

CJEU - Alheto, case C-585/16

The case concerns the eligibility for protection of a person born in Gaza, who holds a passport issued by the Palestinian National Authority, is registered with UNRWA, and sought asylum in Bulgaria. Interpreting Article 12(1)(a) of the 2011 Qualification Directive (equivalent to Article 1D of the Refugee Convention), the CJEU found that Article 1D, as *lex specialis*, must be considered prior to Article 1A of the Refugee Convention, that prior registration with UNRWA does not necessarily mean that the applicant could access sufficient protection in an UNRWA area, and that Palestinians are not included under the second paragraph of Article 1D and automatically entitled to protection if they could be admitted to any area where they could access effective assistance or protection from UNRWA and could live there in safe and dignified conditions for as long as necessary.

Case name (in original language) : Serin Alheto v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite

Case status: Decided

Case number: C-585/16

Citation: CJEU, Alheto (C-585/16), 25 July 2018, ECLI:EU:C:2018:584

Date of decision: 25/07/2018

State: Bulgaria

Court / UN Treaty Body: Court of Justice of the European Union

Language(s) the decision is available in: Estonian, Finnish, Greek, Latvian, Lithuanian, Maltese, Polish, Slovenian, Bulgarian, Croatian, Czech, Danish, Dutch, English, French, German, Hungarian, Italian, Portuguese, Romanian, Slovak, Spanish, Swedish

Applicant's country of birth: Palestine

Applicant's country of residence: Bulgaria

Legal instruments: European Union law, Other international law

Key aspects: Exclusion grounds, Refugee status determination

Relevant Legislative Provisions:

International Law

The Convention relating to the Status of Refugees, Art. 1(A) and (D)

Article 1D 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 [HCR] protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.”

United Nations General Assembly resolution No 302 (IV) of 8 December 1949, concerning assistance to Palestine refugees

EU Legislation

Treaty on the Functioning of the European Union, Art. 78(2)(a), (b) and (d)

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted ('Qualification Directive'), Arts. 2, 4(3), 5(1), 7(1) and (2), 9, 10, 12(1)(a), 15, 17, 21(1), 39(1), 40, 41

Article 12(1)(a) provides: “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.”

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 ('Asylum Procedures Directive'), Recitals 4, 13, 16, 18, 22, Arts. 1, 2, 4(1) and (3), 10(2), 12(1)(a) and (b), 13(1), 33(2)(b) and (c), 34(1), 35, 36(1), 38, 46(1)(a) and (3),

51(1), 52, 53, 54

Article 35 provides: "A country can be considered to be a first country of asylum for a particular applicant if: (a) he or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or (b) he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*,

provided that he or she will be readmitted to that country. [...]"

Article 46(3) provides: "3. In order to comply with (the obligation to provide the right to an effective remedy), Member States shall ensure that an effective remedy provides for a full and ex nunc examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance."

National Law

Law on Asylum and Refugees (Zakon za ubezhishteto i bezhantsite), Arts. 8, 9, 12(1), 13(2), 75(2)

Facts

The applicant was born in 1972 in Gaza, holds a passport issued by the Palestinian National Authority, and is registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). In 2014, she left the Gaza Strip and went to Jordan. The consular service of Bulgaria in Jordan issued her with a tourist visa for travel to Bulgaria. The applicant flew from Jordan to Bulgaria where she lodged an application for international protection, claiming that she was at risk of persecution if she returned to the Gaza Strip.

In 2015, the Deputy Director of the State Agency for Refugees in Bulgaria rejected her application on the ground that her statements lacked credibility and that she did not prove a risk of persecution.

