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 TRIBUNAL DE JUSTICIA DE LA UNIÓN EUROPEA  
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 ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ  
 COURT OF JUSTICE OF THE EUROPEAN UNION  
 COUR DE JUSTICE DE L'UNION EUROPÉENNE  
 CÚIRT BHRÉITHIÚNAIS AN AONTAIS EORPAIGH  
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 SODIŠČE EVROPSKE UNIJE  
 EUROOPAN UNIONIN TUOMIOISTUIN  
 EUROPEISKA UNIONENS DOMSTOL

## JUDGMENT OF THE COURT (Third Chamber)

3 March 2022 \*

**12 15482 -**

(Reference for a preliminary ruling – Common policy on asylum and immigration – Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection – Directive 2004/83/EU – Article 12 – Exclusion from being a refugee – Stateless person of Palestinian origin registered with the United Nations Relief and Works Agency (for Palestine Refugees in the Near East) (UNRWA) – Conditions to be entitled *ipso facto* to the benefits of Directive 2004/83/EC – Cessation of UNRWA's protection or assistance)

In Case C-349/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the First-tier Tribunal (Immigration and Asylum Chamber) (United Kingdom), made by decision of 29 July 2020, received at the Court on 29 July 2020, in the proceedings

**NB,**

**AB**

v

**Secretary of State for the Home Department,**

intervening party:

**United Nations High Commissioner for Refugees (UK),**

\* Language of the case: English.

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third Chamber, J. Passer, F. Biltgen, L.S. Rossi (Rapporteur) and N. Wahl, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- AB and NB, by R. Husain QC, E. Mitchell, G. Capel, R. Toal and T. Tridimas, Barristers, and A. Vasisht, Solicitor
- the Secretary of State for the Home Department, by T. Lindsay, acting as Agent,
- United Nations High Commissioner for Refugees (UK), by M. Demetriou QC, T. Johnston, Barrister, and S. Mobley, Solicitor,
- the German Government, by R. Kanitz and J. Möller, acting as Agents,
- the European Commission, by C. Ladenburger and A. Azéma, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 October 2021,

gives the following

**Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12).
- 2 The request has been made in proceedings between NB and AB, stateless persons of Palestinian origin, of the one part, and the Secretary of State for the Home Department (United Kingdom), of the other, concerning the latter's rejection of the application for international protection submitted by NB and AB.

## Legal context

### *International law*

#### *The Geneva Convention*

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

#### *United Nations Relief and Works Agency (for Palestine Refugees in the Near East) (UNRWA)*

- 5 United Nations General Assembly resolution No 302 (IV) of 8 December 1949, concerning assistance to Palestine refugees, established the United Nations Relief and Works Agency (for Palestine Refugees in the Near East) (UNRWA). UNRWA's task is to serve the well-being and human development of Palestine refugees.
- 6 According to points VII.C and VII.E of UNRWA's Consolidated Eligibility and Registration Instructions, UNRWA's area of operations encompasses five fields, namely the Gaza Strip, the West Bank (including East Jerusalem), Jordan, Lebanon and Syria.

### *EU law*

#### *Directive 2004/83*

- 7 Recitals 3, 10 to 12, 16, 17 and 38 of Directive 2004/83 state:

'(3) The Geneva Convention and Protocol provide the cornerstone of the international legal regime for the protection of refugees.

...

- (10) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members.
- (11) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.
- (12) The “best interests of the child” should be a primary consideration of Member States when implementing this Directive.

...

- (16) Minimum standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.
- (17) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.

...

- (38) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom [of Great Britain and Northern Ireland] has notified, by letter of 28 January 2002, its wish to take part in the adoption and application of this Directive.’

8 Article 1 of that directive provides:

‘The purpose of this Directive is to lay down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.’

9 Article 2(c) to (e) of Directive 2004/83 provides:

‘For the purposes of this Directive:

...

- (c) “refugee” means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of

nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

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

10 Article 4 of Directive 2004/83, entitled ‘Assessment of facts and circumstances’, is worded as follows:

‘1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.

...

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

- (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;
- (b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
- (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant’s personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

...’

- 11 Article 12 of that directive, entitled ‘Exclusion’, provides at paragraph (1)(a) thereof:

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

*Directive 2011/95/EU*

- 12 Recitals 1 and 50 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9) state:

‘(1) A number of substantive changes are to be made to [Directive 2004/83]. In the interests of clarity, that Directive should be recast.

...

- (50) In accordance with Articles 1, 2 and Article 4a(1) of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.’

- 13 Article 12 of that directive, entitled ‘Exclusion’, provides at paragraph (1)(a) thereof:

‘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.’

