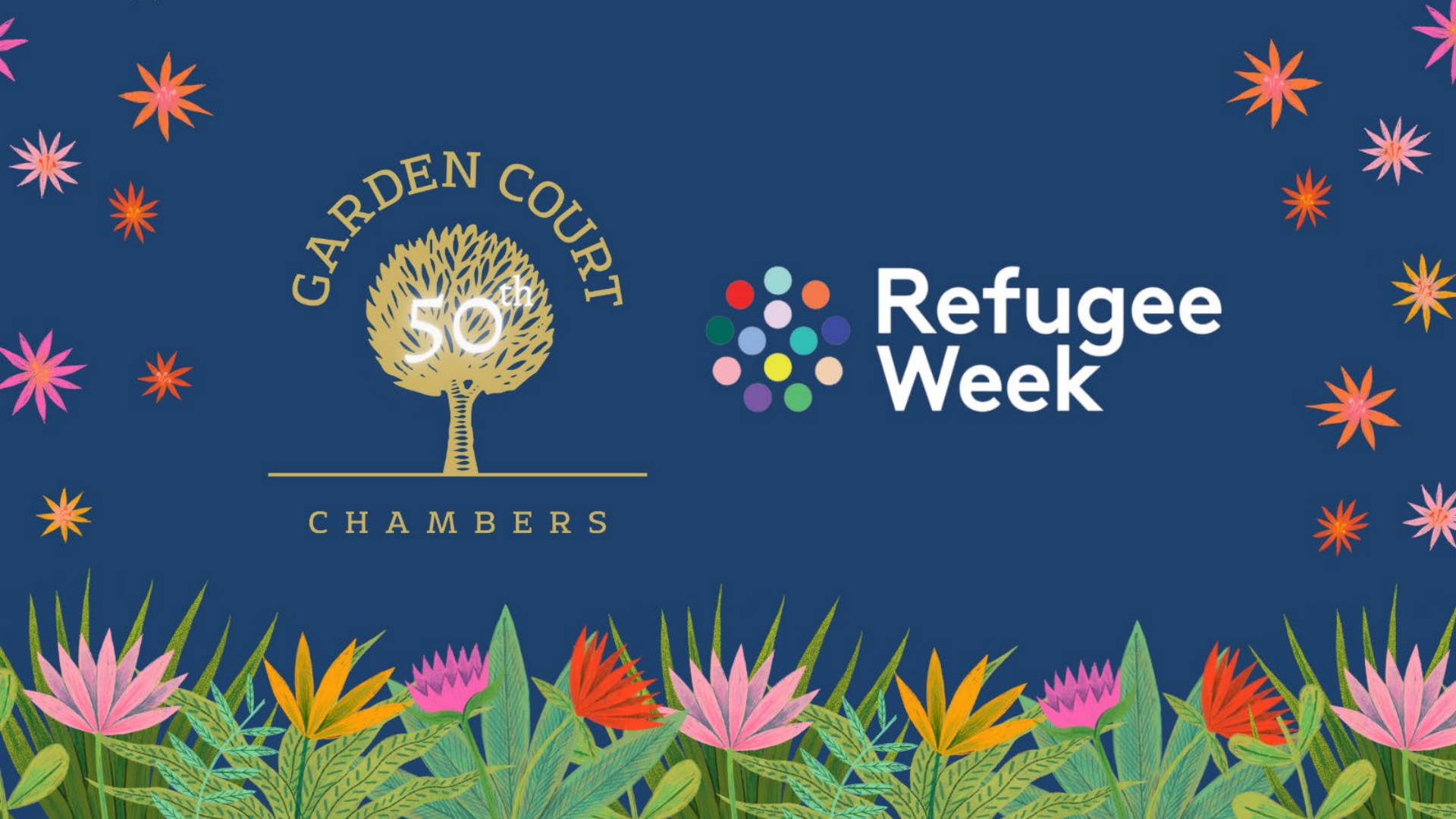
GARDEN COURT
50th
CHAMBERS
Refugee Week

Palestinians Seeking Refuge: Asylum Law Update

Sonali Naik KC, Garden Court Chambers (Chair)
Gordon Lee, Garden Court Chambers
Maha Sardar, Garden Court Chambers
Franck Magennis, Garden Court Chambers
Duran Seddon KC, Garden Court Chambers

Monday 17 June 2024

Article 1D of the Refugee Convention:

UNRWA and Palestinian Refugees

Gordon Lee, Garden Court Chambers

17 June 2024

Article 1D of 1951 Refugee Convention

'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.'

