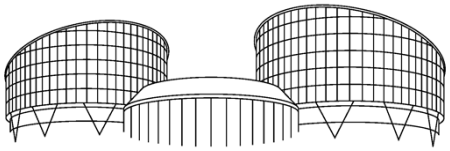

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF H.A. v. THE UNITED KINGDOM

(Application no. 30919/20)

JUDGMENT

Art 3 • Expulsion • Deportation of stateless person of Palestinian origin to refugee camp in Lebanon would not entail a breach • No evidence of any serious harm to the applicant on account of attempts to recruit him to extremist armed groups if returned to refugee camp

Prepared by the Registry. Does not bind the Court.

STRASBOURG

5 December 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of H.A. v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Branko Lubarda,
Armen Harutyunyan,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu*, judges*,
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 30919/20) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a stateless person, Mr H.A. ("the applicant"), on 22 July 2020;

the decision to give notice to the United Kingdom Government ("the Government") of the application;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated in private on 14 November 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicant complains that his expulsion to the Ein El-Hilweh refugee camp in Lebanon would put him at risk of mistreatment in breach of Article 3 of the Convention because of attempts to recruit him to extremist armed factions operating there.

THE FACTS

2. The applicant is a stateless person of Palestinian origin who was born in 1998 and lives in Swansea. He was granted legal aid and was represented before the Court by Ms V. Delgado (Duncan Lewis Solicitors), a lawyer practising in Harrow.

3. The Government were represented by their Agent, Ms L. Stallard, of the Foreign, Commonwealth and Development Office.

4. The facts of the case may be summarised as follows.

I. THE APPLICANT'S ASYLUM CLAIM

5. The applicant was born in the Ein El-Hilweh refugee camp (also transliterated from Arabic as Ain Al-Hilweh) in Lebanon. The United Nations Relief and Works Agency for Palestinian Refugees ("UNRWA") provides access to education, health and other services in the camp.

6. In 2015, the applicant was caught up in fighting in the camp and was injured. He was subsequently approached by rival paramilitary factions in the camp who wished to recruit him. In the summer of 2017, there was a battle in the camp.

7. In November 2017, the applicant left the camp. He arrived in the United Kingdom where he claimed asylum and humanitarian protection on 11 December 2017. He claimed that if returned to Ein El-Hilweh he would be targeted for recruitment by rival paramilitary factions within the camp and forced to fight. In his interview with Home Office officials, he referred to the 2015 fighting in the camp (see paragraph 6 above) and was asked whether anything had ever happened specifically to him. He replied that, in 2015, he had been injured by debris on his right foot in the context of the fighting between extremist groups. He was then asked whether he had ever been targeted by any of these organisations. He replied:

> "I wasn't targeted but they keep trying to recruit us to join these organisations and the catchment area where we live ... they are very keen that the people who are living within our area, everyone who is living in our area they are keen that they come and join these group, they are keen to get new people ..."

8. The applicant confirmed that two specific groups had tried to recruit him directly. He was then asked what he thought these groups would do to him if he returned to Lebanon and answered:

> "They would force me to go and kill somebody, they could force me to take part in a fight, lots of younger men in our camp as a result of those organisation, they send the younger men to Syria."

9. He explained that ever since the incident in 2015 (see paragraph 6 above), the organisations had come back to him and his brother every now and then to try and recruit and brainwash them. Asked in a series of questions to provide more detail of how they tried to recruit him, the applicant explained:

> "Say one of them comes to us to try to tempt me to go and join them, myself and my brother, so trying to sell the idea to us. If you join us you will be able to protect your area ... You see they claim that they are religious but this is just a name, but in action they don't apply it, killing an innocent person is like sipping some water for them.
>
> ...
>
> You're looking for the date when they started recruiting me? ... Fath are based near the house of a friend of mine, because I go and come back very often so they are keen to attract me to join them, because I am regular so they will not suspect me ... summer of 2016.

> ... Say for example, someone comes, puts his arm around my neck, how are you doing, how's our work, are you regular at your prayers and trying to recruit me. If you join us you will be able to protect your family and your people and we will make you very strongly, anyone trying to upset you we will retaliate on your behalf."

10. The interviewer asked whether the applicant had ever had any problems from these groups after saying no to them. The transcript of the interview reads:

> "Response: Yes if we refuse straight away they send, if I am walking they stop me and say why are you looking at me or sometimes they send somebody the same age as mine. You know they try any little action hoping that I will retaliate against.
>
> Question: What would happen if you did retaliate?
>
> Response: They would beat me up and they will all of a sudden, more than one a group coming towards me, and there is no opportunity that I will be in the right side, because they will get together attacking me. Those people who send them, if I try to answer that it's my right, the right is mine, nobody of them will take my side, they always are in the right this is how they promote themselves."

11. Later in the interview the applicant was asked how many times extremist groups had tried to recruit him and what happened when he refused. He said he had been asked 5-6 times and that the first 2-3 times they had asked him to reconsider but after that "they started recruiting me in a deceiving way, covert way, not very obvious". He explained that they "tried to annoy me somehow, they were aiming to make me hate everything. They were trying to annoy me to make me give up". Expanding upon how they tried to annoy him, he said:

> "They send some young men to quarrel with me and you see they approach and try to cause a dispute and then they put the blame on me as being the one who triggered the quarrelling, they say to me you better listen to us or something bad could happen to your family."

