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Ruling

Content indication

Stateless Palestinian from Gaza.

The court is of the opinion that UNRWA cannot provide the plaintiff and his family with living conditions that are consistent with the mandate entrusted to UNRWA. On the basis of the reports to which he has referred and taking into account the applicable jurisprudence, the plaintiff has shown that the overall situation in Gaza is at such a poor level that he was forced to leave Gaza. Therefore, he cannot be expected to return to Gaza. In view of this, the exclusion ground of article 1D of the Refugee Convention does not (any longer) apply to the plaintiff. The plaintiff should have been regarded as a refugee as meant in article 1A of the Refugee Convention.

Text

THE HAGUE DISTRICT COURT

Sitting place Amsterdam

Administrative law

case number: NL20.6600

V-number:

ruling of the single chamber in the case between

plaintiff

(agent: M.F. Wijngaarden)

and

the Secretary of State for Justice and Security, defendant

(authorized representative: Mr. E. Slutzky)

Process

By decision of 6 March 2020 (the contested decision), the defendant rejected the claimant's application for the granting of a temporary asylum residence permit in the general procedure as unfounded.

The plaintiff lodged an appeal against the contested decision.

The investigation at the hearing took place on 29 July 2020. Plaintiff has appeared, assisted by his representative. An interpreter in the Arabic language has appeared. The defendant has been represented by his representative.

Considerations

1. The plaintiff was born on June 15, 1985. He is of Palestinian descent and stateless.

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2. The plaintiff based his asylum application on the fact that the general situation in Gaza is so bad because of the wars, the economic blockade by Israel that has lasted for thirteen years, and the economic crisis, that he is in a hopeless situation. Gaza has a total lack of security, medical care, education, employment and basic daily necessities. The plaintiff has no prospect of a normal life for him, his wife and his children.

3.1 The defendant has qualified the following elements from the claimant's asylum report as relevant:

1. the identity, nationality and origin of the claimant;
2. problems the plaintiff claims to have encountered because of the general situation in Gaza.

3.2. The defendant considers plaintiffs' claims regarding their identity, nationality and origin to be credible. With respect to the second relevant element, the defendant considered that the plaintiff falls under the exclusion ground of Article 1D of the Refugee Convention¹ because he is registered with and has benefited from assistance from UNRWA² and has left Gaza on his own initiative. The plaintiff may be expected to return to UNRWA's mandate area to seek UNRWA's assistance. The defendant contends that the plaintiff's statements have not shown or become plausible that he fears persecution within the meaning of the Refugee Convention upon his return. According to the defendant, there is no question of an exceptional situation in Gaza in which the plaintiff runs a real risk of serious harm only because of his presence there. Although the humanitarian situation in Gaza is poor from a material point of view and in terms of access to basic facilities, it cannot be compared with the situation in Central and Southern Somalia at the time of the judgment in the case of *Sufi and Elmi v. the United Kingdom*³, of 28 June 2011, cited by the plaintiff. At the same time, notwithstanding the worrying humanitarian situation, the Gaza Strip has a number of functioning structures and UNRWA and numerous non-governmental organizations are active in the field of relief, assistance and rehabilitation. According to the defendant, it has not been shown that UNRWA is no longer able to comply with its mandate or that the plaintiff runs a real risk of being treated contrary to Article 3 of the ECHR⁴ on return to the Gaza Strip. In view of this, the plaintiff does not qualify for an asylum residence permit on the grounds of Article 29, first paragraph, opening words and under a or b of the Aliens Act 2000 (Vw), according to the defendant.

3.3 In the contested decision, the defendant rejected the claimant's application as unfounded on the grounds of Article 31, first paragraph, of the Aliens Act 2000 (Vw). This decision also counts as a return decision. The plaintiff must leave the Netherlands within four weeks.

4. The plaintiff has argued that he was in a personal situation of serious insecurity in Gaza. The protection and assistance that the plaintiff and his family enjoyed from UNRWA in essential matters such as food supplies, medical care and financial contributions were so low that the plaintiff and his

¹ The Geneva Convention of 28 July 1951 relating to the Status of Refugees (Treaty Series I 954, 88), as amended by the New York Protocol of 31 January 1967 (Treaty Series 1967, 76).