- 14 Article 40 of Directive 2011/95, entitled, ‘Repeal’, provides:

‘Directive [2004/83] is repealed for the Member States bound by this Directive with effect from 21 December 2013, without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of the Directive set out in Annex I, Part B.

For the Member States bound by this Directive, references to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.’

*Directive 2013/32/EU*

- 15 Recital 18 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 (OJ 2013 L 180, p. 60), is worded as follows:

‘It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.’

- 16 Article 2 of that directive states:

‘For the purposes of this Directive:

...

- (c) “applicant” means a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

...

- (f) “determining authority” means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases;

...’

- 17 Article 46 of Directive 2013/32 provides:

‘1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

- (a) a decision taken on their application for international protection, including a decision:
- (i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;



...

...

3. In order to comply with paragraph 1, 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], at least in appeals procedures before a court or tribunal of first instance.

...’

***United Kingdom law***

18 Directive 2004/83 was transposed into United Kingdom law by the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (S.I. 2006/2525, ‘the 2006 Regulations’), and by the Immigration Rules (the 2006 Regulations) (‘the 2006 Immigration Rules’).

19 Regulation 2 of the 2006 Regulations provides:

“‘refugee” means a person who falls within Article 1(A) of the Geneva Convention and to whom regulation 7 does not apply’.

20 Regulation 7(1) of the 2006 Regulations provides:

‘A person is not a refugee, if he falls within the scope of [Article 1(D), 1(E) or 1(F)] of the Geneva Convention.’

21 Paragraph 339AA of the 2006 Immigration Rules states that:

‘This paragraph applies where the Secretary of State is satisfied that the person should have been or is excluded from being a refugee in accordance with regulation 7 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006.’

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

22 NB has been living in the United Kingdom with her husband and their five minor children, including AB, since October 2015, AB being severely disabled. All family members, having previously resided in the Al Bass refugee camp (Lebanon), are registered with UNRWA, with the exception of H, the youngest family member, who was seven months old on the date on which the order for reference was made.

- 23 By their action, the applicants in the main proceedings seek above all to be granted refugee status on the basis of Article 1(D) of the Geneva Convention, to which Article 12(1)(a) of Directive 2004/83 refers; they argue that, as stateless persons having previously had recourse to UNRWA's protection or assistance, they may, under the second paragraph of Article 1(D), *ipso facto* be entitled to refugee status inasmuch as that protection or assistance has ceased for a reason beyond their control and independent of their volition ('inclusionary clause'). In that context, the applicants in the main proceedings submit that they come within the scope of that inclusionary clause because of, first, the alleged inability of UNRWA to provide assistance to severely disabled children in accordance with its mission and, secondly, the severe discrimination to which AB was exposed, in Lebanon, on account of his disability.
- 24 In that regard, they state that AB did not have access to education or medical assistance appropriate to his needs in the Al Bass camp. Because of his disability, both AB and his siblings had been subject to abuse from the surrounding community, which has had adverse consequences for the mental health and life of the whole family. That situation was exacerbated by the particularly precarious living conditions in the camp, the discrimination to which disabled Palestinians residing in Lebanon are exposed in general and the deterioration of Lebanon's socio-economic situation in recent years.
- 25 In that context, the applicants in the main proceedings submit, relying on the judgment of 19 December 2012, *Abed El Kareem El Kott and Others* (C-364/11, EU:C:2012:826), that severe discrimination, such as that to which AB is in the present case exposed given the abovementioned factors, is capable of being regarded as a reason which forced the person concerned to leave the UNRWA area of operations. They add that the discrimination resulting from the arbitrary refusal to ensure that disabled persons have access to healthcare and education is likely to cause serious harm to the child who is the victim thereof and may even fall within the concept of 'persecution'. The existence of such persecution should be assessed by having due regard to the particular vulnerability of children, which is increased in the present case by the deterioration of the situation prevailing in Lebanon, as well as to the best interests of the child, not only in respect of AB, but also his brothers and sisters. In the light of those considerations, the applicants in the main proceedings submit that they left Lebanon and thus ceased to benefit from UNRWA's protection or assistance for objective reasons beyond their control.
- 26 The Secretary of State for the Home Department disputes the right of the applicants in the main proceedings to be granted *ipso facto* refugee status. While accepting that AB was indeed the victim of discrimination on the basis of his disability, she contends that that discrimination does not reach the level required to be regarded as constituting persecution. In addition, she argues that AB received sufficient assistance in Lebanon and will continue to do so upon his return. The Secretary of State for the Home Department refers, in that regard, to the existence of an early intervention centre operating in the Al Bass camp, under

the responsibility of a non-governmental organisation, and which, in her view, provides assistance to disabled children living there. Lastly, she contends that the applicants in the main proceedings had not demonstrated that it was impossible to have recourse to the education and assistance provided by such non-governmental organisations (NGOs) and, consequently, they had failed to demonstrate reasons beyond their control which prevented them from continuing to benefit from UNRWA's assistance or protection in Lebanon.

