

**QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION
OF THE DIRECTIVE :**

TEMPORARY PROTECTION OF 20 JULY 2001

IN

Bulgaria

By

Dimitrova-Turner, Maria Borissova

National Rapporteur, mbdimitrova@gmail.com, 12.11.2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

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FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: *legislative* refers to a norm adopted in principle by the Parliament; *regulation* refers to a norm complementing the law and adopted in principle by the executive power; *circular or instructions* refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Law on Asylum and Refugees, hereinafter referred to as LAR. The LAR was published in State Gazette 29.06.2007, i.e. more than a month after the submission of the report. I sent the updated version to our national coordinator in order for her to prepare her synthesis report. Most of the amendments are technical and concern only the number of the provision in the integrated in the Law on Asylum and Refugees Law on Amendments and Supplement. This version of the report is with the latest updates and with the answers of your questions. All the amendments are reflected in the file 'Amendements' as well, as requested.
DATE:
NUMBER:
DATE OF ENTRY INTO FORCE: last amended SG 52/29.06.2007
PROVISIONS CONCERNED : paragraphs 2, 5, 8, 11, 14, 19, 20, 21, 23, 25, 27, 37, 44, 47, 57, 59 (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (please tick the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 2

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Law on Bulgarian Identity Documents (please note that this law contains regulations which are not in line with the project for amendment of the Law on Asylum and Refugees; most probably, this provisions will be revoked after the adoption of the new rules)
DATE: Promulgated in State Gazetted 93/11.08.1998, last amended 105/22.12.2006
NUMBER:
DATE OF ENTRY INTO FORCE: 1.04.1999
PROVISIONS CONCERNED : Articles 14, 59 (for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (please tick the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Q.1.B.

Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

TITLE: Law on Child Protection
DATE: Promulgated in State Gazette 48/13.06.2000, last amended SG 82/10.10.2006
NUMBER:
DATE OF ENTRY INTO FORCE: 17.06.2000
PROVISIONS CONCERNED : Article 15, par. 7 (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 2

TITLE: Law on Foreigners in the Republic of Bulgaria
DATE: Promulgated in State Gazette 153/23.12.1998, last amended SG 29/06.04.2007
NUMBER:
DATE OF ENTRY INTO FORCE: 27.12.1998
PROVISIONS CONCERNED : Article 44a (for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Q.2.

This question needs to be answered only for **FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN**

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

LEGISLATIVE RULES
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

REGULATIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

CIRCULAR OR INSTRUCTIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

COMPETENCE CONCERNED:	a request for temporary protection in general
CENTRAL MINISTRY OF:	Council of Ministers
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	
OTHER LEVEL OF ADMINISTRATION:	

IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	
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Table 2

COMPETENCE CONCERNED:	withdrawal of temporary protection
CENTRAL MINISTRY OF:	the chairperson of the State Agency for Refugees
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

YES

NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

YES

NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

MISSING TEXTS
<i>INDICATE HERE THE MISSING TEXTS</i>

SECOND PART

Duration and implementation of temporary protection

Q.5. According to article 5(1) in the Directive the existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council. According to article 5(3) the Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions in the Directive.

Do the national norms of transposition in your Member State mandate the Council to decide about the existence of a mass influx of displaced person, with the effect of introducing temporary protection for the displaced persons to which it refers in your Member State?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation (if the answer is “no”, how is a Council decision transposed ad hoc into national law?)

According to art. 2 (2) of LAR the Council of Ministers grants temporary protection on the basis of the Decision of the Council of the European Union.

Q.6. According to article 6 in the Directive, temporary protection shall come to an end when the maximum duration has been reached or at any time by Council Decision on a proposal from the Commission. *See article 6 (1-2).*

Do the national norms of transposition mandate the Council to decide when temporary protection in your Member State shall come to an end?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (if the answer is ‘no’, how is a Council decision transposed ad hoc into national law?)

Art. 82 (1) of the LAR states that the temporary protection shall be terminated when either the maximum duration has been reached, or at any time with a decision of the Council of the European Union.