² United Nations Relief and Works Agency for Palestine Refugees in the Near East.

³ ECLI:CE:ECHR:20110628JUD000831907.

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms.

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family lived below the subsistence level and had no prospects for the future. UNRWA is not able to provide the living conditions that are consistent with its mission. For example, it is increasingly difficult for the plaintiff to support his family, also because there is a lack of employment. In addition, there are insufficient secondary schools. The medical care in Gaza is insufficient and the plaintiff fears for his own health and that of his children because he is afraid that they will be victims of the ongoing violence in Gaza. Especially at the fences where people are demonstrating against the economic blockade, Israeli soldiers are shooting with bullets that explode when they enter the body. Many children in Gaza have lost their legs as a result. The plaintiff is afraid that this will also happen to his children. The plaintiff claims that he has been forced to leave Gaza because of this totally hopeless situation. Article 1D of the Refugee Convention does not apply to the plaintiff. Also, when returning to Gaza, there is a real risk of violation of the human dignity of the plaintiff, contrary to article 1 of the Charter⁵, because of the exceptional socio-economic and humanitarian circumstances in Gaza.

Assessment of the dispute

5.1. Article 12(1)(a) of the Qualification Directive⁶ provides that a third country national or stateless person is excluded from refugee status if he or she falls under Article 1D of the Convention on Refugees, which relates to receiving protection or assistance from organs or agencies of the United Nations other than the UNHCR.⁷ If, for any reason, such protection or assistance has ceased without the position of the person concerned being definitively settled in accordance with the relevant resolutions of the General Assembly of the United Nations, the person concerned shall be entitled to the benefits provided for in this Directive as a result of that fact.

5.2 Article 1D of the Refugee Convention provides that this Convention does not apply to persons enjoying protection or assistance from organs or agencies of the United Nations other than the UNHCR.

5.3. It is clear from the defendant's policy laid down in paragraph C2/3.2 of the Aliens Act Implementation Guidelines 2000, that Article 1D of the Refugee Convention applies in current practice to the stateless Palestinian foreign nationals covered by UNRWA's mandate. Furthermore, this policy states the following:

The defendant grants the foreign national a temporary asylum residence permit on the basis of Article 29(1)(a) of the Aliens Act:

- if the protection of or assistance to the foreign national by UN bodies or institutions other than the UNHCR has ceased for any reason; and
- The position of the foreign national is not definitively settled in accordance with the relevant resolutions of the UN General Assembly.

⁵ Charter of Fundamental Rights of the European Union.

⁶ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011.

⁷ The United Nations High Commissioner for Refugees.

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UNRWA's protection or assistance of the stateless Palestinian foreigner is terminated if one or more of the following situations apply:

- a. (...)
- b. in case of the impossibility of the body or institution to carry out its mission;
- c. if the stateless Palestinian foreign national can no longer avail himself of the protection or assistance for a reason beyond his control and beyond the control of his will, and this circumstance forces him to leave that territory and thus prevents him from enjoying the protection or assistance granted by UNRWA.

Re c.

The defendant verifies whether the stateless Palestinian foreign national was forced to leave the area in question. This is the case if one of the two conditions mentioned below are met:

1. the stateless Palestinian foreigner was personally in a situation of serious insecurity so that the condition of ceasing protection was met;
- (2) UNRWA is not in a position to provide the stateless Palestinian alien in that territory with living conditions consistent with the mandate entrusted to UNRWA so that the condition of withdrawal of assistance is fulfilled.

5.4. In the judgment of the Court of Justice of the European Union (CJEU) of 17 June 2010⁸ (*Bolbol*), paragraph 51 considers that it follows from the clear wording of Article 1D of the Refugee Convention that only those who have actually availed themselves of the assistance offered by UNRWA are covered by the exclusion ground mentioned in this article.

5.5.1. In the judgment of the CJEU of 19 December 2012⁹ (*El Kott*), it is considered in paragraph 52 that the exclusion from refugee status laid down in the first sentence of Article 12(1)(a) of the Qualification Directive applies not only to persons who have benefited from the assistance provided by UNRWA, but also to persons who have received such assistance shortly before submitting an asylum application in a Member State, in so far as such assistance has not ceased as referred to in the second sentence of this article.