27 The referring court considers that, in order to be able to determine whether the applicants in the main proceedings are entitled *ipso facto* to refugee status on the basis of the facts which they have put forward, it must first of all be clarified whether the cessation of UNRWA's protection or assistance must be examined solely having regard to the situation at the date of their departure, or whether the examination involves, additionally or alternatively, an assessment of any circumstances which may have arisen after that date. The referring court also asks, in that context, who has the evidential burden. Lastly, the referring court seeks clarification as to relevant elements that could establish such a cessation of the protection or assistance provided by UNRWA.

28 In those circumstances the First-tier Tribunal (Immigration and Asylum Chamber) (United Kingdom) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'In assessing whether there has been a cessation of protection or assistance from UNRWA within the meaning of the second sentence of Article 12(1)(a) of [Directive 2004/83] to a UNRWA-registered stateless Palestinian in respect of the assistance afforded to disabled persons:

- (1) Is the assessment purely an historic exercise of considering the circumstances which are said to have forced an applicant to leave the UNRWA area of operations when he [or she] did, or is it also an *ex nunc* forward-looking assessment of whether the applicant can avail himself [or herself] of such protection or assistance presently?
- (2) If the answer to Question 1 is that assessment includes a forward-looking assessment, is it legitimate to rely analogically on the cessation clause in Article 11, so that where historically the applicant can show a qualifying reason as to why he or she left the UNRWA area, the evidential burden falls upon the Member State to show that such reason no longer holds?
- (3) In order for there to be justifiable objective reasons for the departure of such a person related to UNRW[A]'s provision of protection or assistance, is it necessary to establish intentional infliction of harm or deprivation of assistance (by act or omission) on the part of UNRWA or the State in which it operates?
- (4) Is it relevant to take into account the assistance provided to such persons by civil society actors such as NGOs?

## **Procedure before the Court**

- 29 On 31 January 2020, the United Kingdom left the European Union. In accordance with Article 86(2) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2019 C 384 I, p. 1), the Court is to continue to have jurisdiction to give preliminary rulings on requests from courts and tribunals of the United Kingdom made before the end of the transition period. Under Article 126 thereof, that period was to end on 31 December 2020.
- 30 Furthermore, pursuant to Article 89(1) of that agreement, as regards those requests, the judgments and orders of the Court of Justice handed down before the end of the transitional period, as well as those handed down after the end of that period, are to have binding force in their entirety on and in the United Kingdom.
- 31 Since the present request for a preliminary ruling was lodged at the Court Registry on 29 July 2020, the Court continues to have jurisdiction to rule on that request and the referring court is bound by the present judgment.
- 32 On 25 May 2021, the Court addressed a question to the parties and other interested persons for the purposes of Article 23 of the Statute of the Court of Justice of the European Union in which they were invited to set out their views on the effect, if any, of the judgment of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)* (C-507/19, EU:C:2021:3) for the purposes of the answer, in particular, to the first question referred for a preliminary ruling.
- 33 Replies to that question were submitted by NB and AB, the Secretary of State for the Home Department, the United Nations High Commissioner for Refugees and the European Commission. On 25 May 2021, the Court also addressed a question to the United Nations High Commissioner for Refugees concerning the legal obligations of UNRWA with regard to providing assistance to disabled children and measures actually put in place, particularly in Lebanon. The United Nations High Commissioner for Refugees and NB and AB replied to that question.

## **Consideration of the questions referred**

### ***Preliminary observations***

- 34 Before answering the questions referred, it must, in the first place, be observed that, under Article 1 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice (OJ 2008 C 115, p. 295), annexed to the EU and FEU Treaties, the United Kingdom benefits from a derogating regime encompassing all measures adopted within the framework of the area of freedom, security and justice and has the possibility of not taking part in the legislative procedures in that field.

