



## Reports of Cases

### JUDGMENT OF THE COURT (Grand Chamber)

19 December 2012\*

(Directive 2004/83/EC — Minimum standards for determining who qualifies for refugee status or subsidiary protection status — Stateless persons of Palestinian origin who have in fact availed themselves of assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) — The right of those stateless persons to recognition as refugees on the basis of the second sentence of Article 12(1)(a) of Directive 2004/83 — Conditions under which applicable — Cessation of UNRWA assistance ‘for any reason’ — Evidence — Consequences for the persons concerned seeking refugee status — Persons ‘ipso facto ... entitled to the benefits of [the] Directive’ — Automatic recognition as a ‘refugee’ within the meaning of Article 2(c) of Directive 2004/83 and the granting of refugee status in accordance with Article 13 thereof)

In Case C-364/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Fővárosi Bíróság (Hungary), made by decision of 3 June 2011, received at the Court on 11 July 2011, in the proceedings

**Mostafa Abed El Karem El Kott,**

**Chadi Amin A Radi,**

**Hazem Kamel Ismail**

v

**Bevándorlási és Állampolgársági Hivatal,**

intervening parties:

**ENSZ Menekültügyi Főbiztossága,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, L. Bay Larsen (Rapporteur), T. von Danwitz and J. Malenovský, Presidents of Chambers, U. Lohmus, E. Levits, A. Ó Caoimh, J.-C. Bonichot, A. Arabadjiev, C. Toader and J.-J. Kasel, Judges,

Advocate General: E. Sharpston,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 15 May 2012,

\* Language of the case: Hungarian.

after considering the observations submitted on behalf of:

- Mr Kamel Ismail, by G. Győző and T. Fazekas, ügyvédek,
- the ENSZ Menekültügyi Főbiztossága, by I. Ciobanu, acting as Agent, and M. Demetriou, Barrister,
- the Hungarian Government, by M. Fehér, K. Szíjjártó and Z. Tóth, acting as Agents,
- the Belgian Government, by T. Materne and C. Pochet, acting as Agents,
- the German Government, by T. Henze and N. Graf Vitzthum, acting as Agents,
- the French Government, by G. de Bergues, S. Menez and B. Beaupère-Manokha, acting as Agents,
- the Romanian Government, by F. Abrudan, I. Bara and R.H. Radu, acting as Agents,
- the United Kingdom Government, by L. Seeboruth, acting as Agent, and S. Fatima, Barrister,
- the European Commission, by M. Condou-Durande and V. Kreuschitz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 September 2012,

gives the following

### **Judgment**

- 1 This reference for a preliminary ruling concerns 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).
- 2 The reference was made in proceedings between Mr Abed El Kareem El Kott, Mr A Radi and Mr Kamel Ismail, all three of whom are stateless persons of Palestinian origin, and the Bevándorlási és Állampolgársági Hivatal (Office for Immigration and Citizenship) ('the BAH') concerning the latter's rejection of their applications for refugee status.

### **Legal context**

#### *International law*

The Convention relating to the Status of Refugees

- 3 The Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), 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').
- 4 The first subparagraph of Article 1(A)(2) of the Geneva Convention provides that the term 'refugee' is to apply to any person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the

country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence ... is unable or, owing to such fear, is unwilling to return to it’.

- 5 Article 1D of the Geneva Convention, which introduces exceptional legal status for certain groups of persons, is worded as follows:

‘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 [HCR] protection or assistance.

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, these persons shall *ipso facto* be entitled to the benefits of this Convention.’

#### United Nations Conciliation Commission for Palestine

- 6 The United Nations Conciliation Commission for Palestine (UNCCP) was established by United Nations General Assembly resolution No 194 (III) of 11 December 1948. Under the second subparagraph of paragraph 11 of that resolution, the United Nations General Assembly:

‘Instructs the [UNCCP] to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.’

