

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Bundesverwaltungsgericht (Federal Administrative Court)	
Date of the decision: 24 / 03 / 2014	Case number: ² W170 1420086-1
Parties to the case: the applicant, Austrian Ministry of the Interior	
Decision available on the internet? Yes If yes, please provide the link: https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bvwg&Dokumentnummer=BVWGT_20140324_W170_1420086_1_00&ResultFunctionToken=dbc5eb65-833f-49d9-89e4-45d274209d02&Position=1&Entscheidungsart=Undefined&SucheNachRechtssatz=True&SucheNachText=True&GZ=W170+1420086-1&VonDatum=01.01.2014&BisDatum=04.07.2014&Norm=&ImRisSeit=Undefined&ResultPageSize=50&Suchworte	
Language(s) in which the decision is written: German	
Official court translation available in any other languages? No (If so, which):	
Countr(y)(ies) of origin of the applicant(s): Syria (stateless Palestinian)	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Austria	
Any third country of relevance to the case: ³ Other areas where UNRWA is operating, i.e. Jordan, Lebanon and the Occupied Palestinian Territories (Gaza Strip and West Bank)	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees Yes	Relevant articles of the Convention on which the decision is based: Article 1A, 1C, 1D, 1F
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons	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	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:

<p>For EU member states: please indicate which EU instruments are referred to in the decision</p>	<p>Relevant articles of the EU instruments referred to in the decision:</p> <p>Article 12 of the 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 (Qualification Directive) as well as of Council Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Qualification Directive recast)</p>
--	--

Topics / Key terms: (see attached ‘Topics’ annex):

EU Qualification Directive
Palestinian
Statelessness

Suggestions for key terms not included in the annex:

Relocation
Syria
UNRWA

Key facts (max. 200 words)

The asylum-seeker is a formerly UNRWA-assisted stateless Palestinian who has been living in a refugee camp in Damascus before seeking international protection in Austria in April 2008. He claims that he had to flee because his cousin had committed murder and the IC is thus tainted by the blood feud. He also claims that the Syrian authorities plan to tear down his house in the refugee camp and that he fears being recruited by the Palestine Liberation Army. In its decision from June 2011 the Federal Asylum Agency held, that the asylum-seeker’s identity and Syrian origin are credible but not the reasons for flight he presented. Hence, while his asylum application was rejected, the asylum-seeker was granted subsidiary protection. The asylum-seeker appealed the negative part of the decision.

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]

Disclaimer: This is an unofficial translation, prepared by UNHCR. UNHCR shall not be held responsible or liable for any misuse of the unofficial translation. Users are advised to consult the original language version or obtain an official translation when formally referencing the case or quoting from it in a language other than the original.

The Court's decision:

The Federal Administrative Court granted the appeal and referred the case back to the first instance (since 1 January 2014) Federal Office for Immigration and Asylum for further investigations. The court argues that the first instance procedure by the former Federal Asylum Agency had failed to deal with the questions of a) whether the applicant could have availed himself of UNRWA's protection in other countries and b) whether Article 1C or 1F of the 1951 Convention apply.

The Court's legal assessment:

The Court refers to the CJEU jurisprudence in *El Kott* (case number: C-364/11, date of decision: 19th December 2012) which has been reflected in rulings of the Austrian Constitutional Court. It then goes on to say:

In so far as one follows the opinion that also in this specific case the assessment of a possible relocation to another area of UNRWA's operation has to be restricted to the applicant's country of origin (which is not reasonable in this case where the applicant has been granted subsidiary protection because of the security situation in Syria), the first instance would have nevertheless needed to determine the fact that the applicant enjoys ipso facto protection by the EU Qualification Directive. This would result in the recognition of refugee status given that assistance and protection is no longer provided by UNRWA in Syria if the applicant does not fall under any of the exclusion considerations of Art. 12 (1) (b), (2) or (3) of the Qualification Directive.

However, the Court is of the opinion that in the light of the circumstances of the case the question of cessation of UNRWA's protection and assistance cannot be limited to Syria alone as UNRWA does also operate in Jordan, Lebanon, the Gaza Strip and the West Bank. If one follows the opinion of this court it must thus be examined if the applicant could have reasonably availed himself of UNRWA's protection or assistance outside Syria. Should this be the case, the applicant would be excluded from refugee status according to Article 1 D of the 1951 Convention/ Article 12 (1)(a) Qualification Directive. Since no investigations have been conducted in this regard the facts of the case have not been adequately assessed.

The court considers that the following criteria have to be fulfilled for such relocation to another area of UNRWA's operations to be reasonable:

- 1.) The possibility to live there without any real risk to the right to life and freedom from torture and inhuman or degrading treatment or punishment as well as the imposition of the death penalty,*
- 2.) The absence of any threat to the life/ physical integrity to the applicant as a civilian resulting from indiscriminate violence due to an armed conflict,*
- 3.) The possibility to satisfy one's basic needs (in particular: nutrition, accommodation and if need be: immediately necessary health care) already in the phase of establishing oneself following the return and*
- 4.) The possibility to reach that area upon return.*

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

This decision replaced the one rendered by the first instance authority which had refused to grant the applicant refugee status but accorded him subsidiary protection.

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:

Protection Information Unit
Division of International Protection
UNHCR
Case Postale 2500
1211 Genève 2 Dépôt
Switzerland
Fax: +41-22-739-7396
Email: refworld@unhcr.org