



Reports of Cases

OPINION OF ADVOCATE GENERAL
EMILIOU

delivered on 11 January 2024¹

Case C-563/22

SN,

LN, represented by SN

v

Zamestnik-predsdatel na Darzhavna agentsia za bezhantsite

(Request for a preliminary ruling from the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria))

(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’s 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’ – Importance of elements relating to the general living conditions prevailing in the Gaza Strip – Article 4 of the Charter of Fundamental Rights of the European Union – Living conditions amounting to ‘inhuman and degrading treatment’ – Threshold – Directive 2013/32/EU – Article 40 – Subsequent application for international protection – Obligation to reassess elements relating to that general situation which were already examined – Article 19(2) of the Charter – Principle of non-refoulement)

I. Introduction

1. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established following the Israeli–Arab conflict of 1948, with a view to carrying out direct relief and works programmes for stateless persons of Palestinian origin registered with

¹ Original language: English.

that agency.² Its area of operation has been defined as comprising Jordan, Lebanon, Syria, the West Bank (including East Jerusalem) and the Gaza Strip. UNRWA's mandate has been successively renewed and is currently due to expire on 30 June 2026.³

2. SN and LN, the applicants in the main proceedings, are stateless persons of Palestinian origin who used to live in the Gaza Strip and are registered with UNRWA. They seek asylum for the second time in Bulgaria, after their first applications for international protection were rejected by the authorities of that Member State. They claim that they must be granted refugee status in application of the *lex specialis* contained in Article 12(1)(a) of Directive 2011/95/EU.⁴ Under that provision, stateless persons of Palestinian origin who have availed themselves of UNRWA's protection or assistance are excluded from that status. However, that exclusion no longer applies if that protection or assistance has 'ceased'.

3. The present case raises an issue of obvious importance and sensitivity – particularly in the light of the events that have taken place in the Gaza Strip since Hamas' attacks on Israel of 7 October 2023: can UNRWA's protection or assistance be regarded as having 'ceased', in the light of the living conditions generally prevailing in that area, without it being necessary for the persons concerned to show that they are specifically targeted or affected by those conditions by reason of factors particular to their personal circumstances?

4. The dispute in the main proceedings arose before those events. Indeed, SN and LN's claim and the elements on which the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria) relies in its request for a preliminary ruling relate to the situation in the Gaza Strip as it was before or at the time when that request, dated 9 August 2022, was made. However, as I will explain in this Opinion, any assessment that that court or the competent national authorities will need to perform will have to take account of the situation *currently* prevailing in that area, over which several organs and representatives of the United Nations have expressed grave concerns.⁵

² See United Nations General Assembly Resolution No 302 (IV) of 8 December 1949. According to *Consolidated Eligibility and Registration Instructions (CERI)* of UNRWA (available at: <https://www.unrwa.org/sites/default/files/2010011995652.pdf>), UNRWA's protection or assistance is available to persons who meet that agency's 'Palestine Refugee criteria' (that is to say, any person whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict, and descendants of such persons, including legally adopted children, through the male line) as well as certain other categories of persons referred to as 'Other Registered Persons'. That document indicates that 'all applications for registration with UNRWA are thoroughly examined by UNRWA Eligibility and Registration staff and decisions on eligibility for UNRWA services are taken on a case-by-case basis'.

³ See United Nations General Assembly Resolution No 77/123 of 12 December 2022.

⁴ 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).

⁵ In addition to the alarming number of lives lost among the civilian population since 7 October 2023, a great number of casualties have been reported among the UNRWA staff operating in that area. On 27 October 2023, António Guterres, Secretary-General of the United Nations, stated that 'the humanitarian system in Gaza is facing a total collapse with unimaginable consequences for more than 2 million civilians' (see *Statement by the Secretary-General – on the humanitarian situation in Gaza*, available on the United Nations website). Philippe Lazzarini, Commissioner-General of UNRWA, addressed the UN Security Council on 30 October 2023, declaring that 'the system in place to allow aid into Gaza is geared to fail unless there is political will to make the flow of supplies meaningful, matching the unprecedented humanitarian needs' (<https://www.unrwa.org/newsroom/official-statements/un-security-council-emergency-briefing-situation-middle-east>). On 7 December 2023, Mr Lazzarini wrote to Dennis Francis, President of the United Nations General Assembly, that 'UNRWA's ability to implement its General Assembly mandate in Gaza [was] severely limited with immediate and dire consequences for the UN humanitarian response and the lives of civilians in Gaza' and that the humanitarian situation in that area was 'untenable' (<https://www.unrwa.org/resources/un-unrwa/letter-unrwa-commissioner-general-philippe-lazzarini-un-general-assembly>). On 29 December 2023, he added that 'the delivery of much needed and urgent aid continues to be limited in quantities and riddled with logistical hurdles' (<https://www.unrwa.org/newsroom/official-statements/gaza-strip-unrwa-calls-unimpeded-and-safe-access-deliver-much-needed>). The events that have taken place in the Gaza Strip since 7 October 2023 have also led the United Nations General Assembly and Security Council to adopt resolutions. The content of those resolutions is detailed in points 8 to 11 below.

II. Legal framework

A. *International law*

1. *The Geneva Convention*⁶

5. Article 1(D) of the Geneva Convention 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.’

6. 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.

2. *Relevant resolutions of the United Nations General Assembly and Security Council*

(a) *Resolutions adopted prior to 7 October 2023*

7. Various resolutions have been adopted by the United Nations General Assembly and Security Council concerning UNRWA or the situation in its area of operation, since the creation of that agency. In accordance with United Nations General Assembly Resolution No 74/83 of 13 December 2019:

‘The General Assembly,

...

Aware of the growing needs of the Palestine refugees throughout all the fields of operation, namely, Jordan, Lebanon, the Syrian Arab Republic and the Occupied Palestinian Territory,

Expressing grave concern at the especially difficult situation of the Palestine refugees under occupation, including with regard to their safety, well-being and socioeconomic living conditions,

Expressing grave concern in particular at the grave humanitarian situation and socioeconomic conditions of the Palestine refugees in the Gaza Strip, and underlining the importance of emergency and humanitarian assistance and urgent reconstruction efforts,

⁶ 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’).

...

3. *Affirms* the necessity for the continuation of the work of [UNRWA] and the importance of its unimpeded operation and its provision of services, including emergency assistance, for the well-being, protection 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;

4. *Calls upon* all donors to continue to strengthen their efforts to meet the anticipated needs of [UNRWA], including with regard to increased expenditures and needs arising from conflicts and instability in the region and the serious socioeconomic and humanitarian situation, particularly in the Occupied Palestinian Territory, and those needs mentioned in recent emergency, recovery and reconstruction appeals and plans for the Gaza Strip ...

...'

(b) Resolutions adopted since 7 October 2023

8. The events having taken place in the Gaza Strip since 7 October 2023 led the United Nations General Assembly to vote, on 27 October 2023, a resolution entitled 'Protection of civilians and upholding legal and humanitarian obligations', in which it called for 'an immediate, durable and sustained humanitarian truce leading to a cessation of hostilities' in the Gaza Strip.⁷ Among other things, it noted 'the grave deterioration of the situation', deplored 'the heavy civilian casualties and widespread destruction' and expressed grave concern 'at the catastrophic humanitarian situation in the Gaza Strip and at its vast consequences for the civilian population, largely comprising children'.

9. That resolution was followed, on 15 November 2023, by Resolution 2712 (2023) of the United Nations Security Council, calling, inter alia, for urgent and extended humanitarian pauses in the Gaza Strip.⁸

10. On 12 December 2023, the United Nations General Assembly voted a resolution entitled 'Protection of civilians and upholding legal and humanitarian obligations'.⁹ In that resolution, it demanded an immediate humanitarian ceasefire in the Gaza Strip and that humanitarian access to that area be ensured. It also reiterated its insistence that parties to the conflict comply with international law, notably with regard to the protection of civilians, and that all hostages be released immediately and without conditions.

11. On 22 December 2023, the United Nations Security Council adopted Resolution 2720 (2023),¹⁰ recalling all of its relevant resolutions, particularly Resolution 2712 (2023). Among other things, it expressed 'deep concern at the dire and rapidly deteriorating humanitarian situation in the Gaza Strip and its grave impact on the civilian population', underlined 'the urgent need for full, rapid, safe, and unhindered humanitarian access in to and throughout the entire Gaza Strip', and took note of the 'concerning reports from the leadership of the United Nations and humanitarian

⁷ A/RES/ES-10/21, available at the following address: <https://digitallibrary.un.org/record/4025940?ln=en>.

⁸ S/RES/2712 (2023), available at the following address: <http://unscr.com/en/resolutions/doc/2712>.

⁹ A/RES/ES-10/22, available at the following address: <https://digitallibrary.un.org/record/4031196?ln=en>.

¹⁰ S/RES/2720(2023), available at the following address: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/424/87/PDF/N2342487.pdf?OpenElement>.

organizations in this regard’. It also reaffirmed its ‘strong concern for the disproportionate effect that the conflict is having on the lives and well-being of children, women, and other civilians in vulnerable situations’.

B. European Union law

(a) Directive 2011/95

12. Article 12 of Directive 2011/95, 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;

...’

(b) Directive 2013/32¹¹

13. Pursuant to Article 40 of Directive 2013/32, entitled ‘Subsequent application’:

‘1. Where a person who has applied for international protection in a Member State makes further representations or a subsequent application in the same Member State, that Member State shall examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, in so far as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

...’

C. National law

14. Directive 2011/95 and Directive 2013/32 were transposed into Bulgarian law by the *Zakon za ubezhishteto i bezhantsite* (Law on asylum and refugees; ‘the ZUB’).

15. Articles 8 and 9 of the ZUB substantively reproduce the conditions for granting international protection set out in Directive 2011/95. Article 12(1) of the ZUB mirrors the contents of Article 12(1)(a) of that directive.