#### United Nations Relief and Works Agency for Palestine Refugees in the Near East

- 7 United Nations General Assembly resolution No 302 (IV) of 8 December 1949, concerning assistance to Palestine refugees, established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). The latter’s mandate has been regularly renewed and its current mandate expires on 30 June 2014. UNRWA’s area of operations covers Lebanon, Syria, Jordan, the West Bank (including East Jerusalem) and the Gaza Strip.
- 8 Under paragraph 20 of resolution No 302 (IV), the United Nations General Assembly:
- ‘Directs [UNRWA] to consult with [the UNCCP] in the best interests of their respective tasks, with particular reference to paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948.’
- 9 In accordance with paragraph 6 of United Nations General Assembly resolution No 2252 (ES-V) of 4 July 1967, concerning humanitarian assistance, the General Assembly endorses the efforts of UNRWA to provide humanitarian assistance, as far as practicable, on an emergency basis and as a temporary measure, to other persons in the area who are at present displaced and are in serious need of assistance as a result of the recent hostilities.
- 10 Under paragraphs 1 to 3 of United Nations General Assembly resolution No 66/72 of 9 December 2011, concerning assistance to Palestine refugees, the General Assembly:
- ‘1. *Notes with regret* that repatriation or compensation of the refugees, as provided for in paragraph 11 of General Assembly resolution 194 (III), has not yet been effected, and that, therefore, the situation of the Palestine refugees continues to be a matter of grave concern ...

2. *Also notes with regret* that the [UNCCP] has been unable to find a means of achieving progress in the implementation of paragraph 11 of General Assembly resolution 194 (III), and reiterates its request to the [UNCCP] to continue exerting efforts towards the implementation of that paragraph ...
3. *Affirms* the necessity for the continuation of the work of [UNRWA] and the importance of its unimpeded operation and its provision of services for the well-being and human development of the Palestine refugees and for the stability of the region, pending the just resolution of the question of the Palestine refugees.'

#### *European Union legislation*

##### Directive 2004/83

- 11 Recital 3 in the preamble to Directive 2004/83 states that the Geneva Convention provides the cornerstone of the international legal regime for the protection of refugees.
- 12 As is apparent from recital 10 in the preamble to Directive 2004/83, read in the light of Article 6(1) TEU, the directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union ('the Charter'). In particular, the directive seeks to ensure, on the basis of Articles 1 and 18 of the Charter, full respect for human dignity and the right to asylum of applicants for asylum.
- 13 Recitals 16 and 17 in the preamble to Directive 2004/83 are worded as follows:  
  
'(16) Minimum standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.  
  
(17) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.'
- 14 In accordance with Article 1 of Directive 2004/83, its purpose is to lay down minimum standards as regards, first, the requirements to be met by third-country nationals or stateless persons in order to receive international protection and, second, the content of the protection granted.
- 15 Article 2 of Directive 2004/83 states that, for the purposes of the directive:  
  
'(a) "international protection" means the refugee and subsidiary protection status as defined in (d) and (f);  
  
...  
  
(c) "refugee" means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;  
  
(d) "refugee status" means the recognition by a Member State of a third country national or a stateless person as a refugee;

- (e) “person eligible for subsidiary protection” means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) [concerning the grounds for exclusion from subsidiary protection] do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

...’

- 16 Article 4 of Directive 2004/83, which is in Chapter II (‘Assessment of applications for international protection’), sets out the conditions governing the assessment of facts and circumstances. Paragraph 3 of that article provides as follows:

‘The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

- (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;
- (b) the relevant statements and documentation presented by the applicant, including information on whether the applicant has been or may be subject to persecution or serious harm;
- (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant’s personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
- (d) whether the applicant’s activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;
- (e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.’

- 17 Article 11, which is in Chapter III of Directive 2004/83 (‘Qualification for being a refugee’), is entitled ‘Cessation’ and is worded as follows:

‘1. A third-country national or a stateless person shall cease to be a refugee if:

...

- (f) being a stateless person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

...’

- 18 Article 12 of Directive 2004/83 ('Exclusion'), which is also in Chapter III, provides in paragraph 1(a) thereof – a provision comprising two sentences which reflect the two subparagraphs of Article 1D of the Geneva Convention – as follows:

