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icon for stateless palestinians

Recognising Palestinians as stateless persons varies across EU+ countries. According to the European Network on Statelessness (ENS), several EU+ countries do not recognise Palestinians as stateless during the asylum procedure. This has created additional obstacles for Palestinians trying to access international protection, and it may impact the children of Palestinians if they cannot access the nationality of the country in which they were born.1018

The main reason for divergence in practices is because EU+ countries interpret Article 1(D) of the 1951 Geneva Convention on the Status of Refugees (1951 Convention) differently. According to the article, the 1951 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”.1019

Given the current situation in Palestine, the ENS and several civil society and international organisations have questioned the ability of the United Nations Relief and Works Agency for Palestine Refugees in the Near East’s (UNRWA) to protect Palestinian nationals.1020 Moreover, in March 2022, UNHCR emphasised the need to adequately assess the protection needs of Palestinians from Gaza and encouraged countries not to forcibly return people to a dire situation without access to support.1021

The ENS has also asserted that if UNRWA is not in a position to protect a Palestinian person, then this person should not fall within the scope of Article 1(D) and the case should be examined on the merits. In such cases, it is important to verify whether a person has another nationality, as the ENS considers that all Palestinians who do not hold a second nationality should be considered stateless.

Recent jurisprudence on the matter has centred around core issues with UNRWA’s ability to fulfil its mandate and the circumstances in which an applicant is considered to be registered with UNWRA.1022 In January 2022, the Dutch Council of State confirmed that Palestinian applicants

should only fall within the scope of Article 1(D) of the 1951 Convention if they were actively supported by UNRWA prior to requesting international protection in the Netherlands. The State Secretary for Justice and Security v Applicant concerned a Palestinian applicant who was born in Iraq and later moved to Egypt, where he resided without a legal permit. The Council of State noted that the applicant had never lived in an area supported by UNRWA but the applicant's father had been registered with UNRWA, meaning that he had a theoretical right to UNRWA support. The Council of State concluded that the applicant could not be reasonably expected to move to an area where he had never been in order to access support and, thus, confirmed that Article 1(D) was not applicable.

Likewise, in March 2022, the Dutch Council of State concluded that an applicant from the Gaza Strip did not fall within the scope of Article 1(D) as, prior to his arrival in Europe, he had resided in Libya for 3 years.

Following a similar line of interpretation, in April 2022 the Belgian CALL confirmed that an applicant of Palestinian origin must have been personally registered with UNRWA in order to fall within the scope of Article 1(D). CALL further noted that applicants whose parents were registered with UNRWA but did not receive UNRWA assistance themselves should be examined under Article 1(2) of the 1951 Convention.

In March 2022, the CJEU ruled on the cessation of UNRWA protection in the case of *N.B. and A.B.* v *Secretary of State for the Home Department (UK)*. The applicant claimed that she could not access appropriate education and medical assistance for her severely disabled son in the Al Bass camp in Lebanon, where the family was registered with UNRWA. The Secretary of State had rejected their claim for refugee status because they were registered with UNRWA and had received, and were likely to continue to receive, support in Lebanon. While the Secretary of State admitted that the child had been discriminated against on the basis of his disability, this discrimination did not reach the level required to qualify as persecution. When assessing whether UNRWA's protection had ceased, the CJEU concluded that national authorities should consider the applicant's circumstances at the time when they left UNRWA's area of operation and at the time when their request was being examined. The CJEU added that the burden of proof lies with the Member State to illustrate that the applicants would receive UNRWA's protection if they were to return. The CJEU also found that assistance provided by civil society organisations may be considered if the organisation had a formal and stable cooperation agreement with UNRWA.

While these court judgments help to form standard operating procedures in EU+ countries, there is still a lot of unclarity surrounding stateless Palestinians and Article 1(D). To this end, the ENS has issued a number of recommendations, including accession to the relevant international conventions, facilitating access to naturalisation, ensuring access to resettlement, and enacting and implementing fair and accessible procedures during a statelessness determination with procedural safeguards for Palestinians.1023

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