

Unofficial translation

[Pronunciation 202004766/1/V1](#)

ECLI

ECLI:NL:RVS:2021:1550

Date of judgment

July 14, 2021

Indication of contents

By decision of 6 March 2020, the State Secretary for Justice and Security rejected an application by the alien to grant him a fixed-term asylum residence permit. The alien is of Palestinian origin and stateless. He is registered as a refugee with the United Nations Relief and Works Agency for Palestine Refugees in the Near East. He has applied for asylum in the Netherlands because he claims to be in a hopeless and unsafe situation in the Gaza Strip despite assistance from UNRWA. The State Secretary rejected his application because, on the basis of Article 1(D) of the Refugee Convention, this Convention does not apply to the alien. This ruling concerns the question whether the court has rightly ruled that the State Secretary must grant the requested permit and whether the State Secretary has properly justified that UNRWA is able to provide living conditions in the Gaza Strip that are in line with its mission.

202004766/1/V1.

Date of judgment: 14 July 2021

ADMINISTRATIVE JURISDICTION SECTION

Judgment on the appeal of:

the State Secretary for Justice and Security,

appellant

against the judgment of the District Court of The Hague, zittingsplaats Amsterdam, of 21 August 2020 in case no. NL20.6600 in the proceedings between:

[applicant]

and

the secretary of state.

Proceedings

By decision of 6 March 2020, the State Secretary rejected an application by the alien to grant him a fixed-term asylum residence permit.

By judgment of 21 August 2020, the court upheld the appeal lodged by the alien against it, annulled that decision and instructed the State Secretary to take a new decision on the application.

The State Secretary appealed against that decision.

The alien has given a written explanation.

The State Secretary and the alien have submitted further documents. The United Nations High Commissioner for Refugees ('UNHCR') has also submitted documents.

## Unofficial translation

The Division heard the case at a hearing on 8 April 2021, where the State Secretary, represented by Mr. M.M. van Asperen, lawyer in The Hague, and R.A. Visser, and the alien, represented by Mr.M.F. Wijngaarden, lawyer in Amsterdam, have appeared. The UNHCR did not appear with prior notice.

The alien submitted further documents and requested the Division to reopen the investigation and to include those documents in the assessment.

## Considerations

### Introduction

1. The alien is of Palestinian origin and stateless. He is registered as a refugee with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter: UNRWA). He has applied for asylum in the Netherlands because he claims to be in a hopeless and unsafe situation in the Gaza Strip despite assistance from UNRWA. The State Secretary rejected his application because, on the basis of Article 1(D) of the Refugee Convention, this Convention does not apply to the alien.

1.1. This judgment concerns the question whether the court was right to rule that the State Secretary must grant the requested permit and whether the State Secretary has properly justified that UNRWA is able to offer living conditions in the Gaza Strip that are in line with its mission.

1.2. The legal framework and applicable policy is set out in the annex, which forms part of this ruling.

### Attacked statement

2. The court considered that UNRWA is no longer able to provide living conditions in the Gaza Strip that are in line with its mission and that the alien in the Gaza Strip was in a personal situation of serious insecurity. The court has therefore come to the conclusion that the exclusion ground of Article 1(D) of the Refugee Convention no longer applies to the alien, so that the State Secretary must grant him the requested permit according to his policy, and that the State Secretary has improperly motivated and carelessly prepared the decision.

### Appeal by the State Secretary

3. In the second complaint, the State Secretary submits that the court wrongly gave a final opinion on whether he should grant the alien a fixed-term asylum residence permit. According to the State Secretary, if a failure to state reasons were found to be established, the court should have sufficed by annulling the decision on that ground.

3.1. Although the court only concluded that the State Secretary had improperly reasoned and carelessly prepared the decision, with its opinion that the exclusion ground of Article 1(D) of the Refugee Convention, and thus Article 12,1 paragraph, under a, of the Qualification Directive, no longer applies to the alien, the court deprived the State Secretary of the opportunity to express his position on the question whether this ground for exclusion applies. Moreover, with its opinion that, according to his policy, the State Secretary must grant the requested permit to the alien, the court deprived him of the opportunity to assess whether there are otherwise reasons not to do so.

The complaint succeeds.

### Conclusion of the appeal

4. The appeal is well founded for that reason alone. The court's decision is set aside. There is no need to discuss what else the State Secretary is arguing. The Division assesses the appeal. In doing so, it only discusses grounds of appeal on which the court has not yet given its opinion and grounds of appeal on which a decision still has to be taken after the considerations on appeal.