¹¹ Directive of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

16. Under Article 75(2) of the ZUB:

‘In the course of the examination of an application for international protection, account must be taken of all the relevant facts ... concerning the personal situation of the applicant or his or her country of origin ...’

III. Facts, national proceedings and the questions referred

17. SN, born in 1995, and her child, LN, are stateless persons of Palestinian origin. They left the Gaza Strip in July 2018 and stayed in Egypt for 45 days and in Türkiye for seven months. After illegally transiting through Greece, they entered Bulgarian territory with KN, who is SN’s husband and LN’s father.

18. On 22 March 2019, SN and LN lodged applications for international protection with the Darzhavna agentsia za bezhantsite (State Agency for Refugees, Bulgaria; ‘the DAB’). They based their claim on several elements, including the lack of decent living conditions and the instability in the Gaza Strip, as well as the almost permanent situation of armed conflict caused by Israeli military action and tensions between Fatah and Hamas. SN also indicated that KN’s life had been threatened by multiple bombing attacks while he had been at work and that their house was close to a police station, which was often targeted by missiles.

19. SN and LN did not mention in their applications that they were registered with UNRWA.

20. By decision of 5 July 2019, the Predsedatel of the DAB (Chairperson of the DAB) rejected SN and LN’s applications for international protection. The Chairperson of the DAB stated that SN and LN had not been forced to leave the Gaza Strip by reason of a real risk of torture, of inhuman or degrading treatment, of death penalty or execution, or of other serious threats. Nor were SN or LN at risk of facing such threats if they were to return to the Gaza Strip, since they had not adduced evidence that they would be specifically targeted by reason of factors pertaining to their personal circumstances. Furthermore, while in the judgment of *Elgafaji*,¹² the Court had recognised that, in certain situations, the degree of indiscriminate violence characterising an armed conflict may reach such a high level that persons applying for international protection are not required to adduce evidence that they are specifically targeted by reason of factors particular to their personal circumstances, the situation in that area could not be deemed, at the material time, to amount to an armed conflict similar to the one that had led to that judgment. Finally, the Chairperson of the DAB stated that SN and LN could have stayed in Egypt or Türkiye and that they had come to Bulgaria only to benefit from better economic conditions.

21. Upon exhaustion of the available remedies, that decision became final.

22. On 21 August 2020, SN and LN applied for international protection again. They introduced proof of the fact that they were registered with UNRWA and claimed that the *lex specialis* contained in Article 12(1)(a) of Directive 2011/95 therefore applied to them. They argued that, under that provision, they were *ipso facto* entitled to refugee status because UNRWA’s protection or assistance in respect of them had to be regarded as having ‘ceased’.

23. The Intervyuirasht organ na DAB (Interviewing Body of the DAB) declared SN and LN’s subsequent applications admissible.

¹² Judgment of 17 February 2009 (C-465/07, EU:C:2009:94).

24. In support of their claim to be granted refugee status, SN and LN produced several documents that established, according to them, that the conditions under which UNRWA operated in the Gaza Strip at the relevant time (in 2020) were very poor.

25. In particular, SN claimed that the situation in the Gaza Strip had been deteriorated in recent years, particularly since the COVID-19 pandemic. She submitted that unemployment was particularly high and that those who were working were not being paid. She also stated that a curfew had been put in place, that schools remained closed and that Hamas prevented people from leaving their homes and was launching repeated attacks on Israel. She explained that half of the house in which they lived as a family had been destroyed by missiles on account of the house's proximity to a police station, and that, in 2014, damage to the roof meant that they had to relocate for a period of two years.

26. By decision of 14 May 2021, the Zamestnik-predsdatel of the DAB (Deputy Chairperson of the DAB) rejected SN and LN's subsequent applications. The Deputy Chairperson of the DAB explained that, given that those applications were 'subsequent applications', within the meaning of Article 2(q) of Directive 2013/32, not all the elements underlying them had to be examined. Accordingly, the assessment of whether SN and LN should be granted refugee status could be limited, first, to establishing the existence of 'new elements', second, to evaluating the relevance of those elements to their personal situation or the situation in their country of origin and, third, to determining whether the same elements were supported by sufficient evidence.

27. The Deputy Chairperson of the DAB stated that the fact that SN and LN were registered with UNRWA, although introduced as a 'new element', was not relevant to SN and LN's personal situation. First, SN and LN had in fact benefited from UNRWA's protection or assistance in the past and the only reason that they no longer benefited from it was that they had voluntarily left that agency's area of operation. Second, there was no reason to believe that SN and LN would not benefit from UNRWA's protection or assistance again if they were to return to the Gaza Strip. Furthermore, the Deputy Chairperson of the DAB indicated that SN and LN's arguments relating to the general situation in the Gaza Strip did not show that they personally faced persecution or other serious threats. The absence of any such threats meant that they did not qualify for international protection.

28. SN and LN challenged that decision before the Administrativen sad Sofia-grad (Administrative Court, Sofia), the referring court. In particular, SN argued that her return to the Gaza Strip (together with LN) would breach the principle of non-refoulement which requires Member States to refrain from sending anyone to a State where there is a serious risk that he or she would be subjected to death penalty, torture or other inhuman or degrading treatment or punishment.

29. That court wishes to know, first, how Article 40(1) of Directive 2013/32, which concerns subsequent applications, must be interpreted in such a situation. It notes that, in support of their subsequent applications, SN and LN have introduced proof of their registration with UNRWA, an element that they had not disclosed as part of their previous applications. However, it indicates that none of the elements mentioned by SN and LN concerning the reasons why they had left the Gaza Strip can be regarded as 'new', since all those elements were already examined as part of the procedure relating to their previous applications.

30. Second, it enquires as to whether UNRWA's protection or assistance must be regarded as having 'ceased', within the meaning of Article 12(1)(a) of Directive 2011/95, with respect to SN and LN, given the general situation in the Gaza Strip. In that connection, it notes that that general situation, which has worsened over the past few years, has undeniably affected UNRWA's ability to provide *effective* protection or assistance to stateless persons of Palestinian origin in the Gaza Strip. Furthermore, UNRWA has been underfunded and is going through financial difficulties.

31. In that regard, the Administrativen sad Sofia-grad (Administrative Court, Sofia) refers to the European Parliament resolution of 19 April 2018 on the situation in the Gaza Strip,¹³ in which that area is described as suffering from a 'deteriorating, unprecedented humanitarian crisis'. In addition, it points to a document entitled 'UNHCR Position on Returns to Gaza' of March 2022,¹⁴ in which the United Nations High Commissioner for Refugees (UNHCR) has indicated that civilians fleeing the Gaza Strip shall not be forcibly returned to that area given the evidence of serious allegations of infringements of international human rights law and of ongoing instability.

32. In the light of those elements, the referring court wonders whether it must consider that SN and LN would find themselves in a situation of 'extreme material poverty', within the meaning of the judgment in *Jawo*,¹⁵ if they were forced to return to the Gaza Strip. Pursuant to that judgment, SN and LN would need to show that their return to the Gaza Strip would put them in a situation that would not allow them to meet their most basic needs, such as food, personal hygiene and a place to live, and that it would undermine their physical or mental health or put them in a state of degradation incompatible with human dignity. That court notes that if LN (who is a child) was forced to return to the Gaza Strip, her well-being and safety would certainly be at risk. However, it also recalls that the reason why SN and LN left the Gaza Strip is not linked to any serious threat to their personal safety, but only to the general situation in that area.

33. In those circumstances, the Administrativen sad Sofia-grad (Administrative Court, Sofia) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does it follow from Article 40(1) of Directive [2013/32] that, where a subsequent application for international protection lodged by a stateless applicant of Palestinian origin on the basis of his or her registration with UNRWA is admissible, the obligation on the competent authorities laid down in that provision to take into account and consider all the elements underlying the further representations in the subsequent application also includes, in the circumstances of the case, the obligation to consider the reasons for which the person left UNRWA's area of operation, in addition to the new elements or circumstances which are the subject of the subsequent application, when that obligation is interpreted in conjunction with the second sentence of Article 12(1)(a) of Directive [2011/95]? Does fulfilment of that obligation depend on the fact that the reasons for which the person left UNRWA's area of operation had already been examined in the proceedings relating to the first application for [international] protection, which resulted in a final decision refusing such protection but in which the applicant neither invoked nor proved his or her registration with UNRWA?

¹³ OJ 2019 C 390, p. 108.

¹⁴ Available at the following address: <https://www.refworld.org/docid/6239805f4.html>.

¹⁵ Judgment of 19 March 2019 (C-163/17, EU:C:2019:218, paragraph 92).

(2) Does it follow from the second sentence of Article 12(1)(a) of Directive 2011/95 that the phrase “when such protection or assistance has ceased for any reason” in that provision applies to a stateless person of Palestinian origin who was registered with UNRWA and was receiving assistance in Gaza City from UNRWA in the form of food, health services and educational services, without there being any evidence of a personal threat to that person, who left Gaza City voluntarily and lawfully, having regard to the information available in the case:

- assessment of the general situation at the time of departure as constituting an unprecedented humanitarian crisis, associated with shortages of food, drinking water, health services and medicines, as well as water and electricity supply issues, the destruction of buildings and infrastructure, and unemployment;
- UNRWA’s difficulties in sustaining the provision of aid and services in Gaza, including in the form of food and health services, due to a significant deficit in UNRWA’s budget and a steady increase in the number of persons in need of the agency’s assistance, [and the circumstance that] the general situation in Gaza is undermining UNRWA’s activities?

Must that question be answered differently for the sole reason that the applicant is a vulnerable person within the meaning of Article 20(3) of that directive, namely a minor child?