12. The following exchange then took place:

> "Question: Other than them trying to annoy you and the threats, has anything else happened?
>
> Response: In which way? [Any way, have they done anything else to you?] No.
>
> Question: How many times did they threaten you?
>
> Response: twice, three times.
>
> Question: Did they do anything about the threats or was it just words?
>
> Response: They used to come to our house because it's very close to them, twice you know they went and they wanted to ask my father that we could go with them, in the first occasion you see they come very sweet and very nice. Second occasion they come they interfere and intrude, which they shouldn't do. They use vocabulary, it's not straightforward, but inside the words it's a threat, a covert threat."

13. On 4 April 2018, the applicant's claim was refused. The Secretary of State did not accept that the applicant had been targeted for recruitment by extremist groups in the camp, highlighting inconsistencies in his accounts of

events. The situation in Lebanon and in the camp was such that he could still receive protection from the UNRWA (see paragraph 5 above). He was therefore not entitled to claim asylum because Article 1D of the 1951 UN Convention on the Status of Refugees ("the Refugee Convention" – see paragraph 32 below) excluded from its ambit those receiving protection or assistance from UN organs or agencies other than the Office of the United Nations High Commissioner for Refugees ("UNHCR"). It was moreover not accepted that the applicant had a genuine subjective fear on return or that there was any risk of treatment that would breach Article 2 or Article 3 of the Convention. Although he had claimed in interview to have refused to be recruited by extremist groups on several occasions and to have been threatened by them as a result, no actual harm had come to him or his family.

II. THE DECISIONS OF THE DOMESTIC COURTS

A. The First-Tier Tribunal

14. The applicant appealed to the First-tier Tribunal ("FTT") arguing that the decision was in breach of the Refugee Convention, Article 15(c) of the European Union's Qualification Directive (see paragraph 35 below) and Articles 3 and 8 of the Convention. In particular, he contended in his notice of appeal that his removal would be incompatible with his Article 3 rights as there was a real risk that he would face ill-treatment contrary to that Article. In his skeleton argument he explained that he would be at risk of serious harm if returned to the Ein El-Hilweh camp as a result of the internal armed conflict currently taking place there.

15. The applicant relied, *inter alia*, on an UNRWA email of 18 May 2018 confirming that the UNRWA did not manage the refugee camps in Lebanon and was not responsible for physical security or law and order in its fields of operation. The email explained that the Lebanese authorities generally did not exercise control in the camps; Palestinian political and armed factions exerted some forms of control. The result of this arrangement was that camps often lacked a single recognised authority exercising the responsibilities attached to the provision of public services and security, including law enforcement. This created an insecure environment with extremely limited access to law enforcement and justice mechanisms for camp inhabitants. As regards the Ein El-Hilweh camp, the email noted that in the last several years there had been a marked increase in the intensity and frequency of armed violence between political factions and groups which had had a significant humanitarian impact. While the UNRWA had generally been able to continue delivering its services in accordance with its mandate, between August 2015 and August 2017 it had suspended its operations for approximately forty days because of violence.

16. On 30 May 2018, the FTT dismissed the appeal. It referred at the outset to country guidance in this Court's judgment in *Auad v. Bulgaria*, (no. 46390/10, 11 October 2011), and the domestic cases of *KK. IH, HE (Palestinians-Lebanon-camps) Lebanon CG* and *MM and FH (Stateless Palestinians – KK, IH, HE CG reaffirmed) Lebanon CG* (see paragraphs 30-31 below). It further referred to a 2016 report on the situation of Palestinian refugees in Lebanon by the UNHCR (see 33-34 below). Having reviewed the evidence, the FTT found the applicant to be generally credible. In particular, it was credible that someone such as him would be a target for recruitment by more than one organisation in the camp, whose predominant interest was numerical superiority over rivals. The judge noted that the applicant had been unable to explain in his asylum interview the consequences of his refusal to be recruited and had stated that there had been no adverse consequences for him or his family. However, the judge observed in this respect that although past harm was generally accepted as evidence of future risk, the lack of past harm did not undermine the risk of future harm on return.

17. The judge found that the applicant was, however, excluded from the protection of the Refugee Convention by Article 1D (see paragraph 32 below). He had received assistance from the UNRWA until he had left the camp and such assistance remained available to camp occupants. The applicant had failed to show that there had been threats to his life or physical security such as to enable it to be said that UNRWA protection had ceased.

18. There was moreover no risk of serious harm contrary to Article 15(c) of the EU Qualification Directive (see paragraph 35 below) either from indiscriminate violence on its own, or by such violence taken together with the applicant's personal circumstances, to justify the grant of subsidiary protection. The judge considered that the evidence showed that there had been a few incidents of specifically targeted violence between members of identified militia groups, resulting in collateral injury to civilians and damage to property. He was not satisfied that the conditions in the camp met the standard necessary to show that the applicant faced a general risk from indiscriminate violence by his mere presence. The applicant had suffered no actual violence, and since no threats had been carried out against him or his family there was no evidence of factors enhancing his level of risk from indiscriminate violence.

19. Finally, the FTT found that that the applicant did not qualify for humanitarian protection on the basis of a real risk of serious harm, including a risk of torture or inhuman or degrading treatment or punishment. It noted that the applicant had not relied upon any evidence of past treatment amounting to serious harm to him or his family, and as regards future risk he relied on the background evidence to which the judge had already referred. The judge considered that the evidence presented did not show that the applicant would face a real risk of serious harm in future if returned to the

camp: the incidents of violence relied upon in this respect were few and far between. While the protective role within the camp appeared to be in the hands of a Palestinian joint security force, composed of multiple Palestinian factions, the applicant had failed to establish that he was at real risk of serious harm from those organisations and that he would therefore not be able to seek their protection were he to be at risk of suffering serious harm from violence in the camp.

