

## Temporary Protection and Continuation of Remote Work for the Country of Origin

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### Abstract:

**Research Question (RQ):** Can under EU law (Directive 2001/55/EC) displaced persons continue working for public authorities of their country of origin or should their international protection be revoked by narrowly interpreting per analogy the 1951 UN Refugee Convention or should that UN treaty be interpreted according to the UNHCR's not formally binding guidelines?

**Purpose:** This research focuses on an analysis of differences between the 1951 UN Refugee Convention and Directive 2001/55/EC regarding definitions of persons who can benefit from these norms. Incidental contacts with a country of origin may not justify revoking a refugee status. It is unclear if the same reasoning applies to longer contacts. Continuation of employment for the country of origin is that form of the contact, so diplomats were denied a refugee status. A situation of persons who remotely work for public authorities of a country of origin differs from a situation of diplomats. Directive does not refer to a need to terminate contacts with that country. This article answers a question if under international non-binding laws persons working remotely for public administration of their country of origin have to be denied temporary protection.

**Method:** Typically for legal science, this paper is dominated by a use of a dogmatic-legal and analogy methods. Critical comparative analysis of the UN (1951 UN Refugee Convention) and EU (Directive 2001/55/EC) law was made. Historical method helped to deduce intentions of the drafters of the 1951 treaty from *Travaux préparatoires* to show differences between these laws.

**Results:** The 1951 Refugee Convention applies to persons who are unwilling or unable to be protected by their country of origin. However, Directive 2001/55/EC does not refer explicitly to a need to terminate all contacts with that country. Thus, beneficiaries of temporary protection should be able to continue their remote work for public authorities of a country of origin. Still, an asylum caseworker should be able to verify if these activities do not violate refugee law. If they do, temporary protection should be revoked in an individual procedure.

**Organization:** The answer to the research question would help to determine whether providing work for authorities of a country of origin is always an obstacle to benefiting from temporary protection. This can increase coherency of decisions of case workers and judges on providing and revoking temporary protection. Consequently, it may increase predictability of an interpretation of law, and affect a legal situation of beneficiaries of temporary protection.

**Originality:** 28% of displaced persons in Poland work remotely in Ukraine. This factor has been unnoted in other military conflicts, but this may change with a popularization of remote work also in public administration, so among persons who do not terminate their contacts with a country of origin. The 1951 Refugee Convention and Directive 2001/55/EC do not refer to such situations. Still, the Convention explicitly requires to terminate some contacts. Directive 2001/55/EC does not have such an explicit requirement. Previous research focused on a situation when a country of origin is a source of persecution or a when person continues employment in diplomacy. An impact of differences between a direct execution of sovereign powers of a country of origin in that country and in a country of residence on decisions on revoking protection have not been researched yet from a perspective of a soft law.

**Limitations / further research:** This theoretical research focuses on international law. National legislation of the EU Member States and their practice have not been verified. Thus, it should be furthered researched if states have respected a pro humane interpretation of international law.

**Keywords:** EU asylum law, mass arrivals of displaced persons, temporary protection, refugees, work for public authorities.

## 1 Introduction

The 1951 UN Refugee Convention (United Nations, 1950) amended by the 1967 Protocol (United Nations, 1967), which are hereinafter jointly called as the 1951 RC, form fundamentals of the world's system of protecting persons who leave their country of origin (hereinafter: a COO) owing to a well-founded fear of persecution. That treaty defines a term "persecution" which justifies granting a refugee status. Additional forms of protection have been adopted by states and international organizations to address needs of persons who cannot be returned to COO, because the return would expose to a risk returnee's right to life or freedom from torture (a principle of *non-refoulement*). These forms of protection include the EU's temporary protection. It can be granted under Council Directive 2001/55/EC 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 (European Union, 2001; hereinafter: Directive 2001/55/EC). Similarly to other regional norms, also this Directive has to conform to the UN norms. Therefore, the EU's Common European Asylum System (hereinafter: the CEAS) must respect the 1951 RC, which should be interpreted in a dynamic way, so taking into account current social and economic realities.

After the Russian attack on Ukraine on 22 February 2022 the Council has adopted Implementing Decision (EU) 2022/382 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 (European Union, 2022; hereinafter: Decision). It has activated protection to displaced persons from Ukraine who have left Ukraine because of the war. That law, *i.a.*, establishes the EU's minimum effective, coherent and solidary standards for giving temporary protection in a mass influx situation. Thus, in this article beneficiaries of Directive are referred to as "beneficiaries of temporary protection" (hereinafter: BTP) to clearly show differences between a refugee status and a temporary protection. This also indicates that an increasingly popular phrase "Ukrainian refugees" which is applied to beneficiaries of Directive 2001/55/EC (c.f. European Union Agency for Asylum, 2022) is incorrect from legal science perspective, because most of these persons do not meet the 1951 RC's prerequisites to obtain a refugee status.