(3) Must the second sentence of Article 12(1)(a) of Directive 2011/95 be interpreted as meaning that an applicant for international protection who is a Palestinian refugee registered with UNRWA may return to the UNRWA area of operation which he or she had left, specifically to Gaza City, where, at the time of the hearing of his or her action against a refusal decision before the court,

- there is no certainty that that person will be able to obtain from UNRWA the necessary food, health services, medicines and healthcare and education;
- the information on the general situation in Gaza City and on UNRWA, according to the UNHCR Position on Returns to Gaza of March 2022, was assessed as constituting justification for leaving UNRWA’s area of operation and for non-return;

[–] as well as the fact that, if the applicant were to return, he or she would be able to stay there in dignified living conditions?

For the purpose of applying and complying with the principle of non-refoulement under Article 21(1) of Directive 2011/95, in conjunction with Article 19 of the [Charter of Fundamental Rights of the European Union (“the Charter”)], does the personal situation of an applicant for international protection come within the scope of the interpretation given in ... the judgment of 19 March 2019, *Jawo* (C-163/17, EU:C:2019:218) concerning extreme material poverty under Article 4 of the [Charter], in the light of the situation in the Gaza Strip at the time in question, and in so far as the applicant in question is dependent on UNRWA’s assistance as regards food, health services, medicines and healthcare?

On the basis of the information regarding the general situation in Gaza City and regarding UNRWA, must the question as to return to Gaza City be answered differently for the sole reason that the person applying for protection is a minor child, with a view to safeguarding the best interests of the child and guaranteeing his or her well-being and social development, protection and safety?

(4) Depending on the answer to the third question:

In the present case, must the second sentence of Article 12(1)(a) of Directive 2011/95, and in particular the phrase “those persons shall *ipso facto* be entitled to the benefits of this Directive” in that provision, be interpreted as meaning that:

(A) the principle of non-refoulement under Article 21(1) of Directive 2011/95, in conjunction with Article 19 of the Charter, is applicable in relation to a person applying for protection who is a stateless Palestinian registered with UNRWA because, if returned to Gaza City, the person would be exposed to the risk of inhuman and degrading treatment, as he or she could suffer extreme material poverty, and comes within the scope of Article 15[(b)] of Directive 2011/95 for the purpose of being granted subsidiary protection;

or

(B) that provision, in relation to a person applying for protection who is a stateless Palestinian registered with UNRWA, requires recognition by that Member State of refugee status within the meaning of Article 2(c) of that directive and the granting to that person of refugee status by operation of law, in so far as he or she does not come within the scope of Article 12(1)(b)[,] (2) and (3) of that directive, in accordance with [point 2 of the] operative part ... of the judgment of 19 December 2012, *Abed El Kareem El Kott and Others* (C-364/11, EU:C:2012:826), without account being taken of the circumstances relating to that person which are relevant to the grant of subsidiary protection under Article 15[(b)] of Directive 2011/95?

34. The request for a preliminary ruling, dated 9 August 2022, was registered on 22 August 2022. The Bulgarian Government and the European Commission submitted written observations. No hearing was held.

IV. Analysis

35. Directive 2011/95 lays down the conditions that asylum seekers must meet to benefit from international protection in the European Union. It must be interpreted in the light of its general scheme and purpose, which is, *inter alia*, to ensure that all Member States apply common criteria for the identification of persons genuinely in need of international protection, 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 16 of Directive 2011/95, the provisions contained therein must also be interpreted in a manner consistent with the rights recognised by the Charter.¹⁶

36. Article 12(1)(a) of Directive 2011/95, which mirrors the contents of Article 1(D) of the Geneva Convention, details the specific legal regime applicable to stateless persons of Palestinian origin who have availed themselves of the protection or assistance of UNRWA. As I explained in my Opinion in *SW (Refugee status of a Palestinian stateless person)*,¹⁷ that provision contains both an exclusion clause and an inclusion clause.

¹⁶ See judgment of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)* (C-238/19, EU:C:2020:945, paragraph 20 and the case-law cited).

¹⁷ C-294/22, EU:C:2023:388, points 19 to 21. See, also, judgment of 5 October 2023, *SW (Refugee status of a Palestinian stateless person)* (C-294/22, EU:C:2023:733, paragraphs 30 and 31).

37. Indeed, on the one hand, Article 12(1)(a) of Directive 2011/95 provides that if a person falls within the scope of Article 1(D) of the Geneva Convention, he or she is excluded from being granted refugee status under that directive, in the same way that such a person is also excluded from being a refugee under that convention. Although neither Article 12(1)(a) of Directive 2011/95 nor Article 1(D) of the Geneva Convention explicitly state so, the exclusion clause which they contain applies in practice only to stateless persons of Palestinian origin and, more specifically, only to those who have availed themselves of the protection or assistance of UNRWA.¹⁸

38. On the other hand, if that protection or assistance can be considered to have ‘ceased’, that exclusion clause no longer applies and such persons ‘shall *ipso facto* be entitled to the benefits’ of Directive 2011/95 (in the same way that they will *ipso facto* also become entitled to the benefits of the Geneva Convention). Those benefits can be claimed ‘as of right’ –¹⁹ without needing to fulfil the requirements that apply to other asylum seekers. However, refugee status is not automatically granted or unconditional, since, even then, the national competent authorities must, for example, verify, in every case, that the persons concerned do not fall within the scope of any of the grounds for exclusion set out in Article 12(1)(b), (2) and (3) of that directive,²⁰ which apply when there are serious reasons for considering that they have committed or incited or otherwise participated in the commission of certain crimes.

39. As Advocate General Sharpston has stated in her Opinion in *Bolbol*,²¹ Article 1(D) of the Geneva Convention arose out of a specific context. 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, at the same time, to ensuring that stateless persons of Palestinian origin – who have been recognised as refugees by the international community –²² continued to receive *effective* protection or assistance until their position had been definitively settled in accordance with the relevant resolutions of the General Assembly of the United Nations.²³

40. Accordingly, the Court has explained that the purpose of Article 12(1)(a) of Directive 2011/95 is based on the rationale that stateless persons of Palestinian origin must be able to receive *effective* protection or assistance from UNRWA, and not that they are simply guaranteed the existence of a body or agency the task of which it is to provide such assistance or protection.²⁴

41. Within that context, the first question of the referring court concerns a specific procedural issue, linked to the fact that, in the main proceedings, SN and LN are seeking refugee status for the second time. It invites the Court to determine whether, when a stateless person of Palestinian origin submits such a ‘subsequent application’, following the rejection of his or her first application, the competent national authorities must reassess the factual elements relating to the

¹⁸ Thus, it does not cover persons who are, or have been, eligible to receive protection or assistance from that agency, but who have not actually availed themselves of that protection or assistance (see judgment of 17 June 2010, *Bolbol*, C-31/09, EU:C:2010:351, paragraph 51).

¹⁹ See judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraph 71; ‘judgment in *Abed El Karem El Kott and Others*’).

²⁰ See, in that sense, judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 86 and the case-law cited).

²¹ See Opinion of Advocate General Sharpston (C-31/09, EU:C:2010:119, points 41 and 43).

²² See UNHCR Guidelines on International Protection No 13, point 2. As I understand it, it is precisely because stateless persons of Palestinian origin are already recognised as refugees by the international community that they can, in certain circumstances, be *ipso facto* entitled to refugee status under the Geneva Convention (and Directive 2011/95), that is to say, without having to fulfil the general criteria to be granted that status.

²³ See, also, judgment in *Abed El Karem El Kott and Others*, paragraph 62. To date, no solution in that regard has been found.

²⁴ See, in that sense, judgment of 5 October 2023, *SW (Refugee status of a Palestinian stateless person)* (C-294/22, EU:C:2023:733, paragraph 37 and the case-law cited).

reasons why the person concerned has left the area of operation of UNRWA, even where those elements were already considered by those authorities in the context of the procedure concerning that first application. In that regard, the referring court notes that, during that procedure, the competent national authorities examined those elements to determine whether that person satisfied the general criteria to be granted refugee status, and *not* whether the *lex specialis* contained in Article 12(1)(a) of Directive 2011/95 applied to him or her (because that applicant had not submitted that he or she was registered with UNRWA) (A).

42. The second and third questions, which I will analyse together, are of a broader and sensitive nature. As I have already pointed out in the introduction above, they call for the Court to clarify, in essence, whether UNRWA's protection or assistance can be regarded as having 'ceased', within the meaning of Article 12(1)(a) of Directive 2011/95, with respect to applicants who have availed themselves of that protection or assistance and who used to live in the Gaza Strip, in the light of the living conditions generally prevailing in that area, without having to show that they are specifically targeted or affected by those conditions by reason of factors particular to their personal circumstances (B).

43. The fourth question relates to the interrelation – and potential overlap – between the conditions that must be fulfilled in order for a person to be *ipso facto* entitled to refugee status under Article 12(1)(a) of Directive 2011/95 and those that must be satisfied for such a person to be granted subsidiary protection (C).

A. The first question: the need to reassess factual elements already examined during a previous procedure resting on a different legal basis

44. As I have already stated, SN and LN's applications for international protection in the main proceedings are 'subsequent applications'. Such applications are defined, under Article 2(q) of Directive 2013/32, as 'further application[s] for international protection made after a final decision has been taken on a previous application'.

45. The referring court did not raise the question whether Directive 2013/32, which contains the procedural rules that competent national authorities must generally comply with when processing applications for international protection, applies to stateless persons of Palestinian origin who have availed themselves of UNRWA's protection or assistance. Given that those persons are, in principle, excluded from refugee status, in application of Article 12(1)(a) of Directive 2011/95, one could wonder whether they are also excluded from the procedural rules of Directive 2013/32 (or at least some of them). In that regard, I note, however, that that directive does not contain any provision to that effect. Furthermore, in my view, it is logical that the procedural rules contained in that directive apply to such persons. Indeed, although they are not entitled to refugee status under the same *substantive* conditions as other asylum seekers (in application of Article 12(1)(a) of Directive 2011/95), I fail to see why those different *substantive* conditions should result in their applications being subject to different *procedural* rules under Directive 2013/32.

