



Information Note about the legal situation of persons fleeing from Ukraine

14 November 2022

This Information Note is addressed to professionals who provide legal assistance to persons fleeing from Ukraine.

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Essential legal sources

Hungarian legal acts related to third-country nationals:

Act II of 2007 on the admission and right of residence of third-country nationals (**Third-Country Nationals Act – TCN Act**)

Act LXXX of 2007 on Asylum (**Asylum Act**)

Act LVIII of 2020 on the transitional rules related to the termination of the state of danger and on the epidemic preparedness (**Transitional Act**)

Act LXXXIX of 2007 on the State Border

Government Decree 114/2007 (V. 24.) on the implementation of act II of 2007 on the admission and right of residence of third-country nationals (**TCN Impl. Decree**)

Government Decree 301/2007. (XI. 9.) on the implementation of act LXXX of 2007 on Asylum (**Asylum Impl. Decree**)

Decree of the Minister of Interior No. 16/2020. (VI. 17.) on the procedure concerning the statement of intent for the purpose of lodging an asylum application

Relevant European Union legal acts:

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

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 (**Council Implementing Decision**)

Regulation (EC) No 810/2009 the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (**Visa Code**)

Government decrees related to the humanitarian situation in Ukraine, adopted under Article 53(2) of the Fundamental Law:

Government Decree No. 86/2022. (III. 7.) on rules applicable in state of danger and related to persons recognized as eligible for temporary protection, and on derogations from the rules of: [Act CVI of 2011](#) on public employment, on the amendment of acts related to public employment and of other acts

Government Decree No. 95/2022 (10.III.) on the performance of the humanitarian tasks of the Budapest and county defense committees

Government Decree No. 96/2022 (10.III.) on the support of the employment of persons with Ukrainian nationality who have arrived from the territory of Ukraine

Government Decree No. 104/2022 (12.III.) on the support of providing accommodation to persons arriving with respect to a humanitarian disaster in a neighbouring country during the state of danger, and on other related measures

Government Decree No. 106/2022 (12.III.) on certain rules related to the employment of and benefits to persons recognized as entitled to temporary protection and on the amendment of

Government Decree 301/2007. (XI. 9.) on the implementation of act LXXX of 2007 on Asylum, with respect to a humanitarian disaster in a neighbouring country during the state of danger

Government Decree No. 147/2022 (14.IV.) on the provision of childcare services to accompanied children who have arrived from the territory of Ukraine, with respect to the state of danger

Government Decree No. 171/2022 (29.IV.) on certain issues of data processing relevant to health care services, related to the Ukrainian crisis

Government Decree No. 172/2022 (29.IV.) on the support of the employment of persons with Ukrainian nationality

Government Decree No. 173/2022 (29.IV.) on the support of the employment of persons with Ukrainian nationality by certain public financed bodies

Other legal acts

Act CXC of 2011 on national public education (**Public Education Act**)

Act CXV of 2009 on Private Entrepreneurs and Sole Proprietorships (**Private Entrepreneurs Act**)

Government Decree No. 445/2013. (XI. 28.) on the authorization of the employment of third-country nationals in Hungary on the basis of other than a single application procedure , on the exemption from the obligation to obtain an authorization, on the participation of employment centres of the Metropolitan and County Government Offices as specialised authorities in single application procedures, on notifications of employment in Hungary of third-country nationals who are authorised to be employed in Hungary without a work permit, and on the reimbursement of wages

1. General overview – regulations concerning foreigners

As regards the regulations on the entry of foreigners to Hungary, and their residence in Hungary, distinction should be made between foreigners who are EEA nationals and their family members, and foreigners who do not fall into that category. The latter are referred to as third-country nationals in the legislation. The distinction is significant because more lenient rules apply to EEA nationals and their family members, while the entry and residence of third-country nationals are governed by stricter rules under Hungarian law.

