

SUPREME ADMINISTRATIVE COURT 2002:69

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Case No. 2770

Diary No. 1866/3/02

Summary

Return to the country of habitual residence Lebanon and resorting to the assistance of UNWRA was not consider have any legal obstacles concerning a stateless Palestinian registered in a refugee camp run by UNWRA. There were, further, no obstacles shown to threaten seriously the security or livelihood of the applicant that would hinder his return to Lebanon. He was, therefore, not in the sope of application of Article 1D of the 1951 Geneva Convention relating to the Status of Refugees and there were no grounds for granting a refugee status pursuant to Section 30 [of the Finnish Aliens Act] nor grounds to grant a residence permit on grounds of need of protection pursuant to Section 31 [of the Finnish Aliens Act]. Refusing to grant a residence permit was not considered to be unreasonable. In the comprehensive assessment of the merits there were no found no obstacles to return him back to the country of his habitual residence.

The 1951 Geneva Convention relating to the Status of Refugees, Article 1D
Finnish Aliens' Act Sections 20, 30, 31, 37, 38 and 43.

Ruling of the Supreme Administrative Court

A leave to appeal is granted and the appeal is examined.

1. The request for an oral hearing is denied.
2. The appeal is rejected. The decision of the Helsinki Administrative Court is not overruled.

Motivations:

1. A had requested an oral hearing in the Supreme Administrative Court on grounds of the comprehensive examination in the SAC. There have, however, been shown no such new relevant facts on grounds of which there would be need to arrange an oral hearing in the Supreme Administrative Court.

2. A has claimed asylum in Finland 15 April 1999 and applied for a residence permit. A has been a beneficiary of the educational, health care and other social services provided by the UNWRA in his country of habitual residence Lebanon. A has left Lebanon without difficulties with a refugee's travel document issued by the authorities of Lebanon.

Chapter 5 of the Aliens' Act on international protection includes Section 30 on granting asylum and Section 31 on need of protection. The Act has no specific provisions on Palestinian refugees. Such provisions, however, are stipulated in the 1951 Geneva Convention relating to the Status of Refugees, which has entered into force 5 December 1968 by virtue of an act. Section 1 paragraph 1 includes international agreements binding on Finland as applicable law and orders when applying the Aliens' Act.

Pursuant to Article 1D paragraph 1 the mentioned convention is not applied to persons, who presently receive protection or assistance from other UN agencies or offices besides UNHCR. Pursuant to paragraph 2 of the mentioned Article when such protection or assistance ceases for some reason without the position of such persons having been finally ruled according to resolutions accepted by the UN General Assembly these persons have the right ipso facto to the benefits of the 1951 Geneva Convention.

Article 1D of the 1951 Geneva Convention yields to interpretation and, indeed, various State Parties to the Convention have applied it in various different ways.

The responsible UN agency to implement the 1951 Geneva Convention in cooperation with State Parties UNHCR has drafted a Handbook on the Determination of the Refugee Convention. Pursuant to paragraph 143 of the Handbook it must be noted that when Palestinian refugees are concerned UNWRA functions only in certain areas of the Middle East and that protection is granted only in these areas. Therefore a Palestinian refugee outside these areas cannot benefit from the assistance of UNWRA and he can be considered a refugee pursuant to the grounds of the 1951 Geneva Convention. Usually it is sufficient to prove the circumstances on grounds of which he has received protection or assistance from UNWRA prevail and that he has not ceased to be a refugee pursuant to the cessation clauses or that he is excluded pursuant to the exclusion clauses.

UNHCR has, further, issued a statement (September 2001) in which it has clarified its interpretation of Article 1D. UNHCR has stated that in cases where a Palestinian refugee has left UNWRA's jurisdiction paragraph 2 of Article 1D is applied when UNWRA's assistance ceases "for some reason". When the prerequisites of mentioned rule are met with, a refugee receives ipso facto the benefits of the 1951 Geneva Convention. According to UNHCR such is the situation both when a refugee cannot legally return to an area of UNWRA's jurisdiction and when he is unwilling to return to his country of habitual residence due to the threat to his

life or liberty or other pressing issues related to protection. In stead, if a refugee has left UNWRA's jurisdiction, e.g., for the lack of education or job opportunities or other related reasons of personal convenience, he cannot receive in the country of asylum the rights of the 1951 Geneva Convention nor ipso facto refugee status. UNHCR's subsequent statement (October 2002) considers an obstacle to return threat to physical safety in stead of threat to life.

