Analysis of case law from 2022-2024

October 2024

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EUROPEAN UNION
AGENCY FOR ASYLUM

Jurisprudence on the Application of the Temporary Protection Directive

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List of abbreviations

Term	Definition
ACSC	Administrative Court of Sofia-City
APD	(recast) Asylum Procedures Directive 2013/32/EU
BAMF	Federal Office for Migration and Refugees (Germany)
CALL	Council for Alien Law Litigation (Belgium)
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EUAA	European Union Agency for Asylum
EU Charter	Charter of Fundamental Rights of the European Union
EU+ countries	Member States of the European Union and associated countries – Iceland, Norway and Switzerland
FAC	Federal Administrative Court (Switzerland)
Implementing Decision 2022/382	Council Implementing Decision (EU) 2022/382 of 4 March 2022
Implementing Decision 2023/2409	Council Implementing Decision (EU) 2023/2409 of 19 October 2023
IND	Immigration and Naturalization Service (Netherlands)
LAR	Law on Asylum and Refugees (Bulgaria)
SAR	State Agency for Refugees under the Council of Ministers (Bulgaria)
SEM	State Secretariat for Migration (Switzerland)

Note

The cases presented in this report are based on the EUAA Case Law Database which contains more extensive summaries of the main elements of the court's decision. The full judgment is the only authoritative, original and accurate document which should be consulted for the authentic text.

The database includes decisions and judgments related to international protection which were pronounced by national courts of EU+ countries, the Court of Justice of the EU (CJEU), the European Court of Human Rights (ECtHR), the UN Committee on the Rights of the Child (UN CRC) and UN Committee on the Rights of Persons with Disabilities (UN CRPD). The summaries are drafted in English with the support of translation software and are reviewed by the EUAA Information and Analysis Sector before publication.

The database serves as a centralised platform on jurisprudential developments related to asylum, and cases are available in the Latest updates (ten most recent cases by date of registration), Digest of cases (all registered cases presented chronologically by the date of pronouncement, by country or by topic) and the Search bar.

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Introduction

This report covers judgments, decisions and interim measures by national courts and the Court of Justice of the European Union (CJEU) on the implementation and application of the Temporary Protection Directive and the Council Implementing Decision 2022/382 of 4 March 2022 and the Council Implementing Decision 2023/2409 of 19 October 2023.

The report examines jurisprudence concerning displaced persons from Ukraine who requested temporary protection after the Russian invasion on 24 February 2022. The analysis of cases, covering March 2022–August 2024, provides a comprehensive overview of the challenges addressed by courts and their interpretations of the application of the Temporary Protection Directive. In particular, courts assessed the eligibility of Ukrainian nationals and third-country nationals for temporary protection in Europe. The cases further analysed the impact of the date of residence in Ukraine, holding dual nationality, simultaneous applications and the criteria to be considered as a family member of a displaced person from Ukraine.

The eligibility of third-country nationals who were displaced from Ukraine was disputed before national courts on different legal bases. Their eligibility was assessed on grounds of type of residence in Ukraine and their possible return under safe and durable conditions. Terminating temporary protection for this group also needed judicial clarification.

The report also highlights jurisprudential developments related to exclusion from temporary protection, procedural aspects, the interplay with the international protection procedure and the reception of beneficiaries of temporary protection.

The report does not cover decisions and judgments related to the examination and processing of applications for international protection (refugee status and subsidiary protection) which were submitted by Ukrainian nationals or third-country nationals with residence in Ukraine. The report does not examine national policies and practices related to the transposition of EU legislation on temporary protection at the administrative level. For more information on this topic, please see the EUAA's Who is Who in International Protection platform.

The report has been shared with national contact points and feedback was received from Austria, Denmark, Greece, Finland, Netherlands, Poland and Sweden. It should be noted that in Portugal there were no appeals concerning the application of the Temporary Protection Directive.[1]

The selection of cases presented in this report is indicative and not exhaustive to identify trends and common approaches at the national or European levels. The cases are gathered from various sources, including EUAA research, EUAA networks of asylum officers, judges, members of courts and tribunals, independent experts and civil society organisations. We would like to express our appreciation for the time and effort to register these cases in the EUAA Case Law Database, thus contributing to a shared knowledge base on asylum systems in EU+ countries.[i]

[i] EU Member States plus Iceland, Norway and Switzerland.

Main highlights

- In the majority of cases concerning the implementation of the Temporary Protection Directive, national courts were called to clarify the criteria for being eligible for temporary protection. These cases involved a thorough examination of residence in Ukraine on 24 February 2022, dual citizenship, simultaneous requests lodged in different Member States, requests made by beneficiaries of temporary protection in another Member State, family members and third-country nationals residing in Ukraine. Far fewer cases dealt with exclusion from temporary protection, legal aid, appeals and reception conditions.

- Regarding eligibility for temporary protection of Ukrainian nationals, courts examined the requirement of residence in Ukraine on 24 February 2022. They concluded, for example in Austria and Belgium, that the fulfilment of this requirement should not be affected by a short absence from Ukraine, e.g. due to coincidentally being outside of Ukraine at the start of the war.

- Courts also examined eligibility for temporary protection of Ukrainian nationals who are holders of dual citizenship. For example, the courts in Hungary and Switzerland considered dual citizens not to be eligible for temporary protection because of the possibility of receiving protection in the country of the second nationality. However, a visa for another country was not considered to be sufficient and courts noted that national authorities should adequately investigate the need for protection.

- For beneficiaries of temporary protection in one EU+ country who subsequently requested temporary protection in a second EU+ country, the refusal of a new request was validated by courts.

- In cases of simultaneous requests for temporary protection in two Member States, the CJEU will rule on questions submitted by the Czech Supreme Court on the possibility of rejecting the request as inadmissible and the right to an effective remedy under the Temporary Protection Directive and the EU Charter.

- With regard to family members who are unmarried partners, national courts clarified that the decisive factor is the qualification given to such relations in national law or practice in the host country. Third-country nationals with a Ukrainian spouse were precluded from temporary protection as a derived right for family members when the Ukrainian partner was not displaced/did not leave Ukraine.

- The eligibility of displaced third-country nationals displaced from Ukraine was assessed against two complementary requirements: the existence of a legal and permanent residence in Ukraine and the impossibility to return to the country of origin under safe and durable circumstances.

- Third-country nationals with a temporary residence permit in Ukraine faced particular challenges regarding their status in several EU+ countries. For example, in the Netherlands, they were initially granted protection and included in the scope of national legislation implementing Article 2(3) of the Implementing Decision 2022/382. Policy changes were then adopted on the termination of protection, which were interpreted in divergent case law by Dutch courts, leading to two referrals for preliminary rulings on the duration of protection under the Temporary Protection Directive and the Returns Directive. The cases are pending before the CJEU.

- Related to exclusion, an Austrian court assessed that a person who committed a crime in the host country cannot be excluded from temporary protection if the person was not considered to constitute a danger to national security.

- On general access to temporary protection, national courts in Bulgaria and Spain ruled that displaced persons from Ukraine can immediately receive protection without specific formalities, based on their willingness to be protected under the status of temporary protection and a proof of identity.

- Regarding access to legal aid and appeals, some jurisdictions clarified that, if the Temporary Protection Directive does not expressly cover certain procedural aspects, then relevant provisions for international protection are applicable because temporary protection is governed by the same rules and principles.

- On the interplay between temporary protection and international protection, national courts in Bulgaria and Iceland ruled that, while the Temporary Protection Directive provides for the right to apply for international protection at any time, the registration and processing of asylum applications for beneficiaries of temporary protection must be suspended until temporary protection expires under EU law.

- The arrival of displaced minors from Ukraine led courts to adopt prompt guidelines on procedures to be followed for the appointment of a legal guardian. For example, for children accompanied by other people (e.g. the head of a 'family-type' orphanage), a Juvenile Court in Italy assessed the legal status of the guardian appointed under Ukrainian law and the ties between that guardian and the child.

- The activation of temporary protection allowed immediate access to rights and benefits for displaced persons from Ukraine. Thus, there were fewer cases related to reception-related aspects than on eligibility and procedural aspects. The cases mainly concerned disputes on accessing social benefits at the same level as nationals (for example in Poland), accessing food and accommodation (for example in Bulgaria) and access to employment (for example in Germany).

1. Legislative framework

Following the Russian war of aggression against Ukraine, a large number of Ukrainian nationals and third-country nationals residing in Ukraine were forced to flee and move to a nearby EU+ country. To prevent the risk of excess burden on the functioning of the asylum and reception systems in EU+ countries, the Council unanimously adopted the Implementing Decision 2022/382 on 4 March 2022 activating the implementation of the Temporary Protection Directive (TPD), initially until 4 March 2023.

The TPD defines the decision-making procedure needed to trigger, extend or end temporary protection, in addition to the rights and benefits provided to beneficiaries of temporary protection. To harmonise the implementation of the TPD and the Implementing Decision, the European Commission communicated Operational guidelines of 21 March 2022 for the implementation of Council Implementing Decision 2022/384.

The Council Implementing Decision (EU) 2023/2409 of 19 October 2023 (Implementing Decision 2023/2409) extended temporary protection as introduced by Implementing Decision (EU) 2022/382 until 4 March 2025 and most recently the Council of the European Union decided to extend protection until March 2026.

2. Standard-setting jurisprudence by the CJEU

To date, the CJEU has not made any ruling on the application of the TPD. However, there are three referrals for a preliminary ruling pending, which were submitted by courts in Czechia and the Netherlands. The report will be updated once the CJEU pronounces judgments on the pending cases.

3. Eligibility of Ukrainian nationals and their spouses

The Implementing Decision 2022/382 defines under Article 2(1) the people to whom the temporary protection applies:

> *1. This Decision applies to the following categories of persons displaced from Ukraine on or after 24 February 2022, as a result of the military invasion by Russian armed forces that began on that date:*
>
> *a) Ukrainian nationals residing in Ukraine before 24 February 2022;*
>
> *b) stateless persons and nationals of third countries other than Ukraine who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022; and*
>
> *c) family members of the persons referred to in points a) and b).*

The eligibility of Ukrainian nationals for temporary protection in EU+ countries raised a series of legal questions about their actual presence and residence in Ukraine on 24 February 2022 and the impact of dual citizenship or holding a visa in another country. National courts also analysed the consequences of having obtained temporary protection in another EU+ country and questioned before the CJEU the possibility of adopting inadmissibility decisions when a Ukrainian national submits simultaneous requests for temporary protection in two Member States.

On the concept of family, national jurisdictions assessed requests for temporary protection submitted by spouses of Ukrainian nationals who remained in Ukraine and were not displaced and by unmarried partners.

3.1. Residence in Ukraine on 24 February 2022

In some cases, authorities needed to assess eligibility when Ukrainian citizens came to Europe from third countries and were not resident in Ukraine. At the same time, they could not return to Ukraine due to the war.

