Provisional text

JUDGMENT OF THE COURT (Third Chamber)

13 January 2021 (*)

(Reference for a preliminary ruling – Common policy on asylum and subsidiary protection – Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection – Directive 2011/95/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 2011/95 – Cessation of UNRWA protection or assistance)

In Case C-507/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decision of 14 May 2019, received at the Court on 3 July 2019, in the proceedings

Bundesrepublik Deutschland

v

XT,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Wahl, F. Biltgen and L. S. Rossi (Rapporteur), Judges,

Advocate General: E. Tanchev,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 10 June 2020,

after considering the observations submitted on behalf of:

– the Bundesrepublik Deutschland, by A. Schumacher, acting as Agent,

– the German Government, by J. Möller, R. Kanitz and D. Klebs, acting as Agents,

– the Belgian Government, by P. Cottin, C. Pochet and M. Van Regemorter, acting as Agents,

– the French Government, by D. Dubois, acting as Agent,

– the European Commission, by M. Condou-Durande, G. Wils and C. Ladenburger, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 October 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 12(1)(a) 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).

2 The request has been made in proceedings between the Bundesrepublik Deutschland and XT concerning the rejection of XT's application for international protection in order to obtain refugee status.

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). Its 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 ('area of operations') covers five fields, namely the Gaza Strip, the West Bank (including East Jerusalem), Jordan, Lebanon and Syria.

European Union law

Directive 2004/83/EC

7 Articles 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), provided:

'1. A third-country national or a stateless person is excluded from being a refugee if:

(a) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall *ipso facto* be entitled to the benefits of this Directive'.

Directive 2011/95

8 Recitals 1, 4, 16, 23 and 24 of Directive 2011/95 state:

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

…

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

…

(16) 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 and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.

…

(23) 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.

(24) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.'

9 Article 2 of that directive, headed ‘Definitions’, provides:

‘For the purposes of this Directive the following definitions shall apply:

…

(d) “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;

…

(n) “country of origin” means the country or countries of nationality or, for stateless persons, of former habitual residence.’

10 Article 11 of that directive, entitled ‘Cessation’, provides, in paragraph 1 thereof:

‘A third country national or stateless person shall cease to be a refugee, if her or she:

…

(f) being a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.’

11 Article 12 of that directive, entitled ‘Exclusion’, provides:

‘1. A third-country national or a stateless person is excluded from being a refugee if:

(a) he or she falls within the scope of Article 1(D) of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall *ipso facto* be entitled to the benefits of this Directive;

(b) he or she is recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those.

2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

3. Paragraph 2 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.'

12 Article 14 of Directive 2011/95 states:

'1. Concerning applications for international protection filed after the entry into force of [Directive 2004/83], Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be a refugee in accordance with Article 11.

…

3. Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:

(a) he or she should have been or is excluded from being a refugee in accordance with Article 12;

…'

Directive 2013/32/EU

13 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) provides:

'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.'

14 Article 2 of that directive is worded as follows:

'For the purposes of this Directive the following definitions shall apply:

…

(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;

…'

15 Article 46 of that directive 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.

…'

German law

16 Directive 2011/95 was transposed into German law by the Asylgesetz (Law on asylum), in the version published on 2 September 2008 (BGBl. 2008 I, p. 1798, 'the AsylG').

17 Article 3(3) of the AsylG reproduces, in essence, Article 12(1)(a) of that Directive.

18 Paragraph 77(1) of the AsylG provides:

'In disputes falling within the scope of this law, the court shall rely on the situation of fact and of law obtaining at the time of the last hearing; if a judgment is given without a hearing, the relevant point in time shall be that at which the judgment is given. …'

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

19 XT, a stateless person of Palestinian origin born in 1991 in Damascus (Syria), holds a UNRWA registration card as a member of the Yarmouk refugee camp, which is located in the southern part of Damascus.