Q.7. According to article 7, a Member States may extend temporary protection, as provided for in the Directive, to additional categories of displaced persons over and above those to whom a Council decision applies, where they are displaced for the same reasons and from the same country or region of origin. *See optional provision in article 7 (1-2).*

Do the national norms of transposition allow your Member State to extend temporary protection to additional categories of displaced persons?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (If the answer is "yes", if any, what are the criteria for extending protection to additional categories of displaced persons)?

There are no provisions in this respect.

Obligations of the Member States towards persons enjoying temporary protection

Q.8. Questions regarding obligations of the Member States towards persons enjoying temporary protection. *See article 8(1-3):*

Q.8.A. Does your Member State provide persons enjoying temporary protection with a residence permit? *See mandatory provision in article 8(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (if the answer is 'no', what are the practical Consequences for the individual?)

Pursuant to the LAR the foreigners who enjoy temporary protection are entitled to stay on the territory of Republic of Bulgaria. According to art. 41 (1) of LAR the State Agency for Refugees issues registration cards to foreigners who enjoy temporary protection - for the duration of the temporary protection.

Q.8.B. Answer this question if the answer on Q.8.A is 'yes': **Is the residence permit valid for the entire period of temporary protection?** *See mandatory provision in article 8(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (if the answer is 'no', what are the practical Consequences for the individual?)

Q.8.C. Will documents or other equivalent evidence for the residence permit be issued? *See mandatory provision in article 8(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

The document is issued by the State Agency for Refugees and it is called a registration card of a foreigner who has been granted temporary protection.

Q.8.D. Will your Member State provide persons enjoying temporary protection with a document, in a language likely to be understood by them, in which the provisions relating to temporary protection, and which are relevant to them, is clearly set out? See mandatory provision in article 9.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

This norm is perfectly transposed with art. 39 (2) of LAR.

Q.8.E. Will the personal data of the persons enjoying temporary protection (name, nationality, date and place of birth, marital status, and family relationship) be registered? See mandatory provision in article 10.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

The LAR is not very clear. It stipulates what type of personal data should be included in the registration card of a foreigner who enjoys temporary protection. Nevertheless, it does not stipulate that the data is subject to registration at the State Agency for Refugees in accordance with the Personal Data Protection Act. The latter is envisioned for refugee status applicants.

Q.8.F. Will your Member State provide facilities for obtaining the necessary visas, including transit visas, to persons which will be admitted to the territory for the purposes of temporary protection? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

I assumed the necessary amendments in the sub-legislative acts (the regime of visas is regulated by a sub-legislative act - an ordinance) would be undertaken when the main act of transposition comes into force. No amendments of this type have been made so far. However, according to art. 44b (1) of LAR no taxes are collected in cases of issuance of registration card of a foreigner who has been granted temporary protection as well as of issuance of a pass for the transfer of persons enjoying temporary protection.

Q.8.G. According to the national law of your Member State: Will the visas referred to in Q.8.F, be free of charge? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (if the answer is “no”, please indicate the amount charged and indicate amounts charged for other types of visas)

Until now the visas are not envisioned to be free of charge. Otherwise, the taxes for different types of visas in general according to Tariff 3 on the Taxes Collected for Consulate Services in the System of Ministry of Foreign Affairs under the State Tax Law vary from 20 euros to 100 euros.

Q.9. According to national law of transposition, is your Member State responsible to take back a person enjoying temporary protection on its territory if that person seeks to enter onto or remains on the territory of another Member State without authorisation during the period of temporary protection? See mandatory provision in article 11.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

The responsibility is established in Art. 83 (1) of LAR.

Q.10. Has your Member State concluded bilateral agreements with other Member States regulating the responsibility for persons enjoying temporary protection under the Directive? See optional provision in article 11, final sentence.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (If the answer is “yes”, please specify with which country)

From the public resources available there is no information in this respect.

Q.11. Questions regarding work and other activities during temporary protection: See mandatory provision in article 12.

Q.11.A. Are the persons enjoying temporary protection allowed to engage in:

Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- | | | |
|--|--|---|
| Employed activities? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Self-employed activities? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Educational opportunities for adults? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Vocational training? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Practical workplace experience? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Explanation:

Article 39 (1) of LAR refers to most of the activities. Educational opportunities for adults are not established in the act of transposition.