In March 2024 there were 4.3 million BTPs (Eurostat, 2024a). They have not applied for a refugee status. These data can be compared with 1 million applications for a refugee status which were submitted in the EU Member States (hereinafter: the EUMSs) in 2023 - a 20%

increase to a number from 2022 (Eurostat 2024b). Not all applicants receive a refugee status, so the number of beneficiaries is lower than the number of applicants. This shows that the first activation of Directive is of practical importance.

Up until now research have focused on a COO which is a source of persecution (e.g. Boccardi, 2002) or persons who receive orders to reside and execute state powers outside their COO (e.g. diplomats; UNHCR 1979). Some scientists have underlined that refugee status is more stable than temporary protection (e.g. owing to a lack of deadlines specifying for how long a refugee status is granted) and, consequently, they have advocated for facilitating procedures of granting a refugee status in mass influx situations (Küçük, 2023). A situation of persons who leave a COO owing to an ongoing military conflict but who intend to continue working remotely for that country has only recently been analysed (Sadowski, 2024). The low interest in this theme is unsurprising. Buffer (2023) states, a cross-border remote work is a relatively recent phenomenon, unpopular in less developed states and in public administration. Thus, it is uncommon in countries with underdeveloped public administration, so from COOs of most international protection seekers. This can be contrasted with the profile of displaced persons from Ukraine, because 28% of them work remotely in Ukraine when they stay in Poland. Ukraine has not asked its officials to work remotely. However, an increasing popularity of a remote work (Bal & Bulgur, 2023; Gersdorf, 2019) accompanied by a development of electronic platforms of communication makes it worth answering the research question: can under EU law (Directive 2001/55/EC) displaced persons continue working for public authorities of their COO or should international protection be revoked in their cases by applying per analogy the 1951 RC under which a refugee status can be denied to a person who has not ended ties with authorities of a COO?

Previously conducted research have focused on the analysis of legally binding treaties. They have assumed that these treaties should respect aims for which they have been adopted. Still, researchers have limited themselves to a declaration that treaties should be interpreted in a good will. However, these articles have not analysed what are the UNHCR's views on extend of that good will and what were the intentions of the founders of the 1951 RC.

Contrary to previous analysis this article focuses on a difference between a temporary protection and a refugee status granted in a simplified procedure (relying on a *prima facie* recognition – hereinafter: PFR, so by protecting persons who belong to a persecuted group e.g. coming from the same country) by interpreting non-formally binding instruments (soft law). Hence, this article can contribute to building new theoretical knowledge on temporary protection by: filling in the research gap in previously conducted research findings and applying per analogy former research findings focusing on a right to deny refugee.

Conclusions from this article may be useful for further theoretical studies. They may focus on legal possibilities available to a receiving state (hereinafter: a RS) to obtain information about performing remote work for public administration of a COO by BTPs. Conclusions from this

article may also be used by case workers and judges. They may benefit from the expanded interpretation of the aims for which the 1951 RC and temporary protection are granted. Hence, results of this analysis can have an impact on cases on revoking protection owing to performing remote work for the COO.

## 2 Theoretical framework

The 1951 Refugee Convention forms fundamentals of a refugee law. This is the UN-level treaty, so regional organizations whose members share closely e.g. common values and economic situation may complement that treaty in regional laws. These laws must be in line with the letter and aims of the 1951 RC, what can be deduced from Vienna Convention on the Law of the Treaties (United Nations, 1969).

The importance of the 1951 RC to the EU is explicitly declared in the EU's CEAS, including in Article 78(1) of the Treaty on the European Union, which has been amended by European Union (2007). Recently, the CJEU has underlined that "Directive 2011/95 [(European Union, 2011)] must, for that reason, be interpreted not only in a light of its general scheme and purpose, but also in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU" (CJEU, 2024). The EU has harmonized its asylum policy to increase coherency of the EUMS's case workers' decisions on:

- determining the EUMS responsible for examining an application for international protection (currently: European Union, 2013),
- granting and revoking international protection (so that the EUMSs will more coherently interpret *i.a.*, prerequisites for granting protection), which includes the EU's:
  - a subsidiary status granted under Directive 2011/95/EU (applied in individualized recognition procedures when a person is denied a refugee status), and
  - a temporary protection granted *in abstracto* under Directive 2001/55/EC – the only internationally binding treaty regulating protection in mass influx situations (Leboeuf, 2022; Koo, 2018; on the EU's approach to mass influx from the former Yugoslavia see Hurwitz, 2009),
- social conditions (e.g. access to accommodation and food) available to refugee applicants and persons who receive a decision granting protection.