20 Between October 2013 and 20 November 2015, XT held casual jobs in Lebanon where he was resident. Having not obtained a residence permit in that country and fearing expulsion by the Lebanese security forces, he decided, at the end of November 2015, to return to Syria, to the city of Qudsaya, west of Damascus, where members of his family were staying.

21 Due to the war and the very poor living conditions in Syria, XT left that country a few days later; he fears that that he will be arrested if he returns. In addition, before XT left Syria, the Hashemite Kingdom of Jordan and the Republic of Lebanon closed their borders to Palestinian refugees in Syria.

22 XT arrived in Germany in December 2015, where he lodged an application for international protection in February 2016.

23 By decision of 29 August 2016, the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany) rejected XT's application for refugee status but granted him subsidiary protection status.

24 By judgment of 24 November 2016, the Verwaltungsgericht (Administrative Court, Germany) upheld XT's appeal and ordered the Federal Office for Migration and Refugees to grant him refugee status, on the ground that, irrespective of any previous persecution, it was clear from the situation in Syria that XT was at risk of persecution due to serious grounds which arose after his departure from Syria, linked not only to that departure, but also to his application for international protection and his stay abroad.

25 By judgment of 18 December 2017, the Oberverwaltungsgericht (Higher Administrative Court, Germany) dismissed the appeal brought by the Bundesrepublik Deutschland, represented by the Federal Office for Migration and Refugees, against the decision of the Verwaltungsgericht (Administrative Court), finding, in essence, that, as a stateless person of Palestinian origin, XT had to be regarded as a refugee within the meaning of the legal provisions transposing Article 12(1)(a) of Directive 2011/95 into German law. According to that court, XT had received protection from UNRWA and that protection had ceased for reasons that were independent of his volition. XT's personal safety was at serious risk when he left Syria, with the result that his departure from that country was involuntary, which was confirmed by the fact that he was granted subsidiary protection. That court also found that, when he left Syria, XT had no access to protection from UNRWA in other fields of that agency's area of operations and that, before XT's departure from Syria, the Hashemite Kingdom of Jordan and the Republic of Lebanon had already closed their borders to Palestinian refugees in Syria.

26 The Bundesrepublik Deutschland brought an appeal on a point of law (*Revision*) against that judgment before the referring court.

27 That court indicates that, on the one hand, no ground for exclusion from refugee status, within the meaning of Article 12(1)(b) and Article 12(2) and (3) of Directive 2011/95, is applicable to XT. On the other hand, XT satisfies the conditions laid down in the first sentence of Article 12(1)(a) of that directive, according to which, in essence, any stateless person of Palestinian origin is excluded from being a refugee if he receives protection or assistance from UNRWA. According to the referring court, first, UNRWA's mandate was renewed until 30 June 2020, secondly, XT was registered with UNRWA, which is sufficient proof that he indeed received protection or assistance from that agency, and thirdly, XT benefited from that protection or assistance shortly before the submission of his application for international protection, since he was registered as a family member in the Yarmouk UNRWA camp.

28 The referring court, however, has doubts as to whether XT satisfies the conditions concerning the cause of the cessation of the application of that exclusion, laid down in the second sentence of Article 12(1)(a) of Directive 2011/95, according to which, in essence, if the protection or

assistance from UNWRA has ceased for any reason, without the position of persons receiving that protection or assistance being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons are *ipso facto* to be entitled to the benefits of Directive 2011/95.

29 The national court asks, in the first place, whether, in order to determine whether UNRWA's protection or assistance ceased, when the person concerned left UNRWA's area of operations, account must be taken, from a territorial point of view, only of the field of that area of operations in which the person concerned had his or her last actual residence or, as it tends to believe, also of other fields of that area of operations.

