UNRWA's area of operations) to another (a Member State). If that were not the case, one could easily arrive at a situation where any person subject to the exclusion clause of Article 12(1)(a) of Directive 2011/95 who considers that the medical care or treatment which he or she has received (or may receive) in UNRWA's area of operations is not as effective as or up to the standards of the care or treatment that he or she could receive from a Member State, could claim that that agency's 'protection or assistance' to him or her has 'ceased' and be granted refugee status under Directive 2011/95.

75. The threshold of severity must, consequently, be sufficiently high to act as a limiting factor and to avoid such 'pick and choose' cases, as well as a 'floodgates' situation with endless requests for asylum from stateless persons of Palestinian origin. At the same time, if the threshold of severity is 'too high', it could make it virtually impossible for a person to rely on the inclusion

[41] Indeed, the Court has stated that 'the role of the State in which UNRWA operates may also be decisive in enabling UNRWA to fulfil its mandate effectively and ensure that the persons concerned live in dignified conditions' (see judgment in *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)*, paragraphs 82 and 83). I note that the Court has also held, in that judgment, that the need to take into consideration *all the relevant individual circumstances*, including in relation to the State(s) in which UNRWA operates, derives directly from Article 4(3) of Directive 2011/95 (see paragraph 54 of that judgment). That provision lists the factors that must be taken into account by the competent administrative or judicial authorities whenever they assess an application for international protection.

[42] To take a simple example, it is clear that a war in the State in which UNRWA operates may have a direct impact on whether or not UNRWA is able to provide its 'protection or assistance' within the meaning of Article 12(1)(a) of Directive 2011/95. I add that, in the judgment in *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)*, paragraph 80, the Court also indicated that any assistance provided by civil society actors, such as NGOs, should be taken into consideration, provided that UNRWA has a formal relationship of cooperation with them, of a stable nature, in which they assist UNRWA in carrying out its mandate.

clause of Article 12(1)(a) of Directive 2011/95, including in circumstances where such a person's rights enshrined in the Charter, such as, in particular, his or her right to human dignity, his or her right to life, and his or her right to be free from torture or degrading treatment or punishment,[43] which cannot be derogated from,[44] are infringed. It is, therefore, necessary to strike an appropriate balance.

76. With those clarifications made, I recall that, as I have explained in Section A above, in order for UNRWA's 'protection or assistance' to be considered as having 'ceased', two criteria must be fulfilled: the applicant's personal safety must be at serious risk (first criterion); and it must be impossible for UNRWA to guarantee that his or her living conditions in that area will be commensurate with the mission entrusted to it (second criterion).

77. Whereas, in a situation such as the one in the main proceedings, the second criterion requires, in essence, one to establish whether it has become impossible for UNRWA to guarantee that the person's *basic medical and health needs* will be met, if he or she is to remain in that agency's area of operations, the first criterion can, in my view, be broken down into three requirements. First, there must be a threat or threats to the safety of the person concerned, which, in such a situation, will be the naturally occurring medical condition which that person suffers from (an internal threat), exacerbated by external factors. Second, those threats must be such that a 'serious risk' to personal safety can be established (in other words, they cannot be merely hypothetical and must be sufficiently *real*). Third, the harm that the person would suffer if he or she were to remain in UNRWA's area of operations must be *severe* (or else, the same threats cannot be considered as serious enough to affect 'personal safety').

78. Within that context, it is clear to me that, with respect to that third requirement, a certain threshold which relates to the severity of the harm must be established. Likewise, the second criterion, which requires a line to be drawn between the situations in which a person's basic medical and health needs can be regarded as being met and those in which they cannot, also calls for a certain threshold to be established. Indeed, in my view, 'basic' medical and health needs include only certain, core medical and health needs, which, if they are not met, would result in death or severe harm. It follows that, with regard to that criterion, the focus must also be on severe harm.

79. In terms of what can be understood by 'severe harm', I recall that recital 16 of Directive 2011/95 refers to the importance of respecting the fundamental rights recognised in the Charter,[45] as interpreted in the case-law of the Court and, by virtue of Article 52(3) of the Charter, in the case-law of the European Court of Human Rights (ECtHR) concerning equivalent rights. It is also common ground that Article 4 of the Charter, which protects the right to life and the freedom from torture or degrading treatment or punishment, is equivalent to Article 3 of the ECHR.[46]

[43] See Articles 1, 2 and 4 of the Charter.