The applicant then brought an action to the Administrative Court of Sofia seeking to annul that decision. That court decided to stay the proceedings and refer to the Court for a preliminary ruling on the following questions:

1. According to Article 12(1)(a) of the Qualification Directive, can an application lodged by a stateless person of Palestinian origin, registered with UNRWA, who, before making that application, was resident in UNRWA's area of operations, be examined under Article 1(A) of the Geneva Convention rather than under Article 1(D)?
2. Does Article 12(1)(a) of the Qualification Directive preclude national legislation that does not expressly transpose the ground for no longer applying the ground for exclusion from refugee status? Does Article 12(1)(a) have direct effect, even if the applicant does not expressly invoke it?
3. According to Article 46(3) of the Asylum Procedures Directive, read in conjunction with Article 47 of the Charter, may a court seised at first instance of an appeal against a decision refusing to grant international protection, assess the application under Article 1(D) of the Geneva Convention and Article 12(1)(a) of the Qualification Directive, where the body that made that decision did not make that assessment?
4. According to Article 46(3) of the Asylum Procedures Directive, read in conjunction with Articles 18, 19 and 47 of the Charter, does the requirement for a full and *ex nunc* examination of both facts and points of law also cover the grounds of inadmissibility of the application referred in Article 33(2) of that directive and, if so, can that court decide for the first time on the admissibility of the application? Where that ground has not been examined by the determining authority, must the file be referred back to that authority for it to conduct the admissibility interview in accordance with Article 34 of that directive?
5. Can the protection and assistance provided by UNRWA to the applicant in a third country that is not the same as the territory in which she habitually resides, but which falls within the area of operations of that agency be considered sufficient protection within the meaning of the first paragraph of Article 35 of the Asylum Procedures Directive?
6. According to Article 46(3) of the Asylum Procedures Directive, read in conjunction with Article 47 of the Charter, can the court itself deliver a judgment deciding on the application for international protection, in the event that it annuls the decision of the determining authority?

Legal arguments by the applicant

The applicant argued that she should be granted international protection because she was at risk of a serious threat to her life, torture and persecution if she returned

to the Gaza Strip, in particular because Hamas, the organisation that controls the Gaza Strip, does not accept her work informing women of their rights. She also claimed that, in the light of the armed conflict between Hamas and Israel, there is indiscriminate violence in the Gaza Strip.

Legal arguments by the opposing party

The Deputy Director of the State Agency for Refugees in Bulgaria argued that the applicant's statements lacked credibility and that she did not prove a risk of persecution.

The Administrative Court of Sofia considered that the State Agency for Refugees should have examined the application on the basis of Article 1(D) of the Geneva Convention, which corresponds to Article 12(1)(a) of the Qualification Directive, instead of Article 1(A) of that Convention. It considered that it failed to examine whether the protection or assistance which the applicant received from UNRWA had ceased, which would have possibly made her eligible for refugee status in accordance with Article 1(D). The court moreover noted that the Bulgarian Law on Asylum and Refugees failed to correctly transpose the Qualification Directive. The court was also uncertain about the interpretation of several provisions of the Asylum Procedures Directive. It therefore decided to stay the proceedings and referred its questions to the Court for a preliminary ruling.

Decision & Reasoning

Preliminary observations

The Court first analysed the temporal applicability of the provisions of the Asylum Procedures Directive, which replaced Directive 2005/85 with effect from 21 July 2015, i.e., after the date on which the applicant lodged an application for international protection. However, the Court held that the EU legislature allowed Member States to choose whether the directive would apply to applications lodged before that date (§72). To clarify, the Court noted that Bulgarian law had included a requirement of full and *ex nunc* examination since 2007, therefore it was necessary to interpret Article 46(3) of the Asylum Procedures Directive to the questions of the Administrative Court of Sofia (§§67-80). The Court adopted the same conclusion with regards to Articles 33(2)(b) and 35 of that Directive (§81).

Question 1

The Court recalled that, in accordance with Article 12(1)(a) of the Qualification Directive, which reflects Article 1(D) of the Geneva Convention, persons registered with UNRWA are in principle excluded from refugee status in the European Union, unless it results from individual assessment of all the relevant evidence that their personal safety is at serious risk, that it is impossible for UNRWA to guarantee that their living conditions would be compatible with its mission, and that they are forced to leave the UNRWA's area of operations owing to circumstances beyond their control – that is, when UNRWA's protection or assistance has ceased. In that case, the exclusion from refugee status ceases to apply (§§85-86). Recalling previous case law, the Court held that, unless they fall within the scope of any of the grounds for exclusion set out in Article 12(1)(b), Article 12(2) and Article 12(3) of the Qualification Directive, they may *ipso facto* be entitled to refugee status, without necessarily having to demonstrate a well-founded fear of being persecuted (§86). The Court held that the rules laid down in Article 12(1)(a) constitute a *lex specialis* and therefore require an assessment of whether the applicant receives UNRWA's assistance or protection (§87). The Court specified that the same conclusion applies when the application for international protection also includes an application for subsidiary protection (§89).