- 35 Although the United Kingdom, as stated in recital 38 of Directive 2004/83, took part in the adoption and application of that directive, it did, however, make use of that derogating regime for Directive 2011/95, which repealed Directive 2004/83 with effect from 21 December 2013.
- 36 Thus, as stated in recital 50 of Directive 2011/95, the United Kingdom did not take part in the adoption of that directive and is not bound by it or subject to its application.
- 37 Furthermore, it follows from Article 40 of Directive 2011/95 that Directive 2004/83 is repealed with effect from 21 December 2013 only for the Member States bound by Directive 2011/95.
- 38 In those circumstances, it is Directive 2004/83 which continues to apply in respect of the United Kingdom, within the limits recalled in paragraphs 29 and 30 above.
- 39 In the second place, it must also be noted that, as is apparent from recitals 3, 16 and 17 of Directive 2004/83, the Geneva Convention constitutes the cornerstone of the international legal regime for the protection of refugees and that the provisions of the directive for determining who qualifies for refugee status and the content thereof were adopted to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria (judgments of 17 June 2010, *Bolbol*, C-31/09, EU:C:2010:351, paragraph 37, and of 19 December 2012, *Abed El Kareem El Kott and Others*, C-364/11, EU:C:2012:826, paragraph 42).
- 40 Directive 2004/83 must, for that reason, be interpreted in the light of its general scheme and purpose, and in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU. As is apparent from recital 10 of Directive 2004/83, that directive must also be interpreted in a manner consistent with the rights recognised by the Charter of Fundamental Rights (judgments of 17 June 2010, *Bolbol*, C-31/09, EU:C:2010:351, paragraph 38, and of 19 December 2012, *Abed El Kareem El Kott and Others*, C-364/11, EU:C:2012:826, paragraph 43).
- 41 In the third place, it must be pointed out that Article 12(1)(a) of Directive 2004/83 corresponds, in substance, to Article 12(1)(a) of Directive 2011/95, with the result that the case-law concerning the latter provision is relevant to the interpretation of the former (see, by analogy, judgment of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, C-507/19, EU:C:2021:3, paragraph 37).
- 42 The questions referred for a preliminary ruling must be answered in the light of those considerations.

*The first question*

- 43 By its first question, the referring court asks, in essence, whether the second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, in order to assess whether UNRWA's protection or assistance has ceased, so that a person may claim *ipso facto* 'refugee status' for the purposes of that provision, account must be taken only of the relevant circumstances as they exist at the time of that person's departure from the UNRWA area of operations, or also of the circumstances as they exist at the time when the competent authorities consider an application for refugee status or the judicial authorities concerned rule on the appeal against a decision refusing to grant such status.
- 44 In order to answer that question, it must be noted that, according to the first sentence of Article 12(1)(a) of Directive 2004/83, a third-country national or a stateless person is excluded from being a refugee 'if 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'.
- 45 The first paragraph of Article 1(D) of the Geneva Convention provides that that convention is not to 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.
- 46 UNRWA is a United Nations agency which was set up to protect and assist Palestinians in their capacity as 'Palestine refugees'. Its mandate, which has been extended until 30 June 2023, covers its area of operations which consists in five fields, namely the Gaza Strip, the West Bank (including East Jerusalem), Jordan, Lebanon and Syria.
- 47 Thus, any person, such as NB and AB, who is registered with UNRWA, is eligible to receive protection and assistance from that agency in the interests of his or her well-being as a refugee (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 84).
- 48 On account of that specific refugee status established in those territories of the Near East for Palestinians, persons registered with UNRWA are, in principle, by virtue of the first sentence of Article 12(1)(a) of Directive 2004/83, which corresponds to the first paragraph of Article 1(D) of the Geneva Convention, excluded from refugee status in the European Union (judgment of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, C-507/19, EU:C:2021:3, paragraph 49 and the case-law cited).
- 49 In addition, it follows from the second sentence of Article 12(1)(a) of Directive 2004/83, which corresponds to the second paragraph of Article 1(D) of the Geneva Convention, that, when an applicant for international protection in the European Union no longer receives protection or assistance from UNRWA, that

exclusion ceases to apply (judgment of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, C-507/19, EU:C:2021:3, paragraph 50 and the case-law cited).