'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 1D 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 (HCR). 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'.
- 19 Article 12(1)(b) of Directive 2004/83 provides that a third-country national or a stateless person is excluded from being a refugee if he or she is 'recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or rights and obligations equivalent to those'.
- 20 Article 12(2) of Directive 2004/83 states that a third country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that he or she is caught by one or more of the grounds for exclusion which are set out in that provision and relate to the fact that such a person has committed 'a crime against peace, a war crime, or a crime against humanity' (paragraph 2(a)) or 'a serious non-political crime' (paragraph 2(b)) or has been guilty of 'acts contrary to the purposes and principles of the United Nations' (paragraph 2(c)).
- 21 The grounds for excluding a third country national or a stateless person from being a refugee set out in Article 12(1)(b), (2) and (3) of Directive 2004/83 correspond to the grounds in Article 1, paragraphs E and F respectively, of the Geneva Convention.
- 22 Article 13 of Directive 2004/83, in Chapter IV ('Refugee status'), is entitled 'Granting of refugee status' and is worded as follows:
- 'Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III.'
- 23 Article 14 of Directive 2004/83, which is also in Chapter IV, is entitled 'Revocation of, ending of or refusal to renew refugee status' and provides in paragraph 1 thereof that the Member States are to revoke the refugee status granted by a national body if the refugee has ceased to be a refugee in accordance with Article 11.
- 24 Chapter VII of Directive 2004/83, entitled 'Content of International Protection', includes Article 21(1), which provides as follows:

'Member States shall respect the principle of non-refoulement in accordance with their international obligations.'



Directive 2005/85/EC

- 25 Article 2(c) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 1985 L 326, p. 13) provides as follows:

“applicant” or “applicant for asylum” means a third country national or stateless person who has made an application for asylum in respect of which a final decision has not yet been taken’.

*Hungarian law*

- 26 Article 8(1) of Law No LXXX of 2007 on the right of asylum (*Magyar Közlöny* 2007/83) provides as follows:

‘No foreign national to whom one of the grounds for exclusion set out in Article 1, paragraph D, E or F of the Geneva Convention applies may be granted refugee status.’

### **The dispute in the main proceedings**

*The case of Mr Abed El Karem El Kott*

- 27 It is apparent from the order for reference that Mr Abed El Karem El Kott lived in difficult material circumstances at the Ein El-Hilweh UNRWA refugee camp in Lebanon. In those circumstances and after his house had been burned down and he had been threatened, he left the camp and fled Lebanon, where he was certain that he would have been found.
- 28 In Hungary, the BAH did not recognise him as a refugee but, on the basis of Article 21(1) of Directive 2004/83, ordered that he should not be returned (*non-refoulement*).
- 29 Mr Abed El Karem El Kott appealed against that decision before the referring court, challenging the refusal to recognise him as a refugee.

*The case of Mr A Radi*

- 30 As regards Mr A Radi, it is apparent from the order for reference that his home, in the Nahr el Bared UNRWA refugee camp, which is also in Lebanon, was destroyed in May 2007 as the result of clashes between the Lebanese army and the Islamic Fatah. As there was no space to accommodate him in the Baddawi camp, which is close to the Nahr el Bared camp, Mr A Radi, together with his parents and siblings, stayed with an acquaintance in Tripoli (Lebanon). However, Lebanese soldiers insulted and mistreated them, arrested them arbitrarily, tortured and humiliated them. Considering that, as Palestinians, they had no rights in Lebanon, Mr A Radi left that country with his father.
- 31 The BAH has not recognised Mr A Radi as a refugee either but has ordered that he is not to be returned. Mr A Radi lodged an appeal before the referring court contesting the refusal to recognise him as a refugee.

*The case of Mr Kamel Ismail*

- 32 Mr Kamel Ismail lived with his family in the Ein El-Hilweh camp. He stated that, during armed clashes between the Islamic Fatah and the Jund el-Sham, extremists wanted to use the roof of his house. When he refused, he was threatened with death and suspected as an ‘enemy agent’. Unable to protect himself,

he left with his family for Beirut (Lebanon). As he did not feel safe there, he fled to Hungary. He produced a certificate from the Palestinian People's Committee to the effect that he and his family had had to leave the Ein El-Hilweh camp for safety reasons and because of radical Islamist threats, together with photographs of their house after it had been vandalised.

- 33 The BAH did not recognise him as a refugee but granted him and his family members subsidiary protection.
- 34 Mr Kamel Ismail also lodged an appeal before the referring court against the refusal to recognise him as a refugee.