Question 2

The Court held that Article 12(1)(a) of the Qualification Directive precludes national law which fails to transpose both the ground for exclusion from refugee status and the ground for no longer applying that exclusion. It found that Bulgarian law incorrectly transposed the directive. The Court furthermore specified that the second sentence of Article 12(1)(a) of the Qualification Directive, which provides for the ground for no longer applying the exclusion from refugee status, satisfied the criteria for provisions to have direct effect, as it sets out a rule whose content is unconditional and sufficiently precise to be relied on by an individual and applied by a court (§§98-99). The Court also held that that provision was applicable even if the applicant for international protection did not expressly refer to it (§§100-101).

Question 3

The Court held that Article 46(3) of the Asylum Procedures Directive requires that “the processing of the appeals [...] includes an examination, by the court or tribunal, of all the facts and points of law necessary in order to make an up-to-date assessment of the case at hand” (§110). In that provision, the expression “*ex nunc*”

means that the court must make an assessment that takes into account, if needed, new evidence which has come to existence after the adoption of the decision (§111), while the word “full” means that the court must examine both the evidence which the determining authority considered or could have considered and that which has come to existence after the adoption of the decision by that authority (§113). The interpretation of that provision consistently with Article 47 of the Charter requires the court seised of the appeal to interview the applicant, unless it deems the information on the case file sufficient, and to offer the applicant the opportunity to express his or her views when new evidence that could affect him or her negatively comes to light after the adoption of the decision under appeal (§114). Such an examination may concern solely the admissibility of the application and not include a substantive assessment, where applicable (§115).

Question 4

The Court held that the referring court may find that the applicant benefits from sufficient protection in a third country, rendering the application therefore inadmissible (§120). Where the court applies a ground of inadmissibility, such as the first country of asylum ground (Article 35 of the Asylum Procedures Directive) or the safe third country ground (Article 38 of that directive), it must analyse whether each of the cumulative conditions has been satisfied. To that end, it may invite the determining authority to produce any relevant documentation or factual evidence (§121) and must ensure, before ruling on the matter, that the applicant has had the opportunity to set out his or her views in person on the applicability of the ground of inadmissibility to his or her particular situation (§122). The Court also held that the applicant must receive the services of an interpreter when necessary during his or her hearing by the court (§118).

Question 5

Recalling that the applicant who resided in the Gaza Strip travelled to Jordan before leaving for Bulgaria, the Court analysed whether the concept of “sufficient protection” provided for in Article 35 of the Asylum Procedures Directive (concerning the concept of first country of asylum) covered the situation of the applicant. With regards to point (a) of that article, which concerns the case where an applicant has been recognised in the country as a refugee, the Court held that the mere fact that a person is registered with UNRWA does not make her fall within the scope of that provision, as she has the status of Palestine refugee in the Near East and does not

benefit from refugee status linked to the country (Jordan in the present case) (§139). With regards to point (b) of that article, the Court held that the applicant must be regarded as enjoying sufficient protection in Jordan “provided, first, that he is guaranteed to be able to be readmitted there, second, that he benefits there from effective protection or assistance from UNRWA, which is recognised, or regulated, by that third country and, third, that the competent authorities of the Member State in which the application for international protection was lodged are certain that he will be able to stay in that third country in safety under dignified living conditions for as long as necessary in view of the risks in the Gaza Strip.” (§140) Therefore, Jordan can be considered a first country of asylum where the applicant would enjoy sufficient protection, provided that it fulfils those conditions, as well as a State actor of protection within the meaning of Article 7(1)(a) of the Qualification Directive (§141). This assessment is to be conducted by the referring court, if necessary after ordering the determining authority to produce any relevant documentation or factual evidence (§142).