## Appeal of the alien

5. The alien argued that the State Secretary wrongly took the view that the ground for exclusion laid down in Article 12(1)(a) of the Qualifications Directive applies to him. The alien claimed that, by reference to the country information he had submitted, he had made it plausible that UNRWA was unable to provide living conditions in the Gaza Strip that were in line with its mission. According to the alien, there is a humanitarian emergency in the Gaza Strip due to, among other things, high unemployment, poverty, violence and shortages in education and health care. Due to a lack of finances, UNRWA is unable to provide for the essential necessities of life of the Palestinians. The alien pointed out that the Belgian Council for Aliens Law Litigation came to the same conclusion in the judgments of 24 February 2021, 25 February 2021 and 11 March 2021. According to the alien, there are no dignified living conditions in the Gaza Strip, as required by the Court of Justice in the judgment of 25 July 2018, *Alheto*, ECLI:EU:C:2018:584. According to the alien, the State Secretary did not base the decision on any information showing that this is the case. The alien further argued that, under Paragraph C2/3.2 of the Vc 2000, he does not also have to demonstrate that he was in a personal situation of serious insecurity before his departure. To the extent that it is up to him to make that plausible, he has complied by referring to the general situation in the Gaza Strip. He says he left the Gaza Strip for compelling reasons independent of his will.

6. The State Secretary took the view that the alien enjoyed protection and assistance from UNRWA and voluntarily left the Gaza Strip, so that he was excluded from refugee status. According to the State Secretary, the situation in the Gaza Strip is worrisome, but not so serious that the alien was forced to leave the Gaza Strip. In support of his position, the Secretary of State referred to a number of reports from 2017, the UNRWA website and reports from the UK Home Office and the United Nations Office for the Coordination of Humanitarian Affairs (hereinafter: OCHA). According to the State Secretary, it follows from the documents submitted by the alien that UNRWA is facing financial deficits, but not that the financial resources have been completely stopped or that UNRWA's mandate has been withdrawn. At the session at the Division, the Secretary of State, citing a press release from UNRWA dated April 7, 2021, put forward that these deficits will be reduced by a \$150 million commitment by the United States. He also pointed out that UNRWA's Annual Operational Report 2019 shows that UNRWA provided support in 2019 in areas such as education, care and nutrition. The Secretary of State has also submitted reports from OCHA (no. 17 and 28), entitled 'COVID-19 Emergency Situation Report' and 'Gaza Strip: Snapshot - February 2021'. It follows that great efforts are being made to control the pandemic in the Gaza Strip and that the number of coronavirus infections there has decreased. According to the State Secretary, the alien was not in a personal situation of serious insecurity. In this context, he pointed to the alien's statement: "The immediate reason has been the last war. It lasted 50 days in Gaza. This was in 2014. From that moment on, I tried to leave Gaza." According to the State Secretary, the alien sold cotton candy until his departure from the Gaza Strip and was able to use the proceeds, albeit with difficulty, to provide for his livelihood and that of his family.

7. Article 1D of the Refugee Convention is incorporated into EU law in Article 12(1)(a) of the Qualifications Directive. In the judgment in *Alheto*, paragraph 86, and in the judgment of 13 January 2021, XT, ECLI:EU:C:2021:3, paragraph 51, the Court held that the second sentence of Article 12(1)(a) of the Qualification Directive applies if:

- the stateless Palestinian concerned is in a personal situation of serious insecurity;
- the person concerned has requested UNRWA's assistance; and
- UNRWA is unable to provide living conditions in that area which are in line with its mission, forcing the stateless person to leave UNRWA's working area due to circumstances beyond his control.

## Unofficial translation

In that case, unless that stateless person falls within one of the grounds for exclusion set out in the Directive, he may rely on this Directive without having to prove that he has a well-founded fear of persecution.

8. The State Secretary has not properly substantiated that UNRWA is able to provide living conditions in the Gaza Strip that are consistent with its mandate, so that the exclusion ground of Article 12, first paragraph, under a, of the Qualification Directive applies to the alien. The mission of UNRWA is to protect Palestinian refugees, but also to serve their well-being and development (see XT judgment, paragraphs 5 and 48). This mission thus encompasses more than protecting Palestinian refugees from treatment contrary to Article 3 of the ECHR. At the court hearing, the Secretary of State stated that, in his view, UNRWA should in any case be able to provide for the basic needs of the Palestinian refugees, such as food, water, shelter and the opportunity to receive education. In addition, UNRWA provides the Palestinian refugees with emergency assistance and assistance in the form of health care, among other things. In the decision and at the hearing, the State Secretary did not provide any insight into the standard he uses to answer the question of the extent to which UNRWA is able to carry out this assignment. He should have done so, all the more so because in his view the alien has contributed country information from which both the State Secretary and the alien infer that there is a worrying situation in the Gaza Strip from a humanitarian point of view. By merely listing what form of assistance UNRWA still offers to the Palestinian refugees in his opinion, the State Secretary has not explained sufficiently how he has assessed the country information provided by the alien in relation to the question of whether UNRWA is able to operate in the Gaza Strip. to provide living conditions consistent with its mission.

