



Hungarian Helsinki Committee

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### Reference for a preliminary ruling of the ECJ on the application of Article 12(1)(a) of the Qualification Directive

The Hungarian Helsinki Committee's attorney, Gábor Győző is representing a Palestinian asylum seeker before the Metropolitan Court in Budapest (Fővárosi Bíróság) in an asylum case concerning the applicability of **Article 1D** of the 1951 Refugee Convention.

On 15 December 2008, the Metropolitan Court decided to refer **three questions for preliminary ruling to the European Court of Justice (ECJ)** to clarify the scope and **interpretation of Article 12(1)(a)** of 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 (hereinafter referred to as the 'Qualification Directive') to ensure uniform interpretation and application of the Directive. The Metropolitan Court's request was lodged on 26 January 2009.

#### The facts of the case

The applicant is a stateless Palestinian woman from the Gaza Strip, who submitted her asylum application in June 2007 after having stayed lawfully in Hungary with a residence permit. At the time, the Qualification Directive had not been transposed into Hungarian law, so the provisions of the Directive were directly applicable in the case. Due to the general instability in the Gaza Strip and the conflict between Fatah and Hamas, the client did not want to return to Gaza and chose to apply for asylum in Hungary. The applicant has not availed herself of UNRWA's protection or assistance but claims to be entitled to it since her father's cousin is registered by the UNRWA. Her attorney argued that under the Article 1D of the 1951 Refugee Convention, she is eligible to be automatically (*ipso facto*) recognized as a refugee. To support her case she also submitted documentary evidence, the UNRWA registration card issued to her father's cousin in order to confirm that she is entitled to the UNRWA's assistance. The Office of Immigration and Nationality (OIN), the authority responsible for dealing with asylum cases in Hungary, refused to recognize the applicant as a refugee and granted her tolerated status (protection against refoulement). In its decision, the OIN argued that the second sentence of Article 1D does not foresee unconditional recognition; instead it allows access of Palestinian asylum seekers to the refugee status determination procedure, therefore Palestinian asylum seekers' cases must be examined under Article 1A. The applicant requested the judicial review of the decision before the Metropolitan Court, claiming that she is eligible to be recognized as a refugee under Article 1D of the 1951 Refugee Convention.

#### Questions referred to the ECJ

The reference for a preliminary ruling concerns the interpretation of Article 12(1)(a) of the Qualification Directive. The referring court is asking the ECJ to clarify several issues regarding this provision:

1. Whether it is necessary for the person to avail herself of the assistance provided by UNRWA or whether it is enough to be entitled to such assistance to fall within the scope of Art. 12(1)(a)?
2. Under which conditions the protection or assistance from organs or agencies other than UNHCR [namely UNRWA] is considered to have ceased? Is it enough for the person to reside outside the agency's area of operation or is it necessary for the person to demonstrate that she is unable to avail herself from this protection or assistance due to an objective reason?
3. Whether the second sentence of Art. 12(1)(a) confers a right to a person, who no longer enjoys the protection or assistance of organs or agencies other than UNHCR, to be entitled automatically to the benefits of the QD and if so, what are these benefits, i.e. the recognition of the refugee status or of the subsidiary protection?

The Hungarian court procedure has been suspended as the Metropolitan Court decided to stay proceedings until the judgment of the ECJ.

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