Regarding third-country nationals, a further significant ground of distinction exists in the law: depending on whether a third-country national is fleeing from the country of origin, leaving it for compelling reasons, or arrives to Hungary voluntarily. Act LXXX of 2007 on Asylum (**Asylum Act**) is the primary legal source applicable to persons fleeing their country of origin, who arrive in Hungary to seek protection. To those third-country nationals who entered Hungary voluntarily with a certain purpose (for example for the purposes of employment or the pursuit of studies, or entering the country illegally but without the intention to claim asylum), Act II of 2007 on the admission and right of residence of third-country nationals (**TCN Act**) shall apply.

The majority of the persons arriving from Ukraine are third-country nationals, therefore, the provisions of the TCN Act and the Asylum Act are applicable primarily. The National Directorate-General for Aliens Policing (Országos Idegenrendészeti Főigazgatóság, OIF) is the competent authority to conduct the procedures governed by the TCN Act and the Asylum Act.

1.1. The forms of protection which may be provided to persons compelled to leave their country of origin

The forms of protection are laid down by international agreements and EU law. Accordingly, the Hungarian Asylum Act provides four categories of protection regarding the status of entitled persons:

Refugee status (Section 6 of the Asylum Act)

The definition of refugee is laid down in the 1951 Geneva Convention Relating to the Status of Refugees. Persons shall be recognised as refugees if they possess a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of their nationality and are unable or, owing to such fear, are unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence as a result of such events, are unable or, owing to such fear, are unwilling to return to it.

Subsidiary protection (Section 12 of the Asylum Act)

Subsidiary protection may be granted to third-country nationals or stateless persons **if there are reasonable grounds to believe that, in the event of their return to their country of origin, they would be exposed to a risk of suffering serious harm.** Section 61 of the Asylum Act specifies the definition of **serious harm.** Serious harm shall include the death penalty, the application of torture, cruel, inhuman or degrading treatment, or the case when, as the consequence of an armed conflict in the given country, civilians may become victims to indiscriminate armed violence. The basic difference between beneficiaries of subsidiary protection and refugees is that the former ones **are not exposed to the risk of persecution** for reasons of nationality, religion, political opinion or other **personal grounds in their country of origin.**

The asylum authority (OIF) shall recognize as refugees or as beneficiaries of subsidiary protection persons who submit an asylum claim and are able to substantiate that they have a well founded fear of persecution based on their belonging to a protected group, or that they are at risk of serious harm within their country of origin, as defined above. The asylum procedure is a lengthy and complex procedure, in which the applicant shall be interviewed, evidence submitted by the applicant shall be carefully examined and deliberated and, by investigating country of origin information, it shall be assessed whether the asylum claim is well-founded.

Tolerated status (Sections 25/A.-25/B. of the Asylum Act)

Tolerated status may be granted to persons who do not satisfy the criteria for recognition as a refugee or beneficiary of subsidiary protection (for example, due to one of the exclusion grounds under Section 8 of the Asylum Act), but, nevertheless, there is a risk that, in the event of their return to their country of origin, they would be exposed to the risk of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion or to the risk of being sentenced to death, becoming subjected to torture or other inhuman treatment or punishment. In addition, the asylum authority shall recognise tolerated status also when the existence of the abovementioned risks is established not in an asylum procedure but in the course of an aliens policing procedure (i.e. under the TCN Act).

Temporary protection (Section 19 of the Asylum Act)

Temporary protection is provided to persons who had been forced to leave their country in large numbers due to war or a humanitarian disaster. In order to provide temporary protection, a specific legal act (an implementing decision of the Council of the European Union or a government decree) should lay down in an *ad hoc* manner the scope of persons eligible for temporary protection. The significance of this legal institution lies in the fact that it allows the state to resolve the situation of third-country nationals arriving to the country in large numbers, by means of a fast procedure without the need to conduct lengthy, personalized asylum procedures based on country of origin information sources, which would otherwise be necessary for the recognition as refugee or as beneficiary of subsidiary protection.

The content of each protection form is different, but for the time being, it should only be emphasized that refugee status and beneficiary of temporary protection status are not the same, as they are granted as a result of different procedures and they ensue different rights.

Currently people who were forced to leave their country of origin due to the war in Ukraine are arriving in large numbers to Hungary from Ukraine. Temporary protection can be obtained most easily by them. Accordingly, its characteristics and practical application will be presented in the following.