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 35 The three cases were joined for the purpose of the main proceedings by the referring court.
- 36 Giving what, in the view of the referring court, are credible accounts of the individual circumstances in which they were forced to leave UNRWA's area of operations, the applicants in the main proceedings sought recognition as refugees on the basis of the second subparagraph of Article 1D of the Geneva Convention, to which the second sentence of Article 12(1)(a) of Directive 2004/83 refers.
- 37 The applicants submit that, in their case, since UNRWA protection has ceased within the meaning of that provision of the Geneva Convention, they are automatically entitled to recognition as refugees under that provision.
- 38 When examining their applications, the BAH treated the applicants in the main proceedings as applicants for asylum within the meaning of Article 2(c) of Directive 2005/85 and carried out its examination in accordance with the procedure laid down in that directive for granting refugee status. The BAH concluded that the applicants did not satisfy the requirements for recognition as 'refugees' within the meaning of Article 2(c) of Directive 2004/83.
- 39 While it acknowledges that UNRWA assistance ceases if that agency, for objective reasons falling within the scope of its own activities, cannot guarantee assistance to a person entitled to it, the BAH does not consider that the fact that the persons concerned may *ipso facto* be entitled to the benefits of Directive 2004/83 means that such persons automatically qualify as refugees. The legal consequences that may be inferred from the use of the words '*ipso facto*' are simply that the persons concerned fall within the scope *ratione personae* of that directive and, therefore, the use of those words merely opens the way for the possibility of recognition as refugees.
- 40 The referring court points out in particular that, since the applicants in the main proceedings have had recourse to assistance from an organ referred to in the first sentence of Article 12(1)(a) of Directive 2004/83, it is necessary to determine, first, the circumstances under which such assistance may be deemed to have come to an end for the purpose of the second sentence of that provision and, second, the nature and extent of the guarantees to which the person concerned is *ipso facto* entitled under that directive where that assistance ceases.



- 41 In those circumstances, the Fővárosi Bíróság (Budapest Municipal Court) decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

‘For the purpose of Article 12(1)(a) of [Directive 2004/83]:

- (1) Do the benefits of the Directive mean recognition as a refugee, or either of the two forms of protection covered by the Directive (recognition as a refugee and the grant of subsidiary protection), according to the choice made by the Member State, or, possibly, neither automatically but merely inclusion within the scope *ratione personae* of the Directive?
- (2) Does cessation of the agency’s protection or assistance mean residence outside the agency’s area of operations, cessation of the agency and cessation of the possibility of receiving the agency’s protection or assistance or, possibly, an involuntary obstacle caused by legitimate or objective reasons such that the person entitled thereto is unable to avail himself of that protection or assistance?’

### Consideration of the questions referred

#### *Preliminary observations*

- 42 It is apparent from recitals 13, 16 and 17 in the preamble to Directive 2004/83 that the Geneva Convention constitutes the cornerstone of the international legal regime for the protection of refugees and that the provisions of the directive for determining who qualifies for refugee status and the content thereof were adopted to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria (Case C-31/09 *Bolbol* [2010] ECR I-5539, paragraph 37).
- 43 Directive 2004/83 must, for that reason, be interpreted in the light of its general scheme and purpose, and in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU. As is apparent from recital 10 in the preamble thereto, the directive must also be interpreted in a manner consistent with the rights recognised by the Charter (Joined Cases C-71/11 and C-99/11 *Y and Z* [2012] ECR, paragraph 48 and the case-law cited).
- 44 In the case which gave rise to the judgment in *Bolbol*, the Fővárosi Bíróság referred to the Court questions formulated in almost identical terms to those of the questions raised in the present reference for a preliminary ruling. However, in that case, since the person concerned had not availed herself of assistance from UNRWA before leaving that agency’s area of operations to apply for asylum in Hungary, the Court found that it was unnecessary to address, first, the circumstances under which such assistance may be said to have ‘ceased for any reason’ or, second, the nature of the benefits conferred by the directive to which the person concerned may *ipso facto* have been entitled as a result of the cessation of assistance (see, to that effect, *Bolbol*, paragraphs 55 and 56).

#### *Question 2*

- 45 By its second question, which it is appropriate to consider first, the referring court asks, in essence, whether the second sentence of Article 12(1)(a) of Directive 2004/83 is to be interpreted as meaning that the cessation of protection or assistance on the part of a United Nations organ or agency other than the HCR ‘for any reason’ concerns the situation of a person who has left that organ’s or agency’s area of operations in circumstances such as those characterising the departure of each of the applicants in the main proceedings.

