



# STATELESSNESS

## Case Law Database

### [CJEU - Bolbol, case C-31/09](#)

The case concerns a stateless person of Palestinian origin who was refused asylum in Hungary. The question before the CJEU concerned the circumstances in which a person is considered to be receiving "protection or assistance from organs or agencies of the United Nations other than [UNHCR]" within the meaning of Article 12(1)(a) of the 2004 Qualification Directive (equivalent to Article 1D of the Refugee Convention), and may therefore be entitled to refugee status when that protection or assistance ceases. The CJEU held that the words "at present" mean the present day, and that a person receives protection or assistance from UNRWA when that person has actually availed themselves of that protection or assistance, and not if they are entitled to but have not done so. It also noted that persons who have not actually availed themselves of protection or assistance from UNRWA, prior to their application for refugee status, may, in any event, have that application examined pursuant to Article 2(c) of the Directive.

**Case name (in original language) :** Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal

**Case status:** Decided

**Case number:** C-31/09

**Citation:** CJEU Judgment of 17 June 2010, C-31/09, Bolbol EU:C:2010:351

**Date of decision:** 17/06/2010

**State:** Hungary

**Court / UN Treaty Body:** Court of Justice of the European Union

**Language(s) the decision is available in:** Estonian, Finnish, Greek, Italian; Maltese, Latvian, Lithuanian, Maltese, Montenegrin, Polish, Slovenian, Turkish, Bulgarian, Croatian, Czech, Danish, Dutch, English, French, German, Hungarian, Italian, Norwegian, Portuguese, Romanian, Russian, Serbian, Slovak, Spanish, Swedish

**Applicant's country of birth:** Palestine

**Applicant's country of residence:** Hungary

**Legal instruments:** European Union law, Other international law

**Key aspects:** Exclusion grounds, Refugee status determination, Statelessness and asylum

**Relevant Legislative Provisions:**

International Law

- 1951 Convention relating to the Status of Refugees and its 1967 Protocol ('Refugee Convention'), Articles 1A and 1D

Article 1D provides:

“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 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 Convention.”

EU Legislation

- Recital 3, 16 and 17, Article 12(1)(a) of the Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted ('2004 Qualification Directive', superseded by 2011 Qualification Directive)

Article 12(1)(a) provides:

“A third-country national or a stateless person is excluded from being a refugee if: (a) he or she falls within the scope of Article 1D 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, those persons shall ipso facto be entitled to the benefits of this Directive.”

Hungarian Law

- Article 3(1) of Law No CXXXIX of 1997 on asylum

## **Facts**

The applicant was a stateless person of Palestinian origin who left the Gaza strip and became resident in Hungary. The applicant was not registered with and did not avail herself of the protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). When her visa in Hungary was not renewed, she claimed asylum on the basis that she had ceased to receive protection or assistance from UNRWA. Asylum was refused and she applied to have this refusal reversed.

## **Legal arguments by the applicant**

The applicant claimed asylum under the second subparagraph of Article 1D of the Refugee Convention (referred to in the 2004 Qualification Directive), on the basis that she had ceased to receive protection or assistance from UNRWA.

She argued that the second subparagraph of Article 1D is a separate basis for recognition as a refugee. Since she met the conditions laid down in that provision, she was entitled to recognition as a refugee, irrespective of whether she qualified as a refugee under the separate basis provided in Article 1A.

## **Legal arguments by the opposing party**

The opposing party (the Hungarian authority) argued that the second subparagraph of Article 1D of the Geneva Convention is not an independent basis for recognition as a refugee. It does not require a person to be given unconditional recognition as a refugee but instead merely defines the category of persons to whom the provisions of the Refugee Convention apply.

Therefore, if the applicant is subject to that subparagraph, the question is whether she meets the definition of "refugee" for the purposes of Article 1A. She does not meet that definition, because she did not leave her country of origin owing to a fear of persecution for reasons of race, religion, nationality, or political opinion.

## **Decision & Reasoning**

The case concerns Article 12(1)(a) of the 2004 Qualification Directive, which was applied directly as the implementation date had passed without it having yet being transposed into Hungarian domestic law.

*First question:* the referring court asks whether a person receives protection and assistance from a UN agency other than UNHCR for the purposes of Article 12(1)(a) of the 2004 Qualification Directive (equivalent to Article 1D of the Refugee Convention) merely if they are eligible to receive that assistance, or whether that person must have availed themselves of that assistance.

The CJEU stated that application of Article 12(1)(a) is not limited to Palestinians who became refugees as a result of the 1948 conflict, and the provision may apply even if the person is not registered with UNRWA and was displaced as a result of the 1967 and subsequent hostilities (para 45).

The CJEU concluded that "it follows from the clear wording of Article 1D of the Geneva Convention that only those persons who have actually availed themselves of the assistance provided by UNRWA come within the clause excluding refugee status set out therein, which must, as such, be construed narrowly and cannot therefore also cover persons who are or have been eligible to receive protection or assistance from that agency" (para 51).

The CJEU further noted that " [w]hile registration with UNRWA is sufficient proof of actually receiving assistance from it, [...] such assistance can be provided even in the absence of such registration, in which case the beneficiary must be permitted to adduce evidence of that assistance by other means" (para. 52).

Persons who have not actually availed themselves of protection or assistance from UNRWA, prior to their application for refugee status, may have their asylum application examined (para. 54).

*Second and third questions:* In light of its decision on the first question, it was not necessary for the CJEU to answer the second and third questions put to it concerning the meaning of "cessation" of protection or assistance and of "the benefits of the directive".

## **Decision documents**

[Bolbol judgment - Eng](#)

## **Outcome**

The CJEU ruled that:

"For the purposes of the first sentence of Article 12(1)(a) of Council Directive 2004/83/EC [...] a person receives protection or assistance from an agency of the United Nations other than UNHCR, when that person has actually availed himself of that protection or assistance."

**Caselaw cited**

- Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08 Salahadin Abdulla and Others [2010] ECR I-1493 ECLI:EU:C:2010:105