Council of the European Union has accepted 4 March 1996 a Joint Position on a uniform application of the legal definition of a refugee. The Joint Position has been notified to the respective authorities in the Member States as a guideline and they are not, i.a., binding on authorities exercising judicial power (i.a. courts). Point 12 of the Joint Position states on Article 1D of the 1951 Geneva Convention that to a person who deliberately withdraws from the protection and assistance laid down in the mentioned Article 1D cannot be applied the provisions of the Convention but in these cases refugee status is determined as a rule pursuant to Article 1 A 2.

To A, who is a stateless Palestinian registered by UNWRA in Lebanon, the rules laid down in Article 1D can be applied. According to the available information there are no legal obstacles to A's return. Upon return to Lebanon he can benefit further from the possibilities of resorting to the assistance of UNWRA. Therefore it does not follow from the rules of Article 1D that A would in this respect directly, pursuant to Article 1D, enjoy the benefits of the 1951 Geneva Convention.

According to the documents A has lived in Northern Lebanon in the Nahr el Bared- camp administered by UNWRA. There are several rivalling political groups in the camp. A has presented as grounds to his asylum application the threat from Democratic Front - organisation, other organisations and Syrian actors together with various livelihood related and housing problems. With reference to the ruling of Helsinki Administrative Court the Supreme Administrative Court states that there have been no such reasons relating to A's security or basic livelihood shown in the case that would hinder him from returning to his country of habitual residence Lebanon. Therefore it cannot be considered in this respect that his possibilities to further receive assistance form UNWRA have ceased as meant in Article 1D paragraph 2.

Based on the above mentioned reasons A does not have ipso facto right to the benefits granted in the 1951 Geneva Convention. A must therefore not be granted refugee status as ruled in the Convention pursuant to Article 1D, which rule is included in Section 30 of the Aliens Act. Regarding Article 1D A is, therefore, not in the scope of application of the 1951 Geneva Convention.

A's right to asylum and residence permit together with the requirements of removal from the

country against his will must be examined on grounds of prevailing domestic legislation notwithstanding that he is not in the scope of application of the 1951 Geneva Convention.

The Supreme Administrative Court states, as Helsinki Administrative Court, that A has not made it probable that he would, pursuant to Section 30 paragraph 1 of the Aliens' Act have a well-founded fear of persecution in his country of habitual residence on grounds of race, religion, nationality, membership of a particular social group or political opinion.

Pursuant to Section 31 of the Aliens' Act an alien residing in Finland can be issued a residence permit on grounds of, i.a., when he in his country of habitual residence is threatened by torture or other inhuman or degrading treatment. With the reasons stated in Helsinki Administrative Court's decision the Supreme Administrative Court considers that A has not presented such reasons for which there would be a well-founded reason to assume he would be in danger of other serious violations of his rights or inhuman or degrading treatment in his country of habitual residence. The fact that according to the available information Palestinian refugees' rights to, i.a., practice certain professions cannot yield to such an interpretation that A would be in need of international protection pursuant to the mentioned provision. A cannot therefore be granted a residence permit on grounds of need of protection pursuant to Section 31 of the Aliens' Act.

According to the information available social, economic and sanitary conditions in the Palestinian refugee camps in Lebanon, particularly in the camp of Nahr el Bared, are poor. UNWRA's economic resources to help refugees has deteriorated. Taken into consideration all facts presented in their entirety, it cannot, however, be considered that the decision of the Directorate of Immigration is illegal on the grounds that the denial of a residence permit would be unreasonable pursuant to Section 20 paragraph 1 subparagraph 3.

As concerns removal from the country the Supreme Administrative Court states, as does Helsinki Administrative Court that A can have been returned to his country of habitual residence Lebanon and have been ordered a prohibition of re-entry.

Judges: Mr. Timo Silenti, Mr. Hannu Koskinen, Ms. Marita Liljeström, Mr. Pekka Vihervuori and Mr. Ilkka Pere. Referee Mr. Kai Träskelin.