30 In the latter case, it seeks to determine, in the second place, whether it is appropriate to take account of all the fields making up UNRWA's area of operations or only certain fields of it and, if so, what the relevant criteria for identifying them are. According to the referring court, account must be taken of the field in which the person concerned had his or her last effective residence and the fields with which that person has a connection. That connection might result, for example, from material links such as a previous stay or the presence of close parents. In addition, the person concerned should reasonably be able to travel to and stay in that field, since registration with UNRWA does not confer any right of residence or authorise movement between different fields of UNRWA's area of operations. On the other hand, for fields with which the person concerned has never had any personal links, it is so unlikely that the conditions of entry and residence would be met that any consideration of these fields should be excluded from the outset.

31 In the third place, the referring court asks to what extent movement between different fields of UNRWA's area of operations may affect the question whether the protection or assistance provided by UNRWA has ceased. According to the referring court, exclusion from refugee status could also extend to a person who leaves the UNRWA area of operations – on the ground that his or her personal safety is at serious risk in the field of that area, in this case Syria, in which he has his actual residence and in which UNRWA is not in a position to provide him with protection or assistance – since that person went to that field without having any compelling reasons to do so and even though his or her personal safety was not at serious risk in the field where he had previously resided, in this case Lebanon. This would be the case, in particular, if, given the circumstances that existed at the time of his departure from that field, he could neither expect to receive protection or assistance from UNRWA in the new field, in this case Syria, nor be able to return in the near future to the field in which he previously resided, in this case Lebanon.

32 In the fourth place, the referring court notes that, in order to be entitled to refugee status under the second sentence of Article 12(1)(a) of Directive 2011/95, it is not sufficient that the person concerned no longer receives UNRWA's protection or assistance when he or she leaves that agency's area of operations, but rather, in accordance with Article 11(1)(f) of Directive 2011/95, read in conjunction with Article 14(1) thereof, when the decision is taken on the application for international protection, the applicant must also be unable to return to that area in order again to receive the protection or assistance of that agency. The possibility of returning to UNRWA's area of operations should already be taken into account when deciding on whether to grant refugee status, since it would be meaningless to grant refugee status if it had to be immediately withdrawn subsequently.

33 In that connection, that court wonders whether account should be taken only of the field of UNRWA's area of operations in which the applicant for international protection had his or her last habitual residence, or also of other fields of that area and, if so, on the basis of what criteria those other fields should be taken into account.

34 According to that court, account must be taken, first, of the field of UNRWA's area of operations in which the applicant's last habitual residence was situated and, secondly, of the fields with which the applicant has material links, such as actual residence or the presence of close relatives. Finally, that applicant must have a reasonable possibility of accessing those fields.

35 Fifthly, the national court seeks to clarify the concept of 'habitual residence', in particular within the meaning of Article 2(d) and (n) of Directive 2011/95, which could be decisive in establishing whether the ground for exclusion provided for in the second sentence of Article 12(1)(a) of that directive is applicable.

36 In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) When assessing the question of whether, within the meaning of the second sentence of Article 12(1)(a) of [Directive 2011/95], a stateless Palestinian is no longer granted protection or assistance of the UNRWA, is account to be taken from a geographical perspective solely of the respective field of operation (Gaza Strip, Jordan, Lebanon, Syria, West Bank) in which the stateless person had his actual residence upon leaving the area of operations of the UNRWA (in this case: Syria), or also of further fields of operation belonging to the area of operations of the UNRWA?

(2) If account is not solely to be taken of the field of operation upon leaving: Is account always to be taken, regardless of further conditions, of all the fields of operation of the area of operations? If not: Are further fields of operation only to be taken into consideration if the stateless person had a substantial (territorial) connection to that field of operation? Is a habitual residence – at the time of or prior to leaving – required for such a connection? Are further circumstances to be taken into consideration when examining a substantial (territorial) connection? If so: Which ones? Does it matter whether it is possible and reasonable for the stateless person to enter the relevant field of operation when leaving the UNRWA area of operations?

