

1. PROTECTION UNDER THE POLISH ACT

On March 12, 2022, the special act aimed at helping Ukrainian citizens coming directly to Poland was promulgated. **The act is effective with retroactive effect from February 24, 2022¹.**

1.1. Who can legally stay in Poland on the basis of the Special Act?

Pursuant to the Special Act, the stay is considered legal if the entry took place on February 24, 2022 or later. Moreover, the Special Act introduces two restrictions related to the stay which should be considered legal:

- the requirement of having Ukrainian citizenship by the persons concerned (the status of persons who do not have Ukrainian citizenship and are escaping from Ukraine to Poland has not been regulated, which means that they cannot legalize their stay on the basis of the special act),
- the requirement to enter the territory of Poland directly from Ukraine (the special act does not cover indirect entry - through the territory of another state, e.g. from Ukraine to Hungary, from Hungary to Poland).

The exception constitutes the people with a Pole's Card² and spouses of Ukrainian citizens who have directly entered Poland.

1.3. Basic rules resulting from the special act

1. What kind of stay is considered legal?	Pursuant to the Special Act, the stay is considered legal if the entry takes place after February 24, 2022 in connection with the military actions in Ukraine. The latest date of entry entitling to legal stay will be specified in the executive regulation to the special act. The stay of a child born in Poland during the period in which the mother's stay is legal will be also considered legal. The right to legally stay will expire in the event of leaving Poland for a period of more than 1 month. IT IS NOT NECESSARY TO SUBMIT AN APPLICATION FOR LEGALIZATION OF STAY OR FOR TEMPORARY PROTECTION. IT WILL BE PROVIDED BY LAW IF THE CONDITIONS ARE FULFILLED.
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¹ Act of March 12, 2022 on assistance to Ukrainian citizens in connection with an armed conflict in the territory of that state (Journal of Laws of 2022, item 583).

² The Pole's Card is a document confirming the holder's relationship with the Polish Nation. It may be awarded (inter alia) to people who have Polish ancestors or who have confirmed ties with Polish culture or tradition. As a rule, it is valid for 10 years from the date of granting (with the possibility of extension).

<p>2. Which formalities should be fulfilled first?</p>	<p>It is necessary to register the entry:</p> <ul style="list-style-type: none"> - by the commanding officer of the Border Guard during border control, or - by submitting an application to any commune office for PESEL number (if the entry is not registered at the border). <p>The deadline for submitting an application is 60 days from entering Poland. In the case of a person who does not have full legal capacity, the application is submitted by a statutory representative. In the case of a child, the application is submitted by the person who actually provide the custody of the child.</p>
<p>3. What should you know in order to fill in the application for a PESEL number and registration?</p>	<ul style="list-style-type: none"> - a template of application for granting PESEL number will be published in the Public Information Bulletin of the Ministry of Digitization; - a photo should be attached to the application; - fingerprints will be taken from the person submitting the application (not applicable to children under the age of 12 and persons from whom it is physically impossible); - PESEL number will be issued after the identification of the person's identity on the basis of available (including invalidated) documents such as a passport, ID card, but also a Pole's card or driving license, and in the case of children, also a birth certificate.
<p>4. How long is the stay legal?</p>	<p>18 months from February 24, 2022, i.e. until August 24, 2023.</p>

1.3. What kind of entitlements does the special act provide with?

Type of entitlement	Description	Legal basis
<p>1. Assistance from the voivode and other authorities</p>	<p>The voivode should provide Ukrainian citizens with assistance consisting in: accommodation; providing all-day collective meals; providing transport to the places of accommodation or places where medical care is provided; financing of public transport, providing cleaning and personal hygiene products and other products.</p> <p>Other Polish authorities shall also provide similar assistance on their own.</p>	<p>art. 12</p>
<p>2. Performance of work</p>	<p>An Ukrainian citizen residing legally in Poland is entitled to work if his/her employer notifies the poviats labor office within 14 days about from the date he/she commences the work,</p>	<p>art. 22</p>

	that this person has been entrusted with work.	
3. Conducting of business activity	Ukrainian citizens legally residing in Poland may undertake and conduct business activity in its territory on the same terms as Polish citizens, but on condition that they have obtained a PESEL number (the procedure described in the previous table in points 2 and 3).	art. 23
4. Social benefits	Ukrainian citizens legally residing in Poland have the right to obtain the following benefits: family benefits, child-support benefit, "good start" benefits, benefit from family care capital, co-financing of a reduction in the fee for a child's stay in a nursery; they may also be granted with benefits under the provisions of the Act on social assistance, as well as material assistance for students specified in the Act on the education system.	art. 26, 29-30, 53
5. Benefit in the amount of PLN 300	An Ukrainian citizen legally residing in Poland, who has obtained a PESEL number, is entitled to a one-time cash benefit in the amount of PLN 300 per person (separately e.g. for parents and for children). In order to obtain it, a written application must be submitted to the competent commune office.	art. 31
6. Psychological and food assistance	An Ukrainian citizen residing legally in Poland has the right to obtain free psychological assistance - in order to obtain it, one should report to the appropriate commune office.	art. 32 and 33
7. Rehabilitation for people with disabilities and medical assistance	An Ukrainian citizen residing legally in Poland may obtain free medical assistance to the same extent as Polish citizens (with minor exceptions). He/she is also entitled to receive benefits for people with disabilities.	art. 34-37
8. Granting a temporary residence permit	The procedure was described in the table below.	art. 38
9. Social scholarship for students	An Ukrainian citizen residing legally in Poland, who is a student, may apply for a social scholarship intended for Polish students.	art. 41 sec. 10-12