- 46 It should be noted in that regard, first, that the first sentence of Article 12(1)(a) of Directive 2004/83 provides that a third-country national or a stateless person is excluded from being a refugee if 'he or she falls within the scope of Article 1D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the [HCR]'.
- 47 The first subparagraph of Article 1D of the Geneva Convention provides that the convention does not apply to persons who 'are at present receiving' protection or assistance 'from organs or agencies of the United Nations other than the [HCR]'. That ground for exclusion from the scope of the convention must be construed narrowly (see, to that effect, *Bolbol*, paragraph 51).
- 48 It is common ground that UNRWA at present constitutes, as observed by the Advocate General at point 5 of her Opinion, the only United Nations organ or agency other than the HCR which is referred to in the first sentence of Article 12(1)(a) of Directive 2004/83 and in the first subparagraph of Article 1D of the Geneva Convention (see also, to that effect, *Bolbol*, paragraph 44).
- 49 The fact that that provision of the Geneva Convention, to which the first sentence of Article 12(1)(a) of Directive 2004/83 refers, simply excludes from the scope of the convention persons who 'are at present receiving' protection or assistance from such an organ or agency of the United Nations cannot be construed as meaning that mere absence or voluntary departure from UNRWA's area of operations would be sufficient to end the exclusion from refugee status laid down in that provision.
- 50 Indeed, if that were the case, an applicant for asylum within the meaning of Article 2(c) of Directive 2005/85 who submitted an application in the territory of a Member State and was therefore physically absent from UNRWA's area of operations would never be caught by the ground for exclusion from refugee status established in Article 12(1)(a) of Directive 2004/83, which would have the effect of depriving that ground for exclusion of any practical effect, as observed by the Advocate General at points 52 and 53 of her Opinion.
- 51 Moreover, to accept that voluntary departure from UNRWA's area of operations and, therefore, voluntary renunciation of the assistance provided by that agency would trigger the application of the second sentence of Article 12(1)(a) of Directive 2004/83 would run counter to the objective pursued by the first subparagraph of Article 1D of the Geneva Convention, which is intended to exclude from the benefits of the convention all persons who receive such assistance.
- 52 It is therefore necessary to interpret the first sentence of Article 12(1)(a) of Directive 2004/83 as meaning that the ground for excluding a person from being a refugee laid down in that provision covers not only persons who are currently availing themselves of assistance provided by UNRWA but also those such as the applicants in the main proceedings who in fact availed themselves of such assistance shortly before submitting an application for asylum in a Member State, provided, however, that that assistance has not ceased within the meaning of the second sentence of Article 12(1)(a) of the directive.
- 53 The latter provision envisages the situation in which protection or assistance from organs or agencies of the United Nations other than the HCR 'has ceased for any reason', without the position of the persons concerned being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations.
- 54 It is accepted that the position of the persons receiving assistance from UNRWA has not to date been definitely settled, as is apparent, inter alia, from paragraphs 1 and 3 of United Nations General Assembly resolution No 66/72 of 9 December 2011.

- 55 Since 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, 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 that provision.
- 56 It should be noted in that regard that it is not only the abolition itself of the organ or agency giving protection or assistance which brings about the cessation of the protection or assistance provided by that organ or agency within the meaning of the second sentence of Article 12(1)(a) of Directive 2004/83 but also the fact that it is impossible for that organ or agency to carry out its mission.
- 57 Indeed, it is apparent from the words '[w]hen such protection or assistance has ceased' which introduces the second sentence of Article 12(1)(a) of Directive 2004/83 that it is primarily the actual assistance provided by UNRWA and not the existence of that agency itself which must cease in order for the ground for exclusion from refugee status no longer to be applicable.
- 58 While it is true that, considered in isolation, those words could be construed as referring only to events affecting UNRWA directly, such as the abolition of that agency or an event which makes it generally impossible for it to carry out its mission, the use of the words 'for any reason' which follow in that second sentence indicates that that provision is to be interpreted as meaning that the reason for which assistance has ceased may also be attributable to circumstances which have forced the person concerned to leave the UNRWA area of operations as they are beyond that person's control.
- 59 Mere absence from such an area or a voluntary decision to leave it cannot be regarded as cessation of assistance. On the other hand, if the person concerned has been forced to leave for reasons unconnected with that person's will, such a situation may lead to a finding that the assistance from which that person benefited has ceased within the meaning of the second sentence of Article 12(1)(a) of Directive 2004/83.
- 60 That interpretation is consistent with the objective of Article 12(1)(a) of Directive 2004/83, which is inter alia to ensure that Palestinian refugees continue to receive protection by affording them effective protection or assistance and not simply by guaranteeing the existence of a body or agency whose task is to provide such assistance or protection, as is also apparent from a reading of paragraph 20 of United Nations General Assembly resolution No 302 (IV) in conjunction with resolution No 2252 (ES-V).
- 61 For the purpose of determining whether assistance or protection have actually ceased within the meaning of that provision of Directive 2004/83, it is for the competent national authorities and courts to ascertain whether the departure of the person concerned may be justified by reasons beyond his control and independent of his volition which force him to leave the area in question and thus prevent him from receiving UNRWA assistance.
- 62 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 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.
- 63 In the light of that objective, 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.

