

Case C-290/24 [Abkez] ⁱ

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

25 April 2024

Referring court:

Raad van State (Netherlands)

Date of the decision to refer:

25 April 2024

Appellants:

AI

ZY

BG

Respondent:

Staatssecretaris van Justitie en Veiligheid

Subject matter of the main proceedings

Appeals against the rulings of the rechtbank Den Haag (District Court, The Hague) in three cases concerning foreign nationals with a temporary residence permit in Ukraine who fled to the Netherlands when war broke out in Ukraine.

Subject matter and legal basis of the request

Interpretation of Article 4 of Directive 2001/55/EC (Temporary Protection Directive) to clarify when the temporary protection given to the additional categories of displaced persons referred to in Article 7(1) of that directive ends.

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

Questions referred for a preliminary ruling

Must Article 4 of 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 be interpreted as meaning that, where a Member State has made use of the possibility offered by Article 7(1) of that directive also to grant temporary protection under that directive to additional categories of displaced persons ('the optional group'), the temporary protection given to that optional group continues not only in the case of an automatic extension as referred to in Article 4(1) for the period specified in that provision, but also in the case of a decision to extend the period as referred to in Article 4(2) for the period specified in that provision?

Does it make any difference to the answer to the question of whether the temporary protection given to the optional group continues in the event of a decision to extend it as referred to in Article 4(2) that a Member State has decided to terminate the temporary protection given to the optional group before the Council has decided to extend the temporary protection for one year as referred to in Article 4(2)?

Provisions of European Union law relied on

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 ('Temporary Protection Directive'): recital 13, Articles 4, 6 and 7.

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals: Article 3.

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.

Council Implementing Decision (EU) 2023/2409 of 19 October 2023 extending temporary protection as introduced by Implementing Decision (EU) 2022/382: recitals 5, 7 and 8 and Article 1.

Provisions of national law relied on

Vreemdelingenwet 2000 (Law on Foreign Nationals 2000).

Vreemdelingenbesluit 2000 (Decision on Foreign Nationals 2000): Article 3.1a.

Voorschrift Vreemdelingen 2000 (Regulations on Foreign Nationals 2000): Article 3.9a.

Succinct presentation of the facts and procedure in the main proceedings

- 1 Foreign nationals AI, ZY and BG have Algerian, Turkish and Pakistani nationality, respectively. They held temporary residence permits in Ukraine at the time that Russian forces began a large-scale invasion of Ukraine on 24 February 2022. After the invasion, they fled to the Netherlands, where they registered in the Netherlands Personal Records Database. The foreign nationals do not fall within the categories of persons to be granted temporary protection under Decision 2022/382 of 4 March 2022 implementing Directive 2001/55/EC.
- 2 However, the staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security; ‘the State Secretary’) decided to apply the optional provision laid down in Article 2(3) of Implementing Decision 2022/382 and also grant temporary protection to third-country nationals who had a temporary residence permit in Ukraine on 23 February 2022, without assessing whether they would be able to return to their country or region of origin in safe and durable conditions (‘the optional group’). The foreign nationals thus came to be protected under the Temporary Protection Directive.
- 3 With effect from 19 July 2022, the Staatssecretaris terminated the application of the optional provision. From that date, newly displaced persons from the optional group who were not yet registered in the Netherlands Personal Records Database were no longer entitled to temporary protection.
- 4 Under Article 4(1) of the Temporary Protection Directive, temporary protection was automatically extended twice for periods of six months, until 4 March 2024. By Implementing Decision 2023/2409 of 19 October 2023, the Council extended temporary protection for the categories of displaced persons referred to in Implementing Decision 2022/382 by one year until 4 March 2025.
- 5 On 7 February 2024, the State Secretary issued return decisions within the meaning of Article 3(4) of Directive 2008/115/EC in respect of the three foreign nationals. In those decisions, he referred to the ruling of the Afdeling bestuursrechtspraak (Administrative Jurisdiction Division) of the Raad van State (Council of State) (‘the Afdeling’) of 17 January 2024 (ECLI:NL:RVS:2024:32), from which it follows that the foreign nationals’ right to temporary protection under the Temporary Protection Directive and Implementing Decision 2022/382, and thus their lawful residence, would terminate by operation of law on 4 March 2024. The foreign nationals were therefore required to leave the territory of the European Union within four weeks of 4 March 2024.