B. The Upper Tribunal

20. The applicant sought permission to appeal. He argued that the judge had failed to apply the law properly and had wrongly found him to be excluded from refugee protection under the Refugee Convention. The FTT refused permission to appeal on 25 June 2018.

21. In renewed grounds of appeal to the Upper Tribunal, the applicant advanced two grounds of appeal. He argued, first, that the FTT had erred in finding that he was not entitled to protection under the Refugee Convention. Second, he contended that the judge had failed to appropriately assess the available evidence of violence in the camp when considering Article 15(c) of the Qualification Directive or Article 3 of the Convention. His grounds of appeal explained:

> "27. ...[T]he Immigration Judge states that incidents of violence in the camp are 'few and far between'. It is submitted that this is an incorrect assessment of the level of violence in Ein El Hilweh camp with reference to the available background evidence.
>
> 28. It is also submitted that the Immigration Judge failed to properly understand the context within which this violence is taking place. The background evidence indicates that Ein El Hilweh camp area covers only 1.5 square km with a population of around 60,000 people. It was accepted by the Immigration Judge that the findings of *Auad v Bulgaria* applied and that it was unlikely that camp inhabitants were able to leave the camp and live in Lebanon proper or move to another refugee camp in Lebanon. It is submitted therefore that the violence is taking place within in a small, densely populated area from which there is no possibility of escape for civilians. It is submitted that the Judge failed to make reference to any of these facts in his assessment of either Article 15(c) or Article 3 ECHR."

22. On 31 July 2018 the Upper Tribunal granted permission to appeal on each ground, noting that the points raised, particularly in Ground 1 concerning the efficacy of protection in the camp, merited consideration.

23. On 9 July 2019, the Upper Tribunal dismissed the appeal. At the outset of its decision it noted that the applicant challenged only the FTT's conclusions as regards the Refugee Convention. Similarly, when acknowledging that the Ein El-Hilweh camp was not "a pleasant place to live", the tribunal said, "We have to bear in mind, however, that the judge considered that the appellant had not established entitlement under Article 15(c), and that finding is not the subject of any appeal".

24. The Upper Tribunal agreed with the FTT that the applicant was excluded from the protection of the Refugee Convention by Article 1D (see paragraph 32 below). Assessing whether the applicant's departure from the camp had been involuntary for the purposes of the Refugee Convention claim, the tribunal recorded that he had been subject to rival attempts to recruit him in the camp. Although, it noted, he had been beaten up by Fatah in 2016 when he refused to join them, it did not appear that there had been any lasting difficulty from them or from any of the other groups. It observed that the applicant's history relied on events occurring over three successive summers, none of which had had any lasting consequences, which could not separately or cumulatively be seen as having required him to abandon the assistance and limited protection that UNRWA was giving him in the camp. The Upper Tribunal concluded, "No other question having been raised before us, we therefore dismiss this appeal".

C. The Court of Appeal

25. The applicant sought permission to appeal. He argued that the Upper Tribunal had erred in law when concluding that he was excluded from the protection of the Refugee Convention. He further relied on his grounds of appeal to the Upper Tribunal (see paragraph 21 above) which he asserted had not been dealt with. The Upper Tribunal refused permission on 14 August 2019.

26. The applicant subsequently applied directly to the Court of Appeal for permission to appeal. In revised grounds of appeal, he challenged the finding as regards Article 1D of the Refugee Convention and further argued that since the FTT had found it credible that he would be targeted for recruitment (see paragraph 16 above), there was a future risk to him upon return and, even if he was excluded from protection under the Refugee Convention, he still enjoyed subsidiary human rights protection under Article 3 of the Convention. In an accompanying skeleton argument, he submitted that the tribunals had materially erred in law in not assessing a free-standing future risk on return claim and that they ought to have done so even if the point had not been advanced before them. He argued that given that the FTT had found credible his claim that groups in the camp had sought to recruit him, he belonged to a risk group of those to be targeted for forced recruitment and his Article 3 claim ought therefore to succeed.

27. On 1 November 2019, the Court of Appeal refused permission to appeal. The relevant extracts of the decision read:

> "2. The Ein El Hilwa camp is plainly not at all a pleasant place to be. But that does not of itself establish the Article 3 ground. I think, in fact, that the [FTT's] reasoned rejection of the Article 15(c) claim is revealing (and there was no appeal ultimately pursued from that part of the decision).

3. In general terms, the applicant's credibility was accepted (I note he gave no oral evidence). It was among other things found that he would be the target for recruitment by more than one organisation. Further, the Lebanese authorities, and camp security force, cannot guarantee protection.

4. The question remains whether this applicant was at risk such that he required such protection. His own fears cannot decide that: ... an objective appraisal based on all the evidence in each individual case is needed ...

5. In deciding whether the applicant was forced to leave by reason of the situation relating to him at the camp, the [FTT] found on the evidence that the applicant received assistance from the UNRWA which continues to operate in accordance with its mandate, further, whilst UNRWA did not provide physical protection, it was found on the evidence (paragraph 63) that no relevant threats as to life or integrity etc had been established with regard to him; and that no violence had been inflicted on him, notwithstanding the various unsuccessful attempts over the preceding years to recruit him. Thus he was not 'forced' to leave the camp because his 'personal safety was at serious risk'. These were the considerations arising from the [FTT's] decision on the evidence; and then reflected in paragraphs 10 and 11 of the [Upper Tribunal] decision.