2. The temporary protection status

2.1. Differences between the regulation of temporary protection in EU law and domestic law

Section 19 of the Asylum Act regulates two forms of temporary protection:

- a) The form under point a) of Section 19(1) of the Asylum Act transposes the provisions of Council Directive 2001/55/EC into Hungarian law. For its application, the Council of the European Union should declare that, on grounds of a massive influx of third-country nationals, temporary protection must be granted to a predefined scope of persons who are eligible. In such cases, temporary protection shall be granted by all EU Member States. However, in practice no uniform protection type is established for the entirety of the EU, as Member States only have the obligation to grant protection and to ensure rights under their own law and in their own territory to displaced persons. The Directive only lays down the minimum standards regarding this form of protection, and Member States may derogate from those provisions only to grant more favourable treatment to applicants.
- b) Temporary protection under point b) of Section 19(1) of the Asylum Act is independent from Directive 2011/55/EC and exists only under Hungarian law. The cases when this form of protection should be applied, and the scope of eligible persons are laid down by a government decree. The provisions of the Union Directive may not be invoked in this case, only the provisions of the Asylum Act may be relied on.

On 4 March 2022 the Council of the European Union adopted Council Implementing Decision (EU) 2022/382, thereby activating the rules provided for by Directive 2001/55/EC, thus **in this case, the first type of beneficiary of temporary protection status under point a) of Section 19(1) of the Asylum Act is applicable.**

Protection shall be granted to the persons defined in the Implementing Decision from that date, and the Hungarian legal acts related to beneficiaries of temporary protection must be in conformity with the provisions of Directive 2001/55/EC and Council Implementing Decision (EU) 2022/382. The Commission's [Communication](#) 2022/C 126 I/01 (hereinafter: Operational guidelines) provides further guidance on the operational implementation of the Directive and the Implementing Decision.

With respect to the application of temporary protection at Union level, Government Decree No. 86/2022. (III. 7.) was promulgated in Hungary to activate temporary protection under point a) of Section 19(1) of the Asylum Act which is still in force. That was preceded by the granting of temporary protection status applicable under point b) of Section 19(1) of the Asylum Act introduced by Government Decree 56/2022. (II. 24.). That former Government Decree accorded a more extensive protection than the present rules, because it allowed *non-Ukrainian* third-country nationals fleeing from and legally residing in Ukraine to apply for temporary protection. However, that is not possible anymore under the Government Decree currently in force.

2.2. Persons entitled to temporary protection

Currently, under the Council Implementing Decision and the transposing Government Decree No. 86/2022. (III. 7.), the following persons may apply for temporary protection:

- a) Ukrainian nationals residing in the territory of Ukraine before 24 February 2022;
- b) stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection (for example, having a refugee status) or equivalent national protection in Ukraine before 24 February 2022; and
- c) family members of persons referred to in points a) and b).

The following persons shall be considered as family members: spouses, minor children, and other close relatives who lived together as part of the family before 24 February, and who were wholly or mainly dependent on a person referred to in point a) or b) at the time. In our opinion, and according to the practice of the OIF, beneficiary of temporary protection status shall be granted to the unmarried partner living in a stable relationship with a person referred to in point a) or b), and to third-country nationals who are the parents of minors referred to in point a) or b).

According to the Commission's [Operational guidelines](#), the Council Implementing Decision shall not apply to Ukrainian nationals who arrived from Ukraine before 24 February 2022. (Operational guidelines, p.6.) The situation of such persons is discussed in detail in point 3.2.

The Asylum Act also sets out the grounds of exclusion from temporary protection. No temporary protection shall be granted when there are reasonable grounds to believe that they had committed

- a) a crime against peace, a war crime or a crime against humanity as defined in international instruments;
- b) a serious, non-political criminal act outside the territory of Hungary prior to the submission of the application for recognition as a beneficiary of temporary protection;
- c) a crime contrary to the purposes and principles of the United Nations.

