

# ORZECZNICTWO W SPRAWACH CUDZOZIEMCÓW

## 1. Orzecznictwo w sprawach uchodźców

Article 1D of the Geneva Convention Relating to Status of Refugees of 1951.  
(The protection of the other than the UNHCR body or the UN agency)

CASE no. 1

### 1. Case description

E.A. – a stateless person of the Palestinian nationality – on the 1st September 1997 lodged the application to the Ministry of Internal Affairs and Administration for granting the refugee status in the Republic of Poland. He possessed the valid travel document for the Palestinian refugee issued by the Lebanon Embassy in Warsaw.

He stated in the application that the economical situation and the religious war had forced him to leave Lebanon. He did not want to go back to this country because he was afraid of being detained immediately at the airport. He declared that he had been arrested at the moment of crossing the border with Syria in 1980 when he was mistaken for someone else but released after four months of detention. A year later, the Amal soldiers arrested him once again. This time he was released after five days due to the agreement between the Amal and the Palestine Liberation Organisation.

In the interview he also added that while staying in Lebanon he enjoyed the protection of the UNRWA (United Nations Relief and Work Agency for Palestinian Refugees in the Near East).

### 2. The position of the organs deciding on the case

As the organ of the first instance, the Minister of Internal Affairs and Administration denied granting the refugee status to E.A. in the meaning the Geneva Convention and the Protocol of 1967. Recalling provisions of the 1951 Convention and 1967 Protocol as well as Article 10 paragraph 3 of the Act on Aliens of 1963, the Minister stressed that the applicant in his application and the interview did not give any examples of his persecution and he did not even express any fear of the persecution on the grounds of his race, religion, nationality or membership of a particu-

lar social group in the country of his habitual residence. It was also noticed in the decision that E.A., apart from two distant incidents, had not been detained, arrested, tortured or sentenced by the court. Furthermore, the fact of leaving Lebanon legally allowed to presume that he had not been in danger of being persecuted by the authorities of the country of his residence.

It was also stated in the reasons for decision that, due to long – lasting civil war, the economic situation in Lebanon is very bad and that more than half of all Palestinian refugees lives in the camps. They are discriminated in employment. It is forbidden for them to work in 52 professions (eg. justice, medicine, pharmacology and engineering). In practice, they are allowed to take only seasonal jobs or jobs in the building. In fact, Palestinians may work according to their qualifications only in the refugee camps. So it was concluded that the situation of the applicant was not exceptional because all the Palestinians have similar problems. Moreover, bad economic situation cannot be taken into consideration in the determination procedure for refugee status.

Denying the refugee status, the Minister of Internal Affairs and Administration recalled the fact that the applicant possessed the travel document for the Palestinian refugee issued by the authorities of Lebanon. It was also stressed in the decision that the applicant declared in the interview that he had enjoyed the UNRWA protection, what meant that the exclusion clause (Article 1D of the Geneva Convention) should have been applied in his case. It was explained that the protection in the framework of the Geneva Convention was possible after expiration of the protection ensured by other than the UNHCR bodies or agencies of the UN. The fact that the applicant received the travel document for the Palestinian refugee and that he prolonged it at the Lebanese Embassy certified that the mentioned protection was not suspended. According to the Minister, all the mentioned prerequisites caused that the applicant could not enjoy the right to seek refugee status in other than Lebanon country.

E.A. lodged the appeal against the decision denying him the refugee status in the Republic of Poland to the Board for Refugees on 11 February 1999. He stressed in his appeal that after the studies in Poland he had returned to Lebanon to take up a job according to his profession. However, despite his higher medical education, the salary, which was offered to him in the refugee camp, was so low that it could not cover all the costs of living. As he graduated from the medical academy in Poland, he wanted to stay in this country, especially that he married the Polish citizen in 1998.

