

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): “Council of Alien Law Litigation” (CALL)	
Date of the decision:	31/07/2017
Case number:²	190 280
Parties to the case: - A Palestinian applicant from Gaza against the Commissioner General for Refugees and Stateless Persons	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the link: http://www.rvv-ccce.be/sites/default/files/arr/A190280.AN.pdf?utm_source=ECRE+Newsletters&utm_campaign=912ff67cc3-EMAIL_CAMPAIGN_2017_09_22&utm_medium=email&utm_term=0_3ec9497afd-912ff67cc3-422297197 (If no, please attach the decision as a Word or PDF file):	
Language(s) in which the decision is written: Dutch	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
Countr(y)(ies) of origin of the applicant(s): Gaza strip	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Belgium	
Any third country of relevance to the case:³ N/A	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: Article 1D
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
For EU member states: please indicate which EU instruments are referred to in the	Relevant articles of the EU instruments referred to in the decision: Article 12 (1)(a) of the EU Qualification

decision	Directive
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Topics / Key terms: (see attached 'Topics' annex):

1951 Refugee Convention - EU Qualification Directive – Palestinian – Country of Origin information (COI)

Suggestions for key terms not included in the annex:

UNRWA – Gaza

Key facts (max. 200 words)

On 31 July 2017, the Council of Alien Law Litigation (CALL) granted refugee status to a Palestinian from Gaza who had his asylum application rejected by the Office of the Commissioner General for Refugees and Stateless Persons based on the exclusion grounds provided by Article 55(2) of the Belgian Aliens Act in accordance with Article 1D of the 1951 Refugee Convention.

Despite the fact that the applicant had obtained assistance from the UNRWA in the past, the Council found that a return to the Gaza Strip was virtually impossible in practice due to the security situation in that territory, the humanitarian impact of the Israeli blockade and the border crossing situation. Therefore, relying upon UNHCR's Interpretation of Article 1D of the 1951 Refugee Convention and Article 12(1)(a) of the EU Qualification Directive, the Council found that the applicant could no longer avail himself of the protection by UNRWA and should, therefore, be granted refugee status in Belgium.



Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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2.15 (...)

In order to receive the assistance of UNRWA the applicant concerned must be able to return to [UNRWA's] areas of operations. With regards to this aspect, the Council firstly notes that, according to the information added to the administrative file and the note of the defendant, the applicant is in possession of a valid passport (COI Focus *"Territoires Palestiniens – Gaza. Retour dans la bande de Gaza" van 22 februari 2017 en COI Focus "Territoires Palestiniens – Gaza. Retour dans la bande de Gaza" van 8 mei 2017*) the only requirement imposed on persons who want to return to the Gaza strip. Although said information conveys that a return to Gaza via the border with Egypt in Rafa is possible in principle and (irregular) bus transportation is being provided from Caïro, it appears from the same information that this return via the border of Rafa remains problematic in practice. The Egyptian authorities - which Gaza relies on for this- opens its border only sporadically and the travel route from Caïro is greatly hampered by security issues in the Sinaï due to the presence of extremist armed groups, who regularly launch attacks. It is difficult for the Commissioner General to claim that Palestinians originating from the Gaza strip are not being targeted, now that it has become apparent from earlier mentioned information that the bus services are being protected by the Egyptian police, whom, together with the army, are precisely the target of such attacks. In such circumstances it cannot objectively be assumed that the applicant can return to the Gaza strip safely and normally, in order to place himself under the protection of UNRWA again.

This assessment is confirmed by the report submitted by the applicant on the hearing of 14th of July 2017, notably of UNESCO (*United Nations Country Team in the occupied Palestinian territory*), "Gaza Ten Years later" of 11 July 2017. The Council reads herein the following: *"Despite the Israeli unilateral disengagement from the strip in 2005 – including the withdrawal of its soldiers and settlers – Israel retains full control of all movement of people and goods to and from Gaza by sea, air and land, with the exception of a 12 km strip of border with Egypt which, since 2013 in particular, has also remained closed most of the time, due to the security situation in the Sinai. (...) Many of these measures are contrary to international law in that they penalize the entire population of Gaza, without regard to individual responsibility and thus amount to collective punishment. Moreover, the blockade has a serious impact on the human rights of the population in Gaza, notably their right to freedom of movement as well as economic, social and cultural, ultimately undermining an adequate standard of living. (...) The current access and movement regime put in place in late 2014 following the latest round of hostilities, included additional relaxations on both imports, exports and movement of people. Since 2015, some 200 rockets have been fired from Gaza into Israel. With the establishment of the temporary Gaza Reconstruction Mechanism (GRM), import of some 'dual use' item, mainly construction materials, was facilitated not just for international organizations, but also for individuals and for the private sector in order to respond to the vast needs for reconstruction following the 2014 hostilities. Commercial transfers from the Gaza to the West Bank also resumed, first for agricultural produce and later for textiles and furniture. In March 2015, the first exports from Gaza to Israel since 2007 were permitted. This undeniable progress nevertheless still falls far short of pre-2007 levels; in 2016 total exports and transfers of goods from Gaza remained less than 20% of what it had been in the first half of 2007, in part due to continued export restrictions and in part due to restrictions on import of material and equipment necessary for local production. The criteria and quotas for the passage of Palestinians in and out the Gaza were also expanded following the 2014 hostilities, and yet they remained mostly restricted to businesspeople, medical patients and employees of international organizations. While the number of Palestinians permitted to cross Erez more than doubled from 2014 to 2015, this trend reversed in the latter part of 2016, which saw a 13% drop compared to 2015. The decline continued throughout the first half of 2017, which saw an additional drop of 1.5% compared to the latter part of 2016. (...) Substantial human rights violations are also taking place in Gaza under Hamas's control. These occur not only during times of heightened tensions or when hostilities escalate but also become a feature of daily life".*

The Council further points out that according to UNHCR's "Note on UNHCR's Interpretation of Article 1 D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU qualification directive in the context of Palestinian refugees seeking international protection" of May 2013, besides individual flight reasons of the concerned person, other circumstances such as, among others, practical, legal and safety barriers to return (like in this case the closure of the border (practical barrier) and a dangerous travel route (safety barrier)), may lead to the cessation of UNRWA's protection or assistance.

2.16. In light of the above, it is appropriate to provide that as a Palestinian in the Gaza strip the applicant in this case finds/found his personal safety to be at serious risk. Given the fact that a safe return to the Gaza strip would in practice be virtually impossible, it may be established that the applicant is prevented from re-availing himself of the assistance provided by UNRWA and that it is therefore impossible for UNRWA to guarantee his living conditions in accordance with

that organization's mission.

In light of article 1D of the Refugee Convention, to which article 55/2 of the Alien Law refers, it must therefore be concluded that the applicant should *ipso jure* be recognized as a refugee.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

Following this judgment, the Commissioner General for Refugees and Stateless Persons communicated that the policy for Palestinians from the Gaza strip was modified and that refugee status was granted again. The Commissioner General however also mentioned that if the situation in the Gaza strip would improve in the future and/or if barriers to return would disappear, he might apply the cessation clause.

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

Please submit this form to:

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