Moreover, no temporary protection shall be granted to persons whose stay in the territory of Hungary violates the interest of national security and/or

- a) in whose case a court established by a final and binding judgment that they had committed an intentional criminal offense punishable by imprisonment for five or more years;
- b) who are sentenced by a final and binding judgment of a court to imprisonment for having committed a criminal offense as recidivists, multiple recidivists or violent multiple recidivists;
- c) who are sentenced by a final and binding judgment of a court to imprisonment of a term of three years or more for having committed a criminal offense against life, physical integrity, and health, a criminal offense endangering health, a criminal offense against human freedom, a criminal offense against the freedom of sexual life and sexual morality, a criminal offense against public peace, a criminal offense against public safety, or a criminal offense against the order of public administration. [Section 21(1) of the Asylum Act]

The Constitution Protection Office and the National Counterterrorism Centre are the competent expert authorities which determine whether the stay of the applicant in the territory of Hungary presents a threat to national security. [Point a) of Section 2/A. of Government Decree 301/2007. (XI. 9.) on the implementation of act LXXX of 2007 on Asylum (Asylum Impl. Decree)]

2.3. Submitting the application

Any person falling within the category under point 2.2. may apply for temporary protection in any of the EU Members States, including Hungary, **independent from the fact whether he or she is otherwise entitled to legally reside in the territory of that Member State, and/or whether his or her entry into that Member State was legal or not.** Accordingly, Ukrainian nationals who arrived holding a biometric passport and thus have the right to stay within the Schengen area for a 90-day period without a visa, and those who arrived without any document (or holding an old type of passport in lack of a biometric passport) are equally entitled to file an application. The authority often issues, under the provisions of the TCN Act, a temporary residence document (“ideiglenes tartózkodásra jogosító igazolás”) valid only for a 30-day period for the persons arriving to Hungary without a biometric passport, instead of launching a temporary protection procedure. In our view, this happens because those persons are not appropriately informed about the temporary protection available to them in Hungary. Nevertheless, persons who already received a temporary residence document, are equally entitled to request their recognition as beneficiaries of temporary protection at any time.

The application for recognition as a beneficiary of temporary protection may be submitted in Hungary to the asylum authority (OIF): 60 Budafoki Street, 11th District, Budapest and also in the [regional offices](#) of OIF.

In addition, it is possible for applicants to give their personal identification data necessary for the submission of the application in advance by using the [website](#) or [mobile application](#) for that purpose. That possibility is only for accelerating the procedure and does not exempt the applicant from the obligation of appearing in person before the authority, which, in this case, may be fulfilled not only by appearing at the OIF office but also at any government client service point (“Kormányablak”) [Paragraphs (1)-(2b) of Section 5/A of Government Decree 86/2022. (III. 7.)].

It must be demonstrated in the procedure that the applicant falls within the personal scope of the Council Implementing Decision. This may be done usually by means of a passport, a personal identity card, any other document appropriate for the certification of personal identity, or an extract from the birth or marriage register. If, at the time of submitting the application, the applicant has no accommodation that fact may be noted on the application form. In such cases, OIF contacts the competent authorities (Disaster Relief) so that those may provide accommodation for the applicant. If the applicant has accommodation, the address must be given on the data sheet, and in case his or her accommodation changes during the procedure, the authority must be duly notified thereof.

The asylum authority does not adopt a separate decision about the recognition of temporary protection. The authority only records the recognition itself and notifies the applicant by handing over the temporary protection document. [Paragraph (3) of Section 5/A. of Government Decree 86/2022. (III. 7.)]. According to our experience, however, it is sometimes problematic that the authority does not notify the persons whose application for temporary protection is rejected (for example, because they arrived in Hungary before 24 February). Those persons are informed that their attempt was unsuccessful only if they contact the authority in person to request information about the assessment of their claim.

The procedure shall be completed within 45 days. [Paragraph (3) of Section 77 of the Asylum Act] The time-limit set for the procedure of the expert authority (see point 2.2. above) shall be 10 days. If the expert authority does not notify the asylum authority of its decision within 10 days, its consent shall be considered as given. [Paragraphs (2)-(3) of Section 4/A. of Government Decree 86/2022. (III. 7.)] Thus, the decision on recognition must be adopted within 55 days at the latest.