E.A. also stated that not only discrimination against Palestinians but also (despite the peace agreements) lack of stability and national prejudices were the main problems in Lebanon. He also confirmed that he had never been and a member of any political organisation but he was a hearty sympathiser of the PLO. He proved it

taking part in many manifestations (also in Warsaw). Although he was not tortured while he was detained, these occurrences significantly affected his mental life.

The appellate agency, the Board for Refugees, acting on the ground of Article 69 and 34 paragraph 1 of the Act on Aliens of 1997, maintained the decision of the Minister of Internal Affairs and Administration on 25 August 1999. Examining the decision given by the Minister, the Board stated that the first instance organ had considered all the circumstances of the case and, on the other hand, the applicant had not proved that he had been persecuted due to his race, religion, political opinion or other reasons.

Presenting reasons for the decision, the Board for Refugees noticed that E.A. had left Lebanon because of economical and social problems, mainly problems with finding an appropriate job. Moreover, the Board stated that the first instance had acknowledged properly that the applicant as the Palestinian refugee enjoyed the UNRWA protection what excluded the possibility of applying the Geneva Convention in his case. Concluding, the Board noticed that his marriage with the Polish citizen allowed him to legalise his stay in Poland in other administrative procedure.

On 15 September 1999 E.A. lodged the claim to the Supreme Administrative Court (SAC). Motivating the claim, E.A. stated that the administrative organs, which had taken decisions in his case, had not analysed all important circumstances. Firstly, he stressed that he had left Lebanon after the Shiites' attacks on the Palestinian camp while many of his compatriots had been killed. So, according to him, he had left Lebanon not only due to his unemployment but also because he had been in danger for reason of his nationality. Secondly, E.A. claimed that the Board had not given any reasons for the statement that he, as the Palestinian enjoying the UNRWA protection, had did not have the right to enjoy the benefits of the Geneva Convention. Furthermore, he stated that the logical interpretation of the provisions of the Convention in connection with analysis of the main purposes of the UNRWA as well as analysis of the decisions issued in similar cases by authorities of other countries, allowed to acknowledge that enjoying the UNRWA protection was tantamount to recognition that a given person fulfilled also conditions contained in the Geneva Convention. Taking into consideration the fact that E.A. had been the victim of persecution within the territory of Lebanon, the refugee status in the meaning of the Geneva Convention should have been granted to him. Moreover, the fact of being a refugee resulted automatically from the UNRWA protection. Concluding, E.A. noticed that the Board's remarks on the possibility of legalisation of his stay in Poland surpassed the subject of the case.

Acting on the grounds of Article 32 and article 69 of the Act on Aliens and Article 154 paragraph 1 and Article 138 paragraph 1 (2) of the Code of Administrative Procedure as well as Article 38 paragraph 2 of the Act on Supreme Administra-

tive Court of 1995, the Board admitted the claim of E.A. and decided to abrogate its own decision and the first instance decision and in consequence to grant the refugee status to E.A. Taking that decision, the Board referred to the clause contained in Article 1D of the Geneva Convention excluding application of the Geneva Convention towards persons protected by other than the UNHCR organs or agencies of the UN. The Board explained that if a given person had been under protection of the UNRWA and then that protection practically expired, such a person had a right to obtain, without any determination procedure, the refugee status in the meaning of the Geneva Convention. Two prerequisites are the most important in this situation. First, the fact of registration of a given person as a refugee under protection of the UNRWA. Second prerequisite is the expiration of that protection regardless of the reason of the expiration (it may be leaving the territory of the UNRWA activity). Taking into consideration the understanding of Article 1D of the Geneva Convention, E.A. fulfilled both conditions (registration by the UNRWA and the stay outside the territory of its activity), so the refugee status should be granted to E.A.

In consequence of the Board's decision, E.A. withdrew his claim from the Supreme Administrative Court. That is why on the 21st February 200, on the grounds of Article 355 paragraph 1 of the Code of Civil Procedure in connection with Article 59 and Article 53 of the Act on the SAC, the Court decided to discontinue the proceedings before the court.