Article 1D

'When such protection or assistance has ceased for <u>any</u> 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, <u>these persons shall ipso facto be entitled to the benefits of this Convention</u>.'

Article 1D

- A '*deferred inclusion clause*'

- If certain preconditions are satisfied, then Article 1D refugees are **automatically** afforded the full benefits of Articles 2 to 34 of the 1951 Refugee Convention.

- Article 1D only applies to Palestinian refugees.

A Brief History

- In **1947,** the United Nations recommended that Palestine be partitioned into 2 territories: an independent Arab territory and an independent Jewish territory

- As Britain withdrew from Palestine and the Israeli declaration of independence followed on 14 May 1948, civil war between the two communities broke out. By the time the war ended in July 1949, Israel controlled over three quarters of the territory and around **750,000 Palestinian Arabs had been displaced**.

- Organs referred to in Article 1D **United Nations Relief for Palestine Refugees (UNRPR), the United Nations Conciliation Commission for Palestine (UNCCP) and the UNRWA**.

A Brief History (2)

The UNRPR operated from 1948 to 1950, then was replaced by the **UNRWA**.

And while the UNCCP officially still exists, its funding was terminated in 1952.

Therefore, the relevant agency for today's Palestinian refugees is the **UNRWA**.

United Nations Relief and Works Agency for Palestinians in the Near East

- UNRWA, currently has responsibility for almost six million Palestinian refugees in **Gaza, the West Bank, Jordan, Lebanon and Syria**
- Provides healthcare, housing and education:
- Funded mostly through voluntary commitments by donor states, international organisations and NGOs).
- Palestinian refugee population has increased almost sixfold since the agency's creation:
- The Syrian civil war displaced 280,000 Palestinian refugees in Syria, placing additional demands on URNWA services.

Funding Crisis

- In late January 2024, some of UNRWA's biggest donors, including the European Union, Germany and the US decided to suspend funding.

- Between 2009 and 2022, the US was UNRWA's largest single donor, contributing 23% of the agency's total budget, according to UNRWA figures. The EU bloc accounted for another 46% of all contributions.

- Not the first time – Trump cut funding to punish Palestinians for criticising the US decision to move its embassy to Jerusalem.

- But this time the scale is huge - combined, the 18 donor states accounted for over US$777m or 66% of all pledges made to UNRWA in 2022.

Current Conditions

- UNRWA chief Philippe Lazzarini had described the steps to suspend funding an "*additional collective punishment*".
- UN Special Rapporteur on Gaza, Francesca Albanese, also called the decision to cut funding "*immoral*" amid widespread hunger and a health crisis in the besieged Palestinian territory.
- UNRWA announced it would suspend food distribution in Gaza's southern city of Rafah, citing a lack of supplies and insecurity in the densely populated city.
- The UN World Food Programme has said that Palestinians in northern Gaza are experiencing "*full-blown famine*".
- The International Rescue Committee and the organisation Medical Aid for Palestinians, reported that in central Gaza displaced people are surviving on just 3 percent of the internationally recognised minimum requirements of water.

Authorities

Nawras Bolbol v Hungary [2010] EUECJ C-31/09: [47]

'Contrary to the line of argument developed by the United Kingdom Government, it cannot be maintained, as an argument against including persons displaced following the 1967 hostilities within the scope of Article 1D of the Geneva Convention, that only those Palestinians who became refugees as a result of the 1948 conflict who were receiving protection or assistance from UNRWA at the time when the original version of the Geneva Convention was concluded in 1951 are covered by Article 1D of that convention…'

Authorities (cont)

Abed El Karem El Kott and Others v Bevandorlasi es Allampolgarsagi Hivatal (Directive 2004/83/EC) Case C-364/11: [2]:

'The second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, where the competent authorities of the Member State responsible for examining the application for asylum have established that the condition relating to the cessation of the protection or assistance provided by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is satisfied as regards the applicant, the fact that that person is ipso facto 'entitled to the benefits of [the] directive' means that that Member State must recognise him as a refugee within the meaning of Article 2(c) of the directive and that person must automatically be granted refugee status, provided always that he is not caught by Article 12(1)(b) or (2) and (3) of the directive".