...

7. As to the second ground of appeal, this does not appear to have been argued in the FT] at all. The [Upper Tribunal] also recorded, at paragraph 11, that 'no other question', apart from the Article 1D point, was raised before it (and this point was not in the written Grounds of Appeal to the [Upper Tribunal]). It is absurd now to say that it was a Robinson obvious point."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Procedure rules on appeal

28. Section 11(2) of the Tribunal, Courts and Enforcement Act 2007 grants any party to a case decided by the FTT a right of appeal, if permission is granted either by that tribunal or the Upper Tribunal.

29. Where professionally represented, an applicant is expected to identify and pursue all relevant points on appeal. The Upper Tribunal remains under a duty to identify points not raised by an applicant if those points are "Robinson obvious" (see *R v Secretary of State for the Home Department, ex p Robinson* [1997] EWCA Civ 3090). The rules place an onus on the asylum-seeker to state his grounds of appeal, and the appellate authorities are not required to engage in a search for new points. However, if there is, readily discernible, an obvious point of Convention law which favours the applicant although he has not taken it, then this should be applied in his favour. An "obvious point" means a point which has a strong prospect of success if it is argued.

B. Country guidance

30. In *KK, IH, HE (Palestinians-Lebanon-camps) Lebanon CG* ((2004) UKAIT 00293), the Immigration Appeal Tribunal said that although conditions for stateless Palestinians living in refugee camps in Lebanon were harsh and they did not enjoy the same political, economic and social rights as Lebanese citizens, these matters did not in themselves cross the Article 3 threshold.

31. In *MM and FH (Stateless Palestinians – KK, IH, HE CG reaffirmed) Lebanon CG* ((2008) UKAIT 00014), the Asylum and Immigration Tribunal held that the conditions in refugee camps in Lebanon did not reach the threshold to establish a breach of Article 3 of the Convention, and reaffirmed *KK, IH, HE (Palestinians-Lebanon-camps) Lebanon CG*.

II. RELEVANT INTERNATIONAL LAW AND PRACTICE

A. The United Nations

1. *The 1951 UN Convention Relating to the Status of Refugees ("The Refugee Convention")*

32. Article 1A of the Refugee Convention provides for the grant of refugee status. Article 1D stipulates:

> "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. *UNHCR Report on The Situation of Palestinian Refugees in Lebanon*

33. The UNHCR published a report in February 2016 entitled *The Situation of Palestinian Refugees in Lebanon*. It observed:

> "Palestinian individuals may reportedly be at risk of being subjected to harassment, threats or abuse at the hands of militant factions in the camps. As the Lebanese authorities have no access to the camps ..., those at risk can reportedly not seek protection from the Lebanese authorities. Whether or not the concerned individual could seek protection from political factions or inter-factional popular/security committees in the camp reportedly depends on the individual's political affiliations and/or connections with influential persons or families." (footnotes omitted)

34. As regards the Ein El-Hilweh camp specifically, the report noted:

> "In the 1980s and 1990s, Ein El-Hilweh camp reportedly became the main focus of groups considered jihadist, which sought to take advantage of the security vacuum that followed Israel's invasion in 1982. This situation still reportedly persists today, with

not only members of such groups, but also fugitives wanted by Lebanese authorities reportedly residing in the camp.

Most recently, in late August 2015, tensions between rival groups reportedly resulted in six days of fighting between the Fatah Party and the Salafist Jund Al-Sham and their respective allies, which led to six Palestinians being killed and/or wounded, and some 3,000 Palestine refugees being displaced. Some houses were reportedly taken over by armed groups, and there was destruction of homes and infrastructure. According to reports, the fighting was triggered by the attempted assassination of a local Fatah member on 21 August 2015. Heavy fighting was reported in the vicinity of a number of UNRWA installations, including schools and health clinics. Despite a ceasefire having been reached, the situation reportedly remains extremely tense in the camp. Newly formed Palestinian Joint Security Forces, composed of multiple Palestinian factions, ranging from secular to Islamic factions, including Fatah, Usbat Al-Ansar, Ansar Allah and the Alliance of Palestinian Forces, are reportedly in charge of law enforcement within the camp, in coordination with the Lebanese authorities, namely the Lebanese Army, which guard the entrances of Ein El-Hilweh Camp. However, recent armed clashes have reportedly hampered the efficiency of this cooperation." (footnotes omitted)

B. The European Union

1. The EU Qualification Directive

35. The Qualification Directive (Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011) sets out 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. The Directive provides that a person who does not qualify as a refugee is eligible for subsidiary protection where substantial grounds have been shown for believing that the person concerned would face a real risk of suffering serious harm if returned to his country of former habitual residence, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country. Pursuant to Article 15(c) of the Directive, "serious harm" consists, *inter alia*, of a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

2. Lebanon - Information on forced recruitment of young Palestinians by Fatah in Lebanon, EASO COI Query Response, 24 February 2020

36. In February 2020, the European Asylum Support Office ("EASO") published country of origin query response information concerning the forced recruitment by Fatah of Palestinians in Lebanon. The document contained five sections. Under the first section, headed "Information on forced recruitment of young Palestinians by Fatah in Lebanon (2017-Jan 2020)", the document noted:

> "No information on forced recruitment of Palestinians by Fatah in Lebanon could be detected in the scope of this response.
>
> While no information on Fatah-organised recruitment for the reporting period was found in the scope of the research conducted, some sources convey the information about recruitments organised by Fatah in 2014 and 2016.
>
> A local newspaper Sidon Online reported in 2014 on military trainings to be organised by Fatah until the end of June 2014 in the camps of Saida, Beirut, Beqaa, and particularly Ain al-Helweh camp. In January 2016, another local media source reported on the training of fighters conducted by the Palestinian Authority in the Palestinian camps in Lebanon. The source mentioned that the majority of the trainees were the members of the Fatah Movement and that the purpose of the training was to prepare them to face the potential threats of radical factions, e.g. IS (Islamic State); the training was reported to be conducted in the coordination with the Lebanese authorities."