- 50 Thus, the second sentence of Article 12(1)(a) of Directive 2004/83 applies where it becomes evident, based on an assessment, on an individual basis, of all the relevant evidence, that the personal safety of the stateless person of Palestinian origin concerned is at serious risk and that it is impossible for UNRWA, whose assistance was requested by that person, to guarantee that the living conditions of that individual would be compatible with its mission, and that person is forced to leave the UNRWA area of operations owing to circumstances beyond his or her control and independent of his or her volition. In that case, that stateless person may – unless he or she falls within the scope of any of the grounds for exclusion set out in Article 12(1)(b), Article 12(2) and Article 12(3) of that directive – *ipso facto* be entitled to the benefits of that directive, without necessarily having to demonstrate a well-founded fear of being persecuted, within the meaning of Article 2(c) of that directive (judgment of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, C-507/19, EU:C:2021:3, paragraph 51 and the case-law cited).
- 51 It should, however, be noted, in that regard, that the fact that the persons concerned are *ipso facto* entitled to the benefits of Directive 2004/83 within the meaning of Article 12(1)(a) does not entail an unconditional right to refugee status. Indeed, although a person who is *ipso facto* entitled to the benefits of Directive 2004/83 is not necessarily required to show that he or she has a fear of being persecuted within the meaning of Article 2(c) of that directive, he or she must nevertheless submit – as did the applicants in the main proceedings – an application for refugee status, which must be examined by the competent authorities of the Member State responsible (see, to that effect, judgment of 19 December 2012, *Abed El Karem El Kott and Others*, C-364/11, EU:C:2012:826, paragraphs 75 and 76).
- 52 That being so, as the Advocate General observed, in essence, in point 52 of his Opinion, while Article 12(1)(a) of Directive 2004/83 does not specifically indicate what point in time is relevant for the assessment, by the competent national authorities or courts, of the cessation of UNRWA's assistance or protection, the use of the phrase 'are at present receiving' in the first paragraph of Article 1(D) of the Geneva Convention and 'has ceased' in the second paragraph of that provision, favours an assessment that seeks to determine whether that assistance or protection has actually ceased, within the meaning of Article 12(1)(a) of Directive 2004/83.
- 53 In those circumstances, such an evaluation must be based on an individual assessment of all the relevant evidence or factors of the situation in question as it exists at the time of the departure of the applicants concerned from the UNRWA area of operations, while taking into account the circumstances as they exist at the time when the competent administrative authorities take their decision on the

application for refugee status lodged by the person concerned or the judicial authorities concerned rule on the appeal against a decision refusing to grant refugee status. Account must be taken, in particular, of the situation in which the person concerned is able to return to the UNRWA area of operations in that the circumstances which led to that person qualifying as a refugee no longer exist (see, to that effect, judgments of 19 December 2012, *Abed El Kareem El Kott and Others*, C-364/11, EU:C:2012:826, paragraph 77, and of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, C-507/19, EU:C:2021:3, paragraphs 59 and 66).

- 54 The need to carry out such an assessment is consistent with the general scheme of the regime established by Directive 2004/83. In that regard, it follows from Article 4(3)(a) of Directive 2004/83 and Article 5(1) of that directive that, in order to decide on an application for international protection, account must be taken of all relevant facts as they relate to the country of origin ‘at the time of taking a decision on the application’ and, where appropriate, of events which have taken place since the applicant left the country of origin.
- 55 In that regard, it must also be stated, as the Court has already held, that, under Article 46(3) of Directive 2013/32, Member States are required to order their national law in such a way that the processing of the appeals referred to in that provision includes a ‘full and *ex nunc*’ examination, at least in appeals procedures before a court or tribunal of first instance, of all the facts and points of law necessary in order to make an up-to-date assessment of the case at hand. As the Court has already made clear, the expression ‘*ex nunc*’ and the adjective ‘full’ contained in that provision point to the obligation of the court or tribunal to make an assessment which takes into account, where appropriate, both the evidence which the determining authority took into account or should have taken into account and that which has arisen following the adoption of the decision under appeal. The power of the court or tribunal to take into consideration new evidence on which that authority has not taken a decision is consistent with the purpose of Directive 2013/32, which is intended, *inter alia*, as can be seen from recital 18 thereof, to ensure that applications for international protection are dealt with ‘as soon as possible ... , without prejudice to an adequate and complete examination being carried out’ (judgment of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, C-507/19, EU:C:2021:3, paragraph 40 and the case-law cited).
- 56 As the Commission argued in its written observations, even if a person was in the past forced to leave the area of operations because his or her personal safety was at serious risk, there would be no reason to grant the person *ipso facto* refugee status pursuant to the second sentence of Article 12(1)(a) of Directive 2004/83, where, in the meantime, the situation in the area of operations has markedly improved so that the person’s personal safety would no longer be at serious risk there and it would again have become possible for UNRWA to guarantee him or her living conditions commensurate with its mission. Consequently, authorities and courts called upon to decide on an *ipso facto* entitlement to refugee status



should also verify whether such an effective possibility of return to the UNRWA area of operations exists. If it does, the applicant should be excluded from being a refugee, in accordance with the first sentence of Article 12(1)(a) of Directive 2004/83.