- 6 The foreign nationals each lodged an appeal against the return decision issued against them with the District Court, The Hague. Their cases were heard by that court sitting in three different places, namely, Roermond, Zwolle and Haarlem. Although the factual and legal situations of the three foreign nationals were comparable, these three courts arrived at divergent decisions, which in two of the three cases were inconsistent with the Afdeling's ruling referred to in paragraph 5 above. In the third case, the court concerned reached the same verdict as the Afdeling on the basis of different reasoning.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 7 In its ruling of 17 January 2024, the Afdeling already addressed the question of the duration of the temporary protection given to the optional group of displaced persons from Ukraine. The aim of that ruling was to achieve legal uniformity at national level. However, that aim was not achieved: the different places in which the District Court, The Hague, sits remained divided among themselves even after the Afdeling's ruling on the answer to the question of how Article 4(1) and (2) of the Temporary Protection Directive should be interpreted. The three present cases, with the court sitting in Roermond, Zwolle and Haarlem, are examples of this. In addition, in March 2024, the court sitting in Amsterdam referred questions for a preliminary ruling on this issue to the Court of Justice (Case C-244/24).

Ruling of the Afdeling of 17 January 2024

- 8 The Afdeling is of the view that, for the duration of the temporary protection, the scheme and chronology of Article 4 of the Temporary Protection Directive should be followed. According to the Afdeling, paragraph 1 and paragraph 2 of Article 4 of the Temporary Protection Directive deal with different situations. Paragraph 1 relates to the initial duration of the temporary protection and its automatic extension. These matters are provided for in Implementing Decision 2022/382. Paragraph 2 relates to a new situation, in which the Council, on a proposal from the Commission, reassesses whether there are still grounds for continuing to offer the temporary protection. Provision was made for this for displaced persons from Ukraine by Implementing Decision 2023/2409 of 19 October 2023.
- 9 The Afdeling deduces from the latter Implementing Decision that the extension until 4 March 2025 only applies to the optional group to the extent that Member States were still applying Article 2(3) of Implementing Decision 2022/382 on 19 October 2023. That was not the case in the Netherlands. Therefore, on 19 October 2023, that group of displaced persons was no longer eligible for temporary protection in the Netherlands and was no longer covered by Article 2(3) of Implementing Decision 2022/382. Article 1 of Implementing Decision 2023/2409 and the extension until 4 March 2025 laid down in that provision therefore did not apply to the optional group.

- 10 The Afdeling found support for this interpretation of Article 1 of Implementing Decision 2023/2409 in the Commission's proposal for extending temporary protection of 19 September 2023 [COM(2023) 546 final]. The explanatory memorandum to that proposal, in particular footnote 2, does not mention Article 2(3) of Implementing Decision 2022/382. This led the Afdeling to deduce that Article 2(3) of that Implementing Decision is relevant to Implementing Decision 2023/2409 only to the extent that Member States were applying that provision when Implementing Decision 2023/2409 was adopted by the Council. That interpretation also relies on the competence that a Member State has to terminate the application of an optional provision of EU law.
- 11 The Afdeling therefore concluded that the duration of the temporary protection given to the optional group of displaced persons from Ukraine was not extended by Implementing Decision 2023/2409. For this group, the temporary protection ended by operation of law on 4 March 2024.

The court sitting in Roermond (AI)

- 12 In essence, this court considered that the extension of the temporary protection under Article 4(2) of the Temporary Protection Directive did not create a new situation requiring the State Secretary to reassess the situation of the optional group of displaced persons from Ukraine. For the purpose of answering the question whether the duration of the temporary protection given to the foreign national concerned was extended, the only relevant factor is that the foreign nationals concerned had already been brought within the scope of the Temporary Protection Directive and therefore benefited from temporary protection under that Directive at the times when Implementing Decision 2023/2409 was adopted and entered into force.
- 13 This court further considers that the Union legislature gave Member States the choice of whether or not to make use of Article 7(1) of the Temporary Protection Directive. If Member States made use of that competence and provided individual displaced persons with non-obligatory temporary protection, but no longer do so at the time of the extension, it is not logical to assume that the Council would prescribe to Member States that the duration of that protection for the optional group should end but would extend the temporary protection for the other displaced persons. If that had been the Council's intention, it could have expressly laid down this limitation on the extension of temporary protection in recitals 7 and 8 of Implementing Decision 2023/2409, in Article 1 of that Implementing Decision, in Article 7(1) of the Temporary Protection Directive or in Article 2(3) of Implementing Decision 2022/382.
- 14 The court sitting in Roermond concluded that neither the wording nor the scheme and objectives of Implementing Decision 2023/2409 indicate that, at the time of the extension, it was necessary or permissible to reassess which displaced persons were beneficiaries of the Temporary Protection Directive. The decision no longer

to apply Article 7(1) of the Temporary Protection Directive has no effect on the duration of the temporary protection granted previously.