37. Under section 5, headed "Consequences faced by people who oppose recruitment by Fatah in Lebanon", the document stated:

> "No information on the consequences faced by people opposing Fatah recruitment in Lebanon was found in the scope of the research conducted for this response."

THE LAW

I. SCOPE OF THE COMPLAINTS

38. The applicant complained under Article 3 of the Convention that he faced a real risk of severe mistreatment by paramilitary groups upon return to the Ein El-Hilweh camp in Lebanon on account of his refusal to be recruited by them. He complained in particular that the domestic courts had considered only whether he was excluded, on the basis of pre-flight events, from the protection of the Refugee Convention on account of its Article 1D (see paragraphs 13 and 32 above), and had failed to address the merits of his claim of future risk. The Court invited the parties to submit observations under Article 3 and, *ex proprio motu*, under Article 13 of the Convention.

39. In his subsequent observations, the applicant asserted that his was the "first case before the Court to address the application of the Article 1D exclusion clause for UNRWA refugees, and whether the approach to the determination of protection claims through this procedure gave rise to a 'Status Determination Gap'". His observations addressed in some detail the domestic courts' approach to the Article 1D issue and advanced arguments as to the correct interpretation of that provision.

40. The applicant moreover underlined that his complaint concerning the failure of the domestic courts to address properly his Article 3 complaint was twofold. He not only asserted that the courts had failed to consider his risk upon return but also contended that his rights had been violated when they had failed properly to examine the risk of violations of his rights that existed when he had initially fled to the United Kingdom in 2017.

41. The Court underlines that its task is to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention" and its Protocols (Article 19 of the Convention). Its jurisdiction thus extends to "all matters concerning the interpretation and application of the Convention" and its Protocols (Article 32). It follows that the Court's role in the present case is to assess the circumstances of the case by reference to the guarantees contained in the Convention, and notably its Article 3 relied upon by the applicant. The Court does not itself examine the actual asylum applications or verify how the States honour their obligations under the Refugee Convention (see *F.G. v. Sweden* [GC], no. 43611/11, § 117, 23 March 2016). It will therefore disregard the submissions of the applicant advanced in this respect except in so far as they are relevant to his Article 3 complaint.

42. The Court further observes that the two-fold nature of the complaint, as explained by the applicant (see paragraph 40 above), is misconceived. As the Court has reiterated on many occasions, neither the Convention nor its Protocols protect, as such, the right to asylum: the protection they afford is confined to the rights enshrined therein, including particularly in this field the rights under Article 3. That provision prohibits the return of any alien who is within the jurisdiction of one of the Contracting States for the purposes of Article 1 of the Convention to a State in which he or she faces a real risk of being subjected to inhuman or degrading treatment or even torture. In that respect, it embraces the prohibition of *refoulement* under the Geneva Convention (see *N.D. and N.T. v. Spain* ([GC], nos. 8675/15 and 8697/15, § 188, 13 February 2020). The Court in the present case is accordingly not concerned with the domestic courts' alleged failure to examine adequately the risks existing at the time of the applicant's flight from Lebanon, but is concerned only with the examination of the risk of treatment in breach of Article 3 which would allegedly be faced by the applicant upon his return to Lebanon on account of attempts to recruit him to extremist armed groups.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

43. The applicant complained of an alleged risk of treatment in breach of Article 3 if returned to the Ein El-Hilweh camp in Lebanon, relying on the risk of recruitment by extremist armed groups. He contended that the domestic courts had failed to address the merits of his claim that he would be at future risk.

44. As explained in paragraph 38 above, the parties were invited to make submissions in respect of this complaint with regard to both Article 3 and Article 13 of the Convention. Having regard to the parties' observations, and being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12,

§§ 114, 124 and 126, 20 March 2018), the Court finds that it is appropriate to examine the matter under Article 3 only.

45. This provision reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

46. The Government submitted that the applicant's complaint was manifestly ill-founded. However, the Court is of the opinion that the complaint raises sufficiently complex issues of fact and law, so that it cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is further satisfied that it is not inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

47. The applicant maintained that his expulsion to Lebanon would put him at real risk of treatment contrary to Article 3 because of the risk of forced recruitment by extremist armed groups. He referred to the positive credibility findings of the FTT (see paragraph 16 above) and the evidence of forced recruitment in his own account and in country background information. Neither UNRWA nor the Lebanese authorities could provide protection against these risks.