The appeal ground succeeds.

8.1. There is no need to refer to a preliminary ruling the question raised by the alien, with reference to Paragraph C2/3.2 ad c of the Vc 2000, whether the second sentence of Article 12(1)(a) of the Qualifications Directive applies only if an alien merely demonstrates that it is impossible for UNRWA to provide him with living conditions consistent with its mission, or that the alien must also make it plausible that he is in a personal situation of serious insecurity. Since the State Secretary must take a new decision, thereby clarifying the yardstick he uses in answering the question to what extent UNRWA is capable of carrying out its mission, the answer to that question is not relevant at present for the resolution of the dispute (see the Judgment of the Court of 6 October 1982, Cilfit, ECLI:EU:C:1982:335, paragraph 10).

### Conclusion of the appeal

9. The appeal is well founded. The decision of 6 March 2020 is annulled. It is not necessary to discuss what else the alien has submitted. The State Secretary must take a new decision taking into account what has been considered in this judgment and will have to take into account what the alien has further argued. In making a new decision, the Secretary of State will also have to take into account the current developments in the Gaza Strip, including the reignited hostilities between Israel and Hamas and the reports that the United States will resume some of its funding to UNRWA. Therefore, there is currently no reason to reopen the investigation, as requested by the alien. The Division will set a deadline for taking a new decision (Section 8:72, paragraph 4, of the Awb). The State Secretary must reimburse the costs of the proceedings on appeal.

### Decision

The Administrative Jurisdiction Division of the Council of State:

I. declares the appeal well founded;

II. annuls the judgment of the District Court of The Hague, zittingsplaats Amsterdam, of 21 August 2020 in case no. NL20.6600;

## Unofficial translation

III. declares the action well founded;

IV. Annuls the decision of 6 March 2020, V No . [...];

V. instructs the State Secretary for Justice and Security to take a new decision on the application within sixteen weeks of sending this ruling and to publish this in the legally prescribed manner;

VI. orders the State Secretary for Justice and Security to reimburse the alien for legal costs incurred in connection with the handling of the appeal up to an amount of € 1,496.00 (in words: one thousand four hundred and ninety-six euros), entirely attributable to legal aid provided professionally by a third party.

Thus established by Mr. N. Verheij, chairman, and Mr. J.J. van Eck and mr.C.M. Wissels, members, in the presence of mr. J.J. Schuurman, registrar.

The President is prevented from signing the judgment.

The Registrar is prevented from signing the judgment.

Pronounced in public on July 14, 2021

282-927.

### **ANNEX - Legal framework and applicable policy**

International law

Refugee Convention

Article 1. Definition of the term 'refugee'

A. For the purposes of this Convention, "refugee" means any person:

(...)

2. Who ... is outside the country of which he is a national, owing to a well-founded fear of persecution on account of his race, religion, nationality, membership of a particular social group or political opinion, and who is unable or, owing to the fears referred to above, who, by reason of the abovementioned fears, is outside the country in which he was previously habitually resident, or who, if he is not a national and resides outside the country where he was previously habitually resident as a result of the abovementioned events, cannot go there or, by reason of the above fear, does not want to return. (...)

D. This Convention shall not apply to persons currently enjoying 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 definitively settled in accordance with the relevant resolutions of the General Assembly of the United Nations, such persons shall be automatically covered by this Convention. (...)

Qualification Directive (recast: OJ 2011 L 337)

Article 12

1. A third-country national or a stateless person shall be excluded from refugee status where:

(a) it is covered by Article 1(D) of the Geneva Convention, which relates to the benefit of protection or assistance from organs or agencies of the United Nations other than the UNHCR. If, for whatever

## Unofficial translation

reason, such protection or assistance has ceased without the position of the person concerned being definitively settled in accordance with the relevant resolutions of the General Assembly of the United Nations, the person concerned shall be entitled to the benefits under this Directive on that basis;

(...)

### National policies

Circular on Foreign Nationals 2000 (C2)

3.2.

(...)

Re c.

The IND is investigating whether the stateless Palestinian foreigner was forced to leave the area in question. This is the case if one of the two conditions listed below is met:

- the stateless Palestinian foreign national was personally in a situation of serious insecurity so that the condition of cessation of protection was met;
- it is impossible for UNRWA to provide the stateless Palestinian foreign national in that area with living conditions consistent with the mission entrusted to UNWRA, so that the condition of cessation of assistance is fulfilled.