The CEAS was more precise than the 1951 RC. Still, the EU's norms left some issues under regulated. The EUMSs could also apply more favourable norms on e.g. an amount of social support to refugee applicants. The CEAS has been amended to further increase coherency of EU laws. Directive 2001/55/EC is the only law which has not been revised. Therefore, Łysienia (2023, p. 185) indicates that "Its wording often lacks precision and thoroughness".

Prerequisites for obtaining a refugee status and a temporary protection differ. Article 1(2) of the 1951 RC explicitly states that a refugee must be "unable or /.../ unwilling to avail himself

of the protection of that country”. An expression “that country” means a COO. A definition of “displaced persons” from Article 2(c) of Directive 2001/55/EC does not resemble Article 1(2) of the 1951 RC.

However, a “Temporary protection shall not prejudice recognition of a refugee status under the [1951] Geneva Convention.” (Article 3(1) and motive 10 of Directive 2001/55/EC). This is because every state (including the EUMS) can provide international protection to persons who do not meet prerequisites to qualify as refugees, as long as primacy of a refugee status is maintained (Küçük, 2023; Koo, 2018). In other words: a state has to first decide on granting a refugee status and when this status is denied it can verify if other forms of international protection could be granted. Therefore, regional laws which provide an access to a territory and, consequently, registration without making an individualized assessment of a situation of every person (so *in abstracto*) conform to the letter and aims of UN norms (Sadowski, 2022). The reference to aims of the 1951 RC is important, because an interpretation of law which ensures that states meet also these aims has been advocated by the UNCHR. The signatories to the 1951 RC are obliged to cooperate with the UNHCR (Article 35 of the 1951 RC), and they should respect its interpretation of refugee law. Nevertheless, that clarification does not have a binding character, so courts and tribunals cannot claim that states which do not follow the UNHCR’s interpretation of the 1951 RC are infringing that treaty.

Under Article 4 of Directive 2001/55/EC a temporary protection is given for a year. It can be extended two times (each time for maximum 6 months). Contrary to this, a refugee status is granted for an undefined period. Therefore, it is a more stable form of protection than a temporary protection. Küçük (2023) relied on this stabilization to advocate for granting a refugee status also during mass influx. She claimed that decisions could be quick if states would rely on a PFR of a refugee status, but she does not focus on a lack of a legally binding nature of a PFR. Contrary to this, the EUMSs have to grant temporary protection, if the Council decides so (Sadowski, 2023), but he analysed mainly legally binding treaties assuming that their interpretation respects aims for which they have been adopted.

None of the above-mentioned papers have verified if under soft law and *Travaux préparatoires* not all forms of continuation of long-term contacts with the COO justify revoking protection. Therefore, this article in an innovative way fills the research gap by developing previously conducted analysis. It asks a question if persons who continue cooperation with a COO should under soft law be denied a temporary protection and if such a decision can be made when this persons is admitted to the EUMSs’ territory (what may put into question an abstract nature of a decision on an admission to the territory) or when a procedure on revocation of a temporary protection is initiated.

### 3 Method

The purpose of this paper was to verify if the EUMSs may rely on Directive 2001/55/EC to revoke a temporary protection to displaced persons who continue working for public

authorities of the COO. This theoretical research was a preliminary study. It explained an impact of differences between a direct execution of sovereign powers of:

- a COO in the COO and
- a COO and a country of residence

on decisions on denying international protection under the 1951 RC and Directive 2001/55/EC. Findings from this analysis were presented on 30 November 2023 during an academic conference “Challenges of the Modern World” organized by Faculty of Organisation Studies in Novo mesto (Slovenia) with universities from Argentina, Belgium, Netherlands, Poland, Slovenia, and Spain. Subsequent research relied on an obligation to respect the UN norms and their aims (Sadowski, 2024) without analysing these aims and soft law. Other authors have analysed e.g. a term “mass influx” and a need to facilitate an access to state’s territory (c.f. Carrera & Ineli-Ciger, 2023; Ineli-Ciger, 2016b, 2016a; Karska & Dabrowski 2024; Küçük, 2023; Łysienka, 2023).