(3) Is a stateless person who leaves the area of operations of the UNRWA because his personal safety is at serious risk in the field of operation of his actual residence, and it is impossible for the UNRWA to grant him protection or assistance there, entitled, within the meaning of the second sentence of Article 12(1)(a) of Directive 2011/95, *ipso facto* to the benefits of the Directive even if he previously went to that field of operation without his personal safety having been at serious risk in the field of operation of his former residence and without being able to expect, according to the circumstances at the time of the move, to experience protection or assistance by the UNRWA in the field of operation into which he moves and to return to the field of operation of his previous residence in the foreseeable future?

(4) When assessing the question of whether a stateless person is not to be granted *ipso facto* refugee status because the conditions of the second sentence of Article 12(1)(a) of Directive [2011/95] ceased to apply once he left the area of operations of the UNRWA, is account to be taken solely of the field of operation of the last habitual residence? If not: Is consideration also, by analogy, to be given to the fields of which account is to be taken under [the second question] for the time of leaving? If not: Which criteria are to be used to determine the fields which are to be taken into consideration at the time of the ruling on the application? Does the cessation of application of the conditions of the second sentence of Article 12(1)(a) of Directive [2011/95] require the (state or quasi-state) bodies in the relevant field of operation to be prepared to (re)admit the stateless person?

(5) In the event that, in connection with the satisfaction or cessation of application of the conditions of the second sentence of Article 12(1)(a) of Directive [2011/95], the field of operation of the (last) habitual residence is of significance: Which criteria are decisive for establishing habitual residence? Is lawful residence authorised by the country of residence required? If not: Is there at least a need for the conscious acceptance of the residence of the stateless person concerned by the responsible bodies of the field of operation? If so in this respect: Does the presence of the individual stateless person have to be specifically known to the responsible bodies or is the conscious acceptance of residence as a member of a larger group of people sufficient? If not: Is actual residence for a relatively long period of time sufficient in itself?'

Consideration of the questions referred

Preliminary observations

37 Before answering the questions referred, it should first of all be pointed out that, as the Advocate General noted in point 26 of his Opinion, Article 12(1)(a) of Directive 2011/95 corresponds, in substance, to Article 12(1)(a) of Directive 2004/83, with the result that the case-law concerning the latter provision is relevant to the interpretation of the former.

38 Next, it is clear from recitals 4, 23 and 24 of Directive 2011/95 that 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 of that status 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 (see, by analogy, judgments of 17 June 2010, *Bolbol*, C-31/09, EU:C:2010:351, paragraph 37; 19 December 2012, *Abed El Karem El Kott and Others*, C-364/11, EU:C:2012:826, paragraph 42, and 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraph 28).

39 Directive 2011/95 must, for those reasons, 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 16 in the preamble thereto, that directive must also be interpreted in a manner consistent with the rights recognised by the Charter of Fundamental Rights of the European Union (see, by analogy, judgments of 17 June 2010, *Bolbol*, C-31/09, EU:C:2010:351, paragraph 38; 19 December 2012, *Abed El Karem El Kott and Others*, C-364/11, EU:C:2012:826, paragraph 43, and 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraph 29).

40 In addition, it should be borne in mind that Member States are required, under Article 46(3) of Directive 2013/32, to order their national law in such a way that the processing of the appeals referred to in that provision includes an 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; the expression '*ex nunc*' and the adjective 'full' contained in this 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 thereto, 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' (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraphs 109 to 113).

41 Lastly, it should be noted that the referring court bases its questions on the double premiss that it is not for the Court to verify that XT, first, in accordance with the first sentence of Article 12(1)(a) of Directive 2011/95, received protection or assistance from the UNRWA before travelling to Germany and, secondly, left Syria because of the war taking place in that country.

42 However, as regards Article 14 of Directive 2011/95, which the referring court mentions, although it follows from paragraph 3(a) of that provision, read in conjunction with Article 12(1)(a) of that directive, that the possibility of receiving protection or assistance from UNRWA may justify the revocation of refugee status after it has been granted, a possibility which may also be assessed in the context of the full and *ex nunc* examination referred to in paragraph 40 above, when adopting a decision on the grant of that status, Article 14, which specifically presupposes that that status has already been granted, cannot be applicable to that decision.