*Opracowała: Barbara Mikołajczyk*

## 1. Case description

S.S.- Stateless, Palestinian, entered Poland legally on 11 October 1983 on the basis of a travel document issued for Palestinian refugees. On 27 August 1997 he applied for refugee status. Both in the application, as well as in the deposition given during the hearing, acting as a party in the case, he indicated that he was a Palestinian refugee. He had lived in a refuge camp in Lebanon with his parents, who had come there from Palestine in 1948. The family took advantage of the assistance provided by the UNRWA (United Nations Relief and Work Agency for Palestinian Refugees in the Near East). S.S. was a member of a student organisation operating in one of the fractions of the Palestinian Liberation Front, supporting Arafat. He participated in political meetings, however had no part in any military actions. According to the explanations given by S.S., following the Syrian invasion of Lebanon of 1982, the Syrian army searched the refugee camps, placing some people in Syrian prisons. It was then that the applicant decided to leave for Poland. From the time he entered Poland, he has never travelled to Lebanon. He did not even visit Lebanon on the occasion of the funerals of his mother and sister. He only left Poland for Prague on numerous occasions so as to prolong the validity of his travel document. He is afraid to return, fearing political opponents supporting Syria.

## 2. The position of the organs deciding on the case

The Minister of Internal Affairs and Administration, by means of a decision made on 18 January 1999, issued on the basis of article 10 item 3 and 4 of the act on aliens of 28 March 1963 (Journal of Laws 1992, no 7, position 30) and in connection with article 111 item 2 of the act on aliens of 25 June 1997 (Journal of Laws 1997, no 42, position 739) refused to award Mr. S.S. with refugee status in the understanding of the Geneva Convention regarding refugee status of 1951, as well as Additional Protocol to the Conventions of 1967 (Journal of Laws 1991, no 119, position 515 and 517).

It has been stated in the reasons for the decision that the analysis of the evidence gathered in the case indicated that the applicant did not satisfy the conditions described in the Geneva Convention of 1951. It has been demonstrated, following the provisions included in the UNHCR manual under: Definition of refugee status. Criteria and procedures, that persons forced to leave their state of origin in result of a military international or domestic conflict are not considered refugees in the understanding of the Convention. It is further broadly explained in the reasons for the decision that from the time of Mr. S.S.'s departure from Lebanon, the situation in that country has changed.

Moreover, it has been noted that the Applicant holds a travel document of a Palestinian refugee issued by Lebanese authorities, as well as an UNRWA registration card, proving the fact that he is a Palestinian refugee under UNRWA's protection. He is, therefore, subject to the exclusion clause of the Geneva Convention (art. 1 point D), which reads: "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, (...) these persons shall ipso facto be entitled to the benefits of this Convention." In the opinion of the organ of the first instance, the fact that the Applicant has received a travel document issued by Lebanese authorities and has been successively prolonging its validity proves the continuation of the protection provided by UNRWA. With respect to the fact that the Applicant has permanent residence in Lebanon and is under constant care of the United Nations, he is not entitled to applying for refugee status in Poland.

Another fact which was stressed in the reasons for the decision was that the Applicant treated the Polish refugee procedure in an instrumental manner. He applied for refugee status after as many as 15 years in our country, what indicates that Mr. S.S. did not seek effective protection against persecution but the application was merely an effort to legalise his stay in the territory of the Republic of Poland.

In line with the act on aliens of 1963, the Minister of Foreign Affairs was asked for an opinion on the case presented here. He shared the position described above.