Question 6

The Court held that the Asylum Procedures Directive did not govern what happened after any annulment of the decision from a determining authority and that it remained open to the Member States to provide that, following an annulment, the file could be referred back to that authority for a new decision. (§§145-146) However, in that case, a new decision must be adopted within a short period of time and must comply with the judgment annulling the initial decision (§§147-148).

Decision documents

[CJEU, Alheto \(C-585/16\), 25 July 2018](#)

Outcome

Question 1: Article 12(1)(a) of the Qualification Directive, read in conjunction with Article 10(2) of the Asylum Procedures Directive, must be interpreted as meaning that the processing of an application for international protection lodged by a person registered with UNRWA requires an examination of the question whether that person receives effective protection or assistance from that agency, provided that that application has not been previously rejected on the basis of a ground of inadmissibility or on the basis of a ground for exclusion other than that laid down in the first sentence of Article 12(1)(a) of that directive.

Question 2: the second sentence of Article 12(1)(a) of the Qualification Directive must be interpreted as precluding national legislation which does not lay down or which incorrectly transposes the ground for no longer applying the ground for exclusion from being a refugee contained therein, having direct effect, and being applicable even if the applicant for international protection has not expressly referred to them.

Question 3: Article 46(3) of the Asylum Procedures Directive, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that a court or tribunal of a Member State seised at first instance of an appeal against a decision relating to an application for international protection must examine both facts and points of law, such as the applicability of Article 12(1)(a) of the Qualification Directive to the applicant's circumstances, which the body that took that decision took into account or could have taken into account, and those which arose after the adoption of that decision.

Question 4: Article 46(3) of the Asylum Procedures Directive, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that the requirement for a full and *ex nunc* examination of the facts and points of law may also concern the grounds of inadmissibility of the application for international protection referred to in Article 33(2) of that directive, where permitted under national law, and that, in the event that the court or tribunal hearing the appeal plans to examine a ground of inadmissibility which has not been examined by the determining authority, it must conduct a hearing of the applicant in order to allow that individual to express his or her point of view in person concerning the applicability of that ground to his or her particular circumstances.

Question 5: point (b) of the first paragraph of Article 35 of the Asylum Procedures Directive must be interpreted as meaning that a person registered with UNRWA must, if he or she is a beneficiary of effective protection or assistance from that agency in a third country that is not the territory in which he or she habitually resides but which forms part of the area of operations of that agency, be considered as enjoying sufficient protection in that third country, within the meaning of that provision, when it: agrees to readmit the person concerned after he or she has left its territory in order to apply for international protection in the European Union; and recognises that protection or assistance from UNRWA and supports the principle of non-refoulement, thus enabling the person concerned to stay in its territory in safety under dignified living conditions for as long as necessary in view of the risks in the

territory of habitual residence.

Question 6: Article 46(3) of the Asylum Procedures Directive, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that it does not establish common procedural standards in respect of the power to adopt a new decision concerning an application for international protection following the annulment, by the court hearing the appeal, of the initial decision taken on that application. However, the need to ensure that Article 46(3) of that directive has a practical effect and to ensure an effective remedy in accordance with Article 47 of the Charter requires that, in the event that the file is referred back to the quasi-judicial or administrative body referred to in Article 2(f) of that directive, a new decision must be adopted within a short period of time and must comply with the assessment contained in the judgment annulling the initial decision.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

Court of Justice of the European Union, Press Release No 112/18, at [A Palestinian who has refugee status from UNRWA cannot obtain refugee status in the EU while receiving effective protection or assistance from that UN agency \(europa.eu\)](https://european-courts.eu/en/press-releases/2018/07/112-18-a-palestinian-who-has-refugee-status-from-unrwa-cannot-obtain-refugee-status-in-the-eu-while-receiving-effective-protection-or-assistance-from-that-un-agency)

European Database of Asylum Law, CJEU – C-585/16, Alheto, 25 July 2018, at [CJEU - C-585/16 Alheto, 25 July 2018 | European Database of Asylum Law \(asylumlawdatabase.eu\)](https://asylumlawdatabase.eu/en/cjcu-585-16-alheto-25-july-2018)

Caselaw cited

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