STATELESSNESS
Case Law Database

CJEU - Bundesrepublik Deutschland v XT, case C-507/19

The case concerns the interpretation of Article 12(1)(a) of the 2011 Qualification Directive (equivalent to Article 1D of the Refugee Convention). The applicant requested international protection in Germany as he no longer had access to assistance from UNRWA in Syria. The Court held that to determine whether a person is no longer receiving protection or assistance from UNRWA, national authorities should consider all the fields of UNRWA's areas of operations which a stateless person of Palestinian origin who has left that area has a concrete possibility of accessing and safely remaining therein.

Case status: Decided
Case number: C-507/19
Citation: CJEU, Bundesrepublik Deutschland v XT (C-507/19), 13 January 2021
Date of decision: 13/01/2021
Court / UN Treaty Body: Court of Justice of the European Union
Language(s) the decision is available in: English
Applicant's country of birth: Syria
Applicant's country of residence: Germany
Legal instruments: 1954 Statelessness Convention, Other international law
Key aspects: Exclusion grounds, Statelessness determination
Relevant Legislative Provisions:

International Law

- The Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 – Article 1(D)
- United Nations General Assembly resolution No 302 (IV) of 8 December 1949, concerning assistance to Palestine refugees

EU Law

- Article 267 TFEU
- 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 - Article 12(1)(a), Recitals 1, 4, 16, 23 and 24, Article 2, Article 12, 14
- Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted – Article 12(1)(a)
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection – Recital 18, Article 46

National Level

- The Asylgesetz “the AsylG”, 2 September 2008 – Article 3(3), Paragraph 77(1)

Facts

XT, a stateless person of Palestinian origin born in 1991 in Damascus (Syria), held a United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) registration card as a member of the Yarmouk refugee camp, located in the southern part of Damascus. WT was resident of Lebanon for 2 years. Having not obtained a residence permit in that country and fearing expulsion by the Lebanese security forces, he decided to return to Syria, where members of his family were staying. Due to the war and the very poor living conditions in Syria, XT left that country a few days later. In addition, before XT left Syria, the Hashemite Kingdom of Jordan and the Republic of Lebanon closed their borders to Palestinian refugees in Syria.

XT arrived in Germany in 2015, where he lodged an application for international protection in 2016. In a decision of 29 August 2016, the Federal Office for Migration and Refugees rejected XT’s application for refugee status but granted him subsidiary protection status. The Administrative Court upheld XT’s appeal and ordered to grant him refugee status. The Higher Administrative Court dismissed an appeal brought by the Bundesrepublik Deutschland (Federal Republic of Germany). The Bundesrepublik

Deutschland brought an appeal on a point of law against that judgment before the referring Court. Due to the uncertainty around the interpretation of some questions, the national court stayed proceedings and referred 5 questions to the Court of Justice of the European Union (CJEU) :

1. “when assessing the question of whether, within the meaning of the second sentence of Article 12(1)(a) of the recast Qualification Directive, a stateless Palestinian is no longer granted protection or assistance of the UNRWA, is account to be taken from a geographical perspective solely of the respective field of operation in which the stateless person had his actual residence upon leaving the area of operations of the UNRWA, or also of further fields of operation belonging to the area of operations of the UNRWA?
2. If account is not solely to be taken of the field of operation upon leaving: Is account always to be taken of all the fields of operation of the area of operations? If not: Are further fields of operation only to be taken into consideration if the stateless person had a substantial (territorial) connection to that field of operation? Is a habitual residence required for such a connection? Are further circumstances to be taken into consideration when examining a substantial connection? If so: Which ones? Does it matter whether it is possible and reasonable for the stateless person to enter the relevant field of operation when leaving the UNRWA area of operations?
3. Is a stateless person who leaves the area of operations of the UNRWA because his personal safety is at serious risk in the field of operation of his actual residence, and it is impossible for the UNRWA to grant him protection or assistance there, entitled, within the meaning of the second sentence of Article 12(1)(a) of the recast Qualification Directive, ipso facto to the benefits of the Directive even if he previously went to that field of operation without his personal safety having been at serious risk in the field of operation of his former residence and without being able to expect, according to the circumstances at the time of the move, to experience protection or assistance by the UNRWA in the field of operation into which he moves and to return to the field of operation of his previous residence in the foreseeable future?
4. When assessing the question of whether a stateless person is not to be granted ipso facto refugee status because the conditions of the second sentence of Article 12(1)(a) of the recast Qualification Directive ceased to apply once he left the area of operations of the UNRWA, is account to be taken solely of the field of operation of the last habitual residence? If not: Is consideration also, by analogy, to be given to the fields of which account is to be taken under [the

second question] for the time of leaving? If not: Which criteria are to be used to determine the fields which are to be taken into consideration at the time of the ruling on the application? Does the cessation of application of the conditions of the second sentence of Article 12(1)(a) of the recast Qualification Directive require the (state or quasi-state) bodies in the relevant field of operation to be prepared to (re)admit the stateless person?

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

Legal arguments by the applicant

The applicant argued that he should be granted refugee status because his personal safety was at serious risk when he left Syria. Moreover his departure to Germany was involuntary and was a result of the fact that he had no access to protection from UNRWA in the other fields of that agency’s area of operations because they had ceased. Moreover, prior to his departure from Syria, the Hashemite Kingdom of Jordan and the Republic of Lebanon had closed their borders to Palestinian refugees.