Typically for legal science this paper is dominated by a use of a dogmatic-legal and analogy methods. Critical comparative analysis of the UN law (1951 RC) and EU law (Directive 2001/55/EC) was made. Historical method helped to deduce intentions of the drafters of the 1951 treaty from *Travaux préparatoires*.

Ukraine has not asked persons performing work for public authorities to leave Ukraine. Thus, that country’s employees have not received instructions to perform their work in other state. Even if BTPs continue employment for Ukrainian public authorities, they deliver services to persons in Ukraine not in the RS. This lack of an order to leave Ukraine differentiates a remote work from employment in e.g. diplomacy. Therefore, it was impossible to conduct comparative research. However, popularity of a remote work among persons from Ukraine is an incentive to verify if law is ready for a situation when BTPs will be asked by their COO to perform remote work.

Legal scientists increasingly frequently conduct qualitative research (cf. Strzypek 2020, pp. 278–279). Official electronic databases with Polish (Centralna Baza Orzeczeń Sądów Administracyjnych) and Czech (Vyhledávac NSS) courts’ decisions were searched in Polish and Czech language versions of a phrase “revoking temporary protection”. There were 3 results from Poland, but not about BTPs. There were also 3 results from Czech Republic, but all of them considered revoking protection because of the fact that BTPs have obtained protection in other EUMSs, so these cases focused on a different theme than this research. Therefore, it was impossible to conduct qualitative research looking at the cases which have already been decided by courts in states hosting the biggest number of BTPs per capita. Nevertheless, reasons indicating why such a situation has occurred were explained in this analysis by focusing on *non-refoulement*.

This article was primarily based on the analysis of law and study of previous research findings. The dogmatic and a historical-legal methods made it possible to identify whether

states have intended to deny protection to all persons working for public authorities of a COO or whether this limitation applies only in some situations. This served as the basis for the analysis to what extent an interpretation of Directive 2001/55/EC (which does not refer to that issue) should take into account the 1951 RC, and whether verification of a possibility to verify an employment relationship should be done when a person is admitted to the territory or only by revoking temporary protection.

The analysis of reliable case-law databases has three limitations. Firstly, not all persons who receive administrative decisions decide to start a court procedure. Secondly, international protection cases are lengthy, so some of the procedures which have already been initiated may not be ended. Thirdly, terms which has been searched were translations of the term used in Directive 2001/55/EC, but courts might have used a reference to an article in law rather than a name of the form of protection (although that name is very likely to appear in the case). Therefore, the findings from official court databases may not reflect the full picture of denying and revoking temporary protection in Poland and in Czech Republic.

These research results can contribute to the systematization of terms used in refugee law. Considering the lack of dogmatic studies on the possibility of verifying whether the beneficiary of a temporary protection is employed by the authorities of a COO and whether such employment affects his/her right to a temporary protection - they also confirm the innovativeness of this article.

## 4 Results

Other forms of protection can complement the 1951 RC, but they cannot render this UN law obsolete. Moreover, it follows from the very foundations of human rights that states cannot confine themselves to providing illusory protection. On the contrary, countries (especially members of the Council of Europe) must ensure that those rights are effectively executed (ECtHR, 1979).

EXCOMM (1981) supports facilitated admission and registration procedures. A Conference of Plenipotentiaries (hereinafter: the CP) which was held to complete the drafting of, and to sign, the 1951 RC explicitly declared in letter “E” of the text attached to the 1951 RC that it “expresses the hope that the Convention /.../ will have value as an example exceeding its contractual scope and that convention and protocol all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides.” Also Hurwitz (2009, p. 145) underlines that this interpretation can be deduced from the 1951 RC.

Directive 2001/55/EC can be activated when a large number of persons arrives at the EUMSs’ borders. These persons have to come from one country or a specified geographic region. The EU’s temporary protection is activated only when such a situation is confirmed by the EU. This is done through the adoption of an implementing decision by the Council. An analysis of

a history of works on Directive 2001/55/EC prove that a “temporary protection ought not to depend on the lack of functioning of the asylum system” (Kerber, 2002, p. 195). Therefore, an existence of such a deficiency is not required to activate temporary protection.

The EUMSs and the UK (were after Brexit Directive 2001/55/EC still applies; Kosiel-Pająk & Sadowski, 2023) do not issue individual decisions on granting protection to BTPs. Granting protection *in abstracto* facilitates admission of beneficiaries to a safe territory. Similar goal can be achieved by granting a refugee status in a PFR. This procedure has been used in Africa and Latin America (Costello, Foster, McAdam, 2021, p. 641), but states are not legally bounded to interpret the 1951 RC in this way.