2.4. The documents of beneficiaries of temporary protection

Following the submission of their application, applicants receive a so-called **humanitarian residence permit** for the duration of the procedure. [Point c) of Section 29(1) of the TCN Act] The permit certifies their entitlement to the services available for them during the temporary protection procedure (for the services see point 2.7.) If the humanitarian residence permit expires before receiving the temporary protection document following the recognition, the extension of validity may be requested at the closest regional office of the OIF.

Following the recognition as beneficiary of temporary protection, **a document** is issued for the beneficiary of temporary protection **for the purposes of personal identification and the certification of the right to residence**. If, following the issuance of that document the place of residence of the beneficiary of temporary protection changes, the authority must be duly notified thereof. [Point a) of Section 22(1) of the Asylum Act]

According to the Commission's Operational guidelines, once the document certifying personal identity and the right to residence is issued, the person enjoying temporary protection has the right to travel to and stay in other EU Member States for 90 days within a 180-day period. The Operational guidelines also clarify that beneficiaries of temporary protection may apply for temporary protection within the territory of another Member State, provided that the national rules of that Member State allow that. In such cases, however, the temporary protection document issued in the first Member State shall be withdrawn. In fact, the rights ensuing from temporary protection status are linked to one Member State, that is, they may be exercised only within the territory of one Member State.

2.5. The duration of temporary protection

The duration of temporary protection shall be **one year from the entry into force of the Council Implementing Decision, i.e. no matter when the applicants were recognised as beneficiaries of temporary protection , the temporary protection documents issued for them shall expire on 4 March 2023**. Unless the Council adopts a decision to the contrary, the duration of temporary protection shall be extended automatically two times by six months. Following that date, i.e after 4 March, 2023, a separate decision of the Council should be adopted on maintaining the temporary protection for another year. The Council may, at any time during that period of three years, decide to end the provision of temporary protection.

2.6. The termination of temporary protection

The legal status of temporary protection shall cease if:

- the term of temporary protection expires (see point 2.5.) or the Council adopts a decision on ending the temporary protection;
- the beneficiary of temporary protection acquires the legal status of a 'settled person' in Hungary or acquires Hungarian nationality;
- the beneficiary of temporary protection is recognized as a refugee or as a beneficiary of subsidiary protection;
- the asylum authority revokes the recognition as a beneficiary of temporary protection. [Paragraph (1) of Section 25 of the Asylum Act]

The Asylum Act, moreover, provides an exhaustive list of cases when the recognition as a beneficiary of temporary protection shall be revoked. These include the following:

- if the beneficiary of temporary protection receives temporary protection in another Member State;
- if the beneficiary of temporary protection was recognized in spite of the existence of any of the exclusion grounds, or an exclusion ground prevails in respect of the beneficiary of temporary protection (for the exclusion grounds see point 2.2.)
- the beneficiary of temporary protection waives the temporary protection in writing ;
- the conditions of recognition were unfulfilled already at the time of the adoption of the decision on recognition [Paragraph (2) of Section 25 of the Asylum Act]

It is important, therefore, that temporary protection shall not be revoked merely on the grounds that the person returns to Ukraine. That is an important difference between the beneficiary of temporary protection status and the refugee status or beneficiary of subsidiary protection status. In the latter two cases returning to the country of origin results in the revocation of the status recognition.

In case a person waives the temporary protection in writing, and returns to Ukraine, that does not preclude the possibility of being recognized as a beneficiary of temporary protection again by re-submitting an application for temporary protection later on [Section 108 of the Asylum Impl. Decree].

2.7. Services and benefits to which applicants for temporary protection, and beneficiaries of temporary protection are entitled to

Beneficiaries of temporary protection are entitled to several services and benefits from the time of the submission of their application for temporary protection. Those benefits are provided for by the Asylum Impl. Decree in general. In addition, in the present situation, several Government Decrees are adopted under Article 53 of the Fundamental Law (Constitution) that clarify or, in many cases, derogate from the provisions of the Asylum Impl. Decree, and which must be constantly monitored.