Q.11.B. According to optional provision in article 12, Member States may, for reasons of labour market policies, give priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment benefit.

Do the national norms of transposition in your Member State give priority, or allow giving priority, to:

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- | | | |
|---|-------------------------------------|---|
| EU citizens? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Citizens of the European Economic Area? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Legally resident third-country nationals who receives unemployment benefits? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Explanation:

There is nothing in this regard in the main act of transposition.

Question to be answered only if persons enjoying temporary protection are allowed to work:

Q.11.C. According to article 12, final sentence, the general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply if persons enjoying temporary protection are allowed to work.

If persons enjoying temporary protection are allowed to work: Will your country's general laws be applicable regarding:

Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Remuneration? Yes No

Access to social security systems relating to employed or self-employed activities and other conditions of employment? Yes No

Explanation:

According to Bulgarian legislation the right of labor is related to the obligation of the employer and employee to pay the relevant parts of social security contributions on the basis of the remuneration. At the same time, the people who are self-employed are obliged to pay their social security installments by themselves and in compliance with the labor and social legislation. Consequently, the people who enjoy temporary protection and whose right to labor is guaranteed by the act of transposition will practically enjoy access to the social security system and benefit from all rights which originate from the right of labor .

Q.12. Questions regarding the Member States obligation towards the temporary protected regarding accommodation, subsidies, medical care etc. *See article 13(1-4).*

Q.12.A. **Is your Member State obliged under national law to provide the persons enjoying temporary protection with suitable accommodation or means in order to obtain housing?** *See mandatory provision in article 13(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation :

Q.12.B. **Will your Member State, according to national law, be obliged to provide the persons enjoying temporary protection with economic assistance such as social welfare and means of subsistence?** *See mandatory provision in article 13(2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Q.12.C. **Do the persons enjoying temporary protection have access to emergency medical care and essential treatment of illness?** *See mandatory provision in article 13 (2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (If the answer is “yes”, please provide details whether persons enjoying temporary protection have access to *general medical care* or if it is restricted to *emergency care and essential treatment of illness*?)

People who enjoy temporary protection have access free of charge to emergency medical care in accordance with art. 39 (1), item 5 of LAR. The requirement for 'essential treatment' is not transposed.

Q.12.D. Will your Member State, according to national law, be obligated to provide for necessary medical or other assistance to persons enjoying temporary protection who have special needs such as unaccompanied minors, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence? *See mandatory provision in article 13(4).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (If the answer is “yes”, please provide details about the assistance given to different groups of persons with special needs, for example psychological help for persons who have undergone torture).

The LAR does not make difference between the vulnerable groups, i.e. between people who suffered torture, rape, etc, children, or people who suffered other forms of violence. It states that foreigners from vulnerable groups who enjoy temporary protection receive the necessary medical or other treatment under the conditions and procedure established for Bulgarian citizens - art. 39 (3) of LAR.

Q.13. Questions regarding access to education. *See article 14 (1-2):*

Q.13.A. Do persons who are under 18 years of age and enjoying temporary protection have access to the education system under the same conditions as nationals of your Member State? *See mandatory provision in article 14(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

According to art. 26 (1) of LAR the minors who seek protection are entitled to education under the conditions and procedures established for Bulgarian citizens. The provision is very general and it does not make any specific reference to minors who enjoy temporary protection. If we interpret this article per argumentum a fortiori as for the minors who enjoy temporary protection the latter should be entitled to education as well. However, since there is no specific rule for that I consider the provision not transposed. The lack of clarification creates conditions for misinterpretation and hinders the access of minors to the educational system.

Q.13.B. If the answer on Q.13.A is ‘yes’: Is access to education confined to the state education system or does it cover all kinds of educational institutions?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

The LAR does not make any difference between the state and private educational institutions. Therefore, the answer is free access to education in general.

Q.13.C. Do adults enjoying temporary protection have access to the general education system? See optional provision in article 14(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

The adults who enjoy temporary protection are entitled to vocational/professional education.