Thank you

020 7993 7600 | info@gclaw.co.uk | @gardencourtlaw

No Safe Legal Routes

Maha Sardar, Garden Court Chambers

Representing Palestinian asylum seekers within UK's asylum system

Franck Magennis, Garden Court Chambers

17 June 2024

Activities amongst the diaspora: free speech and cancelling leave

Duran Seddon KC, Garden Court Chambers

Palestine immigration cases and freedom of expression

The Contemporary Context

- October 2024: Robert Jenrick MP (Immigration Minister): process of revoking visas and expelling foreign nationals who "spread hate and division" has begun

- November onwards: concerns expressed by NGOs concerning actions 'chilling' free speech on US campuses (pro-Palestinian groups)

Domestic Legal Framework

- Not “conducive to the public good”; Immigration Rules: HC 395, para:

> 9.3.1. An application for entry clearance, permission to enter or permission to stay must be refused where the applicant’s presence in the UK is not conducive to the public good because of their conduct, character, associations or other reasons (including convictions which do not fall within the criminality grounds). 9.3.2. Entry clearance or permission held by a person must be cancelled where the person’s presence in the UK is not conducive to the public good.

- Or excluded at ‘direction’ of SSHD: Rules paras 9.2.1-9.2.4
- Section 3(5)(b) 1971 Act: ‘public good’ deportation
- Policy Guidance ‘Suitability: Non-conducive grounds for refusal or cancellation of entry clearance of permission”, Version. 3.0, 16 January 2024

Policy Guidance

'Suitability: non-conducive grounds for refusal or cancellation of entry clearance of permission, Version. 3.0, 16 January 2024

- 'Non-conducive' relates to a range of reasons: including "reprehensible behaviour" falling short of conviction

- Examples include engaging in "extremism of other unacceptable behaviour"

    - Unacceptable behaviour includes:
    - inciting, justifying or glorifying terrorist violence in furtherance of beliefs;
    - seeking to provoke others to terrorist acts
    - fomenting other serious criminal activity or seeking to provoke others to serious criminal acts
    - fostering hatred which might lead to inter-community violence in the UK

    List of unacceptable behaviours is "indicative" only

        - Associating with individuals involved in terrorism or extremism

Grounds of Challenge

- Common law: JR
- Article 10 ECHR – Freedom of Expression
  - Includes right to "hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers"
- Article 10(2): subject to restrictions that are "prescribed by law" and are "necessary in a democratic society, in the interests of national security, territorial integrity or public safety for the prevention of disorder or crime (etc)
- Article 8 ECHR: right to respect for private / family life
- Article 1 of the First Protocol: peaceful enjoyment of possessions

Article 10 ECHR: A Powerful Right

- Art 10 is a powerful right – universally recognised.
- Grand Chamber ECtHR: "one of the essential foundations of any democratic society": *Morice v France* (2016) 62 EHRR 1 (at §124) (Also, Lord Bingham in *R (Laporte) v Chief Constable of Gloucestershire* [2007] 2 AC 105 at §§35-6)
- "Political speech" enjoys particular protection under art 10: *R (Lord Carlile) v SSHD* [2015] AC 945, [2014] UKSC 60 (at §91); *Lingens v Austria* (1986) 8 EHRR (at §§40-2).
- State is entitled to restrict the exercise of the right under certain circumstances, the Strasbourg Court has said that there is little scope for restrictions on political speech: *Wingrove v UK* (1996) 24 EHRR 1 at §58; *Surek* (above) at §60.
- Applicable not only to favourably regarded information or ideas but also those that "offend, shock or disturb": *Surek v Turkey* (1999) 7 BHRC 339, provided that they do not "tend to provoke violence" (*Redmond-Bate v DPP* (1999) 163 JP 789 at §20.)
- Context of UK immigration / art 10: *Raed Salah Mahajna v SSHD*, IA/21631/2011 - the Deputy President of the UT (IAC): a 'strong' right" (at §85).

Applicability of Art 10 to 'On Entry'/Outside UK

- *Farrakhan v SSHD* [2002] EWCA Civ 606, [2002] QB 1391: applicable on entry
- *Farrakhan* cited without demur for some time: *Huang* [2007] 2 AC 167; *Geert Wilders (EEA)* [2009] UKAIT 00050
- *Moon* [2005] UKIAT 00112: Ouseley J – says *Farrakhan* both *obiter* and wrong
- *Naik* [2011] EWCA Civ 819, §32
- *Carlile v SSHD* [2014] UKSC 60, [2015] AC 945 and *Sehverert v ECO* [2015] EWCA Civ 1141 both concerned parliamentarians' rights in UK as well as applicant – see *Carlile*, §35 and *Sehveret*, §§39, 49 (see also *Geller* [2015] EWCA Civ 45 at §33
- But see width of concession of Leading Counsel for Treasury: p951GH in *Carlile*
- Strasbourg favourable cases:
- *Cox v Turkey* (2010) 55 EHRR 347: US national ban on re-entry (views on massacre of Armenians)
- *Women on Waves v Portugal* Applcn 31276/05: Dutch women's foundation based in Amsterdam.
- *Nolan and K v Russia* Applcn 2512/04: albeit art 9

