## The Council for Alien Law Litigation

## Decision

**No. 144 563 of April 30 2015**
**in the case RvV X / IV**

**In the matter of:** **X**
**Chosen place of residence: X**

**against:**
**the office of the Commissioner General for Refugees and Stateless persons**

**THE CHAIR OF THE IVth CHAMBER**

Considering the petition which X, who declares to be of an undefined nationality, has submitted on 28 November 2014 against the decision of the commissioner-general for refugees and stateless persons of 27 October 2014.

Given article 51/4 of the law of 15 December 1980 relating to the access to the territory, the residence, establishment and removal of aliens.

In view of the notice with comments and the administrative dossier.

Given the decision of March 4 2015 by which the trial is determined on 13 March 2015.

Having heard the report of Chairwoman M.C. GOETHALS.

Having heard the remarks of attorney K. VERHAEGEN, who appears as replacement attorney K. VERSTREPEN on behalf of the applicant, and of attaché K. ALLYNS, who appears on behalf of the defendant.

**DELIVERS AFTER CONSIDERATION THE FOLLOWING JUDGMENT:**

1. About the facts of the case

1.1 The applicant, who declares to be of an undefined nationality, entered according to his statements the Kingdom on 1 July 2013 and declared himself as a refugee on 5 July 2013.

1.2 After the questionnaire was filled out and signed, the dossier of the applicant was transferred on 7 August 2013 by the Immigration Office Services to the Commissioner-General for refugees and stateless, where the applicant was heard on 8 May 2014.

1.3 On 27 October 2014 the Commissioner-General for refugees and stateless took the decision to exclude from refugee status and refuse subsidiary protection status.
This decision was sent 28 October 2014 by registered mail.
The contested decision reads as follows:

***"A. Statement of facts***

*You declare being a Sunni Muslim, being of Palestinian origin, born and raised in the refugee camp of Rashidiya, Lebanon. You are registered with UNRWA. In 2010 you allegedly tried to travel to Turkey, but you [verb missing] by the Syrian authorities. You allegedly spent four and a half months in prison in Syria before you were extradited to the Lebanese authorities. Subsequently you spent another 10 days in a Lebanese prison before you were released. You had a car which you used after your working hours as a car mechanic to go out with your friends. You drank alcohol regularly when you went out. By the end of 2011, 15 to 20 Salafists allegedly surrounded your house at night and took you away with them. Four of your friends were captured and transferred to their "establishment" as well. Allegedly you were tortured during two weeks, during which they forced you to live by their rules of conduct. Subsequently, they released you and your friends. Several days later the Salafists allegedly took you and your friends away and mistreated you again. After four days they released you. Subsequently you went to the home of your employer's brother, who owned an apartment outside of the refugee camp, and went in hiding there. After approximately two and a half months you allegedly returned to the refugee camp. Your father said that the Salafists were looking for you and that they had threatened your family. You stayed in the camp with the intention to get taken so as to not jeopardize the safety of your family. Two days after your arrival at the camp, the Salafists took you away again. This time you and the others were allegedly held captive for three and a half months in their establishment. The Salafists allegedly tried to convince you to fight in Syria. When you refused this, they allegedly shot one of your four friends, M. (…), dead. Hereinafter you decided to agree to join the fight in Syria. By the end of 2012 the Salafists allegedly took you to Syria to fight there on Bashar Al-Assad's side against the Syrian population. After one week you allegedly managed to get away during a fight. You approached somebody who turned out to belong to the "Free Syrian Army" (FSA). He took you to his home and subsequently accompanied you to Bab Al-Hawa, a Syrian/Turkish border post. You allegedly crossed the borders. In Turkey you went to look for work, to earn enough money to continue your travels. Your parents supported you financially. After several attempts to reach Europe, you allegedly ultimately traveled in a truck on a boat from Turkey to Greece, subsequently you travelled to Italy and ultimately you went to Germany. In Germany you allegedly took a train to Belgium where you arrived on 1 July 2013. On 5 July 2013 you requested asylum at the Immigration Office Services (DVZ). To support your asylum claim you submitted the following documents: a copy of your UNRWA-registration card, a copy of your identity card, a copy of your birth certificate, a copy of your membership card of the association for persons with a disability – you are blind at one eye – and a copy of your medical certificates of the eye doctor in Lebanon.*

*Your sister Nev, (…) lives in Belgium and is married to somebody with the Dutch nationality. Your sister Nes, (…) has been living in Germany for several years.*

***B. Reasoning***

*Article 1D of the Refugee Convention, to which article 55/2 of the Aliens Act refers, stipulates that persons who enjoy assistance or protection from other organs or agencies of the United Nations, such as UNRWA, are to be excluded from refugee status. This exclusion does not apply when the assistance or protection of UNRWA has ceased for any reason. If the assistance ceased to exist, the concerned should be recognized ipso jure as a refugee, unless the person needs to be excluded due to the reasons mentioned in article 1E and 1F of the Refugee Convention. The assistance has ceased to exist when the organ which delivers the assistance dissolves, or when it is impossible for UNRWA to execute its mandate, or when it has been established that the departure of a person from the UNRWA mandate-area finds its justification in reasons which are beyond the persons control and independent of his volition and thus prevent him from receiving UNRWA assistance. This is the case when the asylum seeker's personal safety was at serious risk and it was impossible for UNRWA to guarantee that his living conditions in that area would be commensurate with the mission entrusted to that organ or agency (European Court of Justice, 19 December 2012, C-364/11, El Kott v. Bevándorlási és Állampolgársági Hivatal, paras. 58, 61, 65 and 81).*

*From your statements it shows that you as a Palestinian had a right of residence in Lebanon and obtained assistance of UNRWA (see hearing report CGVS* [CGVS stand for 'Commissioner General for Refugees and Stateless persons']*, p. 2). Taking into account article 1D of the 1951 Geneva Convention, to which article 55/2 of the Aliens Act refers, it needs to be examined whether your departure from your country of habitual residence finds its justification in reasons beyond your control and independent from your volition which forced you to leave the area in which UNRWA is operational.*

*In the opinion of the Commissioner-General its needs to be established that the problems you stated which allegedly made you leave the mandate-area, are not to be found credible for the below mentioned reasons.*

*Foremost, it needs to be remarked that it is difficult to understand why the 'Salafists' exactly arrested and tortured you and your four friends up to three times, solely due to the fact that you allegedly drank alcohol. You stated after all that most young people in the camp were drinking alcohol, or at least the persons who had the money for it (CGVS, p. 9). Moreover, it appears that the operating methods of the Salafists were not evidently customary in the camp, that you are not aware of it or that these type of actions by the Salafists occurred before and/or other camp residents had been victim of this before (CGVS, p. 9). Therefore, the questions arises why the Salafists aimed precisely for you and your friends and that such a display of power was allegedly realized in order to arrest you. After all, they allegedly deployed 15 to 20 men to take you and the others with them (CGVS, p. 9). This seems to be extraordinarily out of proportion, with regard to 4 young men who had only drunk a bit too much alcohol. If they really went out with a group of 15 to 20 men, the question can be asked why they did not apprehend more young people from the camp. Altogether, the way in which you portray the facts is not plausible.*