- 57 It is, therefore, for the competent national authorities and courts to conduct, on an individual basis, an assessment of all the relevant factors in order to ascertain whether the departure from the UNRWA area of operations of applicants for refugee status under the second sentence of Article 12(1)(a) of Directive 2004/83 may be justified, in accordance with the case-law referred to in paragraph 50 above, by reasons beyond their control and independent of their volition, which prevented them from receiving UNRWA's protection or assistance; that assessment must also ascertain whether those applicants are currently prevented from receiving that protection or assistance due to the allegedly deteriorating situation in the area of operations concerned for reasons beyond their control and independent of their volition.
- 58 In the light of all the foregoing considerations, the answer to the first question is that the second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, in order to assess whether UNRWA's protection or assistance has ceased, so that a person may claim *ipso facto* 'refugee status' for the purposes of that provision, account must be taken, in the context of an assessment carried out on an individual basis, of the relevant circumstances as they exist not only at the time of that person's departure from the UNRWA area of operations, but also at the time when the competent administrative authorities consider an application for refugee status or the judicial authorities concerned rule on the appeal against a decision refusing to grant such status.

### *The second question*

- 59 By its second question, the referring court asks, in essence, whether the second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, in the context of the analysis of whether UNRWA's protection or assistance has ceased, so that a person may claim *ipso facto* 'refugee status' for the purposes of that provision, where the person concerned establishes that he or she has been forced to leave the UNRWA area of operations for reasons beyond his or her control and independent of his or her volition, it is for the Member State, if it considers that the person is now in a position to return to that area and receive that protection or assistance there, to establish that that is the case.
- 60 In order to answer that question, it must be recalled that, in accordance with Article 13 of Directive 2004/83, Member States are to grant refugee status to a third-country national or a stateless person, who qualifies as a refugee in accordance with Chapters II and III of that directive.
- 61 In those circumstances, in order to grant refugee status to an applicant under the second sentence of Article 12(1)(a) of that directive, which is contained in

Chapter III of that directive, an assessment of the relevant facts and circumstances must be carried out in accordance with Article 4 of Directive 2004/83, which is contained in Chapter II of that directive.

- 62 In particular, pursuant to Article 4(1) of Directive 2004/83, Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is then the duty of the Member State to assess the relevant elements of the application.
- 63 In that regard, it must be noted that the assessment of the facts and circumstances, provided for in Article 4 of Directive 2004/83 and on the basis of which an application for international protection may be substantiated, takes place essentially in two separate stages. The first stage concerns the establishment of factual circumstances which may constitute evidence that supports the application, while the second stage relates to the legal appraisal of that evidence, which entails deciding whether, in the light of the specific facts of a given case, the substantive conditions laid down by the relevant provisions of Directive 2004/83 for the grant of international protection are satisfied (judgment of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 55).
- 64 In the context of that first stage, in which the second question arises, although under Article 4(1) of Directive 2004/83 it is the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection, the Court has clarified that the authorities of the Member States must, if necessary, cooperate actively with him or her in order to determine and supplement the relevant elements of the application, those authorities indeed often being better placed than an applicant to gain access to certain types of documents (see, to that effect, judgment of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraphs 65 and 66).
- 65 Thus, in the present case, it is indeed possible to infer from Article 4(1) of Directive 2004/83 that the burden of proof lies with the applicants to prove that they have actually had recourse to UNRWA's protection or assistance and that that protection or assistance has ceased. However, provided that the applicants are able to prove that, at the time of leaving the UNRWA area of operations, they were actually forced to do so, for reasons beyond their control and independent of their volition – in particular because their personal safety was at serious risk and UNRWA could not guarantee them living conditions commensurate with its mission in that area – it is then for the Member State to demonstrate, as the case may be, that the circumstances have in the meantime changed in the area of operations concerned, so that those persons may once again receive protection or assistance from UNRWA.
- 66 In the light of all the foregoing considerations, the answer to the second question is that the second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, in the context of the analysis of whether UNRWA's

protection or assistance has ceased, so that a person may claim *ipso facto* ‘refugee status’ for the purposes of that provision, where the person concerned establishes that he or she has been forced to leave the UNRWA area of operations for reasons beyond his or her control and independent of his or her volition, it is for the Member State, if it considers that the person is now in a position to return to that area and receive that protection or assistance there, to establish that that is the case.