A decision to deny protection can be made at the border. This is, however, limited to the clearest cases e.g. war criminals (Sadowski, 2023; Przybysławska, 2009). A more in-detail check can be initiated to revoke a temporary protection status when the EUMS has information about reasons justifying revoking protection to the individual. Köhalmi and Nagy-Nádasdi (2020, p. 288) cited the CJUE decision in which judges “ruled that a residence permit, once granted to a refugee may be revoked either [when] there are compelling reasons of national security or public order within the meaning of that provision, or there are reasons to apply the derogation from the principle of *non-refoulement*. Supporting a terrorist organization included on the list may constitute one of the ‘compelling reasons of national security or public order’.”. Other reasons include e.g. convicting a foreigner by a final judgment of a particularly serious crime (Kerber, 2002, pp. 197–198). Prerequisites justifying revocation of a refugee status are enumerated in the 1951 RC. This is a closed list. No other reason can be used by a state in revocation procedure.

The list is repeated in Article 14(4) of Directive 2011/95/EU. Similar grounds are listed in Article 28 of Directive 2001/55/EC. However, they relate to an exclusion from protection.



Table 1. A summary of differences and similarities between the 1951 RC, Directive 2001/55/EC, the UNHCR's Handbook (1979), and an interest in these themes in literature.

	<b>The 1951 RC</b>	<b>The UNHCR's Handbook</b>	<b>Directive 2001/55/EC</b>	<b>Availability of academic research</b>	
<b>Applicant unwilling or unable to be protected by a COO</b>	An explicit reference	An explicit reference	Not referred to in Directive's text	Commented extensively on this prerequisite	
<b>Contacts with a COO</b>	<b>Short-term</b>	Not mentioned explicitly, but may contradict with a prerequisite that applicants are unwilling or unable to be protected by their COO	Possible if contacts are incidental	Not referred to in Directive's text	Short mentions in literature
	<b>Long-term</b>		Not explicitly referred to	Not referred to in Directive's text	Authors assumed that such contacts contradict with the prerequisite for which protection is granted or that a COO is a source of persecution, so cooperation with that state deprives persons protection
<b>Revocation of protection</b>	A closed catalogue of reasons to revoke protection	States cannot add any new prerequisites to the 1951 RC to revoke a refugee status	The same as in the 1951 RC	Commented extensively on this prerequisite	
<b>Availability of protection to individuals</b>	Always available to individuals if a state ratified the Convention	Always available to individuals if a state ratified the 1951 RC	Requires adoption of the Council implementing decision	Some authors suggest that <i>non-refoulement</i> is a customary law, so it does not require ratification	
<b>Granting protection after submission of individual application</b>	A rule	An explicit reference	Not available	Commented on this prerequisite – extensively on the 1951 RC and without an in-depth analysis – in case of Directive 2001/55/EC	
<b>Granting protection without an in-depth examination of individual case</b>	No legal obligation	Clear support to PFR	A rule	Comments are available	

## 5 Discussion

Directive does not contain a reference to a need to terminate contacts with a COO. This may be interpreted as a possibility to continue employment for that state. This view conforms to the 1951 RC aims, analysis of *Travaux préparatoires*, and the UNHCR's views. Therefore, although such contacts can be prohibited if the text of the 1951 UN Refugee Convention would be applied per analogy, that interpretation should be rejected.

States cannot refer to their obligations stemming from participation in regional organization like the EU to justify disobeying the UN standard (Sadowski, 2021). Hence, Widerski (2024, p. 61) correctly underlines that Polish “special act dedicated to the citizens of Ukraine [, which in Poland implements Decision,] in no way excludes displaced persons from this country from using other forms of protection in the territory of Poland (e.g. granting a refugee status, subsidiary protection /.../), due to the situation in their country.” This has been confirmed by Polish practice, which (unlike the UK's and Czech Republic's practices) does not suspend ongoing refugee procedures when the applicant has already been a BTP (Kosiel-Pająk & Sadowski, 2023). This confirms, that Küçük (2023) correctly declared that the main goal of a temporary protection was to provide humanitarian assistance.