In September 2022, the Belgian Council for Alien Law Litigation (CALL) assessed that, for a Ukrainian national, a short-stay visa in Poland cannot equate to protection in that Member State. Thus, the applicant was deemed eligible for temporary protection in Belgium.[2]

In Austria, the Constitutional Court clarified in March 2023 the eligibility for temporary protection for a Ukrainian national who was on holiday when the war broke out. Because the applicant could not return from his holidays in Georgia to Ukraine, he entered Austria in March 2022, where his request for temporary protection was rejected because he was not present in Ukraine on 24 February 2022. The Constitutional Court interpreted Section 1 of the

Displaced Persons Ordinance as meaning that a short absence from Ukraine, e.g. holidays, does not change the status of being a resident in Ukraine.[3] While overturning the negative decision, the court emphasised that the contested decision led to a violation of the right to equal treatment between foreigners.[4]

In contrast, CALL ruled in October 2023, December 2023 and March 2024 that Ukrainian nationals who were outside of Ukraine on 24 February 2022 for personal or family reasons were not eligible for temporary protection.[5] In these cases, CALL found that the applicants left Ukraine a long time before the war started and were not residents shortly before 24 February 2022 or after this date, thus they were deemed not to be eligible under the categories listed in the Implementing Decision 2022/382.

For a Ukrainian national who never lived in Ukraine but only occasionally visited relatives there, CALL confirmed in October 2023 that the person was not eligible for temporary protection.[6]

The Icelandic Immigration Appeals Board ruled in October 2023 that Ukrainian nationals with a residence permit in an EU Member State were eligible for a residence permit on humanitarian considerations (equivalent status to temporary protection).[7] The cases concerned Ukrainian nationals with a temporary residence permit in Poland and Lithuania on the basis of employment, whose applications for international protection and humanitarian residence in Iceland had been rejected.

The Immigration Appeals Board referred to the Icelandic government's activation of the TPD by Government Decision 2022/382 and clarified that, although the national guidelines of March and June 2022 were not published, they were binding according to national legislation upon their entry into force. Based on the principle of legality, the Immigration Appeals Board ruled that these guidelines could be used to narrow the application of the government decision due to its vague nature and lack of clear indications of eligible groups. The board concluded that the applicants could be excluded from temporary protection on grounds that they held a residence permit in Poland or Lithuania.

Similarly, in an appeal on points of law, the Spanish Supreme Court clarified in February 2024 that Ukrainian nationals who were in Spain prior to 24 February 2022 in an irregular situation were eligible for temporary protection based on the extension of eligible categories, as provided by the Council of Ministers of 8 March 2022 implementing the scope of the Implementing Decision 2022/382. The Supreme Court reasoned the judgment by referring to the principle of *non-refoulement*, applied analogously when assessing eligibility for subsidiary protection, and by referring to the obligations derived from human rights law, namely Article 3 of the ECHR and Article 4 of the EU Charter.[8] This decision builds on a previous ruling in Spain in December 2022 that the scope of eligibility was extended to people who were in an irregular situation and unable to return to Ukraine.[9]

In contrast, the Federal Administrative Court (FAC) in Switzerland ruled in July 2024 that a Ukrainian national who was not present in Ukraine when the war broke out but was legally residing in Poland for 2 years did not belong to the categories of people who were eligible for temporary protection. The State Secretary for Migration (SEM) rejected the request because the applicant could access protection in Poland, but FAC looked first into the fact that the applicant was not a resident nor present in Ukraine when the war broke, thus he was to be excluded from S protection status (equivalent to temporary protection under EU law).[10]

3.2. Persons holding dual citizenship or a visa for another country

The situation of people who held a dual nationality or a visa in another country raised legal concerns on eligibility because of the possibility for them to receive national protection in the second country of citizenship, which is not Ukraine.

FAC in Switzerland decided in December 2022 that a Ukrainian national who has Canadian citizenship was not eligible for temporary protection since he can receive protection in a safe country.[11] The applicant's opposition to COVID-19 vaccinations in Canada, other public policies and the absence of friends or relatives were assessed to not overturn the presumption of a safe country. The court reasoned the decision on the principle of subsidiarity in refugee law, noting that if temporary protection would be allowed for people with a dual citizenship, it would create a more favourable situation than for those applying for asylum and having a dual citizenship in a safe country.[12]

Building on the previous case, FAC confirmed in September 2023 the rejection of S protection status for a Ukrainian applicant with a dual citizenship in Bulgaria. Although temporary protection is granted to Ukrainian nationals who were resident in Ukraine before 24 February 2022, the court clarified that dual nationals, such as the applicant who is also an EU/EFTA+ citizen, are not eligible.[13, 14] FAC considered that the principle of subsidiarity under asylum law had to apply for the gap in the provisions regulating temporary protection, namely the Federal Council decision FF 2022 586 of 11 March 2022 adopted on the basis of Section 66(1) of the Asylum Act. In view of the possibility to return safely and permanently to Bulgaria, an EU Member State, the applicant was not entitled to temporary protection.

However, for a Ukrainian national with a visa for Canada and a touristic visa for the USA, FAC ruled in June 2024 that SEM had insufficiently investigated whether the applicant would have comparable and valid alternative protection in these countries. The court also noted that the administrative authority must contact Canadian and American authorities to clarify all aspects related to the status of the applicant. In addition, the court noted an unclear status in Czechia where the applicant stayed for 3 months and where he claimed that his mother was staying, thus the case was referred for a re-assessment.[15]

In a different scenario, the Budapest District Court clarified the eligibility for temporary protection of a Russian national who lived in Ukraine and whose Ukrainian partner had a dual citizenship in Hungary. The court ruled in March 2023 that Section 8(1) of the Government Decree on the implementation of temporary protection does not provide for a less favourable situation for third-country nationals who are family members of Hungarian nationals residing in Ukraine, solely on the ground that their family member has (also) Hungarian citizenship, because such interpretation would be contrary to the Hungarian Constitution.[16]

3.3. Secondary movements of persons holding temporary protection in another Member State

The administrative court in Switzerland received appeals against refusals for temporary protection submitted by beneficiaries of this protection in another EU country. The court found that the validity of temporary protection or the possibility to renew it in another EU country precludes the granting in Switzerland.

The Swiss FAC ruled in June 2024[17] that a Ukrainian national who had previously obtained temporary protection in Poland cannot be granted S protection status in Switzerland (which is equivalent to temporary protection). The court reiterated the categories which are eligible for S protection status, as defined by the Federal Council Decree of 11 June 2022 and the principle of subsidiarity of asylum protection governing the decision-making process of requests for temporary protection. It held that a Ukrainian national who has alternative protection outside of Ukraine is not dependant on protection from Switzerland. The court noted that the applicant held a PESEL registration number which entitled him to access financial assistance, medical services and employment in Poland. In the absence of evidence that a renewal of the PESEL was rejected or that the Polish authorities would not renew his registration number, the court rejected the appeal against the negative decision on S protection status.

The Swiss court reached a similar conclusion in a ruling of June 2024 for a Ukrainian national who had temporary protection status in Romania.[18]

For applicants with an expired residence permit which was granted on the basis of the TPD in Belgium, FAC ruled on 3 July 2024 that they are excluded from S protection status in Switzerland because protection was already granted in Belgium. Since temporary protection is still valid in the EU and the Belgian authorities expressly agreed to readmit the applicants, the court found no reason to grant temporary protection.[19]

3.4. Persons who made simultaneous requests in several EU+ countries

In the case of repeated requests for temporary protection submitted simultaneously in several EU+ countries, the courts in Czechia considered that a second request must be deemed inadmissible, in line with EU legislation which prevent secondary movements.[ii]

To seek clarification, the Czech Supreme Administrative Court referred questions before the CJEU in November 2023 on the interpretation of Article 8(1) of the TPD on the possibility of rejecting a request for temporary protection as inadmissible when the applicant has previously applied for or has been granted such protection in another EU Member State. The second question referred to the possibility to seek a judicial review against an inadmissibility decision, pursuant to Article 47 of the EU Charter.[20]

The case concerned a Ukrainian national who registered for temporary protection in Germany in July 2022 and subsequently in Czechia in September 2022. The German authorities had not yet taken a decision on the application, but the Ministry of the Interior in Czechia rejected the request as inadmissible. The applicant disputed before the Czech courts her right to temporary protection and argued that the TPD did not provide an exclusion clause on grounds of having registered for protection in another EU country. However, the Ministry of the Interior claimed that Czechia did not transpose Article 28 of the TPD and Member States have the discretion to apply inadmissibility in situations which are not governed by the TPD. The Ministry of the Interior added that, although the Council Decision grants the right to choose in which Member State to apply for temporary protection, this does not imply that one can successively apply in several Member States, which may result in a burden on reception systems in EU+ countries due to repeated requests.

The referring court requested the processing of the case in an urgent procedure and also proposed answers to the questions as follows:

> *1. Article 8(1) of Council Directive 2001/55/EC, even having regard to the Member States' agreement not to apply Article 11 of that directive, does not preclude national legislation under which an application for a residence permit for the purpose of giving temporary protection is inadmissible if the foreign national has*

[ii] According to the Swedish Migration Agency (SMA) legal position RS/005/2022 on the examination procedure according to Chapter 21 of the Swedish Aliens Act Rättsligt ställningstagande angående ordningen för prövningen enligt 21 kap. utlänningslagen (2005:716) (migrationsverket.se), the European Commission has stated that people have the right to choose the Member State where they want to register for temporary protection. A Member State shall grant temporary protection to persons covered by the Implementing Decision, regardless of whether the person previously registered in another Member State. Also, Member States shall not apply Article 11 of the TPD. The Swedish Migration Agency considers that the Commission's statement may be interpreted in the sense that the right of residence in another Member State does not prevent the granting of temporary protection in Sweden. According to the Swedish Migration Agency, an investigation is not needed within the framework of the examination of the temporary protection on whether a person has a right of residence in another Member State. See also: Frequently asked questions received on the interpretation of the Temporary Protection Directive and Council Implementing Decision 2022-382_en.pdf (europa.eu)

> *applied for a residence permit in another Member State or has already been granted a permit in another Member State.*
>
> *2. A person enjoying temporary protection under Council Directive 2001/55/EC has the right to an effective remedy before a tribunal under Article 47 of the Charter against the failure of a Member State to grant a residence permit within the meaning of Article 8(1) of Council Directive 2001/55/EC.*

Likewise, in March 2024, the Municipal Court of Prague ruled in an appeal against an inadmissibility decision concerning a request for temporary protection by a Ukrainian national. The court clarified that EU legislation aims to prevent simultaneous requests for temporary protection in more than one EU Member State.[21] However, in this case, the applicant, who was previously a beneficiary of temporary protection in Germany, no longer had this status when applying in Czechia, and there were no other proceedings for such a request in another EU country. Since the Ministry of the Interior was aware that the applicant was not under a simultaneous procedure for temporary protection in another EU Member State, the court held that the inadmissibility decision was contrary to the TPD and would lead to a denial of rights for the applicant.

3.5. Family members

Article 4 of the Implementing Decision 2022/382 stipulates the categories and conditions under which a person can be considered a family member in order to be recognised as a beneficiary of temporary protection.

> *4. For the purposes of Article 2(1c), the following persons shall be considered to be part of a family, insofar as the family was already present and residing in Ukraine before 24 February 2022:*
>
> *a) the spouse of a person referred to in paragraph 1a or 1b, or the unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its national law relating to aliens;*
>
> *b) the minor unmarried children of a person referred to in paragraph 1a or 1b, or of his or her spouse, without distinction as to whether they were born in or out wedlock or adopted; and*
>
> *c) other close relatives who lived together as part of the family unit at the time of the circumstances surrounding the mass influx of displaced persons, and who were wholly or mainly dependent on a person referred to in paragraph 1a or 1b at the time.*

National jurisdictions considered that third-country nationals who are spouses of Ukrainian nationals who were not displaced from Ukraine and still reside there cannot claim protection as family members. For unmarried couples, the decision on eligibility depends on national

systems and whether such relations are recognised and protected by national law or practice as being equivalent to marriage/family in the host country.