The legal provisions on benefits currently in force are set out in the table below:

	Applicant	Beneficiary of temporary protection
Material reception conditions (accommodation, meals, hygienic services)	Point c) of Section 22(1) of the Asylum Act; Point a) of Section 21(1) and Section 101 of the Asylum Impl. Decree (The assessment by the authority under Sections 16(4) -19 of the Asylum Impl. Decree shall be excluded under points (c)-(d) of Section 5(1) of Gov. Decree 86/2022 (III. 7.)	Para. (2) of Section 41 of the Asylum Impl. Decree
Health care	Sections 26-28 of the Asylum Impl. Decree Points (a)-(b) of Section 6(2) of Gov. Decree 86/2022 (III. 7.): specialised oncological care, examinations and medical treatment within the framework of health services related to other chronic illness Gov. Decree 171/2022. (IV. 29.) – on the practical arrangements of receiving health care	Point (b) of Section 37/A(1) and para. (2) of Section 44 of the Asylum Impl. Decree; Points (a)-(b) of Section 6(2) of Gov. Decree 86/2022. (III.7.), Gov. Decree 171/2022. (IV. 29.)
Education	Section 29 of the Asylum Impl. Decree	Point (c) of Section 37/A(1) and Section 45 of the Asylum Impl. Decree; Section 3 of Gov. Decree 106/2022. (III. 12.) (pre-school and childcare services)
Free meals for children	Section 3/A of Gov. Decree 106/2022. (III. 12.) on request, for six months	Section 3/A of Gov. Decree 106/2022. (III. 12.) on request, for six months
Regular subsistence allowance	-	Point (e) of Section 37/A (1) and point (b) of Section 37/A (4) of the Asylum Impl. Decree; Paras. (2)-(3) of Section 4 of Gov. Decree 106/2022 (III. 12.) BUT para. (2) of Section 2: persons shall be obliged to accept the job offered to them within 45 days following the first payment of subsistence allowance. The allowance is subject to a monthly appearance in person before the district office. The entitlement to allowance shall cease in case of employment or pension.
Travel allowances	Section 24 of the Asylum Impl. Decree	Point (c) of Section 37/A(2) and Section 48 of the Asylum Impl. Decree It must be requested from OIF [Para.(2) of Section 48]
Bearing the costs of public funeral	Section 25 of the Asylum Impl. Decree	-

Reimbursement of document translation costs	Point (c) of Section 6(2) of Gov. Decree 86/2022. (III. 7.) Section 49 of the Asylum Impl.Decree; documents issued before the recognition as beneficiary of temporary protection, especially extracts from the birth or marriage register, certificates of education or vocational training	Point (b) of Section 37/A (3) and Section 49 of the Asylum Impl. Decree
Employment	Para. (4) of Section 6 of Gov. Decree 86/2022. (III. 7.) – No special permit is necessary for the employment Public employment: Section 7 of Gov. Decree 86/2022. (III. 7.)	Para. (4) of Section 6 of Gov. Decree 86/2022. (III. 7.) – No special permit is necessary for the employment Public employment: Section 7 of Gov. Decree 86/2022. (III. 7.) Act CVI of 2011
Facilitating final departure from the country	-	Point (c) of Section 37/A(3) of the Asylum Impl. Decree
Family reunification	-	Section 105. of the Asylum Impl. Decree If the family member was awarded temporary protection in another Member State, family reunification may be requested

3. The legal situation of persons arriving from Ukraine who are not entitled to temporary protection

3.1. Ukrainian-Hungarian dual citizens

Persons of dual nationality arriving from Ukraine are entitled to freely enter and reside in the territory of Hungary. **Under Section 8(1) of Government Decree 86/2022 (III. 7.), Hungarian nationals with a permanent residence in Ukraine and arriving from Ukraine on 24 February 2022 or on a later date shall be granted all the benefits and advantages provided to beneficiaries of temporary protection unless they shall enjoy a more favourable treatment with regard to their Hungarian nationality. Accordingly, they are entitled to housing.** Under Section 2 of Government Decree 95/2022, the coordination of their maintenance shall be the task of the Budapest and county defence committees. Defence committees shall be presided by the heads of County Government Offices. Dual nationals shall benefit from childcare services and pre-school education and may go to school, university, and may be employed without any further special permit.

