

IN THE COURT OF JUSTICE OF THE EUROPEAN UNION

CASE C-349/20

NB

AB

Appellants

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

**WRITTEN RESPONSES OF
THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES**

The United Nations High Commissioner for Refugees (“**UNHCR**”) is represented by Marie Demetriou QC and Tim Johnston (Barristers).

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INTRODUCTION

1. These observations are submitted by the Office of the United Nations High Commissioner for Refugees (“**UNHCR**”) in relation to the questions posed by the Court to the Parties on 25 May 2021 in the case of *NB and AB v The Secretary of State for the Home Department* (Appeal numbers PA/07865/2019 and PA/07864/2019) (“**NB and AB**”).

THE FIRST QUESTION:

2. By its first question, the Court asked the parties (and other interested persons) to set out their views on the effect, if any, of the judgment of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)* (C-507/19 EU:C:2021:3) for the purposes of the answer, in particular, to the first question referred.
3. The first question referred by the First-Tier Tribunal (Immigration and Asylum Chamber) of the United Kingdom (“**the FTT**”) was as follows:

“In assessing whether there has been a cessation of protection or assistance from UNRWA within the meaning of the second sentence of Article 12(1)(a) of the QD to an UNRWA-registered stateless Palestinian in respect of the assistance afforded to disabled persons:

 1. Is the assessment purely an historic exercise of considering the circumstances which are said to have forced an applicant to leave the UNRWA area of operations when he did, or is it also an *ex nunc*, forward-looking assessment of whether the applicant can avail himself of such protection or assistance presently?”
4. UNHCR set out its answer to this question in its written observations of 30 November 2020. In UNHCR’s view, the Court’s judgment in *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)* (C-507/19 EU:C:2021:3) (“**XT**”) builds on the existing case law and is broadly consistent with the position taken by the UNHCR in answer to this question.
5. In *XT*, the Court was not directly concerned with the temporal issue raised by question 1 above: whether or not the assessment should be purely historic (by reference to the circumstances that applied when the applicant left the area of operations) or *ex nunc*, by reference to whether the applicant can avail himself of such assistance at the time of the relevant assessment. Rather, the Court in *XT* was primarily concerned with a geographic question: whether the assessment should be purely by reference to the field of operation

in which the stateless person had their residence before leaving or by reference to all the UNWRA fields of operation.

6. The Court in *XT* affirmed its historic position that:
 - (a) Any assessment concerning whether protection or assistance from UNRWA “*has ceased with regard to that person must be determined on the basis of an individual assessment of all the relevant evidence.*” [55]
 - (b) This assessment should be an “*ex nunc*” assessment, on an up-to-date basis, by reference to all the evidence, including evidence that has arisen following the adoption of the decision under appeal. [40]
 - (c) Mere absence or voluntary departure from UNRWA’s area of operations would not be sufficient to end the exclusion laid down in the first sentence of Article 12(1)(a) of the Qualification Directive, and that voluntary departure from UNRWA’s area of operations and voluntary renunciation of UNRWA’s assistance would not trigger the application of its second sentence. [69, 71]

7. The Court also affirmed in *XT* that any assessment should also take account of:
 - (a) “*Whether [the] stateless person has the practical possibility of accessing the territory falling within that field, or of returning to that field if he or she has left it*” [57], and whether the person concerned “is in fact able to receive [UNRWA’s] protection or assistance” [56] and to safely remain there. [63]
 - (b) Whether the individual in question voluntarily travelled to a field in which their personal safety was at serious risk (from a field where it was not at risk), as well as what the person could reasonably expect based on the specific information available to him or her [80] and [82]; and
 - (c) In such cases, as per the circumstances described above in (b), whether the person’s departure from UNRWA’s area of operations as a whole was of a forced nature. [75]