46. In their first applications for international protection (which were rejected by the DAB), SN and LN had not mentioned the fact that they were registered with UNRWA or that Article 12(1)(a) of Directive 2011/95 applied to them. The information provided in the case file before the Court indicates that the DAB rejected their first applications due to their failure to meet the general criteria necessary in order to obtain refugee status, as set out under that directive and, in particular, Article 5(1) and Article 6 thereof. That rejection was, thus, not founded on the *lex specialis* contained in that Article 12(1)(a).

47. SN and LN's subsequent applications differ from their first applications to the extent that, in those subsequent applications, they invoke their registration with UNRWA and their entitlement to refugee status in application of that provision. In that regard, it is important to note that the fact that SN and LN are registered with UNRWA is a 'new element', within the meaning of Article 33(2) and Article 40(2) and (3) of Directive 2013/32. Pursuant to those provisions, an element can be considered as 'new' when it comes about after the decision on the applicant's previous application was adopted or where the applicant presents it for the first time as part of his or her subsequent application.²⁵ As the Court has repeatedly held, a 'new element' therefore does not have to post-date the final decision on the previous applications of the persons concerned.²⁶ Although SN and LN were already registered with UNRWA at the time when they first applied for international protection, that element was not disclosed or made available to the DAB until they lodged their subsequent applications. That 'new element' triggers the application of Article 12(1)(a) of Directive 2011/95 and, thus, opens up a different legal basis on which SN and LN could claim their entitlement to refugee status.

48. In those circumstances, the referring court asks whether the DAB was bound to consider, when examining SN and LN's subsequent applications on the merits, not only the fact that they were registered with UNRWA (the 'new element'), but also the other factual elements in their file, in particular those regarding the reasons why they had left the Gaza Strip, which had already been analysed during that previous procedure. Those reasons relate to the general living conditions prevailing in the Gaza Strip prior to LN and SN's departure from that area.

49. That court refers to Article 40(1) of Directive 2013/32, which, in its view, provides an obligation for the competent national authorities to consider, in every case, all the elements underlying the subsequent application.

50. It is true that that provision refers to such an obligation. However, as I understand it, Article 40(1) concerns only two particular situations. The first arises where, before a final decision on his or her first application for international protection has been reached, the applicant either makes further representations or lodges a subsequent application in the same Member State. That could be, for example, while there is an ongoing appeal against the decision taken by the competent national authorities. The second situation arises where a final decision has already been taken, but the relevant national law allows the procedure to be reopened in the light of a 'new element'.²⁷

51. As the Commission has rightly pointed out, neither of those situations appears to cover the one at hand in the main proceedings, whereby the subsequent application results in the competent national authorities conducting a new asylum procedure on a different legal basis (*in casu*, that new legal basis being Article 12(1)(a) of Directive 2011/95). I am thus not convinced by the argument that a general obligation to consider all the elements underlying a subsequent application could be inferred from that specific provision.

²⁵ Furthermore, pursuant to Article 40(4) of that directive, Member States may provide that a subsequent application will only be further examined if the applicant concerned was, through no fault of his or her own, incapable of asserting the 'new element' in the previous procedure.

²⁶ See judgment of 10 June 2021, *Staatssecretaris van Justitie en Veiligheid (New elements or findings)* (C-921/19, EU:C:2021:478, paragraph 50), and my Opinion in *Bundesrepublik Deutschland (Admissibility of a subsequent application)* (C-216/22, EU:C:2023:646, point 34).

²⁷ In relation to the two types of situations covered by Article 40(1) of Directive 2013/32, see judgments of 4 October 2018, *Ahmedbekova* (C-652/16, EU:C:2018:801, paragraph 98), and of 9 September 2021, *Bundesamt für Fremdenwesen und Asyl (Subsequent application for international protection)* (C-18/20, EU:C:2021:710, paragraph 23).

52. Having said that, I note that the Bulgarian Government invites the Court to focus its analysis on Article 40(2) and (3) of Directive 2013/32 instead of Article 40(1) thereof. It argues that, unlike the first paragraph of Article 40,²⁸ the second and third paragraphs of that provision apply to situations, such as the one at hand, where such a new asylum procedure is initiated. That government considers that, under those paragraphs, elements already assessed during the previous asylum procedure need not be re-examined during that new procedure. In its view, only the ‘new element’ must be analysed in the context of the second application procedure.

53. While I agree with the Bulgarian Government about the relevance of Article 40(2) and (3) of Directive 2013/32 to the issue at hand in the main proceedings, I do not share the interpretation which that government proposes. In my view, the competent national authorities cannot limit themselves to assessing only the ‘new element’.

54. In that regard, it is true that Article 40(2) and (3) of Directive 2013/32, read in the light of Article 33(2)(d) thereof,²⁹ indicates that only the existence of ‘new elements’ may prevent subsequent applications from being declared inadmissible. Thus, in principle,³⁰ ‘new elements’ are the only relevant elements at the admissibility stage of such applications. However, the same is not true when a subsequent application is examined on its merits (after it has been found to be admissible). Those two steps must be clearly distinguished.

55. Indeed, once the competent national authorities move on to examine a subsequent application on its merits, Article 40(3) of Directive 2013/32 makes clear that those authorities cannot treat such an application differently, merely because it was not lodged by a first-time applicant. That provision indicates that, at the examination of merits stage of the procedure, the basic principles and guarantees listed in Chapter II of that directive do indeed apply. That chapter requires, inter alia, that a decision as to whether a person qualifies as a refugee must be taken individually, objectively and impartially and only ‘after an appropriate examination’.³¹

56. I can readily accept that some of the factual elements that the competent national authorities have already assessed during a previous asylum procedure may be identical to those which they need to consider when examining subsequent applications of the persons concerned, even where the two procedures rest on different legal bases. For example, those persons may – as appears to be the case here – invoke the same reasons for leaving their country or area of origin. However, in my view, that does not relieve those authorities of the obligation to reassess the relevance and the accuracy³² of those factual elements. That obligation must be complied with in a situation where, as is the case in the main proceedings, the legal basis under which the subsequent application’s assessment is carried out (Article 12(1)(a) of Directive 2011/95) is not the same as the one on the

²⁸ In that regard, the Bulgarian Government refers to the judgment of 10 June 2021, *Staatssecretaris van Justitie en Veiligheid (New elements or findings)* (C-921/19, EU:C:2021:478, paragraph 50).

²⁹ Pursuant to that provision, subsequent applications may only be declared inadmissible where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95 have arisen or have been presented by the applicant. Article 40(3) of that directive also makes clear that the ‘new element’ must ‘significantly add to the likelihood’ of the applicant qualifying for international protection.

³⁰ Arguably, whether a ‘new element’ ‘significantly [adds] to the likelihood’ of the applicant qualifying for international protection cannot be analysed in isolation from other elements in the case file, meaning that the authorities may, in any case, also have to take account of other elements at the admissibility stage.

³¹ See Article 10(3)(a) of Directive 2013/32.

³² If a factual element was deemed not to be relevant during the previous asylum procedure, the competent national authorities could have disregarded it without examining whether it was supported by sufficient evidence. The accuracy of that element may, therefore, have to be re-examined.

basis of which the previous procedure was conducted. In such a situation, the relevant elements – even if already examined during that previous procedure – must be reassessed through the prism of the specific criteria contained in Article 12(1)(a) of Directive 2011/95.

57. As I have explained in points 36 to 38 above, that provision contains a specific rule on the entitlement to refugee status, which is distinct from the general criteria set out, in particular, in Article 5(1) and Article 6 of Directive 2011/95. When applying Article 12(1)(a) of that directive, the competent national authorities are not required to determine whether, in the light of the reasons having led him or her to leave his or her area of origin, the person concerned has a ‘well-founded fear of being persecuted’, as they would have to do under the general criteria for obtaining refugee status provided in, inter alia, Article 5(1) and Article 6 of that instrument. That requirement of a ‘well-founded fear of being persecuted’ is not relevant to the assessment which the competent national authorities must perform under Article 12(1)(a), the focus of which is on whether UNRWA’s protection or assistance has ‘ceased’. Any reason that the person may have had for leaving his or her area of origin must, in that context, be assessed in the light of that requirement only.

58. I can easily imagine that evidence that a person lived in poor material conditions in UNRWA’s area of operation and that he or she left that area as a result of those poor material conditions (as appears to be the case of SN and LN in the main proceedings) can be a factor in deciding *both* the question of whether UNRWA’s protection or assistance has ‘ceased’ with respect to him or her, so that he or she is *ipso facto* entitled to refugee status under Article 12(1)(a) of Directive 2011/95, and that of whether he or she must be awarded that status in application of the general criteria contained in, inter alia, Article 5(1) and Article 6 of that directive. However, that evidence cannot be appreciated in the same light by the competent national authorities, depending on which of those two legal bases is relevant. During a procedure based on the general criteria for being awarded refugee status laid out in Directive 2011/95 (and not on Article 12(1)(a) of that directive), the competent national authorities approach evidence of the fact that the person concerned lived in poor material conditions from a different angle than under Article 12(1)(a), since they must, among other things, focus on whether the deterioration of the living conditions to which those persons were exposed can be regarded as an ‘act of persecution’³³ and not on whether it contributes to establishing the cessation of UNRWA’s protection or assistance.

59. In the light of those considerations, I am of the view that, when examining a subsequent application on the basis of Article 12(1)(a) of Directive 2011/95, the competent national authorities must reassess, in the light of the legal criteria specific to that provision, the factual elements which they have already analysed in the context of a previous procedure which was not based on that provision but on the general criteria which persons who do not come within the ambit of Article 12(1)(a) of that directive must fulfil in order to be granted refugee status.