Government Decree 106/2022. (III. 12.) prescribes the task of involving Hungarian nationals arriving from Ukraine into employment, and the payment of regular subsistence allowances for them. Such tasks are referred to the competence of district offices. Allowance shall be requested from the district office. The Government Decree makes the payment of allowances subject to mandatory appearance in person before the district office. The entitlement to allowance shall cease if the person receiving allowance becomes employed, receives a pension (including Ukrainian pension if the person has actual access to it from Hungary) or if he or she refuses to be employed in public employment [Section 5 of Government Decree 106/2022].

Moreover, dual nationals are entitled to the same healthcare services as beneficiaries of temporary protection, even if they are not subject to the social security scheme in Hungary. When receiving healthcare services, the service provider, if available, records the person's Hungarian personal identity card number, the type of the passport, or the Ukrainian passport number, respectively. [Point c) of Section 2(3) and Section 2(4) of Government Decree 171/2022 (IV.29.)]

Hungarian nationals arriving from Ukraine, in the same way as beneficiaries of temporary protection, may request the translation of their documents from OIF as provided for under Section 49 of the Asylum Impl. Decree.

3.2. Ukrainian nationals arriving from Ukraine before 24 February 2022

The Commission's Operational guidelines confirm that Ukrainian nationals arriving from Ukraine before 24 February 2022 do not fall under the scope of the Council Implementing Decision (Operational guidelines, p. 6). However, the Operational guidelines point out that such people may equally be in need of immediate protection, just like their compatriots arriving after 24 February. According to current domestic practice, Hungary does not grant temporary protection to Ukrainian nationals who left Ukraine before 24 February.

If they, nevertheless, apply for recognition as beneficiaries of temporary protection, the asylum authority shall grant them tolerated status and shall issue a humanitarian residence permit for them valid for a period of one year. Persons of a tolerated status shall be entitled to:

- pre-school and are obliged to participate in public education [Point (a) of Section 92(1) of the Public Education Act].
- be a private entrepreneur [Point (d) of Section 3(1) of the Private Entrepreneurs Act]
- be employed with a work permit [Sections 3-6 of Gov. Decree 445/2013. (XI. 28.)]
- in case they are not insured under the social security scheme, to treatments by a general practitioner, to emergency care, to mandatory vaccinations and to certain epidemics related health care services. [Paras. (3)-(7) of Section 44 of the Asylum Impl. Decree] (For the characteristics of the tolerated status see point 1.) .

Tolerated status ensues much less rights than the beneficiary of temporary protection status, the refugee status, or even the beneficiary of subsidiary protection status. However, it is currently not possible to request these latter forms of international protection in Hungary by Ukrainian nationals who arrived before 24 February.

If you are contacted by a client who is a Ukrainian national and who left the territory of Ukraine before 24 February, please do not hesitate to contact the Hungarian Helsinki Committee.

3.3. Non-Ukrainian nationals arriving from Ukraine

The situation of third-country nationals who are not eligible for being recognized as beneficiaries of temporary protection as defined by the Council Implementing Decision, is much more difficult.

Under paragraph (2) of Article 2 of the Council Implementing Decision, Member States shall either grant temporary protection or **adequate protection under their national law** to third-country nationals, who were legally and *permanently* residing in Ukraine, and who are unable to return in safe and durable conditions to their country or region of origin. Under the Operational guidelines "adequate" protection does not have to entail benefits identical to those attached to temporary protection, but the respective legal institution must be in accordance with the Charter of Fundamental Rights of the European Union and the spirit of the Directive on temporary protection. The Operational guidelines mention in that regard, for example, the access to a dignified standard of living, which includes access to means of subsistence and accommodation and emergency care.

