



## HIGHLIGHT

# THE *ALETHO* JUDGEMENT: UNRWA PROTECTION AS GROUNDS FOR EXCLUSION FROM REFUGEE STATUS AND INADMISSIBILITY OF AN APPLICATION FOR INTERNATIONAL PROTECTION

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Directive 2011/95<sup>1</sup> establishes in Art. 12 exclusion cases from refugee status, which include cases where the applicant is under the “protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees”. In this regard, some preliminary rulings<sup>2</sup> have been brought before the Court of Justice referring to cases in which the applicants were registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)<sup>3</sup> and left its area of operation seeking international protection in the EU. These cases have allowed the Court to clarify the content, purpose and interpretation of Art. 12, para. 1, let. a), since in the same provision an exception is also included: “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”.

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<sup>1</sup> 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.

<sup>2</sup> Court of Justice: judgment of 25 July 2018, case C-585/16, *Alheto* [GC]; judgment of 19 December 2012, case C-364/11, *Abed El Karem El Kott and Others* [GC]; judgment of 17 June 2011, case C-31/09, *Bolbol* [GC].

<sup>3</sup> I. FELDMAN, *The Challenge of Categories: UNRWA and the Definition of a 'Palestine Refugee'*, in *Journal of Refugee Studies*, 2012, p. 387 *et seq.*

Regarding the facts of the present case, Ms. Alheto held a passport issued by the Palestinian National Authority and was registered with UNRWA. Ms Aletho left the Gaza Strip and reached Jordan by boat, where she obtained a tourist visa for travel to Bulgaria. Once in Bulgaria she extended the visa, and some days before expiration she lodged an application for international protection. The Deputy Chairperson of the State Agency for Refugees refused the application, and Ms. Aletho brought an action before the Administrative Court of Sofia seeking the annulment of the decision of the Deputy Chairperson of the State Agency for Refugees. Finally, this Administrative Court decided to refer some questions to the Court of Justice for a preliminary ruling.

First, it must be noted that in this case two main grounds for not being granted international protection can be established: the above-mentioned Art. 12, para. 1, let. a), of Directive 2011/95, and Art. 33 of Directive 2013/32<sup>4</sup> referring to the inadmissibility of applications. Both are linked and, as it would be established, the applicability of the first would entail the applicability of the second.

In relation to Art. 12, para. 1, let. a), the Court established that applications lodged by persons registered with the UNRWA require an examination as to whether the person receives effective protection from the UNRWA.<sup>5</sup> This will determine therefore whether the person would benefit from the exception of the exclusion clause, obtaining in that case the benefits of the Directive. Anyhow, the applicability of the exception does not entail the automatic recognition of international protection, since as the Court ruled in *El Karem* case, it would be necessary to verify that person is not caught by the other exclusion cases<sup>6</sup> included in Art. 12.

In order to carry out the mentioned assessment, Directive 2013/32 comes into play, since the Administrative Court asked the Court of Justice if the court or tribunal seized in first instance can take into account matters of fact and law which have not been previously analyzed by the body that took the initial decision:<sup>7</sup> the determining authority. This may result in an important change in the final decision of the court or tribunal seized in the first instance,<sup>8</sup> since in this case it may led to the refusal of the international protection on grounds different from that of the determining authority. The result may be that, since Art. 12, para. 1, let. a) has direct effect<sup>9</sup> and since the mentioned

<sup>4</sup> 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.

<sup>5</sup> M. KAGA, *Is there Really a Protection Gap? UNRWA's Role vis-a-vis Palestinian Refugees*, in *Refugee Survey Quarterly*, 2009, p. 511 *et seq.*

<sup>6</sup> *El Karem El Kott*, cit. [GC], para. 76.

<sup>7</sup> The determining authority had refused the application on the ground of lack of credibility. *Alheto* [GC], cit., para. 57.

<sup>8</sup> The Court of Justice established that in case of annulment of the decision is for the "Member states to provide that the file must (...) be referred back" to the determining authority, whose decision must comply with the assessment of the judgment. *Alheto* [GC], cit., paras 146-148.

<sup>9</sup> *Alheto* [GC], cit., para. 101.

court or tribunal can take into account new matters of law, the application of international protection could be refused based on the grounds that the applicant is under UNRWA protection, instead of on a lack of credibility.

The Court of Justice's conclusion regarding the analysis of new matters of fact and law must be linked with its finding regarding the analysis of new grounds of inadmissibility, since the Court states that new grounds of inadmissibility of applications<sup>10</sup> are covered by the *ex nunc* examination of new matters of fact and law. In both cases, when a national court is taking into account new matters of fact and law that can affect negatively the applicant, a new hearing should be conducted to allow the applicant to express his or her views.

Finally, the Court links the exclusion clause of Art. 12, para. 1, let. a) of Directive 2011/95 with the grounds of inadmissibility of Art. 35 of Directive 2013/32. According to the Court, if a person benefits from UNRWA protection in a third country, which is not the one in which he or she habitually resides, and that country agrees to readmit the person and recognize the UNRWA protection, and the principle of *non-refoulement*, that country will fall within the concept of "first country of asylum" of article 35, let. b),<sup>11</sup> making her or his application inadmissible.<sup>12</sup> Therefore, once it has been established that the person falls within the exclusion of Art. 12, para. 1, let. a), the inadmissibility of the application would be the result of those findings as well.

In conclusion, the Court of Justice enlarges the power seized by the courts or tribunals in the first instance, allowing them to take into account new matters of fact and law, which are different from those examined by the determining authority, and to base their decision on new grounds. The Court of Justice also links exclusion grounds and inadmissibility, since in cases in which the applicant is under UNRWA protection, it is first necessary to examine whether the applicant is receiving effective protection, also taking into account the possibility of being readmitted into the country in which he or she can fall under UNRWA protection and the respect of the principle of *non-refoulement*. Finally, if the applicant is under effective UNRWA protection, he or she will fall under the exclusion clause included in Art. 12, para. 1, let. a), which entails that the application will be inadmissible according to article 35, let. b).

<sup>10</sup> Directive 2103/32, Art. 33.

<sup>11</sup> J. ABRISKETA URIARTE, *El "tercer país seguro" en el sistema europeo de asilo: ¿nomen est omen?*, in *Repensar la Unión Europea: Gobernanza, Seguridad, Mercado Interior y Ciudadanía*, Valencia, Tirant Lo Blanch, forthcoming 2019; M.T. GIL BAZO, *The Safe Third Country Concept in International Agreements on Refugee Protection: Assessing State Practice*, in *Netherlands Quarterly of Human Rights*, 2015, p. 42 *et seq.*

<sup>12</sup> *Aletho* [GC], *cit.*, paras 131-143.