5.5.2. Furthermore, in paragraph 61 of the *El Kott* judgment, the CJEU considered that a situation as referred to in the second sentence of Article 12(1)(a) of the Qualification Directive arises if the departure of the person concerned is justified for reasons beyond his control and independent of his will which compel him to leave that territory and thus prevent him from benefiting from the assistance provided by UNRWA.

5.5.3. In the *El Kott* judgment, the CJEU declared the following to be correct:

Article 12(1)(a), second sentence, of the Qualification Directive must be interpreted as meaning that the cessation of the protection or assistance of bodies or institutions of the United Nations

⁸ C-31/09, ECLI:EU:C:2010:351.

⁹ C-364/11, ECLI:EU:C:2012:836.

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other than the UNHCR, "for any reason", also includes the situation of a person who, after having actually availing of that protection or assistance, does not enjoy it for a reason beyond his influence and inviolable of his will. The competent national authorities of the Member State responsible for the examination of the asylum application shall determine, on the basis of an individual assessment of the application, whether that person has been forced to leave the area in which that body or institution operates. This is the case when he personally found himself in a situation of serious insecurity and it was impossible for the body or institution concerned to offer him living conditions in that area that are consistent with the mission entrusted to that body or institution.

5 .6. The judgment of the CJEU of 25 July 2018¹⁰ (*Alheto*) emphasizes in paragraph 86 that Article 12(1)(a), second sentence, of the Qualification Directive applies when, on the basis of an individual assessment of all relevant factors, it appears that the Palestinian concerned is in a personal situation of serious insecurity and UNRWA, who has been requested for assistance by the person concerned is unable to provide living conditions in that area that are consistent with the mission entrusted to that body, forcing that Palestinian to leave the operational area of the UNRWA due to circumstances beyond his control. In such a case, that Palestinian may invoke this Directive on the basis of that fact without necessarily having to prove that he has a well-founded fear of persecution within the meaning of Article 2(d) of this Directive.

6.1 It is not in dispute that the claimant has received protection and assistance from UNRWA.

6.1 In dispute is the answer to the question whether the plaintiff has been forced to leave Gaza and thus whether or not he has been excluded from refugee status under Article 1D of the Refugee Convention. Important in this respect are the questions whether the plaintiff was in a personal situation of serious insecurity and whether UNRWA was able to offer the plaintiff living conditions consistent with its mandate.

7 .1. The court considers that the plaintiff has made it plausible that he was in a personal situation of serious insecurity and that it was impossible for UNRWA to provide him with living conditions in Gaza that were consistent with the mandate entrusted to UNRWA. The departure of the plaintiff from Gaza is therefore, in the opinion of the court, justified by reasons beyond his control and independent of his will, which forced him to leave Gaza. The plaintiff has submitted reports, links to internet pages and references to newspaper articles in support of his view that the overall situation in Gaza is at an inhumanely degrading level. The court then refers to a small selection of these.

7.2. The letter of Refugee Work Netherlands of March 5, 2020 on UNRWA's ability to protect people in the Gaza Strip states that UNRWA's mandate is to provide basic services such as education and health care. UNRWA does not have the means to provide physical protection to refugees from violence by armed parties or any other form of third-party violence.¹¹ This shows that UNRWA is not at all responsible, under its mandate, for protecting the plaintiff from the war situation in the Gaza Strip.

¹⁰ C-585/16, ECLI:EU:C:2018:584.

¹¹ Matthias Burchard, Director of UNRWA Representation to the EU.

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7.3. Various public sources indicate that UNRWA has (recently) suffered significant financial cutbacks and is no longer able to provide the necessary protection.¹² UNRWA currently has a deficit of \$348 million.¹³

7.4. The Committee on the Rights of the Child reports on February 10, 2020¹⁴: “The Committee is deeply concerned about the high number of refugee and internally displaced children in the State party due to the Israeli occupation, forced displacement, evictions and armed hostilities. It notes with concern the dire situation of the majority of these children in refugee camps or living with extended family, including due to overcrowding, poor living conditions, the unemployment of their parents, the discontinuation of cash payments by UNRWA, food insecurity and lack of privacy.”