- 64 It should be added that, where the competent authorities of the Member State in which the application for asylum has been made seek to determine whether, for reasons beyond his control and independent of his volition, it was in point of fact no longer possible for the person concerned to benefit from the assistance of which he had availed himself before leaving the UNRWA area of operations, those authorities must carry out an assessment, on an individual basis, of all the relevant factors, in which Article 4(3) of Directive 2004/83 may be applicable by analogy.
- 65 In the light of the foregoing considerations, the answer to Question 2 is that the second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that the cessation of protection or assistance from organs or agencies of the United Nations other than the HCR ‘for any reason’ includes the situation in which a person who, after actually availing himself of such protection or assistance, ceases to receive it for a reason beyond his control and independent of his volition. It is for the competent national authorities of the Member State responsible for examining the asylum application made by such a person to ascertain, by carrying out an assessment of the application on an individual basis, whether that person was forced to leave the area of operations of such an organ or agency, which will be the case where that person’s personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his living conditions in that area would be commensurate with the mission entrusted to that organ or agency.

#### Question 1

- 66 First, as regards Question 1, it is important to point out that, unlike the Geneva Convention, which deals only with refugee status, Directive 2004/83 governs two distinct systems of protection, that is to say, first, refugee status and, second, subsidiary protection status, in view of the fact that Article 2(e) of the directive states that a person eligible for subsidiary protection is one ‘who does not qualify as a refugee’.
- 67 Therefore, as there would otherwise be a failure to have regard for the different forms of protection afforded by the Geneva Convention and Directive 2004/83 respectively, the words ‘be entitled to the benefits of [the] Directive’ in the second sentence of Article 12(1)(a) of the directive must be understood as referring only to refugee status, since that provision was based on Article 1D of the Geneva Convention and the directive must be interpreted in the light of that provision.
- 68 Furthermore, as it refers only to refugee status, Article 12(1)(a) of Directive 2004/83 does not exclude any person from subsidiary protection status within the meaning of Article 2(e) of the directive, and Article 17 thereof, which sets out the grounds for exclusion from subsidiary protection, contains no reference to protection or assistance from an agency such as UNRWA.
- 69 In the light of those preliminary observations, the referring court must be regarded as asking, in essence, whether the second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that the fact that a person may ‘be entitled to the benefits of [the] Directive’ means that the person concerned is automatically entitled to refugee status or simply that such a person falls within the scope *ratione personae* of the directive.
- 70 It should be noted in that regard, first, that the second sentence of Article 12(1)(a) of Directive 2004/83 provides that, if the requirements laid down in that provision are satisfied, the persons concerned ‘shall *ipso facto* be entitled to the benefits of [the] Directive’ and, second, that the second subparagraph of Article 1D of the Geneva Convention provides that, in such a situation, the persons concerned ‘shall *ipso facto* be entitled to the benefits of this Convention’ and, in the other authentic language version of the convention, ‘bénéficieront de plein droit du régime de cette convention’ (shall benefit as of right from the regime of this Convention).



