



[Bulgaria - Supreme Administrative Court, Fourth Division, Judgment № 6819/07.07.2022 in administrative case № 3789/2022](#)

The Supreme Administrative Court (SAC) quashed Decision № 180/30.03.2022 by the Council of Minister which states the following: “Foreign citizens and stateless persons who have fled from Ukraine as a result of the military actions and who have entered and stayed on the territory of the Republic of Bulgaria may receive temporary protection even without their explicit statement and registration to benefit from temporary protection until 15 April 2022”. SAC found that the wording of the Decision is unclear, that no such deadline may be imposed and that temporary protection status may not be assigned automatically (without the consent of the beneficiary). The cassation court which heard the appeal to that judgment upheld this decision with regard to imposing a deadline for temporary protection registration, but held that temporary protection can be assigned automatically.

Case name (in original language) : Решение № 6819/07.07.2022 г. по административно дело № 3789/2022 по описа на Върховният административен съд на Република България - Четвърто отделение

Case status: Decided

Case number: Administrative case № 3789/2022 before the Supreme Administrative Court

Citation: Judgment № 6819/07.07.2022 in administrative case № 3789/2022 by the Supreme Administrative Court, Fourth Division

Date of decision: 07/07/2022

State: Bulgaria

Court / UN Treaty Body: Supreme Administrative Court

Language(s) the decision is available in: Bulgarian

Applicant's country of residence: Bulgaria

Legal instruments: European Union law

Key aspects: Protection

Relevant Legislative Provisions:

European Union Law

- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Article 5)
- Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (Article 2)

Bulgarian national law

- Asylum and Refugees Act (Articles 1a, 2, 4, 17, 39 and 41)

Facts

Bulgarian law (art. 2, para. 2 of the Asylum and Refugees Act) authorises the Council of Ministers to grant temporary protection in accordance with Council Implementing Decision (EU) 2022/382. Initially, a Decision № 144/10.03.2022 by the Council of Minister was adopted in this regard but it was soon amended by Decision № 180/30.03.2022 by the Council of Minister. This latter Decision states the following: “Foreign citizens and stateless persons who have fled from Ukraine as a result of the military actions and who have entered and stayed on the territory of the Republic of Bulgaria may receive temporary protection even without their explicit statement and registration to benefit from temporary protection until 15 April 2022”. This Decision is regarded as a general administrative act within the meaning of the Administrative Procedure Court and was appealed as unlawful by the NGO Foundation for Access to Right – FAR. The “Bulgarian Lawyers for Human Rights” Foundation joined the appeal.

Legal arguments by the applicant

The applicant raised three main arguments to prove that the Decision is unlawful:

First, the Applicant submitted that neither Council Directive 2001/55/EC, nor Council Implementing Decision (EU) 2022/382 authorises the Council of Ministers to impose 15 April 2022 as a deadline applicable to foreign citizens and stateless persons who

wish to obtain temporary protection.

Second, the Applicant submitted that neither European Union law, nor Bulgarian national law authorise the Council of Ministers to assign temporary protection status to foreign citizens and stateless persons without their explicit consent.

Third, the Applicant submitted that the phrase “foreign citizens and stateless persons who have fled from Ukraine” is very unclear and ambiguous and does not correspond to the wording of art. 2 of Council Implementing Decision (EU) 2022/382. Thus, it is not possible to determine the personal scope of the contested decision.

Legal arguments by the opposing party

The Council of Ministers claimed that the Decision is legal and should remain in force because it enhances the temporary protection legal regime and defends the interest of those who were not able to register for different reasons.

Decision & Reasoning

The SAC adopted the view of the Applicant and stated the following:

First, neither Council Directive 2001/55/EC, nor Council Implementing Decision (EU) 2022/382 authorise the Member States to impose additional restriction on the right of temporary protection. Those legal instruments do not allow the introduction of deadlines for registration for temporary protection.

Second, SAC discussed various provisions of the Asylum and Refugees Act and reached the conclusion that it is not legally possible to assign automatically temporary protection to persons who have not registered voluntarily for such status. SAC focused its attention to recital 16 of Council Implementing Decision (EU) 2022/382 which states the following: *“...Furthermore, Ukrainian nationals, as visa-free travellers, have the right to move freely within the Union after being admitted into the territory for a 90-day period. On this basis, they are able to choose the Member State in which they want to enjoy the rights attached to temporary protection and to join their family and friends across the significant diaspora networks that currently exist across the Union. This will in practice facilitate a balance of efforts between Member States, thereby reducing the pressure on national reception systems. Once a Member State has issued a residence permit in accordance with Directive 2001/55/EC, the person enjoying temporary protection,*

whilst having the right to travel within the Union for 90 days within a 180-day period, should be able to avail of the rights derived from temporary protection only in the Member State that issued the residence permit. This should be without prejudice to the possibility for a Member State to decide to issue, at any time, a residence permit to persons enjoying temporary protection under this Decision". SAC highlighted that all persons within the personal scope of Council Implementing Decision (EU) 2022/382 have the *right to choose* in which Member State to apply for temporary protection. If the Bulgarian government automatically assigns them with temporary protection even when no application has been submitted on their side, this would amount to deprivation of rights.

In this regard, SAC made the following observation: *"A fundamental European value, accepted as a principle in current international and national law, is equal treatment in the exercise of any right. In a narrow sense, this means not allowing certain categories of persons to enjoy less favourable conditions than others in order to exercise the opportunities granted to them to seek and obtain international protection. The armed conflict in Ukraine, which has given rise to the European Commission's proposal for emergency measures, cannot be a reason for Member States to adopt legislative decisions which contravene fundamental principles of law, with the sole motive of minimising formalities because of the urgency of the situation"*.

Third, SAC established that the phrase "foreign citizens and stateless persons who have fled from Ukraine" does not correspond to the wording of Council Implementing Decision (EU) 2022/382 which makes it impossible to determine the personal scope of the general administrative act under review.

For the above reasons, SAC pronounced the unlawfulness of Decision № 180/30.03.2022 by the Council of Minister and quashed it.

Decision documents

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Outcome

The Supreme Administrative Court quashed Decision № 180/30.03.2022 by the Council of Ministers as unlawful. A cassation appeal was filed by the Council of Ministers and this first instance court's decision was only partly upheld at the

cassation. By Decision № 11535/13.12.2022 on administrative case № 7123 / 2022 the Supreme Administrative Court (panel of five judges) agreed that it is not possible to limit the temporary protection with a deadline for registration. However, the cassation court accepted the following points:

- Temporary protection can be assigned *ex officio* because the Operational guidelines for the implementation of Council implementing Decision 2022/382 do not introduce any special procedural requirements and actually stress that one of the objectives of temporary protection is to ensure a rapid process by reducing formalities to a minimum.
- The phrase “foreign citizens and stateless persons who have fled from Ukraine” used in Decision № 180/30.03.2022 by the Council of Ministers corresponds to art. 2, para. 3 of Council Implementing Decision (EU) 2022/382.