

April 18, 2024

Towards an Enhanced Protection of Palestinian LGBTQ Refugees in Israel?

Written by [Tal Mimran](#)



This blog aims to unpack a recent [ruling](#) from the Israeli district court concerning the eligibility of an LGBTQ Palestinian to seek refuge under the [Refugee Convention](#). This issue is of tremendous importance, as LGBTQ Palestinians are a vulnerable group within the Palestinian community, in terms of social acceptance and also, at times, their personal security and dignity.

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[report by HIAS on the issue](#), while the important role of NGO's that promote the rights of LGBTQ Palestinians has been on the rise ([Mohammed S. Abualsaid](#)), the dangers the community face are still prominent, significant, widespread and of grave consequences.

The blog will proceed as follows. Initially, the legal framework of refugee law will be presented. Then, the factual background of the case and the arguments presented by each party will be outlined. Subsequently, I will present the decision of the court in the case at hand. Finally, I will discuss the broader implications of the ruling, which could mark a stride toward bolstering protections for LGBTQ Palestinians in Israel.

The Applicability of the Refugee Convention to Palestinians

The cornerstone of this discussion on the right of Palestinians to apply for refugee status in Israel, lies in article 1D to the 1951 Refugees Convention that states:

“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, without the position of such persons being definitively settled in accordance with

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According to this article, when there is a United Nations organ or agency that provides individuals with protection, the convention will not apply in relation to them. As such, this article can be referred to as an 'exception clause'. The objective of the article is to prevent situations where double protection is granted, in order to focus on the most vulnerable persons, ones who fear persecution and face risk to their life, health and dignity.

As will be shown below, this 'exception clause' stands at the heart of the judgment at hand, since the key issue the court grappled with was if Palestinians – who enjoy the assistance and protection of a specialized United Nations Agency (UNRWA) – should be able to apply for asylum in Israel. Accordingly, it is of importance to understand the proper interpretation and scope of the 'exception clause', in order to evaluate if and how it might apply to Palestinians who seek protection under the 1951 Refugees Conventions.

According to the UNHCR's [Guidelines](#), the 'exception clause' will only be triggered when an individual receives no protection from a United Nations agency, or has ceased to receive protection, for reasons beyond their control (for a critical view, based on the drafting history of the 1951 Refugees Convention, see: [Susan M. Akram](#), p.651-652). The evaluation should be done on a case-by-case basis, rather than the adoption of a blanket approach towards a certain population (like

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[Allampolgársági Hivatal](#) case, has ruled that the term *protection or assistance* in the context of the ‘exception clause’ should be interpreted narrowly, widening the protection granted to asylum seekers, and in relation to Palestinians – this clause should only apply to those who have directly received the assistance provided by UNRWA. This interpretation rejects the possibility to exclude from the ‘exception clause’ individuals that are merely eligible for UNRWA assistance, but are not receiving such aid in practice (para. 51).

Similarly to the view adopted by the UNHCR, the CJEU’s advocate general noted in [El Kott v Bevándorlási és Állampolgársági Hivatal](#) that the ‘exception clause’ should be limited to a situation in which a person is not enjoying assistance for a reason beyond their control (para. 78, 82-3). [The CJEU](#) accepted this notion and imposed the “reason beyond their control” test, while stating that the ‘exception clause’ will be triggered if the personal safety of an individual is at serious risk and if it is impossible for an agency to guarantee his security (para. 61-4).

The District Court Case

The case at hand involves a gay Palestinian man who has been residing in Israel since 2015. The individual expressed concerns regarding his safety in the West Bank, stemming from a fear of persecution based on his sexual orientation. In the past, the applicant was granted a temporary residency permit in Israel, affording him only limited rights.

rejected without any further discussion or evaluation.

The petitioner contended before the district court that the blanket assertion that the 1951 Refugee Convention is inapplicable to Palestinians in the West Bank represents a wrong interpretation of the Convention, as many Palestinians do not receive protection from UNRWA for various reasons, and that this interpretation in fact nullifies the rationale of the 'exception clause'. Conversely, the State contended that Palestinians residing in the West Bank are entitled to assistance from UNRWA, and as such they fall under the 'exception clause'. This view is based, *inter alia*, on a governmental report from 2014 asserting the rarity of persecution based on sexual orientation within the West Bank, and advocating for a local solution for the cases of persecution (when they take place), within the Palestinian Authority.