B. The second and third questions: the cessation of UNRWA’s protection or assistance in the light of the general living conditions prevailing in a part of its area of operation

60. By the second and third questions, the referring court invites the Court to clarify, in essence, whether UNRWA’s protection or assistance must be regarded as having ‘ceased’, within the meaning of Article 12(1)(a) of Directive 2011/95, with respect to persons who have availed themselves of that protection or assistance, in the light of the living conditions generally prevailing in the Gaza Strip and without such persons having to show that they are specifically

³³ ‘Acts of persecution’ are defined in Article 9 of Directive 2011/95.

targeted or affected by those conditions by reason of factors particular to their personal circumstances. It also wonders whether the answer to that question could be different when the applicants are children.

61. I recall that, for the inclusion clause contained in Article 12(1)(a) of Directive 2011/95 to apply, it is sufficient, as that provision expressly indicates, that the cessation of the protection or assistance of an organ or agency such as UNRWA occurs for ‘any reason’.

62. Elaborating on the meaning of those terms, the Court has found that the cessation of UNRWA’s protection or assistance happens not only if that agency ceases to exist, but also if the person concerned has been forced to leave UNRWA’s area of operation for reasons unconnected with his or her will.³⁴ Such is the case if the personal safety of the individual concerned is at serious risk (first requirement)³⁵ and if it is impossible for that agency to guarantee that that person’s living conditions in its area of operation are commensurate with the mission entrusted to it, which is to ensure ‘dignified’ living conditions³⁶ (second requirement).

63. In order to verify whether those requirements are fulfilled and whether the persons concerned are, as a result, *ipso facto* entitled to refugee status under Directive 2011/95, the competent national authorities must consider not only the reasons which led the applicants to leave UNRWA’s area of operation, but also whether it is currently possible for them to return there. The Court made that requirement very clear in its judgment in *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)*,³⁷ in which it held that those authorities should verify whether an effective possibility of returning to UNRWA’s area of operation exists. It explained that account must be taken of factual elements, as they exist at not only at the time of that person’s departure from the UNRWA’s area of operation but also when his or her application is under consideration.³⁸

64. It follows that, for people living in the Gaza Strip, where the level of insecurity and the living conditions have been changing rapidly, especially since the events that have taken place there since 7 October 2023, precise and up-to-date information as to the general situation *currently* prevailing in that area must be taken into account, in addition to the reasons that led such persons to leave it in the first place.

65. The referring court indicates that SN and LN were not subject to individual threats to their safety before leaving the Gaza Strip and that they voluntarily left that area. However, that court explains that, in 2018, when SN and LN left the Gaza Strip, ‘an unprecedented humanitarian

³⁴ See judgment of 5 October 2023, *Refugee status of a Palestinian stateless person* (C-294/22, EU:C:2023:733, paragraphs 34 and 36 and the case-law cited). As the Court has explained, mere absence from the area of operation of UNRWA, without any indication that the person concerned was forced to leave that area, or a voluntary decision to leave cannot be regarded as cessation of the protection or assistance.

³⁵ In that regard I add that, as I explained in my Opinion in *SW (Refugee status of a Palestinian stateless person)* (C-294/22, EU:C:2023:388, point 40), 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 operation. To qualify as threats to ‘personal safety’, the threats must be of sufficient gravity (they must, in other words, presuppose serious harm).

³⁶ See judgment 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, paragraph 82 and the case-law cited). See, also, judgment of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)* (C-507/19, EU:C:2021:3, paragraphs 44 and 54 and the case-law cited).

³⁷ See judgment of 3 March 2022 (C-349/20, EU:C:2022:151, paragraphs 56 and 57). That judgment concerned 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, that provision is the same as Article 12(1)(a) of that directive.

³⁸ *Ibid.*, paragraph 58.

crisis, associated with shortages of food, drinking water, health services and medicines, as well as water and electricity supply issues, the destruction of buildings and infrastructure, and unemployment’ was already ongoing there.

66. Concerning the period after SN and LN left that area, the referring court insists upon the difficulties faced by UNRWA in sustaining the provision of services in the Gaza Strip (including in the form of food and health services). That court also suggests that, even prior to the events having taken place in that area since 7 October 2023, it was not certain that SN and LN would, if they were to return to the Gaza Strip, be able to obtain the food, medicine, health services or education that they need from UNRWA. In the light of those elements, it doubts that *any* stateless persons of Palestinian origin could be required to return to that area.

67. I agree with the Commission that it is not for the Court to carry out its own factual assessment of the general living conditions prevailing in the Gaza Strip or of the personal circumstances of the applicants in the main proceedings. Indeed, it must be borne in mind that Article 267 TFEU does not empower the Court to apply rules of EU law to a particular case, but only to rule on the interpretation of the Treaties and of acts of EU institutions. In the present case, it is thus for the referring court (or, as the case may be, for the competent national authorities) to verify, in the light, in particular, of the general living conditions *currently* prevailing in the Gaza Strip, whether SN and LN are entitled to refugee status under Article 12(1)(a) of Directive 2011/95. However, the Court is entitled to clarify the legal criteria that the referring court or those authorities must apply in that regard and the circumstances that are relevant to that assessment.

68. The key question to be answered in that regard is whether, in order to establish that UNRWA’s protection or assistance has ‘ceased’ in respect of a person who has availed himself or herself of that protection or assistance in the area of operation of that agency or a part thereof, it is sufficient for such a person to invoke the general living conditions prevailing there.

1. The relative importance of elements relating to the general living conditions ...

69. It should be noted that, in cases to which Article 12(1)(a) of Directive 2011/95 does *not* apply and in which the competent national authorities therefore rely on the general criteria to decide whether refugee status, provided for in that directive, is to be granted (criteria which are detailed in, inter alia, Article 5(1) and Article 6 of that instrument), the fact that a person is at serious risk of facing serious harm because of undignified living conditions, ill-treatment, indiscriminate violence or other serious harm if he or she is to return to his or her country or area of origin does not, in and of itself, result in him or her being *de facto* entitled to refugee status.

70. Pursuant to those general criteria, refugee status is only granted if the asylum seeker has a ‘well-founded fear of being persecuted’, within the meaning of Article 5(1) and Article 6 of Directive 2011/95. A ‘well-founded fear of being persecuted’ does not exist unless the relevant acts are ‘acts of persecution’ (as defined in Article 9 of that directive), are carried out by certain actors (listed under Article 6 thereof) and are connected to a particular reason (as described in Article 10 of Directive 2011/95).

71. However, a risk of serious harm may, even if does not rise to the level of a ‘well-founded fear of being persecuted’, entitle the persons concerned to subsidiary protection, which is a different form of international protection³⁹ (the conditions of which are detailed in Article 15 of that directive). It

³⁹ See Article 2(a), (e) and (g) of Directive 2011/95.

may also create, more generally, an obligation for the Member States not to send those persons back to their country or area of origin, in application of the principle of non-refoulement. That principle is enshrined in, inter alia, Article 3 ECHR⁴⁰ and Article 19(2) of the Charter. In particular, that last provision requires that no one be ‘removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment’.

72. A different analysis is required when Article 12(1)(a) of Directive 2011/95 is applicable.

73. As I have explained, that provision conditions the entitlement of stateless persons of Palestinian origin who have availed themselves of the protection or assistance of UNRWA to refugee status on whether that protection or assistance has ‘ceased’. As I have indicated in point 62 above, UNRWA’s mission is to ensure ‘*dignified* living conditions’ for the persons placed under its protection or assistance, by attending to their basic needs (in terms of, inter alia, food, personal hygiene and a place to live). Given that the prohibition laid down in Article 4 of the Charter (which provides that ‘no one shall be subjected to torture or to inhuman or degrading treatment or punishment’ and is equivalent to Article 3 of the ECHR) is closely linked to positive obligations of protection for human *dignity*,⁴¹ it is clear to me – to say the least – that UNRWA’s mission must be regarded as having ‘ceased’ if there is a serious risk that those persons would, if returned to UNRWA’s area of operation (or a part thereof), be exposed to treatment incompatible with Article 4 of the Charter, because their basic needs (the satisfaction of which UNRWA is obliged to ensure) could not be met. That includes undignified living conditions, ill-treatment and indiscriminate violence, as well as other serious harm, which presuppose the infliction of physical or mental pain or suffering of sufficient intensity or duration to meet the threshold set by that provision,⁴² which is the same as that under Article 19(2) of the Charter.⁴³ Importantly, it is not required to show that the serious harm is perpetrated by certain actors or is connected to a particular reason and, thus, amounts to ‘persecution’.

74. Consequently, if a person who has availed himself or herself of UNRWA’s protection or assistance is, as a result of UNRWA’s failure to ensure the satisfaction of his or her basic needs,⁴⁴ exposed to ill-treatment meeting that threshold, the two requirements that I have outlined in point 62 above must, without more, be regarded as having been fulfilled. In concrete terms, the person concerned must be regarded as having been ‘forced to leave’ UNRWA’s area of operation and as being, for that reason, *ipso facto* entitled to refugee status under Article 12(1)(a) of Directive 2011/95.

⁴⁰ Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950. The meaning and scope of Article 4 of the Charter are therefore, in accordance with Article 52(3) of the Charter, the same as those laid down by Article 3 ECHR.

⁴¹ See, in that sense, judgment of 19 March 2019, *Ibrahim and Others* (C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 87 and the case-law cited). I note that respect for human dignity is the subject of Article 1 of the Charter. As Advocate General Trstenjak has explained, ‘under Article 1 of the Charter, human dignity must not only be “respected”, but also “protected”. Such a positive protective function is also inherent in Article 4 of the Charter’ (see Opinion of Advocate General Trstenjak in Joined Cases *NS*, C-411/10 and C-493/10, EU:C:2011:610, point 112).