3.5.1. Unmarried partners of Ukrainian nationals

Diverging case law was identified in several EU Member States on whether unmarried partners of Ukrainian nationals may be considered family members for the purposes of a request for temporary protection.

The Vilnius Administrative Court considered in March 2023 that a Moldovan national who lived for a long period with a Ukrainian partner in Ukraine was eligible for temporary protection as a family member under the TPD. The reasoning was based on Article 2(4) of the Implementing Decision 2022/382 which provides that family members are "a) the spouse or unmarried permanent partner of a Ukrainian person, if the legislation or practice of the Member State concerned provides for unmarried couples similar conditions to those for married couples under its national law relating to aliens".[22]

The court recalled the Constitutional Court's landmark case of 28 September 2011 which interpreted Article 38(1) of the Constitution as protecting unmarried couples in the definition of family. According to the court, the concept of family includes "the joint life of an unmarried man and woman, which is based on constant emotional attachment, mutual understanding, and the voluntary decision to assume certain rights and responsibilities, putting the emphasis on the content of relationships, irrespective of the form of expression of these relationships which is not of fundamental importance to the constitutional concept of family".

Therefore, based on national jurisprudence and Article 8 of the ECHR, and in view of the evidence of joint living in Ukraine and Lithuania, the applicant was granted temporary protection. Upon an appeal against this decision by the Migration Department, the Supreme Administrative Court confirmed on 14 June 2023 that the Vilnius court's interpretation was lawful and reasonable that the applicant qualified as a family member under national law related to foreigners and is therefore eligible for a temporary residence permit based on temporary protection.[23]

In contrast, some courts in Austria and Germany ruled that unmarried partners of Ukrainian nationals were not eligible to receive temporary protection. For example, the Federal Administrative Court in Austria clarified that cohabitation and a domestic partnership between a third-country national and a Ukrainian national in Ukraine did not enable the partner to be considered a family member because no equivalent legal treatment existed in Austria.[24] Likewise, the Regional Administrative Court of Munich stated that, although the applicant had a long cohabitation and partnership with a Ukrainian national, German law does not consider unmarried partners as family members, thus he was not eligible for temporary protection under Article 2(1c)–(4) of the Implementing Decision 2022/382 and Section 24(1) of the Residence Act.[25]

However, the Regional Administrative Court of Cologne allowed a suspensive effect of a decision in July 2023 when the applicant, partner of a Ukrainian woman, was refused temporary protection. The court justified the measure on a risk of loss of rights pending the

determination of whether the applicant can be considered a life partner of a Ukrainian national who was an eligible for protection. The court reiterated the criteria for the existence of a life partnership according to case law of the Federal Constitutional Court and Federal Ministry of the Interior instructions for the implementation of the law on the current adaptation of the Freedom of Movement Act, EU and other laws. Precisely, such partners must demonstrate a relationship beyond a pure household and economic community, and that they are prepared to support each other permanently in different life situations in their social spheres, particularly from a personal and, under certain circumstances, financial perspective.[26]

3.5.2. Relationships of dependency

Dependency between adults was assessed by the Hungarian court as implying material interdependency, with full or partial responsibility to provide financial support or personal care.

The Budapest District Court rejected in January 2023 an appeal submitted by a Russian national against a negative decision on temporary protection, stating that the definition of an adult family member was not based only on living in the same household but rather required a relationship of dependency. The man had resided in Ukraine for more than 30 years in a household with his mother and his daughter; however, only the mother was recognised as a beneficiary of temporary protection, while the applicant and his daughter were rejected as not being considered family members. The Budapest District Court explained that Article 2(4c) of the Implementing Decision 2022/382 referred solely to material dependencies between family members, and that pursuant to the CJEU judgments in *T.B. v Immigration and Asylum Office (Bevándorlási és Menekültügyi Hivatal)* (12 December 2019) and *K.A. and Others v Belgische Staat* (6 May 2018), dependency between adults is more than emotional or economic community, as it requires a situation of inseparability. The material dependence covers interdependencies related to subsistence, for example when a family member takes care of another on a regular basis, and the responsibility implies a total or almost full financial dependence or personal care. To underline the material dependence between adults when applying it to temporary protection, the court referred to the French wording “à la charge de” of the Council Implementing Decision 2022/382. The court considered that if the legislator would have intended to consider emotional attachment, cohabitation or joint household as sufficient for granting a status to family members, then it would have expressly provided for it.[27]

3.5.3. Displacement of Ukrainian nationals as prerequisite for derived rights for family members

In July 2023, the Belgian CALL did not grant temporary protection to an Azeri national whose Ukrainian wife still resided in Ukraine. The man could not provide proof of permanent and legal residence in Ukraine prior to 24 February 2022.[28] The same conclusion was reached by CALL in April 2024 with regard to a Nigerian applicant, married with a Ukrainian national who remained in Ukraine. In the absence of displacement, the applicant was not deemed eligible for temporary protection as a family member of displaced persons.[29]

In a recent judgment of June 2024, the Higher Administrative Court of Baden-Württemberg reiterated the guiding principle according to which the prerequisite for a family member to be eligible for temporary protection under Article 2(1c) of the Implementing Decision 2022/382 is that the Ukrainian national from whom the right derives is also displaced from Ukraine due to the war.[30]

3.5.4. Residence of family members in Ukraine prior to 24 February 2022

The Regional Administrative Court in Karlsruhe clarified in April 2024 the requirements for third-country nationals who are spouses of Ukrainian nationals to be considered as family members, and thus eligible for temporary protection. While BAMF interpreted Articles 2(1c) and 2(4) of the Implementing Decision 2022/382 as requiring a legal residence of the spouse in Ukraine, the Regional Administrative Court reasoned the opposite by interpreting the wording of the provisions as referring to common usage of the terms 'resident' and 'present' without giving it a legal meaning of lawful residence. The Regional Court considered that these terms were different from the provisions of Articles 2(2) and 2(3) of the same decision which expressly mention a legal status as a precondition for the eligibility of third-country nationals.

Since the Implementing Decision 2022/382 wording refers to the importance of preserving family unity, the court found that Article 2(1c) of the Implementing Decision serves to "avoid different legal statuses of members of the same family", thus it cannot be understood as meaning that only third-country nationals with a residence permit in Ukraine are entitled to benefits. A different conclusion would be contrary to Article 6 of the Basic Law and Article 8 of the ECHR concerning the right to family life. The court concluded that it should not be necessary for a spouse of a Ukrainian national from a third country who was resident in Ukraine on 24 February 2022 and living as a family to have previously resided legally in Ukraine with a residence permit in order to be entitled to benefits under Articles 2(1c) and (4a) of the Implementing Decision 2022/382.[31]

In November 2023, the Belgian CALL confirmed that an Albanian national who left Ukraine and lived with his family in Belgium since 2019 was not eligible for temporary protection. The court noted that since Article 11 of the TPD underlines the need to preserve family unity, it was not demonstrated by the applicant that he and his wife formed a family unity in Ukraine prior to the outbreak of the war. The resident documents submitted showed they had different addresses in Ukraine, and they also moved from Ukraine in 2019. Even if their son was born in Belgium, the applicant cannot benefit of a derived status of temporary protection as a family member because Article 2(4) of Council Decision 2022/382 provides that a person is considered a family member as long as the family was present and resided in Ukraine prior to 24 February 2022.[32]

4. Eligibility of third-country nationals residing in Ukraine prior to 24 February 2022

Article 2 (2) of the Council Implementing Decision 2022/382 defines the eligibility of third-country nationals and stateless persons who were residing in Ukraine with a legal permanent residence permit before 24 February 2022 and who are unable to safely return to their country of origin under durable circumstances:

> *2. Member States shall apply either this Decision or adequate protection under their national law in respect of stateless persons and nationals of third countries other than Ukraine who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin.*

Article 2 (3) refers mainly to a possibility for Member States to extend the categories eligible for protection to include third-country nationals who were residing in Ukraine legally and are unable to return in safe and durable conditions to their country. This extension applies especially to displaced third-country nationals from Ukraine who were holding a temporary residence permit and resided legally in Ukraine. The provision mentions that pursuant to Article 7 of the TPD, the additional categories of displaced persons over and above those provided by the Council Decision must have been displaced from the same region and for the same reasons as the main eligible categories and the Council and the European Commission should be immediately notified of this decision.

> *3. In accordance with Article 7 of Directive 2001/55/EC, Member States may also apply this Decision to other persons, including to stateless persons and to nationals of third countries other than Ukraine, who were residing legally in Ukraine and who are unable to return in safe and durable conditions to their country or region of origin.*

Particular situations required an examination by national jurisdictions when applying Articles 2(2) and 2(3) of the Implementing Decision 2022/382:

i) eligibility for temporary protection for third-country nationals with a permanent and valid legal status in Ukraine;
ii) assessment of a return under safe and durable circumstances for third-country nationals who held a permanent status in Ukraine prior to 24 February 2022; and
iii) the status of third-country nationals with a temporary residence in Ukraine who were granted protection in the Netherlands under Article 2(3) of the Implementing Decision (optional provision).

For other categories of third-country nationals who resided in Ukraine on 24 February 2022, the examination of eligibility was made against the requirements of Article (2)(1b) of the

Implementing Decision 2022/382, namely checking the existence of international protection or equivalent national protection in Ukraine on 24 February 2022.

4.1. Stateless persons and third-country nationals other than Ukrainian nationals with permanent or temporary residence

National courts examined the eligibility of third-country nationals displaced from Ukraine for temporary protection on the basis of Articles 2(1b), 2(2) and 2(3) of the Implementing Decision 2022/382. Accordingly, this group of people were required to have legal and permanent or temporary residency in Ukraine prior to 24 February 2022 and to be unable to safely return under durable circumstances to the country of origin. In order to assess this criteria, an examination of the individual circumstances was needed, such as the status in Ukraine prior to 24 February 2022 and the situation in the country or region of origin.

In several cases, national jurisdictions received requests for temporary protection by third-country nationals who had a temporary stay or an unclear legal status in Ukraine. National courts ruled that third-country nationals with a temporary residence in Ukraine (for example for studies) and who could safely return to their country were not deemed eligible for temporary protection, for example in Germany and Luxembourg.

4.1.1. Ineligibility in the absence of permanent residence

This section examines situations when courts rejected temporary protection which was requested by third-country nationals who were asylum applicants in Ukraine but were not yet beneficiaries of international protection. It also includes cases of third-country nationals who did not have residence or a permanent status in Ukraine on 24 February 2022.

The Hungarian Regional Court of Budapest ruled in December 2022 that third-country nationals who were asylum seekers in Ukraine on 24 February 2022 were not eligible for temporary protection under Article 2(1b) of the Implementing Decision 2022/382. The court clarified that eligibility would only apply to beneficiaries of international protection who were residing in Ukraine.[33]

For stateless persons with temporary residence in Ukraine, the Austrian Federal Administrative Court concluded in February 2023 that they were not eligible for temporary protection. This would only apply to beneficiaries of international or a national form of protection in Ukraine.[34]

Similarly, courts rejected requests for temporary protection in situations where the applicant did not have permanent residence as they were only transiting through Ukraine, only had temporary residence or unlawfully pretended to have been present in Ukraine when the war broke out.