48. The applicant argued that the domestic courts should have taken into consideration the evidence he had put before them concerning the period from 2015 to 2017, which had caused him to fear for his safety and security, when assessing his fear that if returned he would once again risk being forcibly recruited by an extremist group. However, the FTT had incorrectly limited its consideration of his asylum claim to pre-flight reasons and risks at the time he fled, instead of considering the credible risk to his Article 3 rights upon refoulement. The Upper Tribunal, on appeal, had looked solely at the applicant's reasons for seeking asylum and had not examined the issue of refoulement. The applicant underlined that his challenge to the Upper Tribunal had not been restricted to the Refugee Convention. He had also raised the issue whether the FTT had "failed to appropriately assess the available evidence with regards to the frequency and intensity of violence" (see paragraphs 21-22 above). Before the Court of Appeal, he had similarly argued that the FTT had failed to properly assess the evidence which clearly showed that the applicant would be at risk if returned. Each of these grounds of appeal spoke not only to the reasons why the applicant had fled the Ein El-

Hilweh camp but were also critical considerations in the examination of whether he would be at risk of recruitment or harm contrary to Article 3 upon return to Lebanon.

49. The applicant rejected the Government's submission that he had suffered no adverse consequences as a result of rejecting the groups' recruitment advances (see paragraph 55 below), arguing that it was "plainly wrong on the facts". He maintained that he had been physically beaten by Fatah after refusing to be recruited by them. Moreover, during his interview with Home Office officials he had explained that he had had problems with the groups after rejecting their recruitment proposals and had detailed how groups of men had been sent to attempt to corner him and directly antagonise him in order to start a fight and beat him (see paragraphs 7-12 above). The information he had provided as to direct harassment and threats received and his resulting fear of leaving his home should not be minimised as mere covert attempts. The applicant further emphasised the finding of the FTT that lack of past harm did not undermine the risk of future harm on return (see paragraph 16 *in fine* above). The applicant argued that there was no indication of any change or improvement in the situation and that the information supported his argument that he would again be subjected to recruitment, physical abuse, threats and harassment if returned to the Ein El-Hilweh camp. He further submitted that the risk of forcible recruitment had to be viewed in the context of the ongoing violence within the camp and the additional risks that posed, as evidenced by the fact that he had previously been struck by debris (see paragraph 7 above).

50. Finally, the applicant challenged the Government's reliance on country guidance decisions from 2004 and 2008 (see paragraphs 30-31 above). He relied instead on the email from UNRWA of 18 May 2018 that he had produced before the FTT (see paragraph 15 above), confirming that protection of camp residents was not within its mandate and attesting to the increased intensity and frequency of armed violence in 2015-2017. That email had not been addressed by the Government. He further referred to two judgments from 2015 and 2019 respectively by the New Zealand Tribunal confirming that UNRWA was unable to assist and protect those in the camps, and to the country information report by EASO from February 2020 documenting "significant forced recruitment of young Palestinian men by Fatah in Lebanon" from 2017 to 2020 (see paragraphs 36-37 above). Finally, he relied on a 2020 decision from a court in the Netherlands which, he said, made findings about the impossibility of UNRWA in Gaza to uphold its mandate of assistance.

(b) The Government

51. The Government argued that the risk to the applicant on return had been considered carefully and in detail by the domestic courts before his claim for humanitarian protection had been rejected. They noted that his fear

of forcible recruitment by extremist groups had been raised in his asylum claim and considered by the Home Office in its decision letter (see paragraph 13 above). The applicant's account had been found not to be credible.

52. The applicant had then enjoyed a full appeal to the FTT, where the judge had found him to be credible and had accepted his evidence but had nonetheless rejected his appeal. The judge had accepted that someone such as the applicant would be the target for recruitment by extremist groups. However, he had noted that despite having been approached on six occasions and having refused each time, the applicant had suffered no adverse consequences. While acknowledging that "lack of past harm does not undermine the risk of future harm on return" (see paragraph 16 above), he had found that there was no particular risk to the applicant as a result of his own personal circumstances. The Government underlined that even in his application to the Court, the applicant had not sought to identify specific features that made him more at risk of treatment contrary to Article 3 through risk of recruitment. While the judge's analysis of the relevant issues had focussed on the applicant's claim for asylum under the Refugee Convention since this had been the focus of the submissions from his representative, the judge had nonetheless expressly considered the risk from the perspective of Article 3 (see paragraph 19 above). Given the judge's careful consideration of the risk of forcible recruitment on return, and the canvassing of this issue in the asylum claim and the initial decision that was under appeal, it was untenable to suggest that the domestic courts had failed to examine whether the applicant's risk of forcible recruitment by extremist groups gave rise to a real risk that he would be subjected to treatment contrary to Article 3. The FTT had carefully considered the risk on return.

53. Where an applicant had had a full merits appeal of the State's original decision to a tribunal, there was no inherent right in the Convention to a further appeal. However, further appeal rights were available in the United Kingdom and the applicant had sought and been granted a further appeal to the Upper Tribunal. It had been for his professional representatives to identify the matters upon which they wished to rely in that appeal, although the Upper Tribunal had been under a duty to identify an "obvious point" in his favour (see paragraph 29 above). Before the Upper Tribunal, the applicant's representatives had argued two grounds of appeal: the first related exclusively to his claim under the Refugee Convention; and the second to his claims under Article 3 of the Convention and Article 15(c) of the Qualification Directive (see paragraph 21 above). However, the risk of recruitment had not featured at all in this latter ground, which had concerned the context in which the violence occurred, by reference to the small geographical size of the camp, its population and the impossibility of leaving it. The Upper Tribunal could therefore not be criticised for not considering the point, especially since it had been fully considered by the FTT.