<p>10. Extension of stay on the basis of a visa</p>	<p>If an Ukrainian citizen stays in Poland on the basis of a visa or a temporary residence permit, e.g. when he came to Poland before February 24, 2022, and the visa or permit validity period ends after that date, it is extended by virtue of law to December 31, 2022.</p> <p>The validity of the residence card, identity document and tolerated stay permit shall be also extended in the same way.</p> <p>The extension occurs by the virtue of law, there is no need to submit any applications or perform other activities.</p>	<p>art. 42</p>
<p>11. Admission to the universities</p>	<p>Polish and Ukrainian citizens who are students of a specific field of study at an Ukrainian university may apply for admission for the same year and field of study at a Polish university.</p>	<p>art. 45</p>
<p>12. Consent to practice the profession of a doctor, nurse</p>	<p>A citizen of Ukraine who is licensed to practice as a doctor, dentist, nurse or midwife may obtain the right to practice this profession in Poland after meeting the conditions set out in the Polish acts on these professions.</p>	<p>art. 61-64</p>

1.4. After an 18-month period of legal stay - a temporary residence permit

It shall be repeated that for the first 18 months from February 24, 2022, the stay of Ukrainian citizens in Poland is legal after meeting the conditions described above and does not require submitting additional applications. **However, in order to legalize a longer stay (over 18 months), it will be necessary to submit an application for a temporary residence permit,** which is also provided for in the Special Act.

<p>1. How to submit an application for a temporary residence permit?</p>	<p>The application shall be submitted to the voivode competent for the place of residence of the citizen of Ukraine (e.g. persons staying in Warsaw will submit the application to the Mazowieckie voivode, and persons staying in Krakow - to the Malopolska voivode).</p> <p>The application must be submitted within the period from the expiry of 9 months from the date of entry to Poland until August 24, 2023 (e.g. if a person came to Poland on February 24, 2022, he/she may submit an application within the period from November 25, 2022. until August 24, 2023; and if he/she arrives in Poland on April 7, 2022, the deadline for submitting the application will start on January 8, 2023, and will also end on August 24, 2023).</p> <p>A citizen of Ukraine who has been granted a temporary residence permit is entitled to work in the territory of Poland without the requirement of</p>
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	a work permit.
2. How long is the temporary residence permit valid and what is it allowed for?	The temporary residence permit is valid for 3 years from the date of its issue. It allows to stay and work in the territory of Poland without the requirement of obtaining a work permit.

2. TEMPORARY PROTECTION UNDER EUROPEAN UNION LAW

In view of the war in Ukraine, the Council of the European Union by the executive decision of March 4, 2022³ provided a solution consisting in granting the temporary protection to people escaping from Ukraine according to the principles mentioned below. This mechanism provides a broader catalog of people who can apply for protection in Poland than the Polish Special Act.

2.1. What is a temporary protection?

Temporary protection allows for the fast legalization of the stay of people escaping from Ukraine **in any Member State of the European Union, regardless of which border of which country and Ukraine has been crossed and by how many countries the person has traveled.**

Examples:

- A person who came to Poland through other countries, such as Hungary, may apply for temporary protection in Poland, if it decides to stay here.
- A person who crossed the Ukrainian-Polish border, but decided to drive on, e.g. to Germany, may submit an application for temporary protection in Germany.

Temporary protection procedure shall not be confused with the procedure for granting of a refugee status, which is regulated by other provisions and is more complicated and time-consuming⁴!

2.2. How long does the temporary protection last?

³Council Implementing Decision (EU) 2022/382 of March 4, 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 temporary protection.

⁴The so-called Dublin III Regulation, (Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 on establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person);

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted;

Directive 2013/32/EU of the European Parliament and of the Council of June 26, 2013 on common procedures for granting and withdrawing international protection;

Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (consolidated text, Journal of Laws of 2021, item 1108).

The basic period of protection is **1 year**. Before the end of the year, it is possible to apply for its extension for the maximum period of **2 years** (in total).