⁴² According to settled case-law of the European Court of Human Rights (ECtHR), for ill-treatment to fall within the scope of Article 3 ECHR (which is equivalent to Article 4 of the Charter), the ill-treatment must attain a minimum level of severity (see, inter alia, ECtHR, 1 June 2010, *Gäfgen v. Germany*, CE:ECHR:2010:0601JUD002297805, § 88 and the case-law cited).

⁴³ Article 19(2) of the Charter is based on the same level of harm as Article 4 thereof. For what it is worth, I note that, in the third question, the referring court mentions the principle of non-refoulement with express reference not only to Article 19(2) of the Charter, but also to Article 21(1) of Directive 2011/95. The Commission argues that that provision is not applicable when the competent national authorities examine whether the conditions provided in Article 12(1)(a) of that directive are met, because it forms part of – and applies only to the provisions of – Chapter VII of Directive 2011/95, whereas Article 12(1)(a) is included in Chapter III of that instrument. However, it is clear to me that Article 21(1) of Directive 2011/95 consists of nothing more than a concrete expression of that broad principle, which must be respected by the Member States whenever they are applying that instrument.

⁴⁴ Whatever the cause of UNRWA’s failure may be.

75. To be clear, as I have just explained, a risk of exposure to treatment incompatible with Article 4 of the Charter does not entitle, in and of itself, anyone to refugee status in the European Union. However, that provision has a specific role to play with respect to stateless persons of Palestinian origin who have availed themselves of UNRWA's protection or assistance and to the question of whether they are entitled to refugee status in the European Union in application of Article 12(1)(a) of Directive 2011/95. In that regard, I recall that, as I have explained in point 39 above, stateless persons of Palestinian origin are already recognised as refugees by the international community. The reason why they are excluded from refugee status under Directive 2011/95 is that they are supposed to receive *effective* protection or assistance from UNRWA, which is supposed to attend to their basic needs (in terms of, inter alia, food, personal hygiene and a place to live) and ensure that they benefit from dignified living conditions. That exclusion can no longer be justified if UNRWA's failure to ensure the satisfaction of those basic needs results in them being exposed to treatment incompatible with Article 4 of the Charter.

76. Having said that, I am of the view that whether evidence of a deterioration of the general living conditions prevailing in the area of operation of UNRWA or a part thereof can be sufficient to establish that the person concerned will be exposed to treatment incompatible with Article 4 of the Charter, if he or she is to return there, and, therefore, that UNRWA's protection or assistance in respect of him or her has 'ceased', within the meaning of Article 12(1)(a) of Directive 2011/95, depends precisely on the degree of such deterioration.

77. On the one hand, I agree that the mere fact that the general living conditions in UNRWA's area of operation or a part thereof are inferior to that which a person could enjoy if he or she were granted refugee status in a Member State is not sufficient to conclude that that person has been forced to leave that area.⁴⁵ On the other hand, it seems to me that it cannot be excluded that, in some situations, those general living conditions could become so intolerable that they may be regarded as 'undignified' for every stateless person of Palestinian origin living there (a). In between those two ends of the spectrum, whether the person concerned can be regarded, because of the same (albeit less severe) general living conditions, as having been 'forced' to leave the area of operations of UNRWA depends, as I will explain, on whether he or she belongs to a particularly vulnerable group (b) or must be regarded as particularly vulnerable or particularly affected because of his or her personal circumstances (c).

(a) Situations where the general living conditions are 'undignified' for everyone

78. I recall that, in, inter alia, its judgment in *Elgafaji*, the Court has already ruled, in relation to the question of whether subsidiary protection can be granted on account of indiscriminate violence caused by internal or international armed conflict, that there exist situations in which the degree of indiscriminate violence reaches such a high level that there are substantial grounds for considering that a civilian, returned to the relevant country or area, would, solely on account of his or her presence on that territory, face a real risk of being subject to a threat to his or her life.⁴⁶

⁴⁵ See, in that sense, judgment of 5 October 2023, *SW (Refugee status of a Palestinian stateless person)* (C-294/22, EU:C:2023:733, paragraph 45).

⁴⁶ See, in that regard, judgment of 17 February 2009 (C-465/07, EU:C:2009:94, paragraph 43). See, also, judgment of 10 June 2021, *Bundesrepublik Deutschland (Concept of 'serious and individual threat')* (C-901/19, EU:C:2021:472, paragraphs 27 and 28), and, most recently, judgment of 9 November 2023, *Staatssecretaris van Justitie en Veiligheid (Concept of 'serious harm')* (C-125/22, EU:C:2023:843, paragraphs 40 and 41).

79. Moreover, in its judgment in *Jawo*, the Court has already recognised (although still *not* in the context of the application of Article 12(1)(a) of Directive 2011/95)⁴⁷ that certain geographical areas may, in practice, experience such major operational problems or systemic flaws that there is a substantial risk that any applicant for international protection may, when transferred or returned to those areas, be treated in a manner incompatible with Article 4 of the Charter. In such circumstances, transfers or returns of any asylum seeker to those geographical areas are, quite simply, out of the question,⁴⁸ on the basis of the general living conditions prevailing there, without it being necessary for those persons to show that they belong to a particularly vulnerable group of asylum seekers (for example, because they are children), or that they are particularly vulnerable because of their personal circumstances (for example, because of an illness) or particularly likely to be affected by those general conditions, again because of their personal circumstances (for example, because their house is located in an area particularly likely to be the target of violent acts).

80. Only a situation that is particularly serious can produce such a blanket prohibition. The Court has held that that particularly high level of severity will not be attained in situations that are merely characterised even by a high degree of insecurity or a significant degradation of the general living conditions.⁴⁹ What is required is a serious risk that persons returned to that area would, because of those major operational problems or systemic flaws, find themselves in a situation of extreme material poverty that does not allow them to meet their most basic needs, such as, *inter alia*, food, personal hygiene and a place to live, and that undermines their physical or mental health or puts them in a state of degradation incompatible with human dignity.⁵⁰

81. I consider that that logic can be imported within the context of the application of Article 12(1)(a) of Directive 2011/95. First, Article 4 of the Charter is a provision of transversal application, so any interpretation of that provision by the Court is not limited to a particular instrument of secondary law. Second, it cannot be excluded – to say the least – that part of UNRWA’s area of operation (*in casu*, the Gaza Strip) may experience systemic deficiencies of such gravity (for example, because of an armed conflict or a military blockade or, to use the terms of the referring court, an ‘unprecedented humanitarian crisis’) that there is a substantial risk that any person sent back there would find himself or herself – solely on account of his or her presence on that territory – in a situation of extreme material poverty that does not allow him or her to meet his or her most basic needs, such as, *inter alia*, food, personal hygiene and a place to live, and that undermines his or her physical or mental health or puts him or her in a state of degradation incompatible with human dignity and, therefore, with Article 4 of the Charter.

82. In such situations, I am of the view that evidence of such general living conditions suffices, in the sense that applicants cannot be required to demonstrate that those general conditions are ‘undignified’ for them, in an individualised manner (for example, because of their particular

⁴⁷ See judgment of 19 March 2019 (C-163/17, EU:C:2019:218). That judgment concerned the issue of whether Article 4 of the Charter could preclude the transfer of an applicant to the Member State responsible for processing his application for international protection because of alleged systemic flaws in the asylum procedure and reception conditions in that Member State. Concerning the same issue, see, also, judgment of 21 December 2011, *N.S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraphs 81 and 86 to 94).

⁴⁸ See judgment of 19 March 2019, *Jawo* (C-163/17, EU:C:2019:218, paragraph 85).

⁴⁹ *Ibid.*, paragraph 91.

⁵⁰ *Ibid.*, paragraphs 92 and 93.

vulnerability), or that they are specifically affected by those conditions by reason of factors particular to their personal circumstances (for example, the fact that their house is located in a street regularly targeted by missiles, as seems to be the case of SN and LN).⁵¹

83. However, it must still be established that the general living conditions can in fact be deemed ‘undignified’ and thus incompatible with Article 4 of the Charter for virtually *everyone*, in the sense that they must be of such gravity that they are liable to concern people irrespective of their personal circumstances or identity. Provided that is the case, it can be deemed, first, that the personal safety of any applicant who would be required to return to that area would be at serious risk (the first requirement which I have referred to in point 62 above) and, second, that UNRWA is not in a position to guarantee that the living conditions of such a person are commensurate with the mission entrusted to it, which is to ensure ‘dignified’ living conditions by ensuring that their basic needs are met (the second requirement). Consequently, the protection or assistance of that agency must be regarded as having ‘ceased’ with respect to such an applicant, within the meaning of Article 12(1)(a) of Directive 2011/95.

(b) Situations in which the applicant must show that he or she belongs to a particularly vulnerable group

84. A more nuanced approach is, in my view, required in situations that do not reach the level of gravity mentioned in the previous section. Indeed, situations that are not affected by systemic deficiencies severe enough that the general living conditions are deemed ‘undignified’ and thus incompatible with Article 4 of the Charter for virtually *everyone* may still generate ‘undignified living conditions’ for certain particularly vulnerable groups of persons (or certain particularly vulnerable persons, as I will explain in the next section) by not allowing them to meet their most basic needs.

85. In that regard, the referring court wishes to know, in particular, whether the fact that the applicant is a *child* affects the level of gravity required for the general living conditions in the Gaza Strip to be regarded as ‘undignified’.

86. I note that the Court has held that the assessment of whether a ‘real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter’ exists indeed depends on the particular vulnerability of the asylum seeker concerned.⁵² Moreover, the ECtHR has recognised that the assessment of the minimum level of severity that ill-treatment must attain in order to fall within the scope of Article 3 ECHR is, ‘in the nature of things, relative’.⁵³

87. In so far as children are concerned, the European Court of Human Rights has repeatedly emphasised, in its case-law relating to the interpretation of Article 3 ECHR, that they are a particularly vulnerable group with specific needs, which are different, particularly in terms of safety and security, from those of adults.⁵⁴ That case-law is echoed in various instruments of EU asylum law, since, for example, the Member States are under the obligation to ensure that the

⁵¹ See, by analogy, judgment of 9 November 2023, *Staatssecretaris van Justitie en Veiligheid (Concept of ‘serious harm’)* (C-125/22, EU:C:2023:843, paragraph 41 and the case-law cited).