[44] The Court has stated, for example, that the prohibition of inhuman or degrading treatment or punishment, laid out in Article 4 of the Charter, is absolute (see judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 85)).

[45] See, also, judgment in *Bolbol*, paragraph 38 and the case-law cited.

[46] See judgment of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)* (C-69/21, EU:C:2022:913, paragraph 65 and the case-law cited) ('judgment in *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*').

80. In so far as the latter provision is concerned, the case-law of the ECtHR makes it clear that the pain caused by a naturally occurring illness, whether physical or mental, will be sufficiently *severe* [47] where, in particular, there are substantial grounds to believe that, although not at imminent risk of dying, the person concerned would face a real risk, on account of the absence of appropriate treatment or the lack of access to such treatment, of suffering a serious, rapid and irreversible decline in his or her state of health resulting in intense pain or a significant reduction in life expectancy.

81. In my view, the same threshold must be relied on in the present case. A person must be deemed to be at a serious risk of suffering severe harm, and his and her basic medical or health needs must be considered not to be met, in a situation where (i) he or she is at imminent risk of dying or (ii) there are substantial grounds to believe that, although not at imminent risk of dying, he or she would face a real risk, on account of the absence of appropriate treatment or the lack of access to such treatment, of suffering a serious, rapid and irreversible decline in his or her state of health resulting in intense pain or a significant reduction in life expectancy.

82. That is quite a high threshold. Importantly, that threshold is based only on the level of *harm* that the person concerned is at a serious or real risk of facing, regardless of the type of medical condition involved and its rareness or commonness.

83. By way of a final note, I would add that the threshold that I have just suggested is, in my view, closely connected with respect for human dignity. I recall that recital 16 of Directive 2011/95 makes it clear that that directive seeks 'in particular' to ensure full respect for human dignity. Moreover, the Court has already referred to human dignity in its judgment in *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, in which it stated that a person cannot be regarded as having been forced to leave UNRWA's area of operations if he or she was able to reside there in safety, under dignified living conditions and without being at risk of being refouled to the territory of habitual residence for as long as he or she is unable to return there in safety. [48]

84. Both the Commission and the applicant in the main proceedings consider that the question of whether a person registered with UNRWA could reside in 'dignified living conditions' in the area of operations of that agency is relevant to the assessment of whether he or she faces a serious or real risk of suffering severe harm and whether his or her basic medical and health needs will be met.

85. I agree with that approach. In my view, the threshold that I have laid out in point 81 above is simply a more detailed expression of that very requirement. [49]

[47] See, in that sense, ECtHR, 13 December 2016, *Paposhvili v. Belgium*, CE:ECHR:2016:1213JUD004173810, §§ 178 and 183). See, also, judgment in *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, paragraphs 63 and 66. That case-law concerns situations involving the removal of a seriously ill person. Yet, I consider it to be relevant for the purposes of the present case.

[48] See paragraph 54 of that judgment, and the case-law cited.

[49] Both the two-part threshold which I have laid out and the concept of 'human dignity' were relied on by the Court in the judgment *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, paragraphs 63 and 71.

V. Conclusion

86. In the light of all of the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Conseil d'État (Council of State, France) as follows:

(1) Article 12(1)(a) of 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

must be interpreted as meaning that the safety of a person who has availed himself or herself of the protection or assistance of UNRWA may be at serious risk and that he or she may be in a situation in which it is impossible for that agency to guarantee that his or her living conditions will be commensurate with the mission entrusted to it, in a situation where he or she suffers from a medical condition and it is impossible for him or her to get access to the required medical treatment or care in the area of operations of UNRWA.

(2) Article 12(1)(a) of Directive 2011/95

must be interpreted as meaning that, in such a situation, it is necessary to establish that the person concerned faces a serious risk of severe harm, and that it will be impossible for UNRWA to guarantee that that person's basic medical and health needs will be met, if he or she is to remain in that agency's area of operations. Both requirements are fulfilled where it is established that, if he or she is to remain in that zone, (i) he or she is at imminent risk of dying or (ii) there are substantial grounds to believe that, although not at imminent risk of dying, he or she would face a real risk, on account of lack of access to appropriate medical treatment or care, of suffering a serious, rapid and irreversible decline in his or her state of health resulting in intense pain or a significant reduction in life expectancy.