### *The third question*

- 67 By its third question, the referring court asks, in essence, whether the second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, in order to determine whether UNRWA’s protection or assistance has ceased, within the meaning of that provision, so that a person who has applied for international protection has been forced to leave that body’s area of operations, it is necessary to establish that UNRWA or the State in whose territory it operates intended to inflict harm on that person or to deprive him or her of assistance, by act or omission.
- 68 In order to answer that question, it must be borne in mind that, as the Court has already held, for the purpose of determining whether UNRWA’s assistance or protection has actually ceased within the meaning of the second sentence of Article 12(1)(a) of Directive 2004/83, it is for the competent national authorities and courts to ascertain whether the departure of the person concerned may be justified by reasons beyond his or her control and independent of his or her volition which force him or her to leave the area in question and thus prevent him or her from receiving UNRWA’s assistance (judgment of 19 December 2012, *Abed El Karem El Kott and Others*, C-364/11, EU:C:2012:826, paragraph 61).
- 69 In that regard, it must be noted that both the second sentence of Article 12(1)(a) of Directive 2004/83 and Article 1(D) of the Geneva Convention require an objective assessment of whether UNRWA’s assistance or protection has in fact ceased for any reason, that body no longer being in a position, for objective reasons or reasons relating to the applicant’s individual situation, to guarantee him or her living conditions commensurate with its mission.
- 70 Thus, for the purposes of such an assessment, it is not necessary to rely on subjective factors such as the intentions of UNRWA or of the State in whose territory it operates. Indeed, to introduce such a requirement for the purposes of applying Article 12(1)(a) of Directive 2004/83 would amount to narrowing the scope of that provision unduly and to limiting significantly and unduly the scope of the protection afforded to stateless persons of Palestinian origin.
- 71 Admittedly, as the Advocate General observed in point 74 of his Opinion, if it were established that UNRWA or the State in whose territory it operates intentionally inflicted harm on the persons concerned or intentionally deprived them of assistance, by act or omission, such evidence would naturally be

particularly pertinent. However, for the purposes of applying the second sentence of Article 12(1)(a) of Directive 2004/83, it is not necessary to provide proof of such an intention.

- 72 In the light of all the foregoing considerations, the answer to the third question is that the second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, in order to determine whether UNRWA's protection or assistance has ceased, within the meaning of that provision, so that a person who has applied for international protection has been forced to leave that body's area of operations, it is not necessary to establish that UNRWA or the State in whose territory it operates intended to inflict harm on that person or to deprive him or her of assistance, by act or omission. For the purposes of that provision, it is sufficient to establish that UNRWA's assistance or protection has in fact ceased for any reason, so that that body is no longer in a position, for objective reasons or reasons relating to the person's individual situation, to guarantee him or her living conditions commensurate with its mission.

#### *The fourth question*

- 73 By its fourth question, the referring court asks, in essence, whether the second sentence of Article 12(1)(a) of Directive 2004/83, read in conjunction with Article 1(D) of the Geneva Convention, must be interpreted as meaning that, in the context of the assessment of the conditions required to determine whether UNRWA's protection or assistance of UNRWA has ceased, so that a person may claim *ipso facto* 'refugee status', for the purposes of that provision of Directive 2004/83, account must be taken of the assistance provided to that person by civil society actors, such as NGOs.
- 74 In order to answer that question, the Court points out that both the second sentence of Article 12(1)(a) of Directive 2004/83 and Article 1(D) of the Geneva Convention refer only to protection or assistance 'from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees' and do not mention any support or services provided by other entities, outside the United Nations, such as NGOs.
- 75 In addition, as has been observed in paragraph 50 above, the second sentence of Article 12(1)(a) of Directive 2004/83 applies where it becomes evident, based on an assessment, on an individual basis, of all the relevant evidence, that the personal safety of the stateless person of Palestinian origin concerned is at serious risk and that it is impossible for UNRWA, whose assistance was requested by that person, to guarantee him or her protection and assistance compatible with its mandate, and that person is forced to leave the UNRWA area of operations owing to circumstances beyond his or her control and independent of his or volition.
- 76 In those circumstances, it must be held that both the second sentence of Article 12(1)(a) of Directive 2004/83 and Article 1(D) of the Geneva Convention refer, in essence, only to the protection or assistance from UNRWA.