The French Council of State ruled that third-country nationals with a non-permanent status in Ukraine were not eligible for temporary protection, pursuant to Article 5 of the TPD read in conjunction with Article 2(2) of the Implementing Decision 2022/382. Thus, the Council of

State allowed the appeal lodged by the Ministry of the Interior against an interim ruling granting a temporary permit to an Armenian woman who previously had temporary residence in Ukraine.[35]

Following the same lines, the Budapest District Court stated in a ruling of March 2023 that a Cuban national transiting through Ukraine was not eligible for temporary protection. The court rejected the appeal in the absence of a legal residence permit in Ukraine and reasons to prevent the return to the country of origin.[36]

The Belgian CALL overturned a negative decision in October 2023 for a Lebanese applicant whose request for temporary protection was rejected on ground that he was not present in Ukraine prior to the outbreak of the war. CALL found that the applicant had a permanent residence in Ukraine, which was sufficient to prove eligibility under Article 2(2) of Implementing Decision 2022/382, and thus, the condition of establishment in Ukraine when the war broke was not a lawful ground for a refusal.[37]

The Administrative Tribunal in Luxembourg ruled in July 2024 that an Eritrean national failed to prove residence and presence in Ukraine on 24 February 2022. In fact, the applicant falsified stamps in his passport to give the impression that he was present in Ukraine on 24 February 2022, but the last stamp for exit from Ukraine was dated September 2021. The tribunal concluded that the absence of residence in Ukraine on the date when the war broke out was sufficient to rule that he was not eligible, therefore an assessment of the possibility of a safe and durable return was no longer necessary.[38]

4.1.2. Assessing safe and durable returns to the country of origin

When called to assess the second requirement of Article 2(2) and Article 2(3) of the Implementing Decision 2022/382, national courts considered a number of elements to determine if a return under safe and durable conditions was possible, for example living conditions, the possibility to ensure a minimum livelihood and reintegration into society in the country of origin.[iii]

On the criteria to examine if the return can be implemented under safe and durable circumstances, the Higher Administrative Court of Bavaria ruled in October 2022 that, although the TPD and the Implementing Decision 2022/382 do not specify the assessment of a safe and permanent return, the operational guidelines of the European Commission mention that a return can be prevented if there is armed conflict or ongoing violence in the country of origin. In the particular case, the court concluded that the fact that the applicant only

[iii] The Swedish Migration Agency provides in the RS/005/2022 legal position on the examination procedure according to Chapter 21 of the Swedish Aliens Act, Rättsligt ställningstagande angående ordningen för prövningen enligt 21 kap. utlänningslagen (2005:716) (migrationsverket.se) that an assessment must be made with regard to the group of people covered by Article 2(2) of the Implementing Decision on whether they can return to their home countries/regions under "safe and durable conditions". Articles 2(c) and 6(2) of the TPD state that this concept does not apply in the areas of armed conflict or characterised by systematic or extensive violations of human rights. A return must be accompanied by due respect for human rights and fundamental freedoms and respect for the principle of *non-refoulement*. The EU Commission's operational guidelines provide further instructions on the application of the concept. The Swedish Migration Agency considers that since this assessment is similar to the examination carried out in the case of an asylum application in accordance with the Qualification Directive, it is therefore reasonable to apply it for this group of people.

complained about not being able to continue his studies in Nigeria did not prevent a return. The court specified that the assessment is to determine the possibility to meet the minimum basic needs and to reintegrate into the society upon a return. [39]

Similarly, the Administrative Tribunal in Luxembourg considered that a man from Comoros was not eligible for temporary protection based on personal reasons of continuing his studies when a safe and durable return was possible.[40]

The Higher Administrative Court in München assessed that a young and employable applicant from Nigeria could secure a minimum economic subsistence level when returned to his country. [41]Likewise, the Higher Administrative Court of Saxony ruled in September 2023 that a Lebanese national who studied medicine in Ukraine had the skills for successful employment upon a return since he came from a privileged family.[42]

In June 2024, the German Higher Administrative Court of Baden-Württemberg considered that a Russian national who lived in Ukraine with her Ukrainian partner was not eligible for temporary protection. She did not have valid permanent residence and was able to safely return to Russia. The court emphasised that Article 2(2) of the Implementing Decision 2022/382 expressly mentions that legal permanent residence in Ukraine must be proved by the applicant, and it noted that the applicant had returned to Russia between 24 February-15 November 2022 for a medical treatment and she had a secured livelihood with her pension and rental income. As such, she could not demonstrate that her return was not safe and under durable circumstances.

Burden of proof

Based on the European Commission's guidelines, the Administrative Tribunal in Luxembourg clarified in February 2024 that the burden of proof lies on third-country nationals to demonstrate that a safe return and durable conditions are not possible. In this case, an Armenian with permanent legal residence in Ukraine was not eligible for temporary protection because he failed to demonstrate that he cannot return safely due to the situation in his country. The conflict between Armenia and Azerbaijan was assessed as irrelevant since the applicant was not from that region.[43]

The same tribunal found in May 2024 that a national of Senegal who had resided legally in Ukraine for over 9 years did not adduce any evidence to counter a safe return to Nigeria, where he had lived the majority of his life.[44]

Other national jurisdictions in Belgium,[45]Germany,[46] Hungary,[47] Luxembourg and Switzerland[48] reached the same conclusion that holders of temporary residence in Ukraine who did not present evidence of impediments to return under safe and durable circumstances were not eligible for temporary protection.

4.2. Third-country nationals with temporary residence in Ukraine

In addition to the obligatory categories of displaced persons from Ukraine who were entitled to request temporary protection, the EU Council allowed Member State to have a margin of discretion to include other categories, namely third-country nationals, other than Ukrainians, who had temporary residence in Ukraine, as enshrined in Article 2(3) of the Implementing Decision 2022/382.

The Netherlands implemented this provision into its national legislation, however several changes in Dutch policies concerning displaced third-country nationals from Ukraine who held temporary residence in Ukraine triggered a series of legal questions when applying the optional provision of Article 2(3) of the Implementing Decision 2022/382. These led to divergent case law in the Netherlands, which will be settled by an upcoming CJEU judgment.

Initially in March 2022, the State Secretary decided to extend temporary protection to third-country nationals and stateless persons (optional provision) who were displaced from Ukraine and held a temporary residence there on 24 February 2022 and could not return in safe and durable conditions to their country. The State Secretary informed the House of Representatives on the implementation of temporary protection and the optional provision.

On 18 July 2022, the State Secretary informed that temporary protection would end on 4 March 2023 for third-country nationals who had a temporary residence permit in Ukraine.[49] The decision was based on a higher influx of third-country nationals belonging to this category and a risk of excessive burden on the reception system. The Aliens Regulations 2000 (VV) was amended with a new Article 3.9a to reflect this change.

Subsequently, on 10 February 2023,[50] the State Secretary sent another letter to the House of Representatives to explain its decision to move the end date of temporary protection from 4 March 2023 to 4 September 2023 for this group of third-country nationals.

Ending temporary protection for third-country nationals with temporary residence in Ukraine after including them in the category of beneficiaries opened up a series of legal questions in the Netherlands, namely:

i) the legality of inclusion in the eligible categories and compliance with the procedure provided by Article 7 of the TPD jointly with Article 2(3) of the Implementing Decision 2022/382;
ii) whether the power to end such protection is the responsibility of the Member State under its own initiative or of the EU Council;
iii) the duration of protection when national authorities change the policy;
iv) the possibility to issue return decisions shortly before the alleged end of protection and their impact;
v) whether the extension of temporary protection for categories under Article 2(1) cover those who were provided a status under the optional provision.

In view of the divergent interpretations and applications of EU legislation, a Dutch court and the Council of State referred questions before the CJEU for a preliminary ruling.

4.2.1. Divergent jurisprudence on duration and end of protection

In 2023, Dutch courts examined appeals from third-country nationals who were affected by changes in Dutch policy with the decision to end protection on 4 September 2023. Administrative courts competent to deal with first instance appeals took divergent views on the legality of the decision to end protection, its compliance with EU legislation in terms of the authority entrusted with the power to end protection under the optional provision and the duration of temporary protection for this category.

The Court of the Hague seated in Utrecht and in Rotterdam ruled in August 2023 that the State Secretary correctly ended temporary protection for Nigerian and Tanzanian nationals with temporary residence in Ukraine as of 4 September 2023. The court stated that there was no conflict with the national and EU laws on principles of legality and certainty, because the State Secretary fully complied with its obligations by notifying the House of Representatives (Parliament) by letters of July 2022 and February 2023.[51]

According to the court in Rotterdam, there was a difference in protection between this category and those who were granted protection longer; however, the principle of certainty was not infringed because the State Secretary had not predefined the length of temporary protection and the situation had changed as these third-country nationals had already left Ukraine and could safely return to their country of origin. The court further assessed that the decision to end protection was balanced and in line with the scope of the TPD and the Implementing Decision to offer protection until these third-country nationals could return safely to their countries of origin. The court considered that the State Secretary decision to move the end date of protection from 4 March to 4 September 2023 was justified for practical reasons, namely by anticipating the impact on the asylum and reception systems.

Similarly, the Court of the Hague seated in s-Hertogenbosch, Groningen and Arnhem ruled that temporary protection could be ended as of 4 September 2023 for this category of people.[52] The court in s-Hertogenbosch and the court in Groeningen explained in their rulings in September 2023[53] and October 2023[54], respectively, that the EU principles were not infringed by the decision to end protection since there was no concrete or precise commitment to offer a longer duration of temporary protection to this category of beneficiaries. The court in Arnhem ruled in November 2023 that the State Secretary duly justified the decision to end protection due to the significant impact on the reception system and stated that the applicant could return to Nigeria. However, the court considered that the applicant had the option to apply for international protection and invoke individual circumstances in case he feared persecution or serious harm upon a return.[55]

In contrast, by ruling of 30 August 2023, the Court of the Hague seated in Roermond considered that the State Secretary correctly applied the optional provision of the TPD and the Implementing Decision for third-country nationals with a temporary residence permit, but it did not have legal competence to decide on the termination of this status for this category. The court extensively analysed the TPD and the optional provision.[56]

The court noted that the Implementing Decision 2022/382, Article 2(3) provides power to a Member State to apply the optional provision to stateless persons and nationals of countries other than Ukraine who cannot return to their country or region of origin in safe and sustainable conditions, provided that the decision is based on Article 7 of the TPD and is duly notified to the European Commission. Since the European Commission and the Council had no reaction on the notification made by the Dutch authorities on the decision to extend the scope of the TPD, the court assumed that the relevant EU decision-making bodies considered the Dutch decision to be compliant with EU law. Therefore, the State Secretary lawfully brought this category under the scope of the TPD and granted a right to residence.