*In addition, it is curious that you were not at all able to indicate to which organization these 'Salafists' belong. You allegedly only knew them as being 'Salafists' or thus extremist Muslims (CGVS, p. 9). Nevertheless, everybody allegedly knew where their 'establishment' was located and therefore it must have been known under which group or militia they operated and made themselves known (CGVS, p. 13). It is therefore hardly credible that nobody allegedly knew to which movement these 'Salafists' belonged. The most peculiar however is the fact that you –also throughout your detentions – did not get to know to which movement these 'Salafists' belonged. Namely you were detained up to three times in their establishment, of which the third time even lasted three and a half months (CGVS, p. 10). They moreover allegedly tried to get you to join them and to follow them (CGVS, p. 7). It can therefore at the least be expected that they clarified or propagated their movement and their objectives to you. Furthermore, you allegedly fought at their side in Syria (CGVS, p. 7). It cannot be found credible that during all that time you could not obtain any more information about this 'Salafist organization', nor the name of their militia or the name of the group to which they conformed to in Syria.*

*Subsequently it can be established that you mixed up the chronological order of the events, which you allegedly went through. When you initially presented your claim, you indicated that you were held and tortured a first time by 'Salafists' during one or two weeks. In that period it was allegedly demanded from you that you would stop drinking and that you had to pray and fast (CGVS, p. 7). However, you started to drink and go out again resulting in you being taken a second time by those same 'Salafists' who this time allegedly demanded from you that you would fight in Syria (CGVS, p. 7). Later during the same hearing you declared that you were held for two weeks during the first time. After your release you allegedly went to the hospital for treatment, but you were apprehended several days later again, this time for a period of four days. You subsequently stayed another two days in the hospital and were apprehended in the hospital again, this time for a period of three and a half months (CGVS, p. 10). Subsequently you state that you were detained the first time for two weeks, that after your release you were detained for four days, that you were released again and subsequently were taken away after two months for a third time (CGVS, p. 10). Confronted with the fact that you earlier stated being apprehended from the hospital the third*

*time, you now state that this happened after your first capture (CGVS, p. 10). This while you stated earlier that after the first capture you were discharged from the hospital that same day (CGVS, p. 10).*

*Finally you state that you don't know anymore, because you 'forget' a lot (CGVS, p. 10). Subsequently you pointed out being "repeatedly" apprehended and released by Salafists (CGVS, p. 11). Seeing the fact that you stated being apprehended by Salafists "repeatedly", it was asked from you whether this happened more than three times. You then state to have been beaten on your head so many times that you cannot remember. You allegedly could, figuratively said, no longer imagine what your parents looked like (CGVS, p. 12). Your continuous varying statements cannot convince in any way whatsoever. Ultimately you remained on your statement that you were detained three times by the 'Salafists'. You state that allegedly after your second detention you left Rashidiya-camp and hid during two and a half months outside the camp (CGVS, p. 12). Two days after your return to the camp the 'Salafists' allegedly took you away again (CGVS, p. 13). Again it can be questioned why you stated earlier that you went out and drank again which caused the 'Salafists' to arrest you again if you were no longer in the camp during this period. Once again you stated not remembering anything anymore due to the numerous hits on your head (CGVS, p. 14). However, this statement can severely be called into question, there where you could talk in detail about what happened in 2010 when you wanted to leave for Turkey to work there (CGVS, p. 12) and when you provided a statement in which you went into great detail about your travel journey from Turkey to Belgium (CGVS, p.7,8). ) That you seem to have 'forgotten' a lot about the core of your claim and cannot tell a coherent story, cannot be followed. In any case, this raises doubts concerning the truthfulness of your asserted asylum motives.*

*Also the credibility of the facts which according to you took place in Syria – when you were taken there by force by the 'Salafists' – loses its grounding. You indicated that you remained one week in Syria to fight there (CGVS, p. 15). You state that in first instance you were brought via Homs to Tal Qaleh (CGVS, p. 15), that you allegedly stayed in Tal Qaleh for one week and that you allegedly fought there (CGVS, p. 15). However, in the preparatory questionnaire of the CGVS, drawn up with the help of an employee of DVZ (see questionnaire CGVS, date 07/08/2013, p. 4), you stated that you had fought in Deir Az-Zor. You give as an explanation that you were supposed to go to Deir Az-Zor via Tal Qaleh (CGVS, p. 16). Questioned whether you effectively stayed a period of time in Tal Qaleh, you state that again you cannot remember anything anymore (CGVS, p. 16). Ultimately you state not having stayed in Tal Qaleh – which is again completely contradictory to your previous statement – but having passed it to establish yourself in Deir Az-Zor (CGVS, p. 16).*

*You also remain very superficial about what you allegedly had done during that week. You don't elaborate further than having fought on the side of the troops of Bashar al-Assad and that you received instructions to shoot any person who passed by (CGVS, p. 16). For somebody who suddenly, and certainly not out of free will, ended up in such a combat, it can at least be expected that you, in a spontaneous manner, with far more details and particularities, could speak about this striking experience. That you leave it at an exceedingly short and factual report is unacceptable in this context. Even if you dread having to stir up your past again, even then it can at least be expected from you to describe your experience on the battleground in a livelier manner. After all it concerns the reason why you say not being able to return to Lebanon.*

*Moreover, little credibility can be attached to your so-called 'escape' from Syria. You state that you allegedly turned yourself in to somebody of the Free Syrian Army (CGVS, p. 16). This man allegedly helped you immediately and took you to his house (CGVS, p. 16). First of all, it's already extremely unlikely that somebody of the opposing party, namely a fighter of the FSA, would be prepared to quasi-unconditionally take a foreign pro-Assad fighter under his wing and smuggle you out of the country. Seeing the heavy and fierce fighting which was raging at that moment between both parties and taking into account the several reprisals from both sides it can really not be believed that you were helped in such a manner by somebody from the opposing party. Subsequently you allegedly went by car from Deir Az-Zor to the border checkpoint Bab Al-Hawa (CGVS, p. 16). You*

*allegedly took one hour or even less on this road (CGVS, p. 16). It needs to be subsequently remarked that it is impossible that you travelled the road between Deir Az-Zor and Bab Al-Hawa within an hour. Firstly, because the road in normal circumstances and taken on the main roads, takes at least five hours (see administrative dossier CGVS). To this end keeping in mind that a civil war is ongoing in Syria, where the power over the entire country is divided and several checkpoints are being set up – which generated obligatory delays -, it can easily be assumed that it would take more than a couple of hours to get up to the border. Moreover, it is hardly credible that somebody from the Free Syrian Army would take the risk to drop you off at the border. It can only be concluded that this confirms the incredible nature of your claim.*

*As a side note it can be remarked that it is very remarkable that you had your passport with you when you crossed the border with Turkey (CGVS, p. 5). You state that you already had your passport with you before your third arrest (CGVS, p. 5). This would mean that during three and a half months of custody and during your battle in Syria you already had your passport with you. Taking into account all these acts of torture, the fact that you were in captivity, crossed the border and were forcefully put into battle, it would be more plausible if your "captors" would have taken your passport for certainty. This way it would also be more difficult for you to flee the area. That this did not happen, taking into account your stated circumstances, can hardly be believed.*

*Taking into account all the above remarks, neither your problems with 'Salafists' nor your forced recruitment to fight in Syria, can be found credible.*

*Further, it follows from information which GVS has (and of which a copy was added to the administrative dossier), that UNRWA is currently still offering assistance in Lebanon and that UNRWA drew up a strategic plan to receive the impact of the Syrian conflict, and in particular the influx of Palestine refugees who are fleeing the Syrian conflict into the neighboring countries. For Lebanon this plan encompasses, amongst others things, humanitarian assistance in the areas of health, education, psycho social assistance, protection, emergency cash for food and rent, and material assistance. It clearly follows from the available information that UNRWA is currently still providing assistance to Palestine refugees in Lebanon, and therefore still is capable of carrying out their mandate.*