43 The questions referred must be answered in the light of those considerations.

The first, second and fourth questions

44 By its first, second and fourth questions, which it is appropriate to examine together, the national court asks, in essence, whether the second sentence of Article 12(1)(a) of Directive 2011/95 must be interpreted as meaning that, for the purposes of determining whether UNRWA's protection or assistance has ceased, account should be taken only of the field of the UNRWA area of operations in which a stateless person of Palestinian origin had his or her actual residence at the time of his or her departure from the said area of operations, or also of other fields falling within that area of operations and, in that case, which of those fields.

45 In order to answer those questions, it must be noted that, according to the first sentence of Article 12(1)(a) of Directive 2011/95, 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'.

46 The first paragraph of Article 1(D) of the Geneva Convention provides that the convention does not apply to persons who 'are at present receiving' protection or assistance 'from organs or

agencies of the United Nations other than the United Nations High Commissioner for Refugees'.

47 UNRWA, a United Nations agency other than the Office of the United Nations High Commissioner for Refugees, was established to protect and assist Palestinians who are 'Palestine refugees'. Its mandate, which, as noted by the Advocate General in point 4 of his Opinion, has been renewed until 30 June 2023, extends over its area of operations which consists of five fields, namely the Gaza Strip, the West Bank (including East Jerusalem), Jordan, Lebanon and Syria.

48 Thus, any person, such as XT, 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).

49 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 2011/95, which corresponds to the first paragraph of Article 1(D) of the Geneva Convention, excluded from refugee status in the European Union (judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 85).

50 That said, it follows from the second sentence of Article 12(1)(a), 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 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 85).

51 As the Court has held, the second sentence of Article 12(1)(a) of Directive 2011/95 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 control. 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(d) of that directive (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 86 and the case-law cited).

52 As the Advocate General noted, in essence, in point 36 of his Opinion, neither Article 12(1)(a) of Directive 2011/95 nor Article 1(D) of the Geneva Convention refer to the residence of the person concerned; those provisions merely refer to whether the person is receiving assistance or protection from UNRWA, or whether that protection or assistance has ceased.

53 Accordingly, it follows from the very wording of those provisions that they require that account be taken of the possibility for the person concerned to receive protection or assistance from UNRWA throughout the territory covered by that agency's mandate, namely UNRWA's area of operations, composed of five fields, referred to in paragraph 6 above.

54 That interpretation is also supported by the case-law according to which, in the event that a person who has left the UNRWA area of operations and lodged an application for international protection in the European Union benefits from effective protection or assistance from UNRWA in that area, enabling him or her to reside there in safety, under dignified living conditions and without being at risk of being refouled to the territory of habitual residence for as long as he or she is unable to return there in safety, that person cannot be regarded by the authority empowered to decide on that application as having been forced, by reason of circumstances beyond his or her control, to leave UNRWA's area of operations. That person must, in that case, be excluded from refugee status in the European Union, in accordance with Article 12(1)(a) of Directive 2011/95 (judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 134).

55 That being said, as can be seen in essence from the case-law cited in paragraph 51 above, the question whether it is effectively impossible for UNRWA to guarantee that the living conditions of the person concerned would be compatible with its mission and whether, as a result, the protection or assistance from UNRWA has ceased with regard to that person must be determined on the basis of an individual assessment of all the relevant evidence.

56 In the context of that assessment, the competent administrative or judicial authorities are required, inter alia, to verify whether the person concerned is in fact able to receive such protection or assistance.

57 The question whether a stateless person of Palestinian origin is able to receive protection or assistance of UNRWA depends not only on that agency's ability to provide that protection or assistance to that stateless person in a given field of its area of operations, but also on whether that stateless person has the practical possibility of accessing the territory falling within that field, or of returning to that field if he or she has left it.