However, the court disputed the competence of the State Secretary to end temporary protection at its own discretion and at any time and ruled that the optional nature of Article 2(3) is solely related to the choice of the Member State to extend temporary protection and bring such categories under the scope of the TPD. Since the legal status of beneficiaries is governed by EU law, the State Secretary's obligations are regulated by EU law. In the absence of explicit or implicit powers given to Member States on ending or revoking the status granted under the optional provision, the court noted that the State Secretary did not have the power to terminate the status of a group of beneficiaries. The court concluded that only the Council of the EU can decide on the termination of the TPD after reaching a qualified majority or after the maximum duration of its implementation has been reached.

The courts in Amsterdam and Haarlem also ruled in September 2023 that the State Secretary could not end temporary protection at a different time since the legal status of beneficiaries is governed by EU law.[57]

The Dutch Council of State confirmed by ruling of 17 January 2024 that only EU decision-making bodies can decide on the implementation of the TPD, while Member States had the option to choose whether to extend protection to people who had a temporary residence permit in Ukraine, for example for work or study. The Council of State considered that temporary protection derives from the TPD provisions, and thus it shall end in line with it and not earlier as decided by the State Secretary. Moreover, the Council of State ruled that, according to the TPD, the status of these applicants should end on 4 March 2024 as this group of third-country nationals does not fall within the scope of the Council Implementing Decision 2023/2409 of 19 October 2023. For them temporary protection was therefore not prolonged until 4 March 2025.[58]

Following the judgment of the Council of State, the State Secretary issued return decisions in February 2024 to third-country nationals whose temporary protection status was to end on 4 March 2024, in line with the Dutch policy adopted by letters of July 2022 and February 2023. As of 4 March 2024, they had 28 days to return voluntarily, otherwise they could be deported from 2 April 2024 onwards.

In appeals submitted by nationals of Algeria and Ghana against return decisions issued by the State Secretary on 7 February 2024, the Court of the Hague seated in Roermond ruled on 19 March 2024 that the return orders were unlawful because the applicants continued to be beneficiaries of temporary protection and could not be returned. The court considered that: i) since the State Secretary granted temporary protection according to the optional provision,

it allowed the extension of temporary protection to displaced persons holding a temporary right of residence in Ukraine who registered in the Netherlands before 19 July 2022; and ii) the Implementing Decision 2023/2409 must be interpreted as extending the duration to all persons who were already granted temporary protection, including those who acquired it through the optional provision of the Implementing Decision 2022/382.[59]

On 29 March 2024 and 2 April 2024, the Council of State allowed interim requests to suspend the implementation of the return decisions issued by the State Secretary in February 2024, pending the outcome of appeals against the end of temporary protection for these third-country nationals. The Council of State took into consideration that on 29 March 2024 the Court of the Hague seated in Amsterdam referred three questions before the CJEU for an interpretation of the TPD, the Implementation Decision 2023/2409 and the Returns Directive *(see Section 4.1.2)*.[60]

The Council of State also determined in the interim relief decision that the applicants should be treated as beneficiaries of temporary protection under the TPD and receive the associated benefits and rights until a decision is made on the merits of the appeals.

4.2.2. Referrals for a preliminary ruling on returns and duration of temporary protection

In view of the divergent interpretations of the Dutch policy on ending temporary protection for a group of beneficiaries and their subsequent return to the country of origin, both the Court of the Hague seated in Amsterdam and the Council of State sought guidance and clarification from the CJEU through referrals with questions for preliminary rulings on the TPD and the optional provision, as well as on interpretation of the Return Directive and its interplay with the TPD.

By ruling of 29 March 2024 (Kaduna, registered with the CJEU under C-244/24), the Court of the Hague seated in Amsterdam asked the CJEU whether Article 6 of the Return Directive precludes Member States from issuing a return decision on a date on which a foreigner is still lawfully resident in a Member State. For the purpose of answering that question, the court also inquired whether it is relevant that the return decision includes a date in the near future on which the lawful residence of the third-country national ends. Regarding the duration of temporary protection, the court asked whether the extension provided by Article 1 of the Implementing Decision 2022/382 covers also a group of third-country nationals who have already been brought under the scope of the TPD by using the optional provision of Article 2(3) of the Implementation Decision, even in a situation where the Member State has subsequently decided to no longer offer temporary protection to that group of third-country nationals.[61]

In addition, on 25 April 2024 (Abkez, registered with the CJEU under C-290/24), the Council of State referred two questions before the CJEU for a preliminary ruling on the interpretation of the TPD. Specifically, if a Member State used the option offered in Article 7(1) to grant temporary protection to other categories of displaced persons, does Article 4 mean that temporary protection for this optional group continues based on an automatic extension as referred to in Article 4(1) and on a decision to extend the period as referred to in Article 4(2)?

The Council also questioned if temporary protection for the optional group continues when a decision has been taken to extend the duration as referred to in Article 4(2) but a Member State has decided to terminate temporary protection for the optional group before the Council adopted a new decision for the one-year extension.

The Council of State requested an expedited procedure, and the CJEU allowed the request by order of 12 June 2024. The CJEU noted that the questions raised in the two referrals, C-244/24 and C-290/24, concerned systemic issues and a significant number of people will likely be affected by the same uncertain situation. The court stated that the questions concerned a category of third-country nationals who have taken refuge in the EU due to the war in Ukraine, placing them in an extremely precarious situation for two main reasons: i) they risk being removed to their country of origin; and ii) they find themselves homeless in certain Dutch municipalities because their right to stay in reception centres was withdrawn. The hearing took place on 3 September 2024. The Advocate General will provide his opinion on 22 October 2024.

Pending the outcome of the preliminary rulings, on 25 April 2024 the State Secretary adopted a Freezing Decision[62] to suspend the end of protection for this group and to regulate the conditions for rights derived from temporary protection status, pending the CJEU judgment. In a ruling of 30 July 2024, the Court of the Hague seated in s-Hertogenbosch assessed that the Freezing Decision added more unclarity and unnecessary requirements for this category to receive temporary protection pending the CJEU ruling.[63] The case concerned an interim request by a beneficiary from Bangladesh against a return order of 21 February 2024 issued by the State Secretary.

5. Exclusion

In two cases concerning Ukrainian nationals who were sentenced for crime s related to human trafficking, the Federal Administrative Court in Austria clarified the exclusion ground provided by Article 28 of the TPD. The exclusion ground must be interpreted narrowly to cases where the applicant for temporary protection would constitute a danger to the security of the host country or has been convicted for a particularly serious crime. The court assessed that the crimes in question did not reach the threshold of a particular serious crime in view of the duration of the sentences (the minimum sanction provided by law was applied), the absence of aggravating circumstances for committing the crimes, the conduct of the applicants and their life prior to the offences.[64] The court further reiterated that the applicant's right to temporary protection derives *ex lege* from residence in Ukraine prior to 24 February 2022 and displacement due to the war.

The Court of the Hague seated in Roermond allowed an interim relief in June 2023 against the State Secretary's decision to exclude an applicant from temporary protection on grounds that the contested decision lacked a sound reasoning on the alleged grounds for exclusion. The interim relief judge considered that the State Secretary must conduct a full assessment of

facts and evidence provided by the applicant, by considering the personal conduct of the applicant and the principle of proportionality.[65]

The French Council of State clarified January 2024 the emergency condition which is required to suspend the execution of an administrative decision in a case involving a Ukrainian applicant whose request to renew his residence permit based on temporary protection was refused on the grounds that he was a threat to public order. The Council recalled that the required emergency condition should, in principle, be regarded as met when the decision was one refusing to renew, revoke or withdraw a residence permit because its execution may harm, in a sufficiently serious and immediate manner, the public interest, the situation of the applicant or the interests of the person it intends to defend.[66]

6. Procedural aspects

Since the activation of the TPD, several questions were brought to the courts related to procedures to follow to receive protection and benefits, and safeguards related to information provision, legal assistance and appeals.

When the registration or processing of applications for international protection were halted for beneficiaries of temporary protection, courts in Bulgaria and Iceland made a thorough analysis to conclude that the suspension was compliant with EU law.

6.1. Access to temporary protection on the basis of interest and eligibility, without formalities

In Bulgaria, by judgment of July 2022, the Supreme Administrative Court annulled the Council of Ministers Decision No 180 of 30 March 2022 (which implemented the Council Implementing Decision 2022/382) as it was found to be unlawful because it provided that displaced third-country nationals who were not Ukrainian citizens or stateless would receive temporary protection without their express declaration of will. The Supreme Administrative Court clarified that this deprived this category of people from choosing to register for immediate temporary protection or to apply for international protection. In conclusion, the contested decision was found contrary to Articles 17 and 19 of the TPD and the Implementing Decision 2022/382. Also, the court found that, contrary to the Articles 2(1), (2) and (3) of the Implementing Decision 2022/382, the contested Council of Ministers Decision lacked a clear definition of eligibility for temporary protection and the requirement of residence in Ukraine.[67]

In an appeal against an expulsion order, the Supreme Court in Spain ruled in December 2022 that a Ukrainian national had an immediate right to temporary protection without a formal application, simply by demonstrating to belong to an eligible category. In addition, the court stated that Spain extended the scope of people who were eligible for protection and had

added people who were in an irregular situation and unable to return to Ukraine. Since the applicant had received an expulsion order for an irregular stay, the court rendered it void of legal effect and considered that the applicant can receive temporary protection.[68]

In a similar judgment, the Spanish Supreme Court reiterated that temporary protection applies without formal requirements to all potential beneficiaries as long as they are able to prove their identity and express their willingness to obtain the status.[69]

6.2. Information provision and legal aid

In March 2023, the Tallin Administrative Court granted moral and material damages to a Ukrainian national from Crimea, who held a Russian passport after the 2014 annexation. The court held that the authorities wrongly waived his registration for temporary protection and unlawfully returned him to Russia, instead of providing access to protection as a Ukrainian national. The court found that the Police and Border Guard Board (PBGB) did not provide the applicant with the correct information on temporary protection and misled him in the process of waiving his registration for temporary protection.[70]

The Czech Supreme Administrative Court ruled on 2 February 2023 that the provisions governing legal aid in the asylum procedure are applicable mutatis mutandis to temporary protection. Through a comprehensive analysis, the court clarified how international protection and temporary protection are intertwined while the statuses are distinct. Thus, the first concept provided in Article 35(5) of the Civil Code includes temporary protection and is applicable for the provision of legal aid.

6.3. Appeals

The Czech Supreme Administrative Court clarified in August 2023 the remedies to be exhausted against a negative decision on temporary protection prior to submitting an appeal before a regional court. Although the applicant applied for a re-assessment of the negative decision, he should have waited for the outcome of that procedure which is a proper remedy and pre-requisite for an appeal, pursuant to the special law on Ukraine and the Act on Residence of Foreigners. The Supreme Court reiterated that temporary protection cannot be separated from the Common European Asylum System (CEAS) and it is included as a form of international protection, which gives applicants the right to be assisted or represented by legal entities pursuant to the Civil Code.