*Noting the above findings, you did not credibly establish that you left Lebanon due to reasons beyond your control and independent from your volition which prevented you in receiving UNRWA's assistance. After all you did not demonstrate that the assistance or protection of UNRWA ceased to exist, nor did you demonstrate that you will be found in an inhumane situation upon return to the camp where you resided. In accordance with Article 1 D of the Refugee Convention and Article 55/2 of the Aliens Act, you are to be excluded from refugee status.*

*The documents you provided cannot alter the above conclusion in a positive way, since they merely indicate your origin and identity. Moreover, it needs to be remarked that you only provided copies – no original documents – which do not have any evidentiary value since neither the authenticity nor the origin of these documents can be verified.*

*For the sake of completeness, it also needs to be noted that it follows from the information which CGVS has (and of which a copy has been added to the administrative dossier), that the Lebanese government provides travel documents to Palestinians who are registered with UNRWA and DAPR ('Department of Palestine Refugee Affairs'). In addition, it follows from statements of different independent, reliable and objective sources that UNRWA-registered refugees can return without any problems and that they have the right to a travel document which is valid for 3 to 5 years. It also appears that the Lebanese embassy in Brussels, aside from a certain administrative inertia, provides its cooperation. Although the procedure indeed takes some time, no noteworthy problems are being experienced in the obtainment of the required travel documents. Besides this procedure does not take more time for Palestinians than for Lebanese citizens. The Syrian refugee crisis and the restrictions to which Palestine refugees from Syria are being subjected to for entry and residence on Lebanese territory does not influence the procedures of access to the territory for registered Palestinians registered in Lebanon. There are no indications that the stance of the*

*Lebanese authorities regarding Palestinians registered in Lebanon who wish to return from Europe to Lebanon has changed.*
*The documents from the administrative dossier show that you have a UNRWA-registration card and a Palestinian identity card. There are thus no reasons to assume that you do not have the possibility to return to the UNRWA mandate-area.*
*The Commissioner General for Refugees and Stateless persons recognizes that the general situation and living conditions in the Rashidiya refugee camp can be precarious, however, emphasizes that not every person living in the refugee camps in Lebanon live in precarious conditions. It does not suffice to merely refer to the general socio-economic situation in the refugee camps in Lebanon, but you need to establish concretely that upon your return to your country of habitual residence you would be at a real risk of serious harm in the sense of article 48/4, par. 2, b) of the Aliens Act. However, it follows from your own statements that your individual situation is decent.*
*From you statements it does not show that you ever encountered any problems with the Lebanese authorities. In the case at hand it further shows that you enjoyed education, indeed only up to the fifth grade of primary education (CGVS, p. 6), that you up to your departure from Lebanon and despite your disability, worked as a mechanic for a Lebanese – you were doing this from the age of 11 up to your departure – and that your father worked as a lime picker which enabled him to support his family (CGVS, p. 6), that there was no rent to be paid, that you had access to medical care and also received material assistance from UNRWA, that your family still is being supported socio-economically by UNRWA and that your family disposed of the necessary funds to fund your travel to Belgium – you are talking about 7.000 euros, which is quite a sum according to Lebanese standards (CGVS, p. 4 and questionnaire DVZ, question 35, p. 8).*
*It cannot be deduced from any of your statements that any concrete and serious security problems or serious problems of a socio-economic or medical nature exist which led you to have to leave your country of habitual residence. You furthermore did not bring forward any concrete elements which would show that the general situation in this refugee camp is of such a nature that, in the case of return to Lebanon, you personally would be at a particular risk of undergoing 'inhumane or degrading treatment'. Hence, it cannot be expected that you, if you would return to the camp where you resided, would find yourself in an inhumane situation.*
*In light of the fact that you are basing your request for subsidiary protection on the grounds of article 48/4 par.2, (a) and (b) of the Aliens Act solely on the motives of your asylum claim, and moreover seeing the incredible nature of your asylum request, the subsidiary protection status on the grounds of the above mentioned articles of the Aliens Act cannot be granted.*
*Apart from the granting of refugee status, an asylum seeker can also obtain protection status through the CGVS due to the general situation in their region of origin. The CGVS emphasizes in this context that Article 48/4, par. 2, c) of the Aliens Act merely envisages offering protection in the extraordinary situation that the degree of indiscriminate violence in the ongoing armed conflict in the country of origin, is of such a high degree that substantial grounds exist to assume that a citizen who returns to the concerned country or, as appropriate, to the concerned area, merely because of his presence there, is at a real risk of a serious threat as referred to in the above mentioned Article of the Aliens Act.*
*It follows from a thorough analysis of the actual security situation in Lebanon (see COI Focus Lebanon –The actual security situation – of 25 April 2014) that the current security situation in Lebanon is being determined to a large extent by the situation in Syria. The consequences of Hezbollah's involvement in the Syrian civil war was being felt quickly in Lebanon. The violence which presently characterises Lebanon, takes shape in the form of car bombs, political murders and border violence and is primarily concentrated in the established frontlines in Tripoli, the border region with Syria and the southern suburbs of Beirut. It further follows from the available information that since the break out of the Syrian conflict in October 2012, 20 terror attacks were committed in Lebanon. The majority of these attacks are to be attributed to Sunni extremist groups*

*which have Hezbollah or its Shiite constituency as a target. In this context, mainly southern suburbs of Beirut are being aimed at. Sunni extremist groups further increasingly target the army in the regions of Tripoli, Bekaa and Akkar. During these kinds of attacks on military targets the number of civilian casualties is low. In the border region with Syria the violence concentrates primarily in the Bekaa-valley (Hermel, Arsal, Baalbek) and Akkar. Syrian rebel groups carry out missile- and mortar attacks on alleged Hezbollah-strongholds in the primarily Shiite areas Baalbek and Hermel. The Syrian army at its turn is carrying out aerial attacks on the alleged smuggle routes and bases for Syrian rebel groups in Sunni border regions. The number of civilian casualties is however relatively limited. Also with the increasing sectarian violence in the border regions the casualties are primarily among the combatting parties. It further follows from the available information that violent confrontations are taking place in the city of Tripoli between Sunni militias from the Bab at-Tabbaneh neighbourhood and the Alawite combatants from the Jabal Mohsen neighbourhood. Because the violence is taking place in densely populated residential areas regrettably there are civilian casualties. However, since April 2014 there is a ceasefire in force in the city which is for the time being upheld. It is predominantly quiet in the other regions. The security situation in South-Lebanon is stable. Also in the Palestinian camps, the current security situation is relatively calm and different armed groups are making efforts not to get involved in the Syrian conflict despite the increasing influence of Salafist groups.*

*The Commissioner General for Refugees and Stateless persons possesses over a certain margin of appreciation and in light of the above mentioned findings and after a thorough analysis of the available information, came to the conclusion that there is currently no extraordinary situation in Lebanon to which the degree of indicriminate violence whereby those confrontations are being characterized to such a degree that substantial grounds exist to assume that you by merely being present there would be at a real risk of serious threats as specified in Article 48/4, par.2, c) of the Aliens Act.*

***C. Conclusion***

*Based on Article 57/6, first paragraph, 5° of the Aliens Act I find that you should be excluded from the protection under the Refugee Convention. Furthermore, you are not eligible for subsidiary protection in terms of Article 48/4 of the Aliens Act."*