58 In this respect, it should be noted, as is clear from the order for reference, that the fact that a stateless person of Palestinian origin is registered with UNRWA does not give him or her any right to access or move within the area of operations of that organisation by moving from one field of that area to another. UNRWA does not have the authority to allow stateless persons of Palestinian origin to access the territories of the five fields of that area, which are under the jurisdiction of different States or autonomous territories.

59 In these circumstances, the determining authority and the court or tribunal hearing an appeal against the decision of that authority must take into consideration all the relevant factors of the situation in question which shed light on the question whether the stateless person of Palestinian origin concerned had, at the time of his or her departure from UNRWA's area of operations, the concrete possibility of accessing one of the five fields of UNRWA's area of operations in order to receive UNRWA's protection or assistance.

60 To that end, the fact that that stateless person has a right to obtain a residence permit in the State or in the autonomous territory of the relevant field of UNRWA's area of operations is an indication that that stateless person is able to access that area and thus receive UNRWA's protection or assistance, provided that UNRWA is able to provide that protection or assistance to him or her in that area.

61 In the absence of such a right, the fact that that stateless person has family ties in a given field of UNRWA's area of operations, had his or her actual or habitual residence in that area or

resided there before leaving that area may be relevant, provided that the States or territories concerned consider that such elements are sufficient to enable, irrespective of the granting of any residence permit, a stateless person of Palestinian origin to access and safely remain on their territory.

62 Likewise, account must be taken of all evidence, such as declarations or practices of the authorities of the said States and territories, which imply a change of attitude towards stateless persons of Palestinian origin, in particular where, through such declarations and practices, they express an intention no longer to tolerate the presence on their territory of such stateless persons if they do not have a right of residence.

63 If it appears from the assessment of all the relevant factors of the situation in question, in particular those referred to in paragraphs 59 to 62 above, that the stateless person of Palestinian origin concerned was in fact able to reach and safely remain on the territory of one of the fields of UNRWA's area of operations in which that agency was in a position to offer him or her its assistance or protection, it cannot be considered that the protection or assistance from UNRWA has ceased, within the meaning of the second sentence of Article 12(1)(a) of Directive 2011/95.

64 In addition, as regards the question of which field of UNRWA's area of operations is to be taken into account in order to determine whether the conditions justifying the recognition *ipso facto* of refugee status ceased to be satisfied in the period since the person concerned left that area of operations and before a final decision has been taken on his or her application for recognition of refugee status, it should be noted that the referring court appears to start from the premiss that the second sentence of Article 12(1)(a) of Directive 2011/95 was applicable to the applicant in the main proceedings at the time he left that area of operations, since UNRWA's protection or assistance had ceased, but that it may no longer be applicable to him when the court seised of the appeal against the decision refusing to grant refugee status rules on that appeal.

65 In that respect, the referring court specifies that, in accordance with its national law, in asylum disputes, it takes into account the legal and factual situation existing at the time it rules on the action before it, with the result that it must also take into account new evidence which has arisen at the time of the last hearing or, failing this, when it delivers its decision, a possibility which is also provided for, as can be seen from paragraph 40 above, in Article 46(3) of Directive 2013/32.

66 In order to answer that question, it suffices to point out, as noted by the Advocate General in point 52 of his Opinion and by all of the interested parties which lodged written observations, that there is no reason to consider that the examination of whether the protection or assistance from UNRWA continues to be excluded under the second sentence of Article 12(1)(a) of Directive 2011/95 at the time the court or tribunal rules on the appeal brought against a decision refusing to grant refugee status, should be carried out in the light of factors other than those referred to in paragraphs 53 to 63 above.

67 In the light of the foregoing, the answer to the first, second and fourth questions is that the second sentence of Article 12(1)(a) of Directive 2011/95 must be interpreted as meaning that, in order to determine whether the protection or assistance from UNRWA has ceased, it is necessary to take into account, as part of an individual assessment of all the relevant factors of the situation in question, all the fields of UNRWA's area of operations which a stateless person of Palestinian origin who has left that area has a concrete possibility of accessing and safely remaining therein.