In May 2022, the Swiss FAC allowed the appeal of a Lithuanian man with a Ukrainian wife and children for not being granted the S protection status. The court found procedural shortcomings such as an insufficient reasoning without being based on legislation and incorrect instructions provided in the decision on the time limits to appeal against a decision on temporary protection. FAC clarified that the general rules of the asylum procedure should also apply to the granting of temporary protection. [71]

Similarly, by judgment of March 2023, FAC ruled that an appeal against a decision on temporary protection is governed by the same deadlines as the regular asylum procedure and not by short deadlines applicable to special procedures. The applicant was in Montenegro when the war broke and received temporary protection there. SEM rejected the application for S protection status by considering that the person can safely return to Montenegro and gave a short time limit to appeal of 5 days, in line with the accelerated procedure when an asylum applicant comes from a safe third country or a safe country of origin. FAC clarified that the short deadlines applicable to special asylum procedures cannot be applied to the temporary protection procedure because in the first case the applicant benefits from procedural safeguards in a federal asylum centre, for example a personal interview and assigned legal assistance. Thus, applying the same procedural rules related to the safe country concept can have an adverse effect, and therefore the appeal deadline should be 30 days as in the regular asylum procedure, pursuant to Article 108(6) of the Asylum Law.[72]

6.4. Interplay with the international protection procedure

In accordance with Article 17 of the TPD, beneficiaries of temporary protection have the right to make and lodge an application for international protection at any time. However, pursuant to Article 19 of the TPD, Member States can specify that temporary protection cannot be granted concurrently with the status of applicant for international protection.

National jurisdictions in Bulgaria and Iceland concluded that the registration and processing of applications for international protection must be suspended or set aside until the expiration of temporary protection. In contrast, an administrative court in the Netherlands considered that an asylum application submitted by a beneficiary of temporary protection must be examined within the maximum time limit of 21 months from the date of lodging, as provided under Article 31(5) of the recast Asylum Procedures Directive (recast APD).

6.4.1. Suspension of processing applications for international protection in Bulgaria

The suspension of the asylum procedure due to the activation of the temporary protection scheme was challenged before some national courts. In Bulgaria, the Administrative Court of Sofia-City reaffirmed in two cases that the existence of temporary protection does not exclude the examination of an application for international protection, in accordance with Articles 17 and 19 of the TPD and the European Commission's operational guidelines.[73] The court considered that Article 58(7) of the Law on Asylum and Refugees (LAR) allows a beneficiary of temporary protection to apply for international protection, with the only distinction that the application will not give rise to the same rights as other asylum applicants. The court interpreted the Implementing Decision 2022/382 and Decision No 144 of 10 March 2022 of the Bulgarian Council of Ministers, amended by Decision No 180 of 30 March 2022, as not

including a ground for ending the international protection procedure when an application for temporary protection was submitted.[iv]

Conversely, the Administrative Court in Varna confirmed inadmissibility decisions on applications for asylum based on Order No 263/8 April 2022 of the Chairman of the State Agency for Refugees (SAR), which provided the ground for terminating temporary protection when asylum application is submitted after 14 March 2022. The rationale of the court was that the asylum applications were not rejected as unfounded since no merits assessment was conducted, but the proceedings were terminated due to the granting of temporary protection until it is withdrawn or terminated.[74] The same court ruled in another case that the termination of the asylum procedure was unlawful because it concerned an application for asylum submitted on 28 February 2022, thus before the activation of the TPD and its implementation at the national level.[75]

In December 2022, the Administrative Court of Sofia-City (ACSC) declared void parts of Order No RD05-263/8 April 2022 of the Chairman of SAR, which concerned the suspending the registration of applications for international protection by Ukrainian citizens, ending proceedings which had already been initiated to examine applications for international protection, and automatically registering these people for temporary protection. The ACSC's decision found it unlawful that the expiry of temporary protection was a pre-condition to access the international protection procedure. The court assessed that the administrative authority cannot substitute itself to the legislator to add grounds for ending proceedings related to international protection when Article 15(1) of the LAR specifically and exhaustively lists the grounds for ending asylum proceedings, without mentioning temporary protection. In addition, the court clarified that the Chairman of SAR does not have the competence to end multiple individual asylum applications in a general and brief manner, without any consideration for the individual circumstances. Regarding EU legislation, the court reiterated that Article 17 of the TPD expressly provides for the right to access the international protection procedure.[76]

The Supreme Administrative Court took a different approach from the lower court and, in a cassation appeal, validated the legality of Order No 263/8 April 2022 of the Chairman of SAR on suspending the registration and processing of international protection applications for Ukrainians until the expiry of temporary protection. The Supreme Administrative Court considered that Article 48(1)(2) of LAR allows the Chairman of SAR to terminate the proceedings for international protection and that Article 68(1)(2) of LAR contains an incompatibility of procedures for international protection with temporary protection, specifically that an international protection procedure can be initiated only after the end or withdrawal of temporary protection. The reasoning of the court further relied on the scope of the TPD, essentially to address an urgent and exceptional situation of a mass influx of persons

[iv] According to the Swedish Migration Agency legal position RS/005/2022 on the examination procedure according to Chapter 21 of the Swedish Aliens Act | Rättsligt ställningstagande angående ordningen för prövningen enligt 21 kap. utlänningslagen (2005:716) (migrationsverket.se), a person who has been granted temporary protection can apply for international protection and have the application for refugee status processed. However, the provisions in Chapter 21 of the Swedish Aliens Act prevent an examination of an application for subsidiary protection status. Therefore, an application for subsidiary protection status will be rejected as long as the temporary protection status is in place.

with minimum formalities and without adding a burden on the national asylum system.[77] In May 2024, the Supreme Administrative Court reiterated its findings on suspending the registration and processing of international protection applications for Ukrainians until the expiry of temporary protection.[78]

6.4.2. Suspension of processing applications for international protection in Iceland

Similarly to the approach of the Bulgarian Administrative Court of Sofia-city, the Icelandic Immigration Appeals Board annulled in June 2022 a decision to set aside applications for international protection submitted by Ukrainian nationals and to grant them temporary protection instead, due to a lack of reasoning, procedural deficiencies and an incorrect application of the legislation on foreigners. The board analysed the provisions of Article 44 of the Act on Foreigners which allows the Minister of Justice to activate its provisions (humanitarian status equivalent to temporary protection status), following which the Immigration Service must assess certain conditions on whether to set aside applications for international protection and grant humanitarian protection based on a group assessment. In the absence of a reasoned decision and an assessment of such conditions, the board referred the case back for re-examination.[79]

In contrast, by judgment of September 2022, the same board validated a decision to set aside the application for international protection of a Ukrainian national and to grant him humanitarian assistance. The reasoning was because the applicant fulfilled the requirements for a group assessment and protection and that the substantive assessment of the case did not reveal a worsening situation compared to other Ukrainian nationals present in Iceland.[80]

In rulings in October 2023, the Icelandic Immigration Appeals Board recalled that an application for international protection is suspended when a person is granted a residence permit on grounds of humanitarian considerations, and the procedure is resumed upon notification of the expiry of such a permit.[81]

6.4.3. Time limit to decide on an asylum application by a beneficiary of temporary protection

The Court of the Hague seated in Arnhem ruled in April 2024 that Article 31(5) of the recast APD, which provides that Member States shall conclude the examination of the asylum procedure within a maximum time limit of 21 months from the lodging of the application, also applies to processing of an asylum application submitted by a beneficiary of temporary protection. The court considered that Articles 17 and 19(2) of the TPD indicate that an asylum application can still be processed and interpreted that the intention of the legislator was not to put on hold asylum applications until the temporary protection has ended. By interpreting the wording of Article 31(5) of the recast APD, implemented in Article 43 of the Vw 2000, the court stated that Member States must in any event complete the examination procedure within a period of 21 months after an application has been lodged, which cannot be exceeded since temporary protection could last 3 years (at the moment of the present decision). An onward appeal against this ruling is pending before the Council of State.[82]

6.5. Guardianship of unaccompanied minors

The arrival of minors displaced from Ukraine raised legal questions on whether those arriving without parents are to be considered unaccompanied minors. In Italy, Law No 47/2017 (Zampa Law) provides that minors arriving from Ukraine, without their parents, are considered unaccompanied minors even in the presence of referent adults.[83] In view of a significant number of minors arriving from Ukraine, the Juvenile Court of Genoa[84] and Milan[85] published letters for the municipalities, border police and prefectures to reiterate the need to follow the provisions of the Zampa Law on the appointment of a guardian and for age determination procedures. To ensure priority treatment, the court of Milan permitted the derogation from the standard procedures for reporting unaccompanied minors to the Public Prosecutor's Office for Minors, thereby authorising institutions to report the presence of unaccompanied Ukrainian minors directly to the Juvenile Court.

For minors accompanied by a parent, the court of Genoa clarified that parental responsibility remains solely with the accompanying parent, stating that the other parent is in a state of 'remoteness' or facing an impediment that prevents them from exercising parental responsibility. The courts reiterated that the status of temporary protection does not require additional proceedings on the regularity of the stay of the parent and child, in compliance with Implementing Decision 2022/382.

However, by decision of April 2022, the Juvenile Court of Bolzano ruled in a case concerning a group of seven minors displaced from Ukraine.[86] The legal question was whether the minors should be considered unaccompanied as noted by the Public Prosecutor or to recognise the guardianship provided to the head of the 'family type' orphanage, a form of guardianship established under Ukrainian law before displacement, which was provided to Ms. A in this case. The Juvenile Court of Bolzano noted that the minors arrived accompanied by the head of the 'family-type' orphanage where they had been living in Ukraine and with whom they had a strong emotional bond. By taking into account the Hague Convention of 19 October 1996, the court ruled that Ukrainian law was applicable and recognised the guardianship arrangement with Ms A. as established and recognised under Ukrainian law. The court emphasised that the minors' long-standing and legally-recognised relationship with Ms A. under Ukrainian law (certification of guardianship) served their best interests and rejected the Public Prosecutor's argument that the minors should be deemed unaccompanied due to the absence of their biological parents and documentation. Consequently, the court ruled against appointing a separate guardian and ordering reception measures under social services, in order to avoid unnecessary emotional distress for the children.

7. Reception-related aspects

There were few appeals related to the reception of beneficiaries of temporary protection, in part because the activation of the TPD allowed immediate access to rights and benefits for displaced persons from Ukraine. The TPD expressly mentions the entitlements for beneficiaries and does not provide for any time limit or pre-condition to access material reception conditions.[v] Court cases concerned allowances to care for family members with disabilities and financial support for education. Access to employment for third-country nationals with a temporary status in Ukraine prior to the war was disputed before some courts.

7.1. Social benefits for beneficiaries of temporary protection

7.1.1. Nursing for family members with disabilities

Administrative courts in Poland clarified that beneficiaries of temporary protection are entitled to national benefits to care for persons with disabilities.

In Poland, the voivodeship court Gorzów Wielkopolski ruled in September and November 2023 that Ukrainian beneficiaries of temporary protection in Poland have the right to family allowances to care for close family members with disabilities, pursuant to the Act of 23 November 2003 on family benefits. The court emphasised that Article 26(1)(1) of the act does not preclude granting benefits to adults and in connection with care for adults because the act does not limit care benefits only to people caring for children. The court stated that the nature of some care benefits also implies that they are granted to adults or in connection with caring for an adult, for example the nursing allowance and special care allowance.[87]

Also, the court in Wrocław clarified that the purpose of the modification made to Article 1(16a) of the Act of 13 January 2023 amending the Act on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of this State and Certain Other Acts was to prevent granting family benefits in connection with the birth, upbringing or care of children when the children of Ukrainian citizens do not reside in Poland. As such, the amendment specifies that the benefits are granted to those that live with the children in Poland.[88]

The administrative court in Kielce also ruled in April 2024 that a Ukrainian woman can receive protection through the right to care for her husband with disabilities. The court clarified that, whereas Article 14 of the TPD provides for the minimum standard of rights to beneficiaries, Member States can grant greater protection to Ukrainian citizens and their spouses, as enshrined in the Act on Assistance to Ukrainian Citizens.[89]

[v] For example, in Sweden, a person from Ukraine who is a beneficiary of temporary protection who has been granted a residence permit for 2 years can be listed in the Swedish Population Register. Those listed in the Swedish Population Register will get a Swedish personal identity number and access to the resources of the Swedish social insurance system as long as their stay is legal.