*2.* On the merits of the appeal

2.1. In a first and only remedy, derived from the violation of Article 1 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees (the Refugee Convention), Articles 48/2, 48/3, 48/5, 48/7 and 55/2 of the Act of 15 December 1980 relating to the access to the territory, the residence, establishment and removal of aliens (the Aliens Act), Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 4 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 (Qualification Directive), the obligation to state reasons enshrined in Article 62 of the Aliens Act and Articles 2 and 3 of the Act of 29 July 1991 relating the explicit statement of reasons of administrative acts, and as principle of good administration, the precautionary- and the reasonableness principle and the principles of good administration, the applicant states meanwhile to be in possession of the originals of his Palestine refugee card and his UNRWA registration card and to submit these during the hearing and therefore his identity, his Palestinian origins and his origin from Lebanon are confirmed. The applicant further puts forward that he automatically needs to be recognized as a refugee in the application of Article 1D, paragraph 2 of the Refugee Convention. He cites Article 1D of the Refugee Convention and gives a theoretical explanation in this regard. The applicant notes that the Court of Justice in the case of *El Kott v. Bevándorlási és Állampolgársági Hivatal* (C-364-11) of

19 December 2012 ruled how the second paragraph of Article 1D of the Refugee Convention needs to be interpreted. The applicant cites paragraphs 56-58 and 63-64 and emphasizes that UNHCR in its most recent and relevant Note takes in a position which is equal to the interpretation of the Court of Justice. According to this Note the words "*for any reason*", also according to UNHCR, should not be interpreted restrictively and can include more general situations, such as an armed conflict or other situations of violence or general insecurity. The applicant therefore does not need to demonstrate a well-founded fear in the sense of Article 1 A of the Refugee Convention. Finally, the second paragraph of Article 1D also needs to be applied when return to the UNRWA mandate-area no longer is possible, because UNRWA in such a situation clearly cannot provide assistance to the party concerned. Against this background, the applicant finds that the Commissioner General for Refugees and Stateless persons unjustly excludes him from refugee status.

Subsequently the applicant notes the inadequate assistance of UNRWA. He points out that paragraph 63 of the *El Kott v. Bevándorlási és Állampolgársági Hivatal* judgment of 19 December 2012, needs to be understood in a way that the assistance should not only be considered to have ceased when it is impossible for UNRWA to fulfil its mandate in general, but also when the living conditions are inhumane. After all, it is UNRWA who needs to offer living conditions which are in line with its mandate. In reference to resolution 302 of the General Assembly of the United Nations, an interim report of the *Economic Survey Mission* and the website of UNRWA, the applicant notes that the mandate of UNRWA consists of offering living conditions which are in line with human dignity, *i.e.* social protection, shelter, food and education, and ensuring that human rights are protected fully. UNRWA should also offer work with a view to reducing emergency assistance and empowering human dignity. The mandate of UNRWA is to guarantee such a living standard, with the utmost respect for human rights.
The applicant brings forward that the Commissioner General for Refugees and Stateless persons wrongly finds that the continued provision of assistance and the development of a strategic plan is sufficient to establish that UNRWA still is capable to carry out its mandate, while according to the opinion of the applicant, very clear quality requirements exist for that assistance. If UNRWA cannot provide a certain quality of assistance, a quality which exists out of offering living conditions which are in line with human dignity, *i.e.* social protection, shelter, food and education, and ensuring that human rights are protected fully, UNRWA can no longer carry out its mandate. To interpret this differently would, according to the applicant, not be in keeping with the spirit of Article 1D of the Refugee Convention. The mere existence of the assistance is thus, according to the applicant, not sufficient. The assistance needs to satisfy certain quality requirements in order to conclude that UNRWA is fulfilling its mandate. The basis for this follows clearly from Article 1 D, paragraph 63 of the El-Kott judgment, from the mandate of UNRWA and from the way in which UNRWA describes its own mandate. The applicant notes that the only qualification which the defendant links to the assistance of UNRWA is formulated negatively, instead of positively. The defendant does this by smuggling the term 'inhumane situation' into its reasoning. The term 'inhumane situation' refers to Article 3 ECHR and to Article 48/4, par. 2, b) of the Aliens Act and with these Articles' related high standard of proof. Whether UNRWA can offer living conditions which are in line with its mandate concerns, according to the applicant, the overall functioning of UNRWA and does not require individualizing the risk of real harm.
The applicant further argues that the application of Article 3 ECHR and the equivalent prohibition of inhumane treatment, differs substantially from the application of Article 1D of the Refugee Convention and the reference to UNRWA's mandate. He clarifies that Article 1D requires that a Palestine refugee *ipso facto* is recognized as a refugee if UNRWA cannot fulfil its mandate. UNRWA was entrusted with its mandate to guarantee a decent standard of living, with utmost respect for human rights. It thus entails a positive obligation to create a decent standard of living. Article 3 ECHR however entails, in first instance, a negative minimum obligation to not treat persons inhumanely. A decent standard of living with utmost respect for human rights can by no means

be seen as the equivalent of not being subjected to inhumane treatment. The parameters both differ qualitatively, as in the sense that the one entails a positive obligation and the other a negative obligation. Nothing indicates that the threshold built into Article 3 ECHR is also the threshold for the application of Article 1D, according to the applicant, who also finds that it would be absurd to find that UNRWA cannot fulfil its mandate merely in the case of inhumane conditions. After all, legal guarantees already exist to remedy inhumane treatment, such as Article 3 ECHR and Article 48/4, par.2, b) of the Aliens Act. Article 1D is actually created to offer a heightened level of protection to Palestine refugees.

The applicant continues stating that the strategic plan of UNRWA to receive the impact of the Syrian conflict which is being referred to in the contested decision and based on which the Commissioner General for Refugees and Stateless persons reaches to the conclusion that UNRWA is still fulfilling its mandate with regard to Palestine refugees in Lebanon, dates from 2013, while the Commissioner General in its own SRB's disposes of much more recent information which it is not citing in the contested decision. Moreover, it is 'just' a plan and not a policy. It does not describe the reality. The plan was set up because the situation in the countries neighboring Syria has become absolutely unbearable. Besides, the plan is not accurate in the sense that it was clearly set up to attract funding. It is correct that Lebanon is disproportionally receiving a lot of Syrian refugees, but the attitude of Lebanon towards Syrian Palestine refugees is particularly callous and is in violation of international law. Syrian Palestinian refugees are being sent back to Syria since May 2014. The plan is getting more realistic and it is effectively citing the 'difficulties' of Syrian Palestine refugees and – implicitly – the *refoulement* practices. The plan further states that the situation in Lebanon is dramatic and inhumane. The plan is a call for receiving funding, because the situation in Lebanon is inhumane and disastrous. The fact that this plan exists does not indicate, according to the applicant, in any way that UNRWA is fulfilling its mandate, but quite the contrary. Nothing indicates that funds indeed have been made effectively available and that the plan can be implemented as such. Subsequently the applicant refers to and cites from the '*Midyear Review*' of the '*Regional Response Plan*' published by UNRWA. From this it shows that only 26% of the necessary budget could be gathered for Lebanon. That UNRWA momentarily does not possess the needed financial means to fulfil its mandate is, according to the applicant, also apparent from its recent findings that it has a shortage of 47 million USD for Gaza. (Middle East Monitor, "*UNRWA requests $47 million for emergency aid in Gaza strip*", 8 September 2014). The applicant continues that the findings of the Commissioner General that the existence of a *Regional Response Plan* indicates that UNRWA is fulfilling its role neither is in line with information which can be found back in the COI-focus "*Lebanon: Living conditions in the Palestine refugee camps* [*Libanon: Leefomstandigheden in de Palestijnse vluchtelingenkampen]*' of 29 January 2014. The applicant cites extensively from this COI-focus, as from an article of the Middle East Monitor entitled "*Palestine refugees from Syria face a mountain of challenges in Lebanon*" from 7 October 2013 and two articles published on the website Al Monitor entitled: "*Terrorist Groups Exploit Palestinians in South Lebanon*" (September 2013) and "*Lebanon Struggles to Manage Palestinian, Syrian refugees*" (January 2013). It follows form this information that the existing Palestine refugee community will have even more difficulties, because the attention of donors has shifted to the Syrian refugee crisis. Palestine refugees in general don't receive food aid or financial aid from UNRWA. For the sake of budgetary deficits UNRWA will further reduce the number of *special hardship cases* (*i.e.* the most vulnerable cases). The medical assistance delivered by UNRWA is of low or no quality and the infrastructure of the camps is disastrous. Due to the influx of Syrian refugees who present themselves as cheap labourers, it is additionally even more difficult for Palestine Refugees to find work to make a living. The applicant wonders how it can be decided in these circumstances that UNRWA can still fulfil its mandate in relation to Palestine refugees in Lebanon. That the Commissioner General is limiting to citing from a strategic plan to conclude from this that UNRWA is providing adequate assistance, can according the applicant, not be considered at the least as a sufficient examination. The Commissioner General has according to