- 77 UNRWA is an agency of the United Nations, established by the United Nations General Assembly, whose mission it is to provide protection and assistance to Palestinian refugees in accordance with its mandate. Given the status granted to UNRWA and the mission entrusted to it, there can be no question of treating that agency in the same way as civil society actors such as NGOs, which are quite different entities from UNRWA and are not in the same position as the latter inasmuch as they cannot provide ‘assistance’ or ‘protection’ for the purposes of the Geneva Convention and Directive 2004/83.
- 78 Nevertheless, that does not call into question the fact that, as is apparent from the documents before the Court, the cooperation of civil society actors such as NGOs may be essential in order to enable UNRWA to carry out its mission. Indeed, it appears that, in view of the increasing difficulties it has encountered in carrying out its mandate, at least in certain fields of its area of operations, UNRWA has in practice had recourse to such cooperation.
- 79 In those circumstances, it cannot be excluded that, where such cooperation exists, the assistance provided by civil society actors such as NGOs must be taken into consideration in the assessment of whether UNRWA’s protection or assistance has ceased, so that applicants may claim *ipso facto* refugee status for the purposes of the second sentence of Article 12(1)(a) of Directive 2004/83.
- 80 However, any assistance provided by civil society actors, such as NGOs, should indeed be taken into consideration, provided that UNRWA has a formal relationship of cooperation with them, of a stable nature, in which they assist UNRWA in carrying out its mandate.
- 81 That is the case in particular, where, as the Advocate General observed in essence in points 83 to 85 of his Opinion, the provision of such protection or assistance has been lawfully entrusted to NGOs by the State in whose territory UNRWA operates and the Palestinian refugees have in fact a legal right to access the protection or assistance provided on a stable, rather than ad hoc, basis by the NGOs in question.
- 82 Moreover, it should be added that, as the Advocate General observed in essence in point 79 of his Opinion, in that context the role of the State in which UNRWA operates may also be decisive in enabling UNRWA to fulfil its mandate effectively and ensure that the persons concerned live in dignified conditions (see, to that effect, judgment of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, C-507/19, EU:C:2021:3, paragraphs 58 and 62).
- 83 Thus, where Palestinian refugees have a real legal entitlement to access, on a durable basis, to education and medical care provided by the State in question, that situation should be taken into consideration in a global assessment of all relevant circumstances under the second sentence of Article 12(1)(a) of Directive 2004/83.

- 84 In the light of all the foregoing considerations, the answer to the fourth question is that the second sentence of Article 12(1)(a) of Directive 2004/83, read in conjunction with Article 1(D) of the Geneva Convention, must be interpreted as meaning that, in the context of the assessment of the conditions required to determine whether UNRWA's protection or assistance has ceased, so that a person may claim *ipso facto* 'refugee status' for the purposes of that provision of Directive 2004/83, account must be taken of the assistance provided to that person by civil society actors, such as NGOs, provided that UNRWA has a formal relationship of cooperation with them, of a stable nature, in which they assist UNRWA in carrying out its mandate.

### Costs

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

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

1. **The second sentence of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that, in order to assess whether the protection or assistance from the United Nations Relief and Works Agency (for Palestine Refugees in the Near East) (UNRWA) has ceased, so that a person may claim *ipso facto* 'refugee status' for the purposes of that provision, account must be taken, in the context of an assessment carried out on an individual basis, of the relevant circumstances as they exist not only at the time of that person's departure from the UNRWA area of operations, but also at the time when the competent administrative authorities consider an application for refugee status or the judicial authorities concerned rule on the appeal against a decision refusing to grant such status.**
2. **The second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, in the context of the analysis of whether the protection or assistance from the United Nations Relief and Works Agency (for Palestine Refugees in the Near East) (UNRWA) has ceased, so that a person may claim *ipso facto* 'refugee status' for the purposes of that provision, where the person concerned establishes that he or she has been forced to leave the UNRWA area of operations for reasons beyond his or her control and independent of his or her volition, it is for the Member State, if it considers that the person is now in a position to**

return to that area and receive that protection or assistance there, to establish that that is the case.

3. The second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, in order to determine whether the protection or assistance from the United Nations Relief and Works Agency (for Palestine Refugees in the Near East) (UNRWA) has ceased, within the meaning of that provision, so that a person who has applied for international protection has been forced to leave that body's area of operations, it is not necessary to establish that UNRWA or the State in whose territory it operates intended to inflict harm on that person or to deprive him or her of assistance, by act or omission. For the purposes of that provision, it is sufficient to establish that UNRWA's assistance or protection has in fact ceased for any reason, so that that body is no longer in a position, for objective reasons or reasons relating to the person's individual situation, to guarantee him or her living conditions commensurate with its mission.
4. The second sentence of Article 12(1)(a) of Directive 2004/83, read in conjunction with Article 1(D) of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, must be interpreted as meaning that, in the context of the assessment of the conditions required to determine whether the protection or assistance from the United Nations Relief and Works Agency (for Palestine Refugees in the Near East) (UNRWA) has ceased, so that a person may claim *ipso facto* 'refugee status' for the purposes of that provision of Directive 2004/83, account must be taken of the assistance provided to that person by civil society actors, such as non-governmental organisations, provided that UNRWA has a formal relationship of cooperation with them, of a stable nature, in which they assist UNRWA in carrying out its mandate.

Prechal

Passer

Biltgen

Rossi

Wahl

Delivered in open court in Luxembourg on 3 March 2022.

A. Calot Escobar

K. Lenaerts

Registrar

President