Legal arguments by the opposing party

The referring court indicated that, on the one hand, no ground for exclusion from refugee status, within the meaning of Article 12(1)(b) and Article 12(2) and (3) of the recast Qualification Directive, was applicable to XT. On the other hand, XT satisfied the conditions laid down in the first sentence of Article 12(1)(a) of that directive, according to which, in essence, any stateless person of Palestinian origin is excluded from being a refugee if he receives protection or assistance from UNRWA. According to the referring court, UNRWA’s mandate had been renewed until 30 June 2020 and XT was registered with UNRWA, which was sufficient proof that he indeed received protection or assistance from that agency. The referring Court also noted that XT

had benefited from that protection or assistance shortly before the submission of his application for international protection as he was registered as a family member in the Yarmouk UNRWA camp.

However the Court was not sure whether XT satisfied the conditions concerning the cause of the cessation of the application of the exclusion laid down in the second sentence of Article 12(1)(a) of the recast Qualification Directive. As a result of that uncertainty, the national court referred its questions to the Court.

Decision & Reasoning

The CJEU made preliminary observations. It noted that Article 12(1)(a) of the recast Qualification Directive corresponded, in substance, to Article 12(1)(a) of Directive 2004/83, which meant that the case-law concerning the latter provision is relevant to the interpretation of the former. Moreover, it noted that the recast Qualification Directive must be interpreted in light of its general scheme and purpose and in a manner consistent with international law such as the Geneva Convention, the Charter of Fundamental Rights of the EU, etc.

The CJEU answered the first, second and forth questions together. It noted that the UNRWA mandate was renewed until 30 June 2023 and that its areas of operations extended over 5 fields, namely the Gaza Strip, the West Bank (including East Jerusalem), Jordan, Lebanon and Syria. According to the first sentence of Article 12(1)(a) of the recast Qualification Directive, persons registered with UNRWA are, in principle, excluded from refugee status in the EU. However, the second sentence offers an exception, i.e.: “when an applicant for international protection in the European Union no longer receives protection or assistance from UNRWA, that exclusion ceases to apply”. The Court also noted that this sentence does not refer to the residence of the person concerned but only to whether that person is receiving assistance or protection from UNRWA or whether that protection or assistance has ceased. Therefore the UNRWA protection should be considered as having ceased when the individual is forced to leave UNRWA’s areas of operations because that person’s personal safety was at risk due to circumstances beyond their control and even though they requested UNRWA’s protection, it was impossible for UNRWA to operate at the time.

The Court stated that an important factor was the ability for the stateless person to access the territories falling under UNRWA's mandate. However the sole fact that the stateless person is registered with UNRWA does not imply that he/she will have access to those territories as this also depends on the States' jurisdiction. The right to reside or the applicant's family ties in one of the territories protected by UNRWA, but also declarations or practices of the authorities of the States towards stateless persons of Palestinian origins without right of residence, are examples of indications that can be used to determine whether a stateless person was able to access those areas of operations. The court reiterated that this question must be analysed by the relevant domestic authority based on an individual assessment of the applicant's situation.

Regarding question 3, the Court noted that it cannot be considered that the departure from UNRWA's area of operations from a given field of that area is involuntary if the person concerned was able to access another field of that area in order to receive effective protection or assistance from UNRWA. Indeed such a conclusion would be contrary to the objective pursued by the first paragraph of Article 1(D) of the Geneva Convention which was to exclude from the benefits of the convention all persons who are able to receive such assistance.

The Court applied the same reasoning to situations where a person of Palestinian origin decided to leave a field of UNRWA's area of operations in which his or her personal safety was not at serious risk and in which that person could receive protection or assistance from UNRWA, in order to travel to another field in that area, in which he or she could not reasonably expect, on the basis of the specific information available to him or her concerning that field, either to receive protection or assistance from UNRWA or to be able to return at short notice to the field from which he or she came. The Court held that the stateless person in those situations, who voluntarily departed from the first field to the second field, cannot be considered as being forced to leave UNRWA's areas of operations if he or she later left that second field. Therefore, the referring Court should conduct, an individual assessment of all the circumstances relevant to the situation of the applicant and take into consideration, *inter alia,* the sudden and unforeseeable nature of the development of the situation, such as closure of the borders between the fields of that area of operations, or the outbreak of conflict in one of those fields.

Decision documents

CJEU, Bundesrepublik Deutschland v XT (C-507/19), 13 January 2021

Outcome

The Court ruled that:

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

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

The Court held that there is no need to answer the fifth question.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

Orchard, C. (2021). Germany v XT (CJEU, 2021). *The Statelessness and Citizenship Review*, *3*(1), 113-119, at https://statelessnessandcitizenshipreview.com/index.php/journal/article/view/295

Caselaw cited

C-31/09, *Bolbol* [2010]

C-364/11, *Abed El Karem El Kott and Others* [2012]

C-443/14 and C-444/14, *Alo and Osso* [2016]

C-585/16, *Alheto*, [2018]

Third party interventions

UNHCR, *Statement on the Interpretation and Application of Article 1D of the 1951 Convention and Article 12(1)(a) of the EU Qualification Directive Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union from the Bundesverwaltungsgericht (Germany) lodged on 3 July 2019 – Federal Republic of Germany v XT (C-507/19)* , 18 August 2020, available at: https://www.refworld.org/docid/5f3bdd234.html