The Judgment

In her judgment, Judge Michal Agmon-Gonen, accepted the UNHCR's interpretation of the article, and noted that "Palestinians persecuted due to their sexual orientation should be afforded the option to file an asylum application", while dismissing the claim of the State that the convention does not apply to Palestinians given their eligibility to UNRWA's assistance (para. 26, 50-51). Judge Agmon-Gonen also reaffirmed the need to evaluate applications on a case-by-case basis, rather than treating all Palestinians seeking assistance as a whole. As

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underscored the substantial importance of the interpretation offered by the UNHCR (para. 49). She also noted that the factual claims brought by the 2014 Israeli governmental report, stating that the sexual persecution is rare, are outdated (para. 26). This view is supported by more updated reports, such as the 2019 HAIS report presented above, which describe a more volatile situation for members of the LGBTQ community.

In an important *obiter dictum*, it was highlighted that the UNHCR guidelines regarding sexual orientation should serve as a normative basis for discussion in future cases (para.54). In doing so, Judge Agmon-Gonen also affirmed that the criteria for refugee status based on “membership of a particular social group”, as enshrined in Article 1(2) of the Refugee Convention, allows for flexibility when assessing if a person falls within one of the protected groups under the 1951 Refugees Convention. This flexibility is essential for addressing societal phenomena not envisaged by the convention’s drafters (para.53), such as persecution based on sexual orientation. A similar opinion was previously adopted by the Israeli Supreme Court in 2020, when it [recognized](#), for example, that women fearing female genital mutilation (FGM) can be seen as particular social group, while relying on the same rationale as the one presented by Judge Agmon-Gonen (relating to the need to further adapt the treaty to pressing social needs).

A Look Ahead – The Importance of the Judgment

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assistance should not enjoy the protection of the convention, it opened the floor to Palestinians that do not receive UNRWA assistance to file an asylum request; (c) The judgment reaffirms the relevance of the UNHCR's guiding principles in the interpretation of the treaty, and it has implicitly supported the "next step" that can, and should, be taken by the Courts in Israel – recognition of refugee status based on sexual orientation.

One can hope that this judgment will indeed mark a change in the policy of the State of Israel towards applications for asylum from Palestinians in general, and particularly from the LGBTQ community (at the least, for ones who find themselves without the avail of UNRWA, due to circumstances beyond their control). This is a significant change from the long-standing approach of the Israeli authorities that prevented Palestinians from gaining such status, and it will be important to wait and see if and how this ruling might indeed change the reality of LGBTQ Palestinians seeking protection in Israel.

Broadly speaking, the ruling affirmed the crucial need to protect LGBTQ Palestinians facing persecution, by recognizing their situation as an objective situation of danger, where UNRWA fails to provide them protection in their homes. Additionally, the court's recognition of the UNHCR's guiding principles in Israeli interpretation of refugee law presents a promising prospect for future jurisprudence and litigation, in terms of enhancing the coherence and predictability of interpretations

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not processed at all). Lastly, the *obiter* regarding the ability to use the “membership of a particular social group” to grant refuge to LGBTQ persons, can be used as a ground for future, and long anticipated, recognition of refugee status for individuals fearing prosecution based on their sexual orientation – as is already widely accepted in other States around the world (see selected examples as [in the EU](#), para.49, [in the US](#), p.820 and [by the UNHCR](#), para.6-7).

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Zara Cooper says

April 18, 2024

This post is Zionist propaganda. LGBT people are not a vulnerable community in Palestine. All Palestinians are, however, vulnerable – because of Israel's genocide, starvation, occupation, military rule, settlements and apartheid.

Mohammed Abualsaid says

June 6, 2024

I'm unsure as to why my article is being referenced here , but it has been entirely misrepresented to fix your narrative as Israel being some form of "gay haven" for queer Palestinians. If you have read my article , you would certainly understand that Israeli colonialism serves as a significant dead end for all Palestinians , not just queer folk.

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