2.3. What does the temporary protection provide with?

The minimum mandatory scope of protection provided by EU Member States is presented below. However, it shall be noted that each State may grant wider protection.

1. Residence documents	Issuing of the residence permits for the entire duration of temporary protection (e.g. a temporary residence permit and a residence card).
2. Visas	Issuing of a visa (including transit visas) with the reduction of formalities and costs to a minimum.
3. Information on the protection	Providing the necessary information in a language understandable to a given person.
4. Taking up gainful activity	Issuing of a work permit and granting education possibility. It also includes the application of regulations on remuneration, access to the social security system and other working and employment conditions.
5. Accommodation and social assistance	Granting access to accommodation, social assistance and livelihood (if a person does not have sufficient means of livelihood), as well as to the medical care.
6. Education	Granting the access to education under the same conditions as citizens of the host Member State to persons under the age of 18.
7. Protection of children	Member States shall take measures to ensure the necessary protection of unaccompanied minors who are granted temporary protection by a guardian or by a representative of an organization which deals with the care and protection of minors or by other appropriate representatives.

2.4. Who is entitled to the temporary protection?

The decision of the Council of the European Union does not introduce any limitations related to the necessity of direct entry into the territory of a given Member State. Persons who are entitled to protection:



3. DECISION OF THE COUNCIL OF THE EUROPEAN UNION AND POLISH REGULATIONS

Pursuant to the European Union law, each Member State of the European Union shall introduce its own regulations and procedures, on the basis of which it will be possible to cover the above-mentioned people with temporary protection. However, the Polish Special Act is inconsistent with the executive decision of the Council of the European Union, as it limits the circle of people authorized to legally reside in Poland to Ukrainian citizens who entered Poland directly from Ukraine.

Moreover, the Special Act is inconsistent with the Polish Act on granting protection to foreigners in the territory of the Republic of Poland⁵. Pursuant to Art. 106 of this act "*Foreigners massively arriving to the Republic of Poland who have left their country of origin or a specific geographical area due to foreign invasion, war, civil war, ethnic conflicts or gross violations of human rights, **may** be granted with temporary protection in the territory of the Republic of Poland, regardless of whether their arrival was spontaneous, or it was the result of help given to them by the Republic of Poland or the international community*".

Furthermore, pursuant to Art. 107 of the above-mentioned act "*the temporary protection shall be granted on the basis and within the limits specified in the decision of the Council of the European Union, for the period specified each time in that decision*".

Consequently, if Poland decides to grant protection to Ukrainians under the above-mentioned act, it should grant it to all people covered by the decision of the EU Council (and therefore also to those who entered Poland through the territory of another state or do not have Ukrainian citizenship).

Due to the above limitations introduced by a special act, Ukrainian citizens who escaped to Poland from the war in Ukraine and **entered the territory of Poland through the territory of other countries**, may stay legally on the territory of Poland for 90 days. In case they are planning a longer stay in Poland, it shall be necessary to take one of the following actions:

⁵Act of June 13, 2003 on granting protection to foreigners within the territory of the Republic of Poland (consolidated text Journal of Laws of 2021, item 1108)

- **Submitting an application for protection in another Member State of the European Union, the provisions of which are consistent with the Decision of the Council of the European Union;**
- **Submitting an application for temporary residence (max. 3 years)⁶ or temporary stay and work⁷ and obtaining a residence card under the Act on foreigners (numerous conditions must be met, e.g. having funds for living or health insurance);**
- Pursuing one's rights in Poland directly on the basis of the Decision of the Council of the European Union, most likely in court, which will of course be time-consuming (such decisions of the EU Council are directly binding and do not require implementation, but there should be national procedures that allow the offices to act);
- Submitting an application for a residence permit for humanitarian reasons (if the return to the country is life-threatening)⁸;
- Submitting an application for refugee status under the Act on granting protection to foreigners in the territory of the Republic of Poland⁹ (it is necessary to deposit the passport for the duration of the proceedings; no possibility to work during the period of proceedings - in practice it may take up to 2 years.

Among the above-mentioned solutions, in practice, it is possible to exercise two: (i) submitting an application for temporary protection in another EU country with favorable regulations; (ii) submitting an application for temporary residence and a work permit under the Act on Foreigners. It is not recommended to submit an application for refugee status due to the very long procedures, during which it is impossible to work and the outcome of which is uncertain.

⁶Article 98 of the Act of December 12, 2013 on foreigners (consolidated text, Journal of Laws of 2021, item 2354)

⁷Article 114 of the Act of December 12, 2013 on foreigners (consolidated text, Journal of Laws of 2021, item 2354)

⁸Article 348 of the Act of 12 December 2013 on foreigners (consolidated text, Journal of Laws of 2021, item 2354)

⁹Article 13 et seq. of the Act of June 13, 2003 on granting protection to foreigners within the territory of the Republic of Poland (consolidated text, Journal of Laws of 2021, item 1108)