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Press release accompanying judgment 202305663/1/V2

ECLI:NL:RVS:2024:32

Date of judgment: 17 January 2024

Temporary protection for 'third-country nationals' from Ukraine ends on 4 March 2024

The State Secretary for Justice and Security was not allowed to terminate the temporary protection of a so-called third-country national on 4 September 2023. The third-country national fled from Ukraine to the Netherlands after the outbreak of the war and was granted temporary protection on the basis of the European Temporary Protection Directive. For the duration of the temporary protection, it must be in line with this directive and it follows that it will end on 4 March 2024. This means that, from that moment on, the third-country national does not have a right to reside in the Netherlands on the basis of this directive. This is evident from a ruling by the Administrative Jurisdiction Division of the Council of State today (17 January 2024).

Background

In the first week after the outbreak of the war in Ukraine, more than 650,000 people fled to European Union member states. The European Union then decided to implement the Temporary Protection Directive. People fleeing Ukraine were thus quickly granted temporary protection throughout the European Union, without having to go through the usual asylum procedure. Not only Ukrainians were entitled to temporary protection on the basis of that directive, but also stateless persons and people of other nationalities who had asylum or permanent residence in Ukraine. In addition, individual member states were free to choose whether they wanted to offer the same temporary protection to people who had a temporary residence permit in Ukraine, for example for work or study. At the beginning of 2022, the State Secretary decided to also offer temporary protection to this group of third-country nationals. But in July 2022, he decided to stop because, according to him, the influx was too high and third-country nationals were often able to return safely to their country of origin. For third-country nationals who were already in the Netherlands, he terminated their temporary protection on 4 September 2023.

No legal basis for termination of temporary protection on 4 September 2023

In the opinion of the Administrative Jurisdiction Division, the Directive does not provide a legal basis for terminating temporary protection earlier than provided for in the Directive. Even if Member States themselves have chosen to grant temporary protection to more people than is strictly necessary, they derive the protection directly from this Directive. This also applies to the duration of the temporary protection.

Temporary protection for third-country nationals will end on 4 March 2024

The Administrative Jurisdiction Division ruled that it follows from the Temporary Protection Directive that the temporary protection of the third-country national does end on 4 March 2024, in contrast to the temporary protection of Ukrainians, stateless persons and people of other nationalities who had asylum or a permanent residence permit in Ukraine. They will retain temporary protection until 4 March 2025. This is because, since July 2022, the State Secretary has no longer granted temporary protection to third-country nationals who had a temporary residence permit in Ukraine. They are therefore not covered by the decision of the Council of the European Union of October 2023 extending temporary protection until 4 March 2025.

Consequence of the ruling

As a result of the ruling, the temporary protection of all third-country nationals who had a temporary residence permit in Ukraine and who registered in the Netherlands in the Personal Records Database before 19 July 2022 will end on 4 March 2024. This means that after 4 March 2024, they will no longer have the right to reside in the Netherlands under the Directive. They can, however, apply for a residence permit on other grounds, such as asylum.