The third question

68 By its third question, the national court seeks, in essence, to ascertain whether the second sentence of Article 12(1)(a) of Directive 2011/95 must be interpreted as meaning that UNRWA's protection or assistance ceases where a stateless person of Palestinian origin left UNRWA's area of operations from a field of that area in which his or her personal safety was at serious risk and in which UNRWA was not in a position to provide that individual with protection or assistance, even though, first, that individual voluntarily travelled to that field from another field in that area in which his or her personal safety was not at serious risk and, secondly, he or she could expect neither to receive protection or assistance from UNRWA in the field to which he or she travelled nor to be able to return at short notice to the field from which he or she came.

69 In order to answer that question, it must first of all be pointed out that the fact that Article 1(D) of the Geneva Convention, to which the first sentence of Article 12(1)(a) of Directive 2011/95 refers, simply excludes from the scope of the convention persons who 'are at present receiving' protection or assistance from an organ or agency of the United Nations other than the United Nations High Commissioner for Refugees cannot be construed as meaning that mere absence or voluntary departure from UNRWA's area of operations would be sufficient to end the exclusion from refugee status laid down in that provision (see, by analogy, judgment of 19 December 2012, *Abed El Karem El Kott and Others*, C-364/11, EU:C:2012:826, paragraph 49).

70 Indeed, if that were the case, an applicant for asylum within the meaning of Article 2(c) of Directive 2013/32 who submitted an application in the territory of a Member State and was therefore physically absent from UNRWA's area of operations would never be caught by the ground for exclusion from refugee status established in Article 12(1)(a) of Directive 2011/95, which would have the effect of depriving that ground for exclusion of any practical effect (see, by analogy, judgment of 19 December 2012, *Abed El Karem El Kott and Others*, C-364/11, EU:C:2012:826, paragraph 50).

71 Moreover, to accept that voluntary departure from UNRWA's area of operations and, therefore, voluntary renunciation of the assistance provided by that agency would trigger the application of the second sentence of Article 12(1)(a) of Directive 2011/95 would run counter to the objective pursued by the first paragraph of Article 1(D) of the Geneva Convention, which is intended to exclude from the benefits of the convention all persons who receive such assistance (see, by analogy, judgment of 19 December 2012, *Abed El Karem El Kott and Others*, C-364/11, EU:C:2012:826, paragraph 51).

72 It follows, next, from the case-law cited in paragraph 54 above that it cannot be considered that the departure from UNRWA's area of operations from a given field of that area is involuntary if the person concerned was able to access another field of that area in order to receive effective protection or assistance from UNRWA.

73 In the case which gave rise to the judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584), the applicant in the main proceedings had – during the armed conflict between the State of Israel and Hamas, the organisation which controls the Gaza Strip – left the Gaza Strip to seek safety in Jordan, where she had stayed and from where she had travelled to Bulgaria. The Court considered that it could not be ruled out that UNRWA might have been able to provide a person registered with it with living conditions in Jordan that meet the requirements of its mission after that person has fled the Gaza Strip, so that that person could stay there in safety, under dignified living conditions and without being at risk of being refouled to a territory

to which that person could not return in safety. If those circumstances were established, according to the Court, a person such as the applicant in the main proceedings could not be regarded as having been forced, by reason of circumstances beyond his or her control, to leave UNRWA's area of operations (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 132 to 134).

74 It could not be otherwise in the case of a stateless person of Palestinian origin who decided to leave a field of UNRWA's area of operations in which his or her personal safety was not at serious risk and in which that person could receive protection or assistance from UNRWA, in order to travel to another field in that area, in which he or she could not reasonably expect, on the basis of the specific information available to him or her concerning that field, either to receive protection or assistance from UNRWA or to be able to return at short notice to the field from which he or she came. Accordingly, it cannot be concluded, in the event of such a voluntary departure from the first field to the second field, that the stateless person was forced to leave UNRWA's area of operations, taken as a whole, if he or she later left that second field in order to travel to the European Union.