54. The applicant had not initially raised any issue under Article 3 of the Convention, or about the risk of recruitment specifically, when seeking a further appeal to the Court of Appeal. He had raised it for the first time in his renewed application for permission to appeal (see paragraph 26 above). The Court of Appeal had considered the point but had refused permission to appeal, noting that while the Ein El-Hilweh camp was plainly not at all a pleasant place to be, that did not of itself establish the Article 3 ground (see paragraph 27 above). Although the court had recognised that the applicant would be the target for recruitment, it had noted that "the question remains whether this applicant was at risk such that he required such protection. His own fears cannot decide that ...". The Government noted that the Court of Appeal had incorrectly suggested that the recruitment issue had not been argued before the FTT. However, they pointed out that the court had confirmed that it was not a "Robinson obvious" point, i.e. a point which had a strong prospect of success if argued (see paragraph 29 above).

55. The Government did not accept that the applicant faced a real risk of being subjected to treatment contrary to Article 3 if returned to Lebanon. It was clear from the established case-law (see paragraphs 30-31 above) that the return of stateless Palestinians to camps in Lebanon would not in general, and in the absence of specific circumstances, create a real risk. The judgment of the Court in *Auad v. Bulgaria*, (no. 46390/10, 11 October 2011) was consistent with the general proposition that in the absence of particular individual circumstances, such as the prior involvement with Fatah and acts of violence in *Auad*, there was not a real risk that an individual such as the applicant would be subjected to treatment contrary to Article 3 upon return. The applicant's position was entirely different to that of the applicant in *Auad* since he had never been involved with any extremist group. He had never suffered any violence to himself, save being caught by debris during a general disturbance (see paragraph 7 above). The Government further underlined that the findings of fact, based on the applicant's own evidence, were that he had never been involved with any of the groups vying for control in the camp. Further, although the applicant had refused six previous approaches by such groups (see paragraph 11 above), there had never been any adverse consequence to him or his family when he refused to join them. The FTT had considered the applicant's risk on return and there was no reason to find that its conclusion was wrong. The Government invited the Court to find that the applicant's expulsion to Lebanon would not violate his Article 3 rights.

2. The Court's assessment

(a) General principles

56. The Court in *F.G. v. Sweden* (cited above, §§ 111-116, with further references; see also *J.K. and Others v. Sweden* [GC], no. 59166/12, §§ 77-105, 23 August 2016) set out in detail the general principles applicable

to complaints concerning an alleged risk of treatment contrary to Article 3 upon expulsion. The judgment reads, in relevant part, as follows:

> "111. ... Contracting States have the right to control the entry, residence and expulsion of aliens ... However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the destination country. In these circumstances, Article 3 implies an obligation not to deport the person in question to that country ...
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> 112. The assessment of whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires the Court to examine the conditions in the destination country in the light of the standards of Article 3 of the Convention ... These standards entail that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this level is relative, depending on all the circumstances of the case ...
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> 113. The assessment of the existence of a real risk must necessarily be a rigorous one ... It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 ...
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> 114. The assessment must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and of his or her personal circumstances ... In this connection, and where it is relevant to do so, the Court will have regard to whether there is a general situation of violence existing in the country of destination ...
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> 115. If the applicant has not already been deported, the material point in time for the assessment must be that of the Court's consideration of the case ... A full and *ex nunc* evaluation is required where it is necessary to take into account information that has come to light after the final decision by the domestic authorities was taken ... The assessment must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and of his or her personal circumstances ...
>
> 116. It is for the Court to consider in an expulsion case whether, in all the circumstances of the case before it, substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of being subjected to treatment contrary to Article 3 of the Convention. If the existence of such a risk is established, the applicant's removal would necessarily breach Article 3, regardless of whether the risk emanates from a general situation of violence, a personal characteristic of the applicant, or a combination of the two. However, it is clear that not every situation of general violence will give rise to such a risk. On the contrary, the Court has made it clear that a general situation of violence would only be of sufficient intensity to create such a risk 'in the most extreme cases' where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return ..."

57. The Court further reiterated that where domestic proceedings have taken place, it is not its task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. As a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility

of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned (see *F.G. v. Sweden*, cited above, § 118, with further references).

(b) Application of the general principles to the facts of the case

58. The applicant does not challenge the conclusions of the FTT as to the general conditions in the camp and the risk of violence. He has produced no further evidence in this respect. His sole contention before this Court is that the risk of recruitment by extremist armed groups puts him at particular risk of treatment contrary to Article 3, and that UNRWA and the Lebanese authorities will be unable to provide protection against these risks (see paragraph 47 above). The Court's starting point is the findings of the domestic courts.

59. In this respect, the Court observes that the only court to examine the applicant's Article 3 arguments concerning alleged risk on return was the FTT, with the Upper Tribunal and the Court of Appeal considering only the argument advanced under Article 1D of the Refugee Convention. The Upper Tribunal was under the impression that the only ground of appeal concerned the Refugee Convention (see paragraphs 23-24 above). It is unclear why it considered this to be the case given the two grounds advanced in the renewed grounds of appeal as well as the terms of the decision granting leave to appeal (see paragraphs 21-22 above). The Government accepted that the applicant did advance an Article 3 argument on appeal before the Upper Tribunal but emphasised that it concerned the general conditions in the camp only, and that no specific argument concerning the risk of forced recruitment had been made (see paragraphs 53 above). They conceded, however, that such an argument was subsequently advanced before the Court of Appeal (see paragraph 54 above). That court, however, observed that the point did not appear to have been argued at all before the FTT and that it had not been raised before the Upper Tribunal. Since it was not a "Robinson obvious point", the Upper Tribunal could not have been expected to identify it itself (see paragraphs 27 and 29 above).