It has not been clear since March how such protection would be provided in Hungary, as under Section 2(2)-(3) of Government Decree 86/2022. (III.7.), third-country nationals fleeing from Ukraine may not apply for temporary protection in Hungary. With respect to them, the asylum authority "shall proceed under the general rules". These persons are provided with a temporary residence document by OIF, with a validity between 1 and 3 months, but that title of residence is far from ensuring "adequate" protection as provided for in the Commission's guidelines. The rules related to the temporary residence document are laid down in Section 30 of the TCN Act. Under the TCN Act, the document of provisional residence may be extended by a maximum of three additional months at a time [Point (a) of Section 30(2) of the TCN Act]. According to relevant experience gained so far, OIF is ready to extend the validity of certificates in practice too. When

applying for an extension of validity, it is recommended to show the authority all the relevant documents which may support that the person concerned made efforts to leave the country or to regularise his or her stay in Hungary on the long term (such as proceeding with a visa application to another country or a correspondence with a Hungarian university).

The Council Implementing Decision, just like the Commission's Operational guidelines expressly state that in case third-country nationals are unable to return to their country of origin but are not eligible for temporary protection or other adequate protection under the law of the Member State, they must be ensured access to the asylum procedure, as a result of which the person's refugee status or a beneficiary of subsidiary protection status may be recognized.

That may raise serious problems in the future, especially because Chapter 84 of Act LVIII of 2020 on the transitional rules related to the termination of the state of danger and on the epidemic preparedness (Transitional Act) and the Decree of the Minister of Interior No. 16/2020. (VI. 17.) on the procedure concerning the statement of intent for the purpose of lodging an asylum application precluding the submission of asylum claims in Hungary. Under those legal acts, that is possible only if first, a so-called statement of intent is submitted in the Hungarian Embassy in Belgrade, which is assessed by the asylum authority. The applicant may submit an application for recognition as a refugee in the territory of Hungary only if OIF approves of the statement of intent. [Sections 268-270 of the Transitional Act] **That regulation is in breach of the provisions of international law and European Union law related to persons entitled to international protection in several aspects, and most probably, does not comply with the requirement of "adequate" protection as set out by Article 2(2) of the Council Implementing Decision.** That is especially so, because third-country nationals arriving from Ukraine, who receive a temporary residence document usually do not hold a visa necessary for travelling to Serbia, and therefore, are not in the position to submit a statement of intent in Belgrade. In case you are contacted by a third-country national client in whose case an application for asylum may be appropriate, please do not hesitate to contact the Hungarian Helsinki Committee for assistance.

On the long-term, the regularisation of the residence of non-Ukrainian nationals arriving from Ukraine could be possible by applying for one of the residence permits set out by the TCN Act (for example, permit for the pursuit of studies, for employment, or for the purposes of family reunification, etc.) if the appropriate title is available for the applicant (for example, he or she is admitted to a university, has a job-offer, etc.) that makes it possible. Applications for such residence permits must be submitted, as a general rule, at the embassies of Hungary. Accordingly, it must be explicitly requested from the authority to allow the submission of the application within the territory of Hungary, providing specific reasons.. Unfortunately, experience shows that the mere fact that someone is in the territory of Hungary due to the war situation in Ukraine is not considered by OIF as an acceptable reason for submitting the application in Hungary – as opposed to the [information material](#) on OIF's website addressed to non-Ukrainian nationals.

3.4. The consequences of illegal stay

It is important to point out that in case a third-country national arriving from Ukraine does not register with OIF and does not request a temporary residence document or does not request the extension of the expired temporary residence document, his or her stay in Hungary becomes illegal. One of the consequences may be that in case the police checks the person and he or she is unable to certify the right of residence, then he or she may be taken by the police to the Serbian-Hungarian border and pushed back to Serbia. The police shall be authorised to do that under Section 5 of Act LXXXIX of 2007 on the State Border, which is contrary to the provisions of international and EU law. The other possibility is that OIF launches an alien policing procedure, as a result of which the person concerned may be expelled from Hungary and during the procedure, may be taken in alien policing detention [Sections 42-61 of the TCN Act].

With respect to that, we recommend that you encourage persons fleeing Ukraine who are not eligible for temporary protection to make sure on a regular basis that they are rightfully residing in the territory of Hungary through OIF.