Similarly, the Polish Local Government Appeal Board decided in June 2024 to grant a one-off, pro-life benefit to a Ukrainian beneficiary of temporary protection when giving birth to a child with disability. The board clarified the correct application of the Act on Family Benefits and the provisions of the Act on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of that State. The board also considered that the Act on Support for Pregnant Women and Families must be directly applied to the applicant.

In contrast, one court ruled that access to family allowances is governed by different rules for the two categories of beneficiaries of temporary protection: i) those holding a PESEL UKR and granted protection under the special law; and ii) third-country nationals granted temporary protection under the general Act on Granting Protection to Foreigners. Thus, the Administrative Court of Gliwice considered that the mother of a Ukrainian child with disabilities was not entitled to the right to care as provided under the Family Benefits Act because she is not a Ukrainian national and her status of temporary protection is based on the Act of Protection for Foreigners and not on the special law, namely the Act on Assistance to Citizens of Ukraine. The court rejected the appeal and stated that the family benefits do not constitute a mandatory element of "necessary assistance in the field of social assistance and obtaining means of subsistence" or "necessary medical assistance", as referred to in Article 13(2) and (4) of the TPD.[90]

7.1.2. Impact of an absence from the Member State on social benefits

In Poland, the Act on Assistance for Ukrainians provides for access to different types of social benefits for adults and children when proof is made of legal residence and registration for the PESEL UKR number. However, once a person leaves Poland for more than 1 month, this right can be removed or refused. National administrative courts in Poland adopted divergent views on evidence and the procedure to assess whether an absence of more than 30 days from Poland can lead to an end of social benefits.

By ruling of February 2023, the Voivodeship Court in Lublin considered that the Social Insurance Institution did not correctly establish the facts because it ignored proof submitted by the applicant that her absence from Poland was for 1 day when she travelled to pick up her foreign passport from Ukraine. The court instructed the administrative body to conduct a full assessment of all circumstances in order to correctly establish the facts and adopt a justified decision. Also, the court pointed out that when there are doubts over the lengths of stay outside of Poland, the administrative body must summon the person within 3 days to provide explanations, failure to which the right to the requested benefit is suspended.[91]

In May 2023, the Voivodeship Court in Gliwice rejected an appeal submitted by a Ukrainian national against the refusal to be granted the right to the ‘good start’ benefit. The Social Insurance Institute justified the refusal on a finding in the registry of the Border Guard, according to which the applicant was absent from Poland for more than 1 month. The court considered that the contested decision was lawful because it is not the attribute of the court invested with appeal to conduct procedures related to the legality of the stay in Poland and cannot correct entries in the Border Guard registry. The fact that the applicant’s status was restored in December 2022, after the issuance of the negative decision, was considered not

to change the assessment on the legality of the contested decision.[92] A cassation appeal against this judgment is pending before the Supreme Administrative Court.

7.1.3. Support for education

The Administrative Court of Varna ruled in June 2024 on the right of a Ukrainian student and beneficiary of temporary protection to receive a one-time allowance for schooling in Bulgaria. The court based its reasoning on Bulgaria's international obligations as enshrined in Articles 13 and 16 of the European Social Charter, Article 27 of the UN Convention for the Rights of the Child (UNCRC) and national legislation in Article 10a(1) of the Law on Family Benefits for Children. The court highlighted that Article 3 of the law provides that families of foreign citizens are entitled to the same benefits as Bulgarian nationals if they reside permanently and raise their children in Bulgaria, thus temporary protection beneficiaries are included since they have the right to stay on the territory. The court considered that a different conclusion would lead to a situation of discrimination.[93]

In Germany, the Social Court in Nuremberg granted in March 2023 an interim measure allowing that a Ukrainian child with disabilities, a beneficiary of temporary protection, can provisionally receive integration assistance to cover costs of attending a curative education daycare centre. The court thoroughly assessed the requirements enshrined in the Social Book Code to state that the restriction on access to benefits are not applicable to foreigners who are in possession of a settlement permit or a temporary residence permit and who are likely to reside permanently in Germany. Contrary to the position of the social authority, the court considered that the status of the applicant as a beneficiary of temporary protection for an initial period of 2 years does not mean that it constitutes a prognosis against permanent residence. The court noted that, according to Article 4(2) of the TPD, the duration of temporary protection can be extended and it was found that the parents of the applicant come from disputed territories annexed to Russia and wanted to settle permanently in Germany. Since the applicant is dependent on his parents, and if there is an intent to remain in Germany, it must be assumed that the residence is likely to be permanent.[94]

7.2. Material reception conditions

7.2.1. Access to accommodation

The Council of Ministers in Bulgaria adopted a decision in 2022 on humanitarian assistance for displaced Ukrainians. Two civil society organisations contested Decision No 181 of the Council of Ministers of 30 March 2022 for alleged discriminatory treatment and accessing the humanitarian programme to receive accommodation[vi] based on when a person registered for temporary protection. Initially in June 2022, the Supreme Administrative Court had not found any violation of national or European law. In contrast, in a cassation appeal, a panel of five judges of the same court annulled the contested decision and ruled that the Council of

[vi] Since March 2022, the Bulgarian authorities have implemented a humanitarian programme which includes the provision of accommodation by the state to beneficiaries of temporary protection (Unified Governmental Platform for Ukraine, https://ukraine.gov.bg/find-accomodation/ and EUAA, https://whoiswho.euaa.europa.eu/temporary-protection).

Ministers did not justify the difference in treatment since the two groups of persons were beneficiaries of temporary protection receiving humanitarian assistance irrespective of the moment of registration and issuance of the registration card as a beneficiary of temporary protection.[95]

7.2.2. Provision of food

The Bulgarian Foundation for Access to Rights disputed Decision No 908 of the Council of Ministers of 16 November 2022 which ended the provision of food for displaced Ukrainian nationals while it extended the timeframe for their accommodation in the Transit Reception Centre from 14 to 30 days and established a main Transit Reception Centre in Elhovo. The civil society organisation invoked a risk of significant and irreparable harm against people from Ukraine, potentially leading to endangering their health and life since the food supply had ended. The Supreme Administrative Court initially allowed the request for a suspension of the implementation of the contested decision in December 2022.[96] By final decision of February 2023, the Supreme Administrative Court ruled that the provision of food must be resumed and highlighted that, although civil society organisations provide food to displaced people and it is in the national interest to reduce expenses, the humanitarian situation outweighs the interest since a lack of food can cause significant and irreparable harm.[97]

7.2.3. Access to employment

In Germany, the legislation provides that social benefits and access to employment are granted to holders of a 'fictitious certificate' (fiktionsbescheinigung)[98] which was not automatically granted in 2022 when requesting temporary protection. Non-Ukrainian third-country nationals faced particular challenges with accessing the labour market when this certificate was not automatically issued and due to different approaches adopted by authorities and courts on letters issued by the Federal Ministry of the Interior for this category and their legal effects.

In August 2022, the Regional Administrative Court allowed an interim injunction and ordered the local authority to issue a certificate confirming the right to stay legally and a 'fictitious certificate' with a note on access to employment. The court considered that the applicant appeared to be eligible for temporary protection since the letters issued by the Federal Ministry of the Interior and Home Affairs stated that non-Ukrainian third-country nationals with a temporary status in Ukraine, for example for studies as was the case of this applicant, are eligible for protection, pursuant to Article 2(3) of the Implementing Decision 2022/382. [99]

In contrast, the Higher Administrative Court of Baden Wurttemberg rejected in October 2022 an appeal submitted against the refusal, under temporary injunction, to be granted a 'fictitious certificate' with a note on access to employment. The court considered that the letters issued by the Federal Ministry of the Interior and Home Affairs did not have a binding effect, and even if non-Ukrainian third-country nationals were eligible for protection under Article 2(3) of Implementing Decision 2022/382, they need to prove that they cannot return safely to their country of origin. The applicant did not make it plausible that he was eligible to be granted temporary protection, thus he could not claim a certificate to be permitted to work as a derived right under Article 12 of the TPD.[100]

Conclusions

The Temporary Protection Directive was activated for the first time in 2022, providing a path to protection for millions of people displaced from Ukraine. However, various statuses of residence in Ukraine prompted questions about eligibility for temporary protection. The cumulation of case law in this report tells the story of individuals who have faced unique situations which needed to be addressed in a uniform manner by legal institutions.

The analysis shows that national courts have managed these cases in a relatively swift and diligent manner in a timeframe of less than 3 years since the Implementing Decision 2022/382 was adopted. These jurisprudential developments demonstrate that the scope of the directive, to offer immediate access to protection in a situation of mass influx of displaced persons, has been successfully implemented in appeals procedures.

The Council Implementing Decision 2022/382 established the categories of people who are eligible for temporary protection in a clear, explicit and exhaustive manner. However, in practice, the examples at the country level show diverse situations which required clarification and court interventions for a harmonised application of the TPD. As such, a large share of cases was related to eligibility criteria when determining the right to temporary protection.

While in principle the protection offered to Ukrainian nationals seemed straightforward, questions arose for example over dual citizenship, residency in Ukraine on 24 February 2022 and family members. In particular, the applicability of the TPD to non-Ukrainian, third-country nationals who were displaced required a further assessment of individual circumstances and clarifications on the eligibility requirements under the Implementing Decision 2022/382 and the TPD. At times, changing or unclear policies, combined with divergent jurisprudence, led national legal bodies, for example in the Netherlands, to seek further guidance from the CJEU.

For procedural aspects such as access to legal assistance and to appeals, national courts emphasised the complementarity between international and temporary protection, while acknowledging the differences in their scopes. They thus applied an equivalent approach for safeguards which are not expressly covered in the TPD.

Despite already-existing pressure on national reception systems and the need to provide solutions for millions of displaced persons over a short period of time, the TPD prevented national systems from being bottlenecked through clear processes to access housing, education and employment. This is attested by the small number of court cases which have been related to the reception of beneficiaries of temporary protection.[vii]

Overall, there was a harmonised approach in the implementation of temporary protection or its equivalent across EU+ countries. The court cases between 2022-2024 added important clarifications and enhanced a better application the EU provisions at the national level.