⁵² See, in that sense, judgment of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127, paragraph 73).

⁵³ See, inter alia, ECtHR, 25 April 1978, *Tyrer v. United Kingdom* (CE:ECHR:1978:0425JUD000585672, § 30).

⁵⁴ See ECtHR, 4 November 2014, *Tarakhel v. Switzerland* (CE:ECHR:2014:1104JUD00292171, § 99). In that regard, the ECtHR recalled that children have specific needs that are related in particular to their age and lack of independence, but also to their asylum-seeker status.

living conditions provided to children after they have received refugee status,⁵⁵ as well as pending any decision on whether they are to be granted international protection, are commensurate to their needs and reflect their particular vulnerability.⁵⁶ As such, it seems generally accepted that living conditions which cannot be regarded as ‘undignified’ for adults could nevertheless be considered as such for children as a group.⁵⁷

88. In the light of those considerations, it is clear to me that, in certain situations, the general living conditions – although not deteriorated enough to create a serious risk of serious harm for virtually any person – may still be regarded as exposing *any* child to a serious risk of serious harm incompatible with Article 4 of the Charter, by reason of the fact that children constitute a particularly vulnerable group of asylum seekers.

89. In such situations, I am of the view that persons belonging to that particularly vulnerable group (or any other particularly vulnerable group) do not have to show that the general living conditions are ‘undignified’ and thus incompatible with Article 4 of the Charter for them, in an individualised manner, so long as it can be established, first, that those general living conditions are severe enough to be deemed ‘undignified’ for anyone belonging to that group and, second, that the applicant’s relevant personal circumstances (for example, the age, gender or particular condition or disability) qualify him or her as part of that group.

(c) Situations where the person concerned must show that he or she has a particular vulnerability or is specifically affected by the general living conditions because of his or her personal circumstances

90. As I have indicated in point 84 above, the case-law of the Court indicates that there are also certain situations in which the general living conditions cannot be regarded as ‘undignified’ and are, thus, incompatible with Article 4 of the Charter for virtually everyone or for one or more particularly vulnerable groups of persons. However, those situations can still create ‘undignified living conditions’ for certain persons who must be regarded as particularly vulnerable on account of their personal circumstances⁵⁸ or who are specifically affected by the same general conditions by reason of factors particular to their personal circumstances (for example, the fact that their

⁵⁵ See Article 20(3) of Directive 2011/95, which provides that children are ‘vulnerable persons’ (along with disabled people, elderly people and pregnant women, amongst others). The Commission considers that that provision does not apply in a situation such as the one in the main proceedings. Indeed, it points out that Article 20(3) forms part of Chapter VII of Directive 2011/95. That chapter, which is entitled ‘Content of international protection’ (and of which Article 12(1)(a) is not part), relates to the safeguards which Member States must put in place once a person has been granted refugee status, not before. However, in my view, that does not mean that that provision cannot be relied upon as illustrating the fact that minors are generally recognised as a particularly vulnerable group of asylum seekers.

⁵⁶ See, in that regard, Article 21 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96).

⁵⁷ I add that recital 18 of Directive 2011/95 states that ‘the “best interests of the child” should be a primary consideration of Member States when implementing [that] [d]irective’ and that, ‘in assessing the best interests of the child, Member States should in particular take due account of the principle of family unity, the minor’s well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity’. That recital reflects the content of Article 24(2) of the Charter, which must be respected in *all* actions relating to children.

⁵⁸ The Court has recognised, in essence, that a situation that does not amount to extreme material poverty for all may nevertheless still be regarded as such with regard to an applicant able to demonstrate the existence of exceptional circumstances unique to him or her indicating that he or she has a particular vulnerability (see, in that regard, judgment of 19 March 2019, *Jawo*, C-163/17, EU:C:2019:218, paragraph 95). See, also, judgment of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127, paragraph 73), which concerned an asylum seeker with a particularly serious psychiatric condition, namely post-natal depression and periodic suicidal tendencies. In that regard, I also recall that the ECtHR has held, with respect to Article 3 ECHR, that whether the ill-treatment suffered or which the person is at a risk of suffering reaches the required level of severity depends ‘on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of health of the victim’ (see ECtHR, 4 November 2014, *Tarakhel v. Switzerland*, CE:ECHR:2014:1104UD002921712, § 118).

house is located in a street regularly targeted by missiles). Indeed, as Advocate General Wathelet has explained, ‘it would be manifestly incompatible with the absolute character of [Article 4 of the Charter] if the Member States could disregard a real and proven risk of inhuman or degrading treatment affecting an asylum seeker under the pretext that it does not result from a systemic flaw’.⁵⁹

91. The Court has already applied that reasoning within the context of the application of Article 12(1)(a) of Directive 2011/95. Indeed, in its judgment in *SW (Refugee status of a Palestinian stateless person)*, which concerned a person suffering from a particularly serious illness, it concluded that UNRWA’s protection or assistance must be regarded as having ‘ceased’ if that agency is unable to ensure that such a person has access to the specific healthcare and medical treatment without which he or she is exposed to a real risk of imminent death or a real risk of suffering a serious, rapid and irreversible decline in his or her state of health or a significant reduction in life expectancy.⁶⁰

92. In situations such as the one which led to the judgment in *SW (Refugee status of a Palestinian stateless person)*, the general living conditions prevailing in a part of the area of operation of UNRWA were not, in and of themselves, severe enough to establish the existence of a treatment incompatible with Article 4 of the Charter for everyone or even a particular group of persons. However, the applicant was able to rely on personal circumstances particular to him that rendered him particularly vulnerable and caused those general living conditions to be unbearable and ‘undignified’ (and thus incompatible with that provision) for him in an individualised manner.

2. ... But the need for an individual assessment in all cases

93. I have just detailed, in the previous sections, three possible scenarios in which UNRWA’s protection or assistance can be regarded as having ‘ceased’ due to that agency’s inability to ensure dignified living conditions to stateless persons of Palestinian origin who have availed themselves of its protection or assistance, by ensuring, in essence, that their basic needs such as, inter alia, food, personal hygiene and a place to live are met.

94. In my view, the respective weight that must be given to the general living conditions prevailing in UNRWA’s area of operation or a part thereof, on the one hand, and the personal circumstances of the persons concerned, on the other hand, varies depending on which of those three scenarios applies. In the first two scenarios, it is *not* necessary to show that those general living conditions are ‘undignified’ for the person concerned in an individualised manner, because those conditions are so severe that they can be deemed ‘undignified’ and thus incompatible with Article 4 of the Charter for everyone at large or for a particularly vulnerable group to which that person belongs. In the third scenario, however, the ‘undignified’ nature of the general living conditions must be shown in an individualised manner by relying on the particular vulnerability or other circumstances particular to the person concerned.

95. I would like to make the following additional remark. Whereas the general living conditions prevailing in a part of the area of operation of UNRWA are always relevant in order to determine whether that agency’s protection or assistance has ‘ceased’, within the meaning of Article 12(1)(a) of Directive 2011/95, they may only be taken into account within the context of an *individual*

⁵⁹ See Opinion of Advocate General Wathelet in *Jawo* (C-163/17, EU:C:2018:613, point 86).

⁶⁰ See judgment of 5 October 2023, *SW (Refugee status of a Palestinian stateless person)* (C-294/22, EU:C:2023:733, paragraphs 46 and 48 and the operative part).

assessment. In fact, the Court has already stressed that requirement in its judgment in *Abed El Karem El Kott and Others*.⁶¹ Indeed, it held that, when examining whether a person is, for reasons beyond his or her control and independent of his or her volition, no longer in a position to benefit from the protection or assistance of UNRWA, the competent national authorities must carry out an assessment of all the relevant factors on an *individual basis*.

96. In the light of that case-law, I therefore agree with the Commission that elements of a general nature, which relate to the general living conditions in the relevant area in which UNRWA operates or a part thereof (here, the Gaza Strip) must always be integrated within an individual assessment. Even in the first scenario, refugee status is not automatically granted to all. As I have already indicated in point 83 above, the persons concerned must still apply for that status, and a case-by-case analysis is required to determine not only that they have actually availed themselves of the protection or assistance from UNRWA in the area concerned (or a part thereof), but also that, at the time of that assessment, the general living conditions in that geographical area can be regarded as ‘undignified’ for virtually everyone, so that there are substantial grounds for believing that the applicant would face a real risk of harm incompatible with Article 4 of the Charter, only on account of his or her presence and without having to show that he or she would be specifically exposed to that harm were he or she to return there.

97. The need for such an individual assessment is important to stress. If that requirement did not exist, then the system put in place by Article 12(1)(a) of Directive 2011/95 would, in some respect, become equivalent to that introduced by Directive 2001/55/EC,⁶² which affords temporary protection (a different form of protection, which is distinct and less extensive than the protection afforded by refugee status or subsidiary protection) in the event of a mass influx of displaced persons, without any requirement for those persons to make individual applications and, therefore, to be subjected to an individual assessment. That directive is designed to apply only in certain limited situations and only following a formal decision of the Council of the European Union (such a decision was, for example, recently adopted for displaced persons who have had to leave Ukraine on or after 24 February 2022 as a result of the military invasion by Russian armed forces).⁶³ In my view, the mechanism put in place by Article 12(1)(a) of Directive 2011/95 cannot substitute itself for that instituted by Directive 2001/55.