Under the 1951 RC definition of “a refugee”, protection is granted to persons who are “unable or /.../ unwilling to avail himself of the protection” of a COO. Such a reference is missing in Directive's definition of a temporary protection. This should be welcomed, because the EXCOMM Conclusions, which explicitly regulated a relationship between a refugee status and a temporary protection, also do not contain such a reference. This has been achieved by declaring that “The asylum seekers forming part of these large-scale influxes include persons who are refugees within the meaning of the 1951 /.../ Convention /.../ or who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of, or the whole of their country of origin or nationality are compelled to seek refuge outside that country.” (EXCOMM, 1981, para. 1.1).

Historic analysis confirmed that promoting the admission and registration of BTPs is clearly in line with aims of the 1951 RC. This is because the CP (1951, letter “E”) explicitly declared that “the Convention /.../ will have value as an example exceeding its contractual scope and that convention and protocol /.../ [and states] will be guided by it in granting [protection] so far as possible to persons /.../ who would not be covered by the terms of the Convention”. A use of terms “as an example” and “guided by it in granting so far as possible” are of a particular importance. They manifestly underline a minimal character of the 1951 treaty, so a possibility to complement it in regional and national laws. This was explicitly declared by the EXCOMM (1981). It can also be derived from works on Directive 2001/55/EC (Kerber, 2002, p. 195), and literature (Hurwitz, 2009, p. 145).

Küçük (2023, p. 3) correctly perceives an “immediate access to certain right without the long asylum process” as an exemplification of a solidarity with persons in need of protection. She

claims that this could be achieved also in a *prima facie* subsidiary protection procedure. Her views are in line with the 1951 RC and para. 44 of the UNHCR Handbook (1979). Still, a reliance on the PFR is not obligatory to the EUMSs. It has not been also explicitly mentioned in the EXCOMM Conclusions, even those on mass influx situations (1981). Hence, an initiation of a PFR depends solely on a good will of states. Even states with overburdened asylum systems are not legally bounded to rely on these procedures. This is problematic, because the 1951 RC lacks a clear definition of a *non-refoulement* principle, and some states indicate that this means that their responsibilities are limited to supporting persons staying in their territory. This view contradicts with aims for which the 1951 RC has been adopted and with the Plenipotentiaries' views. The CP's view should be seen as a confirmation of a humanitarian nature of a refugee law. Hence, it is a part of international humanitarian law (hereinafter: the IHL), so principles from that law should be applied also to refugee law. The principle of humanitarianism underlines a need to protect all non-combatants (persons who cannot be targets to military actions) and limit casualties among combatants. Moreover, the IHL confirms that states are responsible for persons who are under their effective jurisdiction during a military conflict. This is perfectly exemplified by the fact that during occupation (which was mentioned by the CP) it is the occupant who is responsible for persons on the occupied territory. Annexation of that territory by the occupant is a war crime. Thus, the occupant executes its jurisdiction also on a territory which is not a territory of that state.

Also, the European Court of Human Rights (since 1989) has indicated that states are responsible for consequences of their decisions even if these consequences (e.g., risk to life and freedom from torture) would materialize in other state. Therefore, it can be said that the views from the CP pre-dated that interpretation. Hence, they should be seen as an expression of solidarity with all persons in need of protection. However, this also exemplifies solidarity with states which host displaced persons (Koo, 2018; Küçük, 2023) by promoting fair burden sharing between RSs. Moreover, this Plenipotentiaries' view should be taken into consideration in interpreting Directive 2001/55/EC, because increasing solidarity was one of the reasons for which this Directive has been adopted.

Contrary to the non-binding nature of a PFR, Decision has explicitly established an obligation to grant protection *in abstracto*. This confirms that Directive 2001/55/EC follows the CP's recommendation (1951) to "Governments and inter-governmental bodies to facilitate, encourage and sustain the efforts of properly qualified organizations" in their actions to efficiently address the needs of protection seekers.

In mass influx situations Directive 2001/55/EC is a *Lex specialis* to the 1951 RC, so the 2001 norms get priority. Hence, the EUMSs can protect persons who have been displaced from a country specified in the Council implementing decision. This form of protection should be available also when a person is not "unable or /.../ [is not] unwilling to avail himself of the protection" of a COO. This is a case of persons who work remotely for the administration of their COO.

However, Article 1.C.1 of the 1951 RC specifies that a cessation clause applies when a person acts in order to reobtain protection from a COO and when that country provides this protection (UNHCR, 1979, para. 119). An examination of meeting the first of these preconditions is complicated. The UNHCR Handbook (1979, para. 121) specifies that asking for a passport can be considered as asking for protection, contrary to incidental acts like asking for a birth certificate. This suggests that a caseworker should focus on a strength of ties between a refugee and a COO. A type of an employment contract (e.g. employment law vs. civil law contract) is irrelevant.