8. The precise relationship between these two elements (historic and contemporary) was not the focus in *XT*. To the extent that there is any uncertainty concerning what weight to lend to the two temporal elements of the assessment, UNHCR's position remains as set out in its written observations of 30 November 2020.
9. The evaluation of whether protection or assistance has ceased for any reason requires a holistic, forward-looking assessment. That will take into account all relevant circumstances. Those circumstances include any factors that prompted the Applicant to leave the UNRWA area of operations (past events). However, the critical question to be answered by the decision-maker should be whether protection or assistance has ceased within the meaning of the second paragraph of Article 1D of the 1951 Convention or second sentence of Article 12(1)(a) of the Qualification Directive at the time that the claim is considered. If, at the time of decision-making, the Applicant does not have the concrete possibility of accessing and safely remaining in a relevant UNRWA field of operations, where he or she will be able to receive protection or assistance, that protection or assistance has ceased.
10. UNHCR acknowledges that where an individual departs the UNRWA area of operations voluntarily, UNRWA's protection or assistance may not be considered as having ceased at that time.¹ Nonetheless if, at the time of decision-making, objective reasons² exist preventing the Applicant from (re)availing him or herself of UNRWA's protection or assistance, then protection or assistance has ceased for that person at that point in time.
11. Put another way, while an Applicant's voluntary departure may preclude the application of the second paragraph of Article 1D or the second sentence of Article 12(1)(a) QD at that point in time, it does not preclude their application indefinitely.
12. This is consistent with the words 'ceased for any reason' in Article 1D of the 1951 Convention. That provision obliges States parties to grant the benefits of the Convention to a Palestinian refugee who is unable for objective reasons to (re)avail him or herself of

¹ As noted in UNHCR's Guidelines on Article 1D, "The application of the second paragraph of Article 1D is not, however, unlimited. Protection under the 1951 Convention does not extend to those applicants who, being outside an UNRWA area of operation, refuse to (re-)avail themselves of the protection or assistance of UNRWA for reasons of personal convenience."; UNHCR, *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, December 2017, HCR/GIP/17/13, at [19].

² UNHCR has described the objective reasons that may prevent a Palestinian refugee from (re)availing him or herself of UNRWA's protection or assistance in its Written Observations submitted on 30 November 2020. See also, UNHCR *Guidelines on Article 1D, ibid.*, at [22].

UNRWA's protection or assistance. Were the position otherwise, the applicant would be denied the benefits of the Convention in a manner that is contrary to the objective of Article 1D and of Article 12(1)(a) of the Qualification Directive, which is to "*ensure that Palestinian refugees continue to receive protection, as Palestinian refugees, until their position has been definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations*" (emphasis added).³

THE SECOND QUESTION:

13. The second question posed by the Court to UNHCR is as follows:

What legal obligations does the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) have with regard to providing assistance to disabled children and what measures has UNRWA actually put in place, particularly in Lebanon?

14. To respond to the Court, UNHCR requested UNRWA to provide its views on its legal obligations with regard to providing assistance to disabled Palestinian refugee children and to inform of the measures it has actually put in place for disabled children, particularly in Lebanon.

15. As per the attached letter:

- (a) UNWRA's mandate extends to the provision of support to individuals with disabilities.
- (b) UNRWA has an obligation to act in good faith to consider, as part of its planning process, how to make progress in addressing the needs, rights and protection of persons with disabilities, including children; however it is not obliged to provide a comprehensive service within the scope of its mandate.
- (c) The practical reality is that UNWRA does not provide a comprehensive service, within the scope of its mandate, because it is not able to do so.

³ See *El-Kott v Bevándorlási és Állampolgársági Hivatal* [2012] Case C-364/11; European Court of Justice; 19 December 2012 *El-Kott* at [62].

- (d) This follows from the fact that UNWRA's funding (which derives from voluntary contributions) is limited. There are significant constraints on the level of service that UNWRA can provide within the scope of its mandate.
- (e) Disabled persons experience particular disadvantages in Lebanon including inaccessible and unsafe infrastructure and discrimination in terms of access to work.
- (f) UNWRA seeks to provide its services in an inclusive manner. However, it does not:
 - (1) Fund significant adaptations to private accommodation to support disabled persons;
 - (2) Fund the full medical costs of disabled persons with chronic medical needs;
 - (3) Provide comprehensive – or in some cases any – educational support to disabled children; or
 - (4) Provide comprehensive – or in some cases any – assistive devices to disabled children.

CONCLUSION

16. In conclusion, UNHCR submits that the answers to the referred questions remain those set out in its written observations of 30 November 2020.