the opinion of the applicant thus not complied with the imposed duty to cooperate as enshrined in Article 4 of the Qualification Directive.

The applicant further asserts that the Commissioner General for Refugees and Stateless persons is also not complying to the duty to examine and to cooperate by assuming that his situation is decent and that he did not have any serious problems of a socio-economic or medical nature which led him to having to leave Lebanon. The applicant firstly points out in this context that the Commissioner General acknowledges that the living conditions in Rashidieh can be dire in the contested decision. Dire living conditions are living conditions which are not in line with the mandate of UNRWA, which should be evident, thus the applicant, who further states that the statements contained in the contested decision are at odds with the reality and with the statements which he provided as part of his asylum request, after which he attempts to rebut the reasoning in the contested decision. The applicant raises that the Commissioner General is painting an image in the contested decision of the situation of him and his family in Rashidieh, while this image does not correspond with the reality nor with the general information which was at the disposal of the Commissioner General. Concerning education, as well as employment, housing, financial capacity, and medical care, the Commissioner General is portraying an excessively optimistic image, according to the applicant, who is emphasizing in this regard that in reality he did not enjoy the living conditions in Lebanon which UNRWA was supposed to offer him. The applicant continues that, even if it could be established that in the past he and his family was able to live in an acceptable manner with the support of UNRWA, there is no guarantee of that in the future. From his statements it cannot be derived that he, at this moment, can count on the support of his family and UNRWA. This aspect was not adequately examined by the defendant. The applicant concludes from the above that UNRWA is not capable of providing sufficient assistance to Palestinians in Lebanon, and himself in particular, in order to live a dignified life. In this case, it can be found according to the applicant, that UNRWA no longer can fulfill its mandate adequately and that the assistance of UNRWA "for any reason" ceased in the sense of Article 1 D paragraph 2 of the Refugee Convention. The terrible living conditions in the Palestinian Refugee camp forced the applicant to leave the UNRWA mandate-area. Therefore, UNRWA can no longer fulfil its mandate in regard to him and needs to recognize the applicant, in his opinion, as a refugee based on Article 1D, paragraph 2 of the Refugee Convention. In support of his argumentation he refers to the jurisprudence of the French Council of State.

In addition, the applicant points out the uncertain possibility of return to Lebanon. He challenges the reasoning in the contested decision that the Lebanese government provides travel documents to Palestinians who are registered with UNRWA and DAPR. Moreover, he brings forward that the Commissioner General neglected to verify this possibility of return in practice. Indeed, the administrative dossier does not contain any concrete information on the readmission of the Lebanese authorities, nor does it provide figures on the number of flights which returned. The applicant in this regard points out that the Lebanese authorities in the past refused to readmit refugees and that the Lebanese authorities always have been of a refusing attitude towards the readmission of Palestine refugees in their territory. This is proven in first instance by the politics of systematic exclusion of Palestine refugees from Lebanese society with the intention of preventing them from establishing themselves definitively on Lebanese territory. Furthermore, the policy changes of the Lebanese authorities in the past point to their unwillingness to readmit Palestine refugees into their territory, according to the applicant. He cites in this context from A. Takkenberg, "*The status of Palestinian refugees in International Law*" from 1997 and from a contribution of S. Akram and Goodwin-Gill in The Palestine Yearbook of International Law from 2000/2001 entitled: "*Brief Amicus Curiae on the status of Palestinian refugees under international refugee law*", The Palestine Yearbook of International Law. The applicant asserts that to this day there are no figures available from the Immigration Office Services on the effective provision of

travel documents to Palestine refugees to return to Lebanon and that it reads on the website of the Lebanese embassy in Brussel that Palestinians need to submit among others the following: *"La carte de séjour sur le territoire du pays où l'intéressé réside, ou bien une attestation faisant preuve de lancement de la procédure d'obtention de cette carte".* (http://libaneurope.be/passeport, see also the administrative dossier). That the applicant will not be able to submit a Belgian residence permit, is clear. After all, he only possesses a registration certificate as long as the asylum procedure is ongoing. The moment that he would have to return to Lebanon, he would not be entitled to a residence permit. Whether he can provide a certificate that a procedure has been initiated to obtain a residence permit, is unclear. Indeed, it is unclear for the applicant what is meant with this certificate. When examining the conditions on the website of the Lebanese embassy, the applicant does not seem to be eligible to request a travel document. This needs to be examined at least, according to the applicant, who also points out that in a recent report of the Immigration and Refugee Board of Canada it is mentioned that Palestine refugees, who wish to return from Canada to Lebanon, need to be in possession of a permanent residence permit in Canada. The applicant thus supposes that it is possible that the Lebanese embassy in Belgium demands similar requirements. However, in the case at hand he would not be able to request a residence permit. Lastly, the applicant puts forward that a number of sources cited in the COI-Focus are not verifiable and therefore no serious examination of the information used can take place, in particular the e-mails and telephone conversations, nor on the basis of what information these persons can conclude this. In this context, the applicant points out that a "recognized refugee" for example cannot be considered as an authoritative, reliable nor objective source and that the e-mails and the transcripts of the telephone conversations which are being referred to, are not incorporated in the COI-Focus. Because of this the exactitude of the information cannot be confirmed. The same applies also to the information sources originating from the embassy for which, according to the applicant, there are serious grounds for doubting that these would be objective. The applicant is therefore of the opinion that the rules imposed in Article 26 of the Royal Decree of 11 July 2013 for regulating the workings of - and the judicial procedures for the Commissioner General for Refugees and Stateless persons were not being observed. The Commissioner General for Refugees and Stateless Persons thus did not examine in a serious manner whether he can return, thus the applicant, who believes that a correct application of Article 1D of the Refugee Convention needs to be examined on whether he can return to the UNRWA mandate-area. In this context, he refers to the jurisprudence of the Council in which it is determined that examining the possibility of return to the territory where the person concerned received assistance, is part of the examination of Article 1D of the Refugee Convention (RvV no. 108.154 of 8 August 2013, RvV no. 100.713 of 10 April 2013 and RvV no. 96.372 of 31 January 2013), as well as to UNHCR's "*Note on UNHCR's Interpretation of Article 1D 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.