98. Furthermore, I recall that, as I have already explained in point 38 above, before granting refugee status in application of Article 12(1)(a) of Directive 2011/95, the national competent authorities must also verify, in every case, that the person concerned does not fall within the scope of any of the grounds for exclusion set out in Article 12(1)(b), (2) and (3) of that directive.⁶⁴ Those provisions provide, in essence, that refugee status will not be granted to a stateless person of Palestinian origin (even if he or she has availed himself or herself of UNRWA’s protection or assistance) if there are serious reasons for considering that he or she has committed or incited or otherwise participated in the commission of certain crimes (crimes against peace, war crimes, crimes against humanity, serious non-political crimes outside the country of refuge or other acts

⁶¹ See paragraph 64 of that judgment.

⁶² Council Directive of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ 2001 L 212, p. 12).

⁶³ See Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55, and having the effect of introducing temporary protection (OJ 2022 L 71, p. 1).

⁶⁴ See, in that sense, judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 86 and the case-law cited).

contrary to the principles of the United Nations). That would include, in my view, the commission of terrorist acts and any form of participation in or incitation to commit such acts (such as, to take the most recent example, acts perpetrated by Hamas against Israel).

99. It follows, as the Court has already held, that the fact that stateless persons of Palestinian origin are *ipso facto* entitled to the benefits of Directive 2011/95 within the meaning of Article 12(1)(a) of that instrument if the protection or assistance of UNRWA ceases does not entail an unconditional right to refugee status.⁶⁵

C. The fourth question: the interrelation between Article 12(1)(a) of Directive 2011/95 and the provisions relating to subsidiary protection

100. As I understand it, the fourth question, the purpose and meaning of which is, I must admit, rather difficult to decipher at first sight, concerns the interrelation between Article 12(1)(a) of Directive 2011/95 (which opens the possibility, in certain conditions, for stateless persons of Palestinian origin to be *ipso facto* entitled to refugee status) and the provisions of that instrument that relate to ‘subsidiary protection’ – which is, as I have already stated in point 71 above, a different (and less extensive)⁶⁶ form of international protection than that conferred by refugee status.

101. In particular, the referring court asks, first, whether the principle of non-refoulement, which is enshrined in, inter alia, Article 19(2) of the Charter, applies to a situation where a stateless person of Palestinian origin, although not entitled to refugee status under Article 12(1)(a) of Directive 2011/95, is eligible for subsidiary protection in application of Article 15(b) thereof. The entitlement of such a person to subsidiary protection would be based on the fact that, if he or she were to return to the area of operation of UNRWA, he or she would find himself or herself in a situation of ‘extreme material poverty’ akin to the one described in point 81 above.

102. Second, that court asks the Court to clarify whether, when examining if a person meets the conditions listed in Article 12(1)(a) of Directive 2011/95 to obtain refugee status, the competent national authorities must take into account not only the principle of non-refoulement but also the elements which are relevant to determine whether they would be entitled to subsidiary protection, in application of Article 15(b) thereof.

103. As I explained in my Opinion in *SW (Refugee status of a Palestinian stateless person)*,⁶⁷ the unique regime to which stateless persons of Palestinian origin are subject under Directive 2011/95 concerns only the possibility for them to be granted refugee status, not subsidiary protection.⁶⁸ Thus, those persons, just like other asylum seekers, can apply for subsidiary protection status, pursuant to Article 18 of that directive, and are not excluded from that status.

104. The conditions that must be fulfilled in order for a person to become eligible for subsidiary protection are detailed in Chapter II and Chapter V of Directive 2011/95. In essence, it must be shown that the person concerned faces a real risk of serious harm. ‘Serious harm’ is defined under Article 15 of that directive and consists of ‘the death penalty or execution’ (Article 15(a)), ‘torture

⁶⁵ See the judgment in *Abed El Kareem El Kott and Others*, paragraph 75.

⁶⁶ For example, the residence permit can be shorter (see Article 24 of Directive 2011/95). Member States can also limit access to social welfare (see Article 29 of that directive).

⁶⁷ C-294/22, EU:C:2023:388, point 29.

⁶⁸ See the judgment in *Abed El Kareem El Kott and Others*, paragraph 68.

or inhuman or degrading treatment or punishment ... in the country of origin' (Article 15(b)) or 'serious and individual threat to [the applicant]'s life or person by reason of indiscriminate violence in situations of international or internal armed conflict' (Article 15(c)).

105. In the light of those elements, it is clear to me that the level of harm to which a stateless person of Palestinian origin would be exposed if he or she were to return to the relevant area in which UNRWA operates may very well reach the threshold for 'serious harm' listed in Article 15 of Directive 2011/95, for example because it amounts to 'torture or inhuman or degrading treatment or punishment' (Article 15(b)), and, *at the same time*, be severe enough to lead to a finding that UNRWA's protection or assistance with respect to him or her has 'ceased', within the meaning of Article 12(1)(a) of that directive. Both regimes (for obtaining the 'refugee' status in application of Article 12(1)(a) or 'subsidiary protection' status in application of Article 15(b)) allow, in essence, for the taking into account of similar levels of harm, that is to say, 'inhuman or degrading treatment' that is incompatible with Article 4 of the Charter.

106. Additionally, with respect to Article 15(c) of Directive 2011/95, the Court has clarified, in its judgment in *Elgafaji*,⁶⁹ that, whereas the existence of a risk linked to the general situation in a country is not, as a rule, sufficient to establish that the conditions for obtaining subsidiary protection have been met in respect of a specific person, some exceptions exist. Indeed, in certain situations, the degree of indiscriminate violence characterising an armed conflict may reach such a high level that persons applying for international protection are not required to adduce evidence that they are specifically targeted by reason of factors particular to their personal circumstances. In that regard, the Court has adopted, in essence, the same logic as that which I have outlined in the previous section. The more the applicant is able to show that he or she is specifically affected by reason of factors particular to his or her personal circumstances, the lower the level of indiscriminate violence required for him or her to be eligible for subsidiary protection. Consequently, both regimes (for obtaining 'refugee' status in application of Article 12(1)(a) of Directive 2011/95, or 'subsidiary protection' status in application of Article 15(c) thereof) can be relied upon to protect stateless persons of Palestinian origin who are facing indiscriminate violence.

107. However, the two statuses are, notwithstanding those similarities, mutually exclusive. Not only can a person not benefit from both statuses simultaneously, but those statuses must also always be awarded independently of one another. It follows that, in order to establish whether a person is *ipso facto* entitled to refugee status, in application of Article 12(1)(a) of Directive 2011/95, the competent national authorities do not need to examine whether the person concerned fulfils the conditions to be granted 'subsidiary protection'.

108. Conversely, a person who fails to meet the conditions for UNRWA's protection to be deemed to have 'ceased', within the meaning of Article 12(1)(a) of Directive 2011/95, for example because the real risk of inhuman or degrading treatment to which he or she would be exposed if he or she were to return to the area of operation of UNRWA is not connected to that agency's mission,⁷⁰ can still apply for – and obtain, if the conditions are met – 'subsidiary protection' status.

⁶⁹ See judgment of 17 February 2009 (C-465/07, EU:C:2009:94, paragraphs 36, 37 and 39).

⁷⁰ As I have explained in point 62 above, the second requirement for the inclusion clause in Article 12(1)(a) of Directive 2011/95 to apply is that it must be impossible for UNRWA to guarantee that the living conditions of the person concerned in its area of operation are commensurate with the mission entrusted to it. UNRWA's mission is to ensure 'dignified' living conditions by fulfilling the basic needs of the persons placed under its protection. To give a simple example, if the person concerned faced the death penalty for committing a crime because of the laws prevailing in the area of operation of UNRWA, that harm would not be connected to UNRWA's mission, but it could nevertheless entitle the person concerned to 'subsidiary protection' under Article 15(a) of that directive.

109. Moreover, if a person eligible for subsidiary protection were required to return to the area of operation of UNRWA and to face ‘undignified living conditions’ or ‘extreme material poverty’, then it is clear that the principle of non-refoulement enshrined in Article 19(2) of the Charter would be breached. I recall that the application of that principle is not limited to persons entitled to refugee status.⁷¹ Consequently, the principle of non-refoulement applies – and must be complied with – regardless of the specific status (refugee status or subsidiary protection status) for which the person concerned may qualify.

V. Conclusion

110. In the light of all of the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria) as follows:

- (1) Article 12(1)(a) of Directive 2011/95 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, read in conjunction with Article 40(3) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection,

must be interpreted as meaning that the fact that certain elements invoked by stateless persons of Palestinian origin seeking to obtain refugee status in application of Article 12(1)(a) of Directive 2011/95 were already analysed by the competent national authorities during the procedure relating to previous applications of the persons concerned, based on other provisions of that directive, does not relieve those authorities of the obligation to examine them again when verifying whether the protection or assistance has ‘ceased’ within the meaning of that provision.

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

must be interpreted as meaning that it cannot be excluded that UNRWA’s area of operation or a part thereof may experience systemic deficiencies of such gravity that there is a substantial risk that any person sent back there would find himself or herself in a situation of extreme material poverty that does not allow him or her to meet his or her most basic needs, such as food, personal hygiene and a place to live, and that undermines his or her physical or mental health or puts him or her in a state of degradation incompatible with human dignity and, therefore, with Article 4 of the Charter. In such a situation, in order to establish that UNRWA’s protection or assistance has ‘ceased’, within the meaning of that provision, it is not necessary for the person concerned to show that the general living conditions prevailing in that area or a part thereof are undignified for him or her in an individualised manner, because the general living conditions can be deemed to be ‘undignified’ for virtually everyone. However, the right to refugee status is not unconditional even in such a situation. The person concerned must apply for international protection. Furthermore, an individual assessment is still required to verify, *inter alia*, that none of the exclusions set out in

⁷¹ Since it requires that ‘*no one ... be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment*’ (my emphasis).

Article 12(1)(b), (2) and (3) of that directive apply. Whether that person is entitled to ‘subsidiary protection’, within the meaning of Article 2(g) of that directive, is irrelevant to that assessment.