75 It is therefore for the referring court to verify, in the context of an individual assessment of all the relevant circumstances of the situation at issue in the main proceedings, including in particular the specific information concerning the situation in Syria available to XT at the time of his departure from Lebanon, if that departure took place under the conditions described in paragraph 74 above. If that were the case, XT could not be regarded as having been forced to leave the UNRWA area of operations taken as a whole when he subsequently left Syria.

76 That being said, the Court may provide the referring court, on the basis of the information contained in the reference for a preliminary ruling and in the file submitted to the Court, with elements likely to be relevant for the purposes of that assessment.

77 In the present case, it is apparent from the order for reference that XT claims to have left Lebanon because of the lack of a valid residence permit and the tightening of controls by the Lebanese security forces which, in the absence of such a permit, were deporting persons such as XT to the Syrian border.

78 In addition, since the referring court has doubts as to the impact of elements indicating that XT could have expected, in the light of the prevailing circumstances at the time of his departure from Lebanon, that he would not be able to receive protection or assistance from UNRWA in Syria nor return at short notice to Lebanon where he resided previously, it should be noted that those circumstances must, in order to be relevant in the context of the individual assessment referred to in paragraph 75 above, be reasonably foreseeable at the time of that departure. A person, such as XT, must therefore have specific information concerning the situation in the UNRWA area of operations. In that regard, it is also necessary to take into account the sudden and unforeseeable nature of the development of the situation, such as closure of the borders between the fields of that area of operations, or the outbreak of conflict in one of those fields.

79 In the light of the circumstances mentioned in paragraphs 77 and 78 above and in so far as they are correct, which it is for the referring court to verify, it does not appear that XT's departure from Lebanon to Syria occurred in the conditions described in paragraph 74 above, with the result that his departure from UNRWA's area of operations taken as a whole was not voluntary.

80 In the light of the foregoing, the answer to the third question is that the second sentence of Article 12(1)(a) of Directive 2011/95 must be interpreted as meaning that UNRWA's protection or assistance cannot be regarded as having ceased where a stateless person of Palestinian origin left the UNRWA area of operations from a field in that area in which his or her personal safety was at serious risk and in which UNRWA was not in a position to provide that individual with protection or assistance, first, if that individual voluntarily travelled to that field from another field in that area in which his or her personal safety was not at serious risk and in which that person could receive protection or assistance from UNRWA and, secondly, if he or she could not reasonably expect, on the basis of the specific information available to him or her, to receive protection or assistance from UNRWA in the field to which he or she travelled or to be able to return at short notice to the field from which he or she came, which is for the national court to verify.

The fifth question

81 In view of the answer to the first, second and fourth questions, there is no need to answer the fifth question.

Costs

82 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 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 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, it is necessary to take into account, as part of an individual assessment of all the relevant factors of the situation in question, all the fields of UNRWA's area of operations which a stateless person of Palestinian origin who has left that area has a concrete possibility of accessing and safely remaining therein.**

2. **The second sentence of Article 12(1)(a) of Directive 2011/95 must be interpreted as meaning that UNRWA's protection or assistance cannot be regarded as having ceased where a stateless person of Palestinian origin left the UNRWA area of operations from a field in that area in which his or her personal safety was at serious risk and in which UNRWA was not in a position to provide that individual with protection or assistance, first, if that individual voluntarily travelled to that field from another field in that area in which his or her personal safety was not at serious risk and in which he or she could receive protection or assistance from UNRWA and,**

secondly, if he or she could not reasonably expect, on the basis of the specific information available to him or her, to receive protection or assistance from UNRWA in the field to which he or she travelled or to be able to return at short notice to the field from which he or she came, which is for the national court to verify.

[Signatures]

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* Language of the case: German.