7.5. Recent information¹⁵ shows that there are serious shortages in Gaza's health care system in terms of medical equipment, essential medicines and medical supplies, surgical equipment and ambulance supplies.

7.6 The Court finds on the basis of these sources:

- that there is a humanitarian emergency in Gaza;
- that UNRWA is unable to provide for the daily necessities of Gaza's citizens due to severe financial and material shortages;
- that UNRWA is not mandated or equipped to provide protection to the citizens of Gaza against the violence of war;
- that the Palestinians in Gaza live largely below the poverty line;
- a large proportion of households in Gaza do not have enough of the vouchers provided by UNRWA for the purchase of products;
- that Gaza's citizens sometimes have to sell their food obtained with food vouchers in order to make ends meet;
- that more than half of Gaza's population is unemployed;
- that the majority of the children in Gaza are forced to live in appalling conditions in refugee camps due to the Israeli occupation, armed conflicts and forced exits;
- that in the field of education serious shortages of (secondary) schools, teachers and teaching materials have arisen;
- that salary payments to teachers are stopped and normal education cannot take place;
- that the health system in Gaza is under severe pressure;

¹² At <https://reliefweb.int/sites/reliefweb.int/files/resources/Gaza%20The%20Dead-Zone%20en.pdf> it can be read that in 2018 the United States froze assets for UNRWA in the amount of \$ 125 million.

¹³ See <https://www.aljazeera.com/news/2020/03/gaza-virus-cases-cope-outbreak-200319121444619.html> and https://reliefweb.int/sites/reliefweb.int/files/resources/hummonitor_dec_2019_linal.pdf.

¹⁴ https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/PSE/CRC_C_PSE_CO_1_41513-E.pdf.

¹⁵ https://www.ecoi.net/en/file/local/2021188/Special_Situation_Report_Nov_14_FINAL.pdf.

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- that there are serious shortages of doctors, hospitals, medical equipment, medicine, surgical equipment and ambulance supplies in Gaza's health care system;
- that Gaza is unable to respond adequately to large-scale virus outbreaks such as the current coronavirus outbreak.

7.7. These reports confirm the claimant's position that it has proved impossible for UNRWA to provide the Palestinians in Gaza with living conditions that are consistent with the mandate of UNRWA. The court is of the opinion that the plaintiff has thus demonstrated that he was forced to leave Gaza as referred to in the above-mentioned case law. Therefore, he cannot be expected to return to Gaza.

7.8. The court does not follow the defendant's view that the plaintiff has not substantiated that he does not belong to the group of 70% of the population in Gaza that receives aid from UNRWA. After all, the fact that 70% of the population receives aid from UNRWA does not contradict the claimant's argument that this aid is insufficient to provide for the basic needs of his family and that his living conditions are inhumane.

7.9. In view of the above, the court concludes that the exclusion ground of Article 1D of the Refugee Convention does not (any longer) apply to the plaintiff. The plaintiff should have been regarded as a refugee as meant in article 1A of the Refugee Convention. As a result, according to his policy, the defendant should have granted the claimant a temporary asylum residence permit on the basis of Article 29(1)(a) of the Aliens Act.

Conclusion

8.1 The defendant wrongly rejected the claimant's application for asylum as unfounded. The contested decision is inadequately reasoned and inadequately prepared. The appeal is well-founded. The respondent will have to decide on the claimant's application again with due observance of this decision.

8.2. The court orders the defendant to pay the legal costs incurred by the plaintiff. These costs are set by the court on the basis of the Besluit proceskosten bestuursrecht (Administrative Law Costs Decree) at € 1.050,- (1 point for filing a notice of appeal and 1 point for appearing in court, with a value per point of € 525,-, and weighting factor 1).

Decision

The Court:

- declares the appeal well-founded;
- vetoes the contested decision;
- orders the defendant to make a new decision on the application within 6 weeks after this judgment has been sent, with due observance of this judgment; orders the defendant to pay the plaintiff's legal costs up to an amount of €1,050.

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This decision has been made by Mr. R. Hirzalla, judge, in the presence of Mr. W. Nielke, registrar.

The verdict has been pronounced in public and published on:

Legal remedy

An appeal may be lodged with the Administrative Jurisdiction Division of the Council of State within one week after the day of publication.