- 71 The words ‘shall *ipso facto* be entitled to the benefits of [the] Directive’ must be interpreted in a manner that is consistent with the second subparagraph of Article 1D of the Geneva Convention, namely as permitting the persons concerned to benefit ‘as of right’ from the regime of the convention and the ‘benefits’ conferred by it.
- 72 Therefore, it cannot be said that the only right available for the person concerned where UNRWA assistance has ceased and the ground for exclusion is no longer applicable is that of applying for refugee status on the basis of Article 2(c) of Directive 2004/83, since that option is already available to any third-country national or a stateless person in the territory of one of the Member States.
- 73 The statement at the end of the second sentence of Article 12(1)(a) of Directive 2004/83, to the effect that the persons concerned ‘shall *ipso facto* be entitled to the benefits of [the] Directive’, would be superfluous and ineffective if its only purpose was to point out that the persons who are no longer excluded from refugee status by virtue of the first sentence of that provision may rely on the directive to ensure that their application for refugee status will be considered in accordance with Article 2(c) of the directive.
- 74 Moreover, it is apparent from the full text of the second sentence of Article 12(1)(a) of Directive 2004/83 that as soon as the position of the persons referred to in that provision has been definitely settled, they may qualify as refugees if, for any reason, they are persecuted within the meaning of Article 2(c) of the directive. On the other hand, if, as is the case in the main proceedings, the position of the persons concerned has not been settled, even though the assistance provided to those persons has ceased for reasons independent of their volition, the fact that those persons are, in that specific situation, ‘*ipso facto* ... entitled to the benefits of [the] directive’ necessarily has wider implications than those arising from the simple fact that such persons are not excluded from the possibility of qualifying as refugees if they satisfy the requirements laid down in Article 2(c).
- 75 It should, however, be noted that the fact that the persons concerned are *ipso facto* entitled to the benefits of Directive 2004/83 within the meaning of Article 12(1)(a) does not, as rightly observed by the Hungarian and German Governments, entail an unconditional right to refugee status.
- 76 Thus, a person who is *ipso facto* entitled to the benefits of Directive 2004/83 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, but must nevertheless submit – as did the applicants in the main proceedings – 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 (see, in that regard, *Bolbol*, paragraph 52), 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.
- 77 Furthermore, it should be added that Article 11(f) of Directive 2004/83, read in conjunction with Article 14(1) thereof, must be interpreted as meaning that the person concerned ceases to be a refugee if he is able to return to the UNRWA area of operations in which he was formerly habitually resident because the circumstances which led to that person qualifying as a refugee no longer exist (see in that regard, by analogy, Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08 *Salahadin Abdulla and Others* [2010] ECR I-1493, paragraph 76).
- 78 Lastly, the interpretation of the words ‘shall *ipso facto* be entitled to the benefits of [the] Directive’ set out at paragraphs 70 to 76 above does not, contrary to what is maintained by a number of governments which have submitted observations to the Court in these proceedings, lead to discrimination, prohibited by the principle of equal treatment enshrined in Article 20 of the Charter.

- 79 Given that applicants for asylum who must have a well-founded fear of persecution in order to qualify as ‘refugees’ within the meaning of Article 2(c) of Directive 2004/83 are in a different position from that of persons, such as the applicants in the main proceedings, who were receiving assistance from UNRWA before leaving its area of operations and submitting an application for asylum in a Member State, the principle of equal treatment does not require that they be treated in the same manner as those who, like the applicants in the main proceedings, had recourse to such assistance.
- 80 It should be noted in that regard that, having regard to the particular situation of Palestinian refugees, the States signatories to the Geneva Convention deliberately decided in 1951 to afford them the special treatment provided for in Article 1D of the convention, to which Article 12(1)(a) of Directive 2004/83 refers.
- 81 In the light of the foregoing considerations, the answer to Question 1 is that the second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, where the competent authorities of the Member State responsible for examining the application for asylum have established that the condition relating to the cessation of UNRWA protection or assistance is satisfied as regards the applicant, the fact that that person is *ipso facto* ‘entitled to the benefits of [the] directive’ means that that Member State must recognise him as a refugee within the meaning of Article 2(c) of the directive and that person must automatically be granted refugee status, provided always that he is not caught by Article 12(1)(b) or (2) and (3) of the directive.

### Costs

- 82 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **The second sentence 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 must be interpreted as meaning that the cessation of protection or assistance from organs or agencies of the United Nations other than the High Commission for Refugees (HCR) ‘for any reason’ includes the situation in which a person who, after actually availing himself of such protection or assistance, ceases to receive it for a reason beyond his control and independent of his volition. It is for the competent national authorities of the Member State responsible for examining the asylum application made by such a person to ascertain, by carrying out an assessment of the application on an individual basis, whether that person was forced to leave the area of operations of such an organ or agency, which will be the case where that person’s personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his living conditions in that area would be commensurate with the mission entrusted to that organ or agency.**
2. **The second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, where the competent authorities of the Member State responsible for examining the application for asylum have established that the condition relating to the cessation of the protection or assistance provided by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is satisfied as regards the applicant, the fact that that person is *ipso facto* ‘entitled to the benefits of [the] directive’ means that that Member State must recognise him as a refugee within the meaning of Article 2(c) of the directive and that person must automatically be granted refugee status, provided always that he is not caught by Article 12(1)(b) or (2) and (3) of the directive.**



[Signatures]