In line with the EUAA Regulation, the EUAA will continue to publish up-to-date summaries in the EUAA Case Law Database of relevant judgments pronounced on the implementation of the TPD.[viii]

[vii] See also the EUAA Report (8 March 2023). *Providing Temporary Protection to Displaced Persons from Ukraine: A Year in Review*

[viii] All cases related to the TPD are available under this permanent link, using the keyword 'temporary protection': https://caselaw.euaa.europa.eu/pages/searchresults.aspx?Keywords=Temporary+protection

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[37] Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], *X v Belgian State represented by the State Secretary for Asylum and Migration (de Belgische staat, vertegenwoordigd door de Staatssecretaris voor Asiel en Migratie)*, No 295 240, 10 October 2023.
[38]Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant v Ministry of Immigration and Asylum*, No 49121, ECLI:LU:TADM:2024:49121, 8 July 2024.
[39] Germany, Higher Administrative Court (Oberverwaltungsgericht/Verwaltungsgerichtshöf), *Applicant v Federal Ministry of the Interior and Homeland*, 11 S 1467/22, 26 October 2022.
[40] Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant v Ministry of Immigration and Asylum*, No 47583, LU:TADM:2023:47583, 15 June 2023.
[41] Germany, Higher Administrative Court (Oberverwaltungsgericht/Verwaltungsgerichtshöf), *Applicant v Federal Ministry of the Interior and Homeland*, 11 S 1467/22, 26 October 2022.
[42] Germany, Higher Administrative Court (Oberverwaltungsgericht/Verwaltungsgerichtshöf), *Applicant v Regional Administration Saxon Switzerland-Eastern Ore Mountains (Landrat Sächsische Schweiz-Osterzgebirge)*, No 3 B 141/23, 6 September 2023.

[43] Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant v Ministry of Immigration and Asylum*, No 48320, ECLI:LU:TADM:2024:48320, 5 February 2024.
[44]Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant v Ministry of Immigration and Asylum*, No 48565, ECLI:LU:TADM:2024:48565, 6 May 2024.
[45] Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL]:

- *X v Belgian State represented by the State Secretary for Asylum and Migration (de Belgische staat, vertegenwoordigd door de Staatssecretaris voor Asiel en Migratie)*, No 277 651, 20 September 2022.
- *X v Belgian State represented by the State Secretary for Asylum and Migration (de Belgische staat, vertegenwoordigd door de Staatssecretaris voor Asiel en Migratie)*, No278 203, 30 September 2022.
- *X v Belgian State represented by the State Secretary for Asylum and Migration (de Belgische staat, vertegenwoordigd door de Staatssecretaris voor Asiel en Migratie)*, No 297 560, 23 November 2023.

[46] Germany, Higher Administrative Court (Oberverwaltungsgericht/Verwaltungsgerichtshöf), *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 10 ZB 23.19, 30 January 2023; Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 6 K 22.1372, 25 July 2022.
[47]Hungary, Budapest District Court [hu. Fővárosi Törvényszék], *Applicant v National Directorate-General for Aliens Policing (Országos Idegenrendészeti Főigazgatóság, NDGAP)*, 11.K.701.503/2023/4. , 20 June 2023.
[48] Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *Applicant v State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, D-2183/2022, 20 May 2022.
[49] Netherlands, Immigration and Naturalization Service (19 July 2022). *People with a temporary Ukrainian residence permit no longer entitled to municipal shelter*.
[50] Netherlands, Immigration and Naturalization Service (10 February 2023). *Temporary protection for third-country nationals from Ukraine will continue until September 4, 2023*.
[51] Netherlands, Court of the Hague seated in:

- Utretch, *Applicant v State Secretary for Justice and Security*,31 August 2023.
- Rotterdam, *Applicant v State Secretary for Justice and Security*, 9 August 2023.

[52] However, the Council of State overturned these judgements in February 2024 and considered based on its ruling 17 January 2024, that the applicant's temporary protection cannot end on 4 September 2023, but on 4 March 2024.
[53] Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, ECLI:NL:RBDHA:2023:14606, 5 September 2023.
[54] Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, ECLI:NL:RBDHA:2023:16291, 30 October 2023.
[55] Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL23.24785, ECLI:NL:RBDHA:2023:16410, 1 November 2023.
[56] Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL23.21692, ECLI:NL:RBDHA:2023:12912, 30 August 2023.
[57] Netherlands, Court of The Hague [Rechtbank Den Haag]:

- *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL23.21453 (appeal) and NL23.21454 (interim relief), ECLI:NL:RBDHA:2023:13022, 01 September 2023.
- *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL23.21445 and NL23.21446, ECLI:NL:RBDHA:2023:14235, 21 September 2023.

[58] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, No 202305663/1/V2, 17 January 2024.
[59] Netherlands, Court of the Hague [Rechtbank Den Haag], 19 March 2024:

- *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL23.24696 and NL24.7930.

Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid), NL23.24995 and NL24.7928.
[60] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State]:

- *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202402011/2/V3, 29 March 2024.
- *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202402011/3/V3, 2 April 2024.

[61] Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL24.5401 T, 29 March 2024.
[62] Netherlands, State Secretary (25 April 2024). *Letter to Parliament on the consequences of the Council of State's decision to assess the end of protection of third-country nationals from Ukraine*.

[63] Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, NL24.20123, ECLI:NL:RBDHA:2024:11861, 30 July 2024.
[64] Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG]:
- *B.F. v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, W247 2287849-1, ECLI:AT:BVWG:2024:W247.2287849.1.00, 3 May 2024.
- *BF v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, W189 2274902-1, ECLI:AT:BVWG:2023:W189.2274902.1.00, 8 August 2023.

[65] Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL23.2718, ECLI:NL:RBDHA:2023:8261, 7 June 2023.
[66] France, Council of State [Conseil d'État], *M. B. A. v Prefect of Hérault*, No 471605, 29 January 2024.
[67] Bulgaria, Supreme Administrative Court [Върховен административен съд], *Foundation for Access to Rights - PHAR v Council of Ministers of the Republic of Bulgaria*, No 6819, 7 July 2022.
[68] Spain, Supreme Court [Tribunal Supremo], *Don Pelayo v Government Delegation in Madrid (Delegación de Gobierno en Madrid)*, STS 4625/2022, ECLI:ES:TS:2022:4625, 12 December 2022.
[69] Spain, Supreme Court [Tribunal Supremo], *Doña Angustia v Public Administration (Administracion General del Estado)*, STS 4822/2022, ECLI:ES:TS:2022:4822, 21 December 2022.
[70] Estonia, Administrative Courts [Halduskohtud], *X v Police and Border Guard Board (Politsei- ja Piirivalveamet)*, No 3-22-1245, 20 March 2023.
[71] Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A, B, C, D v State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, D-2283/2022, 30 May 2022.
[72] Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A. v State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, D-3584/2022, 9 March 2023.
[73] Bulgaria, Administrative Court Sofia city [bg. Административен съд - София град]:
- *Applicant v State Agency for Refugees*, No 5540, 29 September 2022.
- *E.K. v State Agency for Refugees*, No 5424, 9 September 2022.

[74] Bulgaria, Administrative Court Varna [bg. Административен съд -Варна]:
- *Applicant v Deputy Chairman of the State Agency for Refuge8es under the Council of Ministers*, No 1624, 24 August 2022.
- *O.P. v Deputy Chairman of the State Agency for Refugees under the Council of Ministers*, 1544/2022, 28 July 2022.

[75] Bulgaria, Administrative Court Varna [bg. Административен съд -Варна], *Applicant v State Agency for Refugees*, 29 July 2022.
[76] Bulgaria, Administrative Court Sofia city [bg. Административен съд - София град], *O.V. and M. V. v State Agency for Refugees*, No 7901, 21 December 2022.
[77] Bulgaria, Supreme Administrative Court [Върховен административен съд], *State Agency for Refugees v Applicants*, 1992/2023 , 14 July 2023.
[78] Bulgaria, Supreme Administrative Court [Върховен административен съд], *Applicant v State Agency for Refugees (Държавна агенция за бежанците при Министерския съвет, SAR)*, No 5543, 8 May 2024.
[79] Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), *Applicants v Icelandic Immigration Service*, KNU22050042 and KNU22050045, 30 June 2022.
[80] Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), *Applicant v The Icelandic Directorate of Immigration*, KNU22070034, 1 September 2022.
[81] Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), 24 October 2023:
- *Applicant 1 v Icelandic Immigration Service*, No 632/2023.
- *Applicant 2 v Icelandic Immigration Service*, , No 634/2023.
- *Applicant 3 v Icelandic Immigration Service*, No 635/2023.

[82] Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL24.4748, ECLI:NL:RBDHA:2024:4613, 3 April 2024.
[83] See AIDA Italy, Temporary Protection 2023, July 2024.
[84] Juvenile Court of Genoa, Note of 14 March 2022.
[85] Juvenile Court of Milan, Letter of 7 March 2022.
[86] Italy, Civil Court [Tribunali], *Public Prosecutor v A.*, Nr. 37-22 R. Tutele; Nr. 101-22 VG , 6 April 2022.
[87] Poland, Voivodeship Administrative Court [Wojewodzki Sąd Administracyjny]:
- *S.T. v Local Government Appeal Board*, II SA/Go 608/23, 29 November 2023.
- *V.L. v Local Government Appeal Board*, II SA/Go 398/23, 13 September 2023.

[88] Poland, Voivodeship Administrative Court [Wojewodzki Sąd Administracyjny], *Applicant v Local Government Appeal Board*, IV SA/Wr 545/23, 29 May 2024.
[89] Poland, Voivodeship Administrative Court [Wojewodzki Sąd Administracyjny], *L.B. v Local Government Appeal Board in Kielce*, II SA/Ke 105/24, 17 April 2024.

[90] Poland, Voivodeship Administrative Court [Wojewodzki Sąd Administracyjny], *OK v Local Government Appeal Board in Katowice*, II SA/Gl 869/23, 24 August 2023.
[91] Poland, Voivodeship Administrative Court [Wojewodzki Sąd Administracyjny], *Applicant v National Insurance Institution*, II SA/Lu 877/22, 2 February 2023.
[92] Poland, Voivodeship Administrative Court [Wojewodzki Sąd Administracyjny], *S.H. v Social Insurance Institution*, II SA/Gl 90/23 , 26 May 2023.
[93] Bulgaria, Administrative Court Varna [bg. Административен съд -Варна], *Applicant v Social Assistance Directorate*, No 3632, 9 April 2024.
[94] Germany, Social Court [Sozialgerichtsbarkeit], *Applicant v Social Services*, S 5 SO 25/23 ER, 9 March 2023.
[95] Bulgaria, Supreme Administrative Court [Върховен административен съд], *Foundation for Access to Rights (PHAR) (2) v Council of Ministers of the Republic of Bulgaria*, No 11853, 20 December 2022; Bulgaria, Supreme Administrative Court [Върховен административен съд], *Foundation for Access to Rights (PHAR) v Council of Ministers of the Republic of Bulgaria*, No 5884, 15 June 2022.
[96] Bulgaria, Supreme Administrative Court [Върховен административен съд], *Foundation for Access to Rights (PHAR) (2) v Council of Ministers of the Republic of Bulgaria*, No 11853, 20 December 2022.
[97] Bulgaria, Supreme Administrative Court [Върховен административен съд], *Foundation for Access to Rights (PHAR) v Council of Ministers of the Republic of Bulgaria*, No 1516, 13 February 2023.
[98] Fiktionsbescheinigung – issued to persons who are staying in Germany and have applied for the granting or extension of a residence permit or settlement permit if the immigration authorities cannot or do not want to decide immediately. See Section 81 Paragraphs 3, 4, 5, 5a and 6 of the Residence Act (AufenthG) and https://www.mkjfgfi.nrw/fiktionsbescheinigung.
[99] Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 8 L 527/22, 26 August 2022.
[100] Germany, Higher Administrative Court (Oberverwaltungsgericht/Verwaltungsgerichtshöf), *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 11 S 1467/22, 26 October 2022.

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