60. The Government relied on the FTT decision in support of their position that it was untenable to suggest that the domestic courts had failed to examine whether the applicant's risk of forcible recruitment by extremist groups in the camp gave rise to a real risk that he would be subjected to treatment contrary to Article 3 (see paragraph 52 above). They further argued that the Convention did not require a general right of appeal in such matters, and that the Upper Tribunal could not be criticised for failing to address the risk of recruitment argument given that the applicant had failed to raise it (see paragraph 53 above).

61. The Court's concern in the present case is whether substantial grounds have been shown for believing there to be a real risk that the applicant will face ill-treatment if returned to Lebanon. This was a matter that the applicant

raised on appeal (see paragraph 59 above). Regardless of whether he raised the specific question of recruitment to terrorist organisations in this context, he had clearly pleaded Article 3 and had been granted leave to appeal on this ground. That being the case, the question of risk of serious harm on return was a matter that ought to have been examined and determined by the Upper Tribunal explicitly in its decision. In view of the failure of the Upper Tribunal to do so, which failure was not remedied in the context of the Court of Appeal's decision on his request for permission to appeal, it falls to the Court to assess the question of risk with reference to the general principles outlined in paragraph 56-57 above.

62. The Court is satisfied that the FTT gave careful consideration to the question of the alleged risk of treatment contrary to Article 3 faced by the applicant if returned to the Ein El-Hilweh camp (see paragraph 19 above). It considered in particular the risk of recruitment to extremist groups and found the applicant's account of events in this respect to be credible. However, it noted that the applicant had been unable to explain in his asylum interview the consequences of his refusal to be recruited and had stated that there had been no adverse consequences for him or his family (see paragraph 16 above). The applicant had accordingly failed to substantiate his claim that the risk of recruitment – a risk accepted by the FTT – would result in treatment contrary to Article 3. The general conditions, although poor, did not meet the Article 3 threshold.

63. The FTT's conclusions were based on the answers given by the applicant in his interview with Home Office officials (see paragraphs 7-12 above), previous country guidance cases, including this Court's judgment in *Auad* (cited above) and other relevant information before it (see paragraph 16 above). As can be seen from the excerpts cited above, the applicant's interview responses accepted that there had been no adverse consequences following the previous attempts by extremist armed groups to recruit him. Although the Upper Tribunal referred to one occasion in which he was beaten up after refusing to join Fatah (see paragraph 24 above), the evidence upon which this conclusion is based is not clear. The FTT did not make any such factual finding, and the applicant's interview appears to have referred to a likelihood of being beaten, in response to a hypothetical question posed, rather than to a concrete example of an incident which occurred (see paragraph 10 above). That this reading of the interview transcript is the correct one is further bolstered by the applicant's answers to other questions during the interview, including his prior response to the question whether anything had ever happened specifically to him (see paragraph 7 above) and the later exchange that took place in which the applicant confirmed that other than them trying to annoy him and threatening him, the extremist armed groups had done nothing else to him (see paragraphs 11-12 above). In any case, there is no evidence before the Court concerning any beating and no submissions as to the circumstances of any such incident, its gravity or any

injuries that were sustained. The Court therefore accepts the FTT's findings on the question of risk at the time of its examination of the applicant's case.

64. However, as the applicant has not already been deported, the material point in time for the assessment of the risk must be that of the Court's consideration of the case (see the case-law quoted in paragraph 56 above). Given the careful scrutiny of this matter by the FTT, the question is whether any material that has come to light following that judgment is capable of leading this Court to conclude that the applicant's expulsion to Lebanon would give rise to a risk of treatment in breach of Article 3 on account of attempts to recruit him to extremist armed groups.

65. In his submissions, the applicant relied in particular upon the email from UNWRA (see paragraph 15 above), three judgments from other States and an EASO report from 2020 (see paragraph 50 above). The Court observes that the UNWRA email and the judgments were cited in support of the applicant's argument that UNRWA had no capacity to provide assistance and protection against the risk of recruitment. As such, they are irrelevant to the question which must be addressed first, namely whether there is any risk to the applicant from recruitment attempts. The EASO report does concern the recruitment of young Palestinians in refugee camps in Lebanon. However, while it noted that there was evidence of such recruitment – a matter which was accepted by the FTT – it recorded that "no information on the consequences faced by people opposing Fatah recruitment in Lebanon was found in the scope of the research conducted for this response" (see paragraphs 36-37 above). It cannot therefore support the applicant's argument that his refusal to be recruited by extremist armed groups would put him at risk of serious harm (compare and contrast *Auad*, cited above, in particular §§ 102-04).

66. On the basis of its *ex nunc* assessment (see paragraph 64 above), the Court therefore concludes that none of the material currently before it (see paragraphs 15, 36-37, 50 and 65 above) permits the calling into question of the conclusion of the FTT that there was no evidence of any serious harm to the applicant if returned to Ein El-Hilweh camp in Lebanon on account of attempts to recruit him to extremist armed groups. In view of this conclusion, there would be no violation of Article 3 of the Convention on this account in the event of the applicant's expulsion to Lebanon.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that the applicant's deportation to Lebanon would not give rise to a violation of Article 3 of the Convention.

Done in English, and notified in writing on 5 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President