Lastly, the applicant argues that the return of a Palestine refugee to a refugee camp in Lebanon involves a real risk of ill-treatment in the sense of Article 3 ECHR, due to the socio-economic and humanitarian circumstances in the camps. He points out that it follows from the information attached to the petition (documents 4, 10, 18 and 19) that the situation in the Palestinian refugee camps were created deliberately by the Lebanese government and that the Lebanese government is fully responsible for the socio-economic and humanitarian circumstances. It concerns a deliberate governmental policy with regard to a specific population. In this respect, the applicant refers among other things to the judgments of M.S.S. v. Belgium and Greece and to Sufi and Elmi v. the United Kingdom and he argues that the M.S.S. approach as applied in the Sufi and Elmi judgment is applicable by analogy to the situation of Palestine refugees in Lebanese refugee camps.

The applicant concludes from all of the above that he had to leave the UNRWA mandate-area due to reasons independent of his volition, that he received insufficient assistance of UNRWA and that it is uncertain whether he can return to the UNRWA mandate-area. For these reasons and on the basis of the information and arguments which he submits, which are not or at least insufficiently examined by the defendant, the applicant argues that he automatically needs to be recognized as a refugee on the basis of Article 1D, paragraph two of the Refugee Convention.

2.2.1. As an attachment to the petition the following substantiating documents are added: a photocopy of the applicant's Palestinian Refugee card, a photocopy of the applicant's UNRWA-registration card, CLAES M. "The unacknowledged protection need of Palestinian refugees from Lebanon, the application of Article 1D Refugee Convention in the Belgian Asylum procedure"("*Niet-erkende beschermingsnood van Palestijnse vluchtelingen uit Libanon: de toepassing van artikel 1D Vluchtelingenverdrag in de Belgische asielprocedure"*), *T. Vreemd* 2014, afl. 1, p. 52-67; UNHCR, , "Note on UNHCR's Interpretation of Article 1D 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; General Assembly Resolution 302, A/RES/302 (IV) of 8 December 1949; First Interim Report of the United Nations Economic Survey Mission for the Middle East of 6 November 1949; UNRWA, Who we are, Human Development goals; BBC NEWS, "Lebanon 'expels' Palestinian refugees fleeing Syria" of 6 May 2014; UNRWA Midyear Review 2014; Middle East Monitor, "UNRWA requests $47 million for emergency aid in Gaza strip" of 8 September 2014; AL MONITOR, "Terrorist Groups Exploit Palestinians in South Lebanon"; Middle East Monitor, "Palestinian refugees from Syria face a mountain of challenges in Lebanon" of 7 October 2013; AL MONITOR, "Lebanon Struggles to Manage Palestinian, Syrian refugees"; Cour Nationale du droit d'asile, 24 May 2013, no. 04020557 and no. 04020558; Canada: Immigration and Refugee Board of Canada, *Liban : information sur les exi-gences et la marche à suivre pour un réfugié palestinien qui désire obtenir un titre de voyage; information indiquant si une vérification des antécédents criminels du de-mandeur est effectuée (2005-février 2014)* of 19 February 2014; European Union (ARGO project JLS/2005/ARGO/GC/03), Common EU Guidelines for Processing Country of Origin Information (COI); International Crisis Group, Nurturing instability: Lebanon's Palestinian Refugee Camps, 19/2/2009, Middle East Report n° 84, executive summary and Craig Damian Smith, "Perpetuated Liminality, On the causes, Nature, and Effects of Palestinian Seperation from the International Refugee Regime, University of Amsterdam, 24 June 2008, p. 50-51.

During the hearing the applicant, in accordance with Article 39/76, paragraph 1, sub paragraph two of the Aliens Act, submits an additional notice with the following new elements: a medical certificate dating from 4 November 1996 with a translation in Dutch, a doctor's note dating from 31 May 2000 with a translation in Dutch, a certificate of [the Palestine Liberation Organization [this must be a typo]] Foundation Abu-Jihad Alwazeer for education of persons with disabilities in Lebanon dating from 18 November 2014 with a translation in Dutch, a certificate of the Palestine Liberation Organization in which it is attested that the applicant "has contact with the Zionist enemy" and that the leader of the security corps issued a mandate to prosecute him and to arrest him dating from 9 October 2013 with a translation in Dutch and a security announcement coming from the Palestine Liberation Organization to all people responsible for Palestinian refugee camps in Lebanon, in which it is stated that the applicant "is being tracked down to arrest him for suspicious security reasons" with a translation in Dutch.

2.2.2. As an attachment to the statement of defence the following documents will be added: COI Focus "*Lebanon: The security situation in Lebanon*" from 7 November 2014 and the document *Syria Regional Crisis Response* January-December 2014, mid-year review of UNRWA.

On 27 February 2015, the Commissioner General for Refugees and Stateless persons, in accordance with Article 39/76, paragraph 1, sub paragraph two of the Alien's Act, submitted an additional notice with new elements. It concerns a report of the Danish Immigration Service's fact finding mission to Beirut, Lebanon entitle "Stateless Palestinian Refugees in Lebanon – Country of Origin Information for Use in the Asylum Determination Process" of October 2014.

On 6 March 2015, the Commissioner General for Refugees and Stateless persons, in accordance with Article 39/76, paragraph 1, sub paragraph two of the Aliens Act, submitted an additional notice with new elements. It concerns the COI Focus "*Lebanon: Request of a new travel document for Palestinians*" dated from 16 January 2016 2015 and a judgment of the Council of State [RvS] of 24 February 2015 (judgment number 230.301).

2.3. Firstly, the Council notes that the use of a legal remedy requires that both the rule of law as the legal principle which would have been violated is indicated and the way in which that rule of law or that legal principle was violated by the contested decision (RvS 8 January 2007, no. 166.392). It therefore does not suffice to list a number of legal provisions without clarifying in which way these provisions are violated. The Council finds that the applicant is not at the least explaining in how he deems Article 48/2 of the Alien's Act to have been violated. Besides, the Council does not see how the Article could have been violated. After all, Article 48/2 of the Aliens Act stipulates that the alien who fulfills the conditions of Article 48/3 or Article 48/4 as a refugee or as a person eligible for subsidiary protection can be recognized. It is, however, a generally formulated Article, which describes the right to asylum or to subsidiary protection, but by no means consists of an automatic application for persons who invoke the Refugee Convention together with Article 48/3 of the Alien's Act or Article 48/4 of the Alien's Act to obtain asylum or subsidiary protection.

Moreover, the applicant cannot successfully prove the violation of Articles 48/2, 48/3 and 48/5 of the Aliens Act and of Article 1 A of the Geneva Convention against the decisions to exclusion from refugee status and refusal of subsidiary protection status, since the contested decision, concerning refugee status, was taken on the grounds of Article 55/2 of the Aliens Act and Article 1D of the Refugee Convention.