The court sitting in Zwolle (ZY)

- 15 The Zwolle court shares the Afdeling's conclusion in its ruling of 17 January 2024 that the temporary protection for the optional group of displaced persons from Ukraine ended as of 5 March 2024. However, it reaches this conclusion on the basis of different reasoning from the Afdeling.
- 16 The starting point is that, according to recital 13 of the Temporary Protection Directive, the protection offered should be of limited duration and that the central issue in that regard is whether actual return to the country of origin is possible. The State Secretary made use of the possibility offered in Article 7(1) of the Temporary Protection Directive to offer temporary protection to additional categories of displaced persons, but stopped doing so on 19 July 2022. Like the Afdeling, the Zwolle court considers that the temporary protection continues for those third-country nationals who were already part of the optional group of displaced persons from Ukraine at that time and that its automatic extensions also apply to that group. However, the adoption by the Council of Implementing Decision 2023/2409 on the basis of Article 4(2) of the Temporary Protection Directive constitutes a new assessment moment. At the time of the new assessment, Article 7(1) of the Temporary Protection Directive had already ceased to apply in the Netherlands since July 2022. As a result, for the optional group of displaced persons from Ukraine, the maximum duration referred to in Article 6(1) of the Temporary Protection Directive was reached on 4 March 2024, the date on which the automatically extended temporary protection expired.
- 17 The Zwolle court took into account in this ruling that Article 6 of the Temporary Protection Directive does not specify what that maximum duration is. It follows from Article 4 of the Temporary Protection Directive that this maximum duration can be two years, in the situation laid down in paragraph 1, or three years, in the case of extension under paragraph 2. Thus, for the optional group, the maximum duration is different from that for the other displaced persons. Therefore, it does not follow from Article 6(1) of the Temporary Protection Directive and the fact that it has been fully applicable to the optional group, that the optional group is still entitled to temporary protection until 4 March 2025.
- 18 The fact that the Council did not make an exception for the optional group in Implementing Decision 2023/2409 does not lead to a different conclusion. This is because the Council is not concerned with the application and therefore the termination of the optional provision; that is up to the Member States. Nor does it follow from recitals 7 and 8 of Implementing Decision 2023/2409 that this should be judged differently. The Zwolle court reads these recitals in the light of recital 5: that recital does not apply to the optional group because the persons belonging to that group come from another country and are therefore not required to return to Ukraine.

- 19 According to the Zwolle court, this interpretation is in line with the aims of the Temporary Protection Directive. Indeed, that Directive sets minimum standards of protection for displaced persons who cannot return to their country of origin, but for the optional group, return to the country of origin is generally possible.

The court sitting in Haarlem (BG)

- 20 According to the Haarlem court, because the Netherlands has applied Article 2(3) of Implementing Decision 2022/382, the persons belonging to the optional group are displaced persons as referred to in Article 2 of that Implementing Decision. Article 1 of Implementing Decision 2023/2409 extends the temporary protection for all displaced persons covered by Article 2 of Implementing Decision 2022/382 until 4 March 2025. It does not distinguish between the different groups mentioned in Article 2 of Implementing Decision 2022/382. The fact that temporary protection under Implementing Decision 2022/382 does not continue automatically after 4 March 2024, but has been extended by a Council decision under Article 4(2) of the Directive, is therefore not a reason to conclude that the extension does not apply to the optional group of displaced persons from Ukraine.

Request for determination pursuant to the expedited procedure and request for joinder

- 21 For essentially the same reasons as those put forward by the District Court, The Hague, sitting in Amsterdam, in Case C-244/24, the Afdeling requests that the case be dealt with under the expedited procedure. In that connection, the Afdeling also points to the legal inequality that has arisen between foreign nationals who appealed against their return decision and those who did not. In addition, the Afdeling requests that the Court of Justice deal with the two requests for a preliminary ruling jointly.