Mr. S.S. appealed against the decision of the Minister of Internal Affairs and Administration to the Board for Refugees. In reasons for the appeal he indicated that he was a Palestinian refugee, therefore it was not viable to refuse him refugee status following the provisions of article 1 D of the Geneva Convention. He further explained that, for example, should the conditions of article 1 D sentence 2 of the convention be satisfied by excluding the possibility of a return to the area of UNRWA's operations (what indeed is true in his case), the persons seeking refuge status – following the provisions of the articles – can seek the status of a conventional refugee without the need to establish refugee status in accordance with article 1A item 2 of the Convention. The analysis carried out by the signatory states of whether the conditions were met is limited to the criteria defined in article 1D of the Convention. The aim of the analysis is also to establish whether the conditions of the provisions of cessation and exclusion included in articles 1C, E or F of the Geneva Convention are satisfied. However, this is where the possibility of examining individual cases ends. As it is in the case of statutory refugees, there is no possibility of analysing the reasons or the use of article 1A of the Convention in case the status of a Palestinian refugee ceases to exist. Moreover, the reasons for the cessation of the UNRWA protection over the registered Palestinian are also no longer important. Article 1 senten-

ce 2 of the Convention defines the situation clearly: “When such protection or assistance has ceased for any reason...”. Therefore, the deciding factor in this case is the criterion of registration with UNRWA, which is a confirmation of being included in this group of refugees and of satisfying the conditions of article 1D sentence 2 of the Convention.

The Board for Refugees, operating in line with the provisions of articles 32 and 69 of the act of 25 June 1997 on aliens (Journal of Laws 1997, no 114, item 739 with later amendments), as well as article 138 par. 1 point 2 of the Code of Administrative Proceedings (uniform text journal of Laws 1980, no 9, item 26 with later amendments) reversed the appealed decision and decided on granting Mr. S.S. of the refugee status in the Republic of Poland. In reasons to the decision, the Board stressed that the issue of basic importance in the investigation and settlement of the case was the use of the UNRWA protection by the Party. The clause included in article 1D of the Geneva Convention, which excludes its use with respect to certain persons in connection with their being included under the protection of other organs or agencies of the United Nations, connects this exclusion with the real existence of this protection. However, if the protection is not there, for any reason, then – in line with the position of the doctrine and the UNHCR – the Board has decided that the persons which had been under this protection previously have the right to being treated “automatically” as persons taking advantage of the protection accounted for in the Geneva Convention. In other words, if a given person was under the protection of UNRWA and then this protection ceased for any reason, then such person has the right to seek refugee status in line with article 1A point 2 of the Conventions (see: G. Köfner, P. Nicolaus: *Bases of Refugee Law in the German Federal Republic*, Ch. Kaiser Verlag, Munich 1986, point 3.1.2.1.2.; *The Principles and Course of Awarding Refugee Status*, published by the Office of the United Nations High Commissioner for Refugees, Geneva 1992, p.38). It is the Board’s opinion that the decisive factor in this case is – on the one hand – the person being registered as subject to the protection of an UN organ or agency, e.g. UNRWA, on the other, however – the practical cessation of this assistance for any reason (e.g. in result of leaving the territory of UNRWA’s operations – see: G.S. Goodwin –Gill: *The refugee in International Law*, Oxford 1985, p. 57).

The Board has assumed that in the case under analysis the key factor is whether the Party had been registered as one under the protection of UNRWA and whether or not this assistance had ceased. In course of the proceedings it has been established that the party was indeed registered with UNRWA and it has been assumed that the protection did cease. The latter opinion is further proved by the fact that UNRWA protection covers limited territory and that the Party in question has lived outside of the country of several years, having left Lebanon in his young age. Moreover, S.S. is not sure of his fate upon returning to Lebanon.

The Board for Refugees further indicated that the organ of the first instance concentrates its attention on analysing whether the Party satisfied the conditions included in article 1 A point 2 of the Convention. However, it omitted the registration aspect of the Party, as one being under the formal protection of UNRWA with the assistance actually having ceased. And it was this moment, in the opinion of the Board, which decided on the case and the result of the settlement.

*Opracowała: Mieczysława Zdanowicz*