2.4.1. In accordance with the contested decision the applicant will be excluded from refugee status and the subsidiary protection will be refused, because (i) no credence can be given to his stated problems which allegedly made him leave the mandate area of UNRWA and the documents he submitted cannot alter this conclusion in a positive way, as has been clarified, (ii) it follows from the information added to the administrative dossier that UNRWA presently still is providing assistance to Palestine refugees in Lebanon, that UNRWA has drawn up a strategic plan to receive the impact of the Syrian conflict, and in particular the influx of Palestine refugees who are fleeing the Syrian conflict, into neighboring countries and that UNRWA is therefore still capable of carrying out its mandate, (iii) it follows from the information added to the administrative dossier that the Lebanese government provides travel documents valid from 3 to 5 years and that the Lebanese embassy in Brussel provides its cooperation, and that the Syrian refugee crisis and the restrictions to which Palestine refugees from Syria are being subjected to for entry and residence on Lebanese territory do not influence the procedures of access to the territory for the in Lebanon registered Palestinians. (iv) It cannot be deduced from any of his statements that any concrete and serious security problems or serious problems of a socio-economic or medical nature exist which led him to have to leave his country of habitual residence and furthermore he did not bring forward any concrete elements which would show that the general situation in the refugee camp is of such a nature that, in the case of return to Lebanon, he would personally be at a particular risk of undergoing 'inhumane or degrading treatment', hence, it cannot be expected that he would

return to an inhumane situation if he would return to the camp where he resided and (v) based on a thorough analysis of the current security situation, it follows that there is currently no extraordinary situation in Lebanon whereby the degree of indiscriminate violence by which the confrontations are being characterized, is of such a degree that substantial grounds exist to assume that he by merely being present there would be at a real risk of a serious threat as specified in Article 48/4, par.2, c) of the Aliens Act.

2.4.2. The Council therefore finds that the reasoning of the contested decision can easily be read from that decision so that the applicant could have taken notice of it and could have checked whether it is of use to appeal the contested decision with the appeal possibilities which he legally disposes of. Thereby, the main objective of the formal obligation to state reasons, as enshrined in the law of 29 July 1991 relating to the explicit statement of reasons of administrative acts and Article 62 of the Alien's Act has been met (RvS 5 February 2007, no. 167.477; RvS 31 October 2006, no. 1.64.298; RvS 10 October 2006, no. 163.358; RvS 10 October 2006, no. 163.357; RvS 21 September 2005, no. 149.149; RvS 21 September 2005, no. 149.148). The applicant does not make clear on which point this formal reasoning would not enable him to understand on which legal and factual grounds the contested decision has been taken in such a way that the above outlined objective of a formal obligation to state reasons had not been complied with. It also follows from the petition that the applicant knows the reasoning of the contested decision, so that the objective of the explicit obligation to state reasons has been met in the case at hand (RvS 21 March 2007, no. 169 217). To that extent, the remedy cannot be accepted. The Council notes that the applicant essentially alleges a breach of the substantial obligation to state reasons.

The substantial obligation to state reasons, the requirement of sound reasoning, entails that an administrative act, in this case the decision to exclude refugee status and the refusal of the subsidiary protection status of 27 October 2014 (CG no.1314062), needs to rely on reasons for which the factual existence has been duly proven and which can lawfully be considered to account for the decision. The remedy will therefore be examined among other things from this perspective (RvS 25 June 2004, no 133.153).

2.5. Article 1, D of the Refugee Convention stipulates the following:
*"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."*

2.6. Article 12, first paragraph, a) of Directive 2004/83/EC of the Council of 29 April 20014 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) excludes a third country national from refugee status when *"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"*.

2.7. Article 55/2 of the Aliens Act provides:

*"An alien is excluded from refugee status if he falls within the scope of Article 1, D, E or F of the Geneva Convention.*
*This also applies to persons who knowingly instigate or otherwise participate in crimes or acts mentioned in Article 1 F of the Geneva Convention."*

2.8. The fact that the applicant before his departure from his country of habitual residence enjoyed the assistance of UNRWA is not disputed in the contested decision, and also follows from the documents in the administrative dossier. This shows that the exclusion ground in the first paragraph of article 1, D of the Refugee Convention is in any case applicable to the applicant.

2.9. The key question is whether the exclusion ground in Article 1, D of the Refugee Convention at present is also applicable to the applicant. The Council hereby refers to jurisprudence of the European Court of Justice in which, following a new prejudicial question on Article 12, paragraph 1, sub paragraph 2) of the Qualification Directive, it is expressly stated that the first paragraph of article 1, D of the Refugee Convention cannot be construed in a manner that the mere fact that the person concerned found himself outside the area in which UNRWA is operating or voluntarily departs this area, would be sufficient to end the exclusion from refugee status laid down in that provision (ECJ 19 December 2012, C-364-11, *El Kott v. Bevándorlási és Állampolgársági Hivatal*, para. 49). It can therefore be concluded from this that the exclusion ground from article 1, D of the Refugee convention, even if he left the mandate area of UNRWA, at present is also applicable to the applicant.

2.10. On the other hand, in principle, no additional assessment for asylum seekers who originate from such a mandate area should be made in the sense of Article 1, A of the Refugee Convention. This view is confirmed by the European Court of Justice which finds that it initially needs to be ascertained based on an individual assessment whether the departure of the person concerned from the mandate-area may be justified by reasons beyond his control and independent of his volition and thus prevent him from receiving UNRWA assistance (ECJ 19 December 2012, C-364-11, *El Kott v. Bevándorlási és Állampolgársági Hivatal*, para. 61). The Court continues in its judgment that this is the case, where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee his living conditions in that area would be commensurate with the mission entrusted to that organ or agency (ECJ 19 December 2012, C-364-11, *El Kott v. Bevándorlási és Állampolgársági Hivatal*, para. 65). If such a situation occurs, the concerned person must automatically be granted refugees status, unless he needs to be excluded for the reasons mentioned in Article 1, E and F of the Refugee Convention (ECJ 19 December 2012, C-364-11, *El Kott v. Bevándorlási és Állampolgársági Hivatal*, para. 81).

2.11 *In casu* the Commissioner-General for refugees and stateless persons finds that the applicant does not demonstrate that at the moment of his departure from Lebanon he found himself in a situation where his personal safety was at serious risk which, for reasons beyond his control and independent of his volition, prevented him from receiving UNRWA assistance and led him to depart the UNRWA mandate-area. After all, neither his stated problems with 'Salafists' nor his compulsory recruitment to fight in Syria are to be found credible.

The Council finds that the applicant in this petition is not undertaking the minimal effort to clarify or rebut this pertinent reasoning in the contested decision, which is decisive and finds support in the administrative dossier and based on which it can be justly decided that his motives to flee lack credibility. It is up to the applicant to shed a different light on these motives on the basis of concrete elements and arguments, in which he however completely failed. Neither does the applicant challenge the reasoning of the contested decision concerning the documents he submitted during the administrative procedure. The whole of this reasoning as set out in the

contested decision is therefore adopted as such by the Council and shall be considered as reiterated.

The Council emphasizes in this context that the burden of proof initially lies with the asylum seeker (RvS, no. 134.545 of 3 September 2004). As with any citizen who requests the recognition, the asylum seeker must also demonstrate that his request is justified. He needs to undertake and attempt to substantiate the claim and he needs to tell the truth (UNHCR, *Guide des procédures et critères à appliquer pour déterminer le statut de réfugié*, Genève, 1992, no. 205; RvS, no. 163.124 of 4 October 2006; RvV [Council for Alien Law Litigation], no. 19.768 van 1 December 2008). This rule applies in full to the asylum seeker who claims falling under the scope of article 55/2 of the Aliens Act together with Article 1 D of the Refugee Convention (ECJ C-31/09, *Nawras Bolbol v Bevándorlasi és Álllampolgársági Hivatal*, 17 June 2010, paragraphs 51-52; ECJ C-364/11, *El Kott v. Bevándorlási és ÁllamolgárságiHivatal*, 19 December 2012, paragraphs 58, 61, 65 and 81).