However, the UNHCR's Handbook (1979) explicitly states that sometimes *i.a.*, during a war a COO may be unable to provide effective protection. Thus, when a person employed by public administration of a COO cannot be efficiently protected in that state, then this person can receive temporary protection. Moreover, granting protection to persons who cannot be protected under the 1951 RC is in line with that treaty aims. This is because that treaty explicitly allows to establish more favourable norms. This view is supported by the fact that Directive 2001/55/EC provides a list of exclusions from temporary protection which is the same as in that UN treaty (Kerber, 2002, pp. 197–198).

What is more, an impossibility to be effectively protected by a COO is explicitly declared in Decision. That law enumerates preconditions which have to be met to obtain a temporary protection (Sadowski, 2022). Among others, it explicitly refers to general risks in the COO.

As a rule, the applicant should be considered by a state as a person in need of protection. However, the 1951 RC provides a list of preconditions which could exceptionally be used to revoke protection. This nature of the list suggests that the enumeration has to be interpreted narrowly, so states-signatories to the 1951 RC cannot establish additional reasons for non-granting or depriving protection. EU norms enumerating reasons to revoke protection do not go beyond the list which can be found in the UN treaty. Thus, they are in line with the UN standard. This, again, underlines the fundamental importance of the 1951 RC to the CEAS.

Public authorities of a RS should be able to verify a relationship between the BTP and a COO. It is insufficient to limit verification to an identification of the existence of such a link. This is because not all situations when a state power is executed by a person employed by a COO contradict with the aims of the UN values (Sadowski, 2024). As it has been discussed in the above, other reasons do not justify denying and depriving a person of temporary protection, because Directive 2001/55/EC does not provide other motives than the 1951 RC.

Finally, authorities denying and revoking a temporary protection should verify if a return decision, which is a consequence of their decision on denying or revoking protection, does not contradict with a *non-refoulement* principle. Hence, all these decisions should be accompanied with information about a right to appeal (Article 29 of Directive 2001/55/EC).

## 6 Conclusion

This research confirmed that Directive does not require to end all contacts with the COO. This can be interpreted as allowing to continue employment for that state. This view conforms to the 1951 RC objectives, the analysis of the *Travaux paratoires* and the views of the UNHCR.

The EU's CEAS is based on the foundations of the 1951 RC, but it has developed an interpretation of that UN treaty. Among others, the EU has established the only legally binding law which can be activated in mass influx situations. Displaced persons may benefit from a temporary protection when the Council defines "mass influx" in a specific case. This protection cannot limit an access to a refugee status. Still, it can ensure protection to persons who would not qualify for a refugee status. This interpretation is in line with aims of the 1951 RC, because that UN treaty promotes providing humanitarian assistance.

However, under EU law the EUMSs may deny and revoke a temporary protection to persons performing work to authorities of their COO. These decisions cannot be arbitrary. They should focus on a relationship between a person performing work and the authorities of the COO. Consequently, a country providing protection should verify if that performance is connected with an execution of state powers. If it is, then a nature of this execution of power has to be analysed. This would ensure that state security and public order of the RS are respected, as well as the UN goals are ensured. This individualized verification would also guarantee that protection is denied only in exceptional cases.

This research was limited to the theoretical analysis of the impact of soft law on an interpretation of international refugee law. An existence of relationships between them are uncontested, but it is the Authors subjective (although deeply based in law and results of dogmatic studies) opinion that states should strongly support an interpretation of international law takes into account also soft law and aims for which treaties has been adopted. Views presented in this research have reflected European perspective, because Directive has been activated only once to support persons displaced from European state to other European states. Subsequent research could verify if findings from this article could be used also in other regions of origin and destination.

The conclusion from this article are well grounded in the UNHCR's views, the humanitarian nature of a refugee status, views of the CP, and indications from scientists. Support for these suggestions is based on the need to interpret treaties in a good will in order to ensure real efficiency of these laws. However, owing to a lack of an institution which can impose legally binding interpretation of the 1951 RC and sanction states which do not obey these interpretations views opting for a pro humane perception of the 1951 RC cannot be promoted at the UN level in a binding way. This should not hinder efforts of the Court of Justice of the European Union (which interprets EU law) and the European Court of Human Rights to continue their efforts in ensuring efficient executions of international refugee law, taking into account current social and economic realities. This could help to increase European coherency

of an interpretation of a refugee law. Still, loopholes which have been identified in this article should be clarified in the amendments to Directive 2001/55/EC, because that law is the only part of the CEAS which has not been amended.