Outstanding Question

Is Art 10 engaged at all where the reason for refusal is not in order to deny expression, but for other reasons; in *Farrahkhan*, *Moon*, *Naik*, *Carlile* (etc.) – grounds for exclusion were directly connected to the exercise of the rights in question?

Case in point: *Raed Salah Mahanja*

- *Raed Salah Mahajna v SSHD* IA/21631/2011 (UT), 5 April 2012
- Palestinian resident in Israel; leader of 'Islamic Movement' in Israel
- Visited UK (with EC); intended meetings: non-conducive
- Succeeded: art 10 ECHR
- Limited historic assertions five years previous engaged unacceptable behaviour / non-conducive
- UT balanced: remarks isolated, historic, not "tip of ice-berg", not at the heart of his general message;
- No "clear agenda".
- No previous problems on earlier visits
- *Contrast: Naik* and *GW* both "clear agenda" cases i.e. public pronouncements pervasive, offensive, dangerous

Relevant aspects of Art 10 case law

- *Surek and Ozdemir v Turkey*, 8 July 1999 [GC], Applcn 23927/94, §§57-64: leading member of proscribed organisation, not in itself enough; not incitement to violence; public's right to be informed of a different perspective – irrespective of how "unpalatable" that perspective may be; case of a journalist.
- *Dmitriyevskiy v Russia*, 3 October 2017, Applcn 42168/06: publication (by editor in chief of paper and head of NGO) of Chechen leaders statements containing long, damning criticism denouncing RF: "one-sided view" not enough to justify interference §§7-9, 106-109.
- Contrast: *Surek v Turkey* No. 3, 8 July 1999 [GC], Applcn 24735/94, §§10, 40-42.
- *Doner & Others*, 7 June 2017, Applcn 29994/02: where own aims non-violent / cultural albeit co-incide with aims / instructions of an illegal armed organisation (see at §§102-107).
- *Perincek v Switzerland*, 15 October 2015 [GC]: court reluctant to enter historic debates but will nevertheless look to see whether made in course of "tense" situation and (always) whether the statements can be seen as form of incitement to hatred or intolerance: §§213-220, 234, 238-9, 244
- *Bidart v France*, 12 November 2015, Appcn 52363/11: legitimate to impose constraints regarding nature of convictions but (not on whole Basque question), §42
- *Erdogdu and Ince v Turkey*, 8 July 1999 [GC], Applcn 25067/94, §47(iii): *context* of impugned statements important

Is The Policy Prescribed By Law IE Non-arbitrary?

- *Phillips v Secretary of State for Foreign and Commonwealth Affairs* [2024] EWHC 32 (Admin), [2024] 1 WLR 2227
- British national produced and disseminated audiovisual content in support of Russian invasion of Ukraine
- Therefore: designated under Russia (Sanctions) (EU Exit) Regulations 2019 – tightly written and defined – with detailed safeguards against arbitrariness: see §144(1)-(10)
- Raised Art 10
- Counsel advanced examples intended to show not foreseeable: “mere” expressions of support socially or social media arguing western support should cease: §145
- Court response: §145 “mere dissent”: high protection / Regulations do not apply
- Compare with non-conducive policy.

Forum issues where have human rights appeal

- What remedy do you needs?
- Intensity of review:

- *Carlile, R (Naik), Geller:* all examples of unsuccessful immigration JR / art 10. *Carlile*: need to be careful with.

- *Raed Salah Mahajna* (UT): less scope to defer to a decision of the SSHD on a statutory appeal (*Raed Salah Mahajna* (§§32-33).

- *R (FMA) v SSHD* [2023] EWHC 1579 (Admin), [2024] 1 WLR 723: 'anxious scrutiny' applied but for SSHD to decide generally what of 'relevance'

- Disclosure required?

Thank you

020 7993 7600 | info@gclaw.co.uk | @gardencourtlaw