Nor can the documents added by the applicant during the hearing on the Palestine Liberation Organization in the least restore his credibility. The content of these documents, in which it is attested that (1) the applicant "has contact with the Zionist enemy" and that the leader of the security corps issued a mandate to prosecute him and to arrest him and that (2) the applicant "is being tracked down to arrest him for suspicious security reasons", indeed does not seem to reconcile with the applicant's stated reasons for fleeing, namely that he was abducted and tortured several times by "Salafists" during which they allegedly forced him to live by their rules of conduct and that he was brought to Syria by them to fight there on Bashar Al-Assad's side against the Syrian population. During the administrative procedure the applicant did not mention at any moment the fact that he for one reason or another allegedly had any problems neither with the Palestinian Liberation Organization, nor with the fact that an arrest warrant had been issued against him.

2.12. The Council further notes that the situation of the Palestinian refugees in Lebanon is worrying, however it considers that the mere fact of being a Palestinian refugee in Lebanon and the linked denial of general rights on its own is not sufficient to conclude that in the applicant's case a well-founded fear of persecution or a situation of grave unsafety or a real risk of suffering serious harm should be assumed. The general statement in the petition that the situation of the Palestinian refugees is deliberately being created by the Lebanese authorities and that the Lebanese government is fully responsible for the socio-economic and humanitarian conditions consequently does not suffice to demonstrate that the applicant really is being threatened or persecuted or that he finds himself in a situation where his personal safety is at risk or that a real risk of suffering serious harm exists for him in his country of origin. Every asylum request needs to be assessed on an individual basis and on its own merits. The applicant thus needs to demonstrate *in concreto* in his case that there is serious discrimination on the part of the Lebanese authorities or that the continuing and systematic violation of his fundamental human rights making living in his country of habitual residence unbearable.

The Commissioner-General for refugees and stateless persons acknowledges that the general situation and the living conditions in the Rashidiya refugee camp can be terrible, however it rightly points out that not every person residing in the refugee camps in Lebanon lives in precarious conditions. However, the Commissioner-General cannot be followed in its decision that it follows from the applicants statements that his individual situation in Lebanon is decent. The Commissioner General's reasoning for its decision is as follows: "*From your statements it does not show that you ever encountered any problems with the Lebanese authorities. In the case at hand it further shows that you enjoyed education, indeed only up to the fifth grade of primary education (CGVS, p. 6), that you up to your departure from Lebanon and despite your disability, worked as a*

*mechanic for a Lebanese – you were doing this from the age of 11 up to your departure – and that your father worked as a lime picker which enabled him to support his family (CGVS, p. 6), that there was no rent to be paid, that you had access to medical care and also received material assistance from UNRWA, that your family still is being supported socio-economically by UNRWA and that your family disposed of the necessary funds to fund your travel to Belgium – you are talking about 7.000 euros, which is quite a sum according to Lebanese standards (CGVS, p. 4 and questionnaire DVZ, question 35, p. 8).”*

The applicant can be followed (i) where he claims that he only went to school until he was 10 years old and that he could not even finish his primary school, so as that this cannot be accepted as a criteria to find that his personal situation is decent, (ii) where he while referring to the COI Focus “*Lebanon: Living conditions in the Palestine refugee camps* [*Libanon: Leefomstandigheden in de Palestijnse vluchtelingenkampen]”* of 29 January 2014 points out that medical facilities provided by UNRWA are inadequate and that the access to adequate treatment and the number of hospitals is limited, (iii) where he argues that the fact that his family is dependent on food aid, which is moreover very limited, indicates in which precarious financial situation they are and that they are among the poorest families of the camp, (iv) where he emphasizes that during his interview he indicated that the home of his family is in a very poor condition, that during the winter the family needs to sleep in one room due to leaking in the roof and they regularly wake up in a pool of water, (v) where he argues that his father indeed works as a lime picker, but that this is a job which he can only do when there is work to do, that his father sometimes works 1 day per week, there is sometimes no work at all and during the rainy season there is no work, that he also worked himself as a mechanic when there was work available - on average four days per week – that his father approximately earns the equivalent of four euros for a day’s work and that he earned four or five euros himself per day and that these revenues are insufficient to support the family in a humane manner, (vi) where he points out that he had to quit school at the age of 10 and started to work and he argues that the Commissioner General seems to suggest from his education and employment that he was well off socio-economically in Lebanon, that this however is a too rosy reading of his statements and that big question marks can be put at the use of child labour due to poverty as an argument for a socio-economic ‘decent’ situation and (vii) where he emphasizes that it is incorrect that it is his family who was capable of raising 7000 euros to pay for his travel to Belgium and that he was able to pay for a part of this amount by working in Turkey.

Also taking into account the fact that Palestinian refugees in Lebanon are an extremely vulnerable group, the Council finds that *in casu* the applicant’s personal living conditions in the refugee camp Rashidiya forced him to leave the camp and the UNRWA mandate-area, that the applicant, who is moreover visually impaired, thus found himself at the moment of departure from Lebanon in a “situation where his personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his living conditions in that area would be commensurate with the mission entrusted to that organ or agency” and that the applicant in the event of returning to Lebanon will be at a real risk of ending up in an inhumane situation and undergoing treatment in violation of Article 3 ECHR and Article 48/4, paragraph 2, b) of the Aliens Act.

The Council emphasizes in this context that the term “situation where his personal safety was at serious risk” should be interpreted broadly. It includes according to the judgment of the Council also those circumstances which lead the concerned asylum seeker in his country of habitual residence to be at real risk of serious harm in the sense of Article 48/4, paragraph 2 of the Aliens Act. The Council therefore finds it perfectly possible that an asylum seeker at the moment of his departure from the UNRWA mandate area found himself in a situation of serious unsafety which can be considered as a situation at which there is a real risk of serious harm, but that on the ground of Article 1D, paragraph two of the Refugee Convention, still automatically refugee status can be

granted. The refugee status in the present case however will not be recognized based on the fact that the concerned asylum seeker is at a real risk of facing serious harm in the sense of Article 48/4, paragraph 2 of the Aliens Act, but because he already is a refugee and has demonstrated that due to a situation of serious insecurity he was forced to leave the mandate-area and could no longer receive the assistance of UNRWA.

Considering the above the Council decides that the departure of the applicant from the UNRWA mandate area finds its justification in reasons beyond his control and independent of his volition, which prevents him from receiving UNRWA's assistance. Consequently, the applicant should in accordance with Article 1D paragraph 2 of the Refugee Convention be automatically recognized as a refugee.

**FOR THESE REASONS THE COUNCIL FOR ALIEN LAW LITIGATION DECIDES:**

Only Article

To recognise the refugee status of the applicant.

Pronounced in a public hearing in Brussels on Thirty April Two Thousand Fifteen by:

| | |
|---|---|
| Ms. M.-C GOETHALS | Chairwoman |
| Mr. R. VAN DAMME | Registrar |

| | |
|---|---|
| Registrar, | Chairwoman |
| R. VAN DAMME | M.-C. GOETHALS |