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## **Povzetek:**

### **Začasna zaščita in nadaljevanje dela na daljavo za državo izvora**

**Raziskovalno vprašanje (RV):** Ali lahko razseljene osebe v skladu z zakonodajo EU (Direktiva 2001/55/ES) še naprej delajo za javne organe svoje izvorne države ali bi bilo treba njihovo mednarodno zaščito preklicati z ozko razlago po analogiji Konvencije ZN o beguncih iz leta 1951 ali bi bilo treba to pogodbo ZN razlagati v skladu z formalno zavezujoče smernice UNHCR?

**Namen:** Ta raziskava se osredotoča na analizo razlik med Konvencijo ZN o beguncih iz leta 1951 in Direktivo 2001/55/ES glede opredelitev oseb, ki lahko koristijo te norme. Naključni stiki z državo izvora morda ne upravičujejo preklica statusa begunca. Ni jasno, ali enako razmišljanje velja za daljše stike. Nadaljevanje zaposlitve za državo izvora je taka oblika stika, zato so diplomati zavrnil status begunca. Položaj oseb, ki delajo na daljavo za javne organe države izvora, se razlikuje od položaja diplomatov. Direktiva se ne nanaša na potrebo po prekinitvi stikov s to državo. Ta članek odgovarja na vprašanje, ali je treba v skladu z mednarodnimi nezavezujočimi zakoni osebam, ki delajo na daljavo za javno upravo svoje matične države, zavrniti začasno zaščito.

**Metoda:** Značilno za pravno znanost v tem prispevku prevladuje uporaba dogmatsko-pravne in analogne metode. Opravljena je bila kritična primerjalna analiza prava ZN (Konvencija ZN o beguncih iz leta 1951) in prava EU (Direktiva 2001/55/ES). Zgodovinska metoda je pomagala razbrati namere pripravljavcev pogodbe iz leta 1951 iz Travaux préparatoires, da pokažejo razlike med temi zakoni.

**Rezultati:** Konvencija o beguncih iz leta 1951 se uporablja za osebe, ki nočejo ali ne morejo biti zaščitene v svoji državi izvora. Vendar Direktiva 2001/55/ES ne navaja izrecno potrebe po prekinitvi vseh stikov z državo izvora. Tako bi morali imeti upravičenci dočasne zaščite možnost nadaljevati delo na daljavo za javne organe države izvora. Kljub temu bi moral biti azilni delavec sposoben preveriti, ali te dejavnosti ne kršijo begunskega prava. V nasprotnem primeru naj se začasno varstvo odvzame v posameznem postopku.

**Organizacija:** Odgovor na raziskovalno vprašanje bi pomagal ugotoviti, ali je zagotavljanje dela za organe izvorne države vedno ovira za pridobitev začasne zaščite. S tem se lahko poveča usklajenost odločitev sodnih delavcev in sodnikov o dodelitvi in odvzemu začasnega varstva.

Posledično lahko poveča predvidljivost razlage prava in vpliva na pravni položaj upravičencev do začasne zaščite.

**Originalnost:** 28 % razseljenih oseb na Poljskem dela v Ukrajini na daljavo. Ta dejavnik v drugih vojaških spopadih ni bil opažen, vendar se lahko to spremeni s popularizacijo dela na daljavo tudi v javni upravi, torej med osebami, ki ne prekinejo svojih stikov z državo izvora. Konvencija o beguncih iz leta 1951 in Direktiva 2001/55/ES ne omenjata takih situacij. Kljub temu konvencija izrecno zahteva prekinitev nekaterih stikov. Direktiva 2001/55/ES nima tako izrecne zahteve. Prejšnje raziskave so se osredotočale na situacijo, ko je država izvora vir preganjanja ali ko oseba nadaljuje z delom v diplomaciji. Vpliv razlik med neposrednim izvajanjem suverenih pooblastil izvirne države v tej državi in v državi bivanja na odločitve o odvzemu zaščite torej še ni raziskan z vidika mehkega prava.

**Omejitve/nadaljnje raziskovanje:** Ta teoretična raziskava se osredotoča na mednarodno pravo. Nacionalna zakonodaja držav članic EU in njihova praksa nista bili preverjeni. Zato bi bilo treba nadalje raziskati, ali so države spoštovale prohumano razlago mednarodnega prava.

**Ključne besede:** azilno pravo EU, množični prihodi razseljenih oseb, začasna zaščita, begunci, delo za javne organe.

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