



Reports of Cases

Case C-364/11

Mostafa Abed El Karem El Kott and Others

v

Bevándorlási és Állampolgársági Hivatal

(Reference for a preliminary ruling from the Fővárosi Bíróság)

(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)

Summary — Judgment of the Court (Grand Chamber), 19 December 2012

1. *Border controls, asylum and immigration — Asylum policy — Refugee status or subsidiary protection status — Directive 2004/83 — Conditions for determining who qualifies for refugee status — Person receiving protection or assistance from a United Nations agency other than the High Commissioner for Refugees — Exclusion from refugee status — Cessation of such assistance — Application of the directive — Conditions*

(Council Directive 2004/83, Art. 12(1)(a), first and second sentences)

2. *Border controls, asylum and immigration — Asylum policy — Refugee status or subsidiary protection status — Directive 2004/83 — Conditions for determining who qualifies for refugee status — Person receiving protection or assistance from a United Nations agency other than the High Commissioner for Refugees — Exclusion from refugee status — Cessation of such assistance — Recognition of that status — Conditions*

(Council Directive 2004/83, Art. 12(1)(a)), second sentence)

1. It is necessary to interpret the first sentence of Article 12(1)(a) of Directive 2004/83 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 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 organs or agencies of the United Nations but also those 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.

According to the latter provision, the cessation of the protection or assistance provided by a United Nations organ or agency other than the United Nations High Commissioner for Refugees ‘for any reason’, which gives the persons concerned ipso facto entitlement to the benefits of Directive 2004/83, includes, inter alia, 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. Indeed, it is apparent from the words ‘[w]hen such protection or assistance has ceased’ which introduce the second sentence of Article 12(1)(a) of Directive 2004/83 that it is primarily the actual assistance provided by United Nations organ or agency and not the existence of that organ or agency itself which must cease in order for the ground for exclusion from refugee status no longer to be applicable. Mere absence from the area of operations of that organ or agency 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.

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 that area, 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.

(see paras 52, 57, 59, 61, 63-65, operative part 1, 2)

2. The second sentence of Article 12(1)(a) of Directive 2004/83 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, where the competent authorities of the Member State responsible for examining the application for asylum have established that the condition relating to the cessation 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 any of the grounds for exclusion in Article 12(1)(b) or (2) and (3) of the directive.

The words ‘shall ipso facto be entitled to the benefits of [the] Directive’ in the second sentence of Article 12(1) (a) of Directive 2004/83 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. 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. However, 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 entail an unconditional right to refugee status. 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 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 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.

(see paras 71, 72, 75, 76, 81, operative part 2)