Q.14. Questions regarding right to family reunification. See article 15:

Q.14.A. Do the national norms of transposition in your Member State allow separated family members, which enjoy temporary protection in different Member States, to reunite? See mandatory provision in article 15(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

There is no explicit provision which introduces art. 15 (2) of the Directive and which refers to the case when the members of the family are on the territory of another Member State. I presumed that reunification applies in all cases, no matter whether the members of the family are on the territory of another Member State or on the territory of a third country because there is a general provision on reunification. There is also a provision (art. 39a (5) of LAR) which states that a foreigner who enjoys temporary protection in Bulgaria seizes to benefit from it if he/she reunites with his/her family on the territory of another Member State. Nevertheless, this is just a partial regulation on the hypothesis when the members of the family are on the territory of two Member States. But as the question refers to a specific situation and cooperation on behalf of the Member States - no, there is no provision which regulates specifically this situation.

In my opinion there is no obstacle for applying the general provision. There is no special regulation which specifies the case of family members on the territory of another Member State but I think the general provision will apply in this case.

Q.14.B. Do the national norms of transposition in your Member State allow family members who are not yet in a Member State to reunite with a person enjoying temporary protection in your Member State? See mandatory provision in article 15(3).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

There is a general provision in the LAR (art. 39a (1)) which regulates family reunification.

Q.14.C. For the application of the rules regarding family reunification: Whom does your Member State consider a “family member”? See article 15(1)(a)(b).

(Please indicate by ticking the correct box/boxes and **EXPLAIN YOUR ANSWER**)

- The spouse of the person enjoying temporary protection.**
- The unmarried partner in a stable relationship to the person enjoying temporary protection.**
- The minor unmarried children of the person enjoying temporary protection or of his/her spouse, without distinction as to whether they were born in or out of wedlock or adopted.**
- Other close relatives who lived as part of the family unit with the person enjoying temporary protection at the time of the events leading to the mass influx, and who were wholly or mainly dependent on him/her at the time.**

Explanation:

The LAR does not explicitly states as for the children - 'without distinction as to whether they were born in or out of wedlock or adopted.' However, our family laws in general do not make difference between children born in and out of wedlock. Also, the provision envisions as family members the husband, the wife and THEIR minor and unmarried children. No distinction is made for the children of the husband and the children of the wife. As for adopted children - our Family Code stands for the idea of a legal bound between the parents and the fully adopted children which from a legal point of view is as strong as the one between natural children and their parents. I assume that the non-mentioning of adopted children is not going to create problems and they will be treated in terms of reunification as natural children. However, please consider that there is no specific reference as to adopted children. Also, Bulgarian legislation contains the legal institute of partial adoption. It is not clear if children who are considered partially adopted under their national legislation could benefit from the right of reunification.

The unmarried partner in a stable relationship is not mentioned in this particular situation of reunification. The people who enjoy refugee/humanitarian status are entitled to reunify with their unmarried partner. Therefore the difference in treatment is confusing and illogical.

According to art. 39a of LAR the chairperson of the State Agency for Refugees (SAR) may, i.e. he/she is not obliged to do it, permit the reunification with close relatives who lived together with the person at the time of the events which the influx and who depended on the person in the country of origin. The chairperson of the SAR should also consider the additional difficulties which may appear in case of non-reunification.

Q.14.D. What means of proof is needed in your Member State to verify family membership, is for example documentary evidence needed?

The main act of transposition does not give any details in this respect.

Q.14.E. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the provisions on family reunification in the national norms of transposition? See mandatory provision in article 15(4).

There is no specific provision on the 'best interest of the child' principle as regards family reunification. LAR contains a general provision in art. 6a which states that the best interests of the child should have primary significance when applying LAR. I would consider art. 6a of LAR as transposing art. 15 (4) of the Directive.

Q.14.F. According to article 15(5), Member States shall decide in which Member State the reunification shall take place. Please indicate which authority possesses the competency to take such decisions?

Name and function of the Authority: There is no information in this respect.

Q.14.G. If there is a formal procedure foreseen for such decisions, please describe it briefly:

There is no procedure envisioned.

Q.14.H. Are reunited family members in your Member State granted residence permits under temporary protection?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

According to article 39a (4) of LAR in case of reunification the reunified family members have all the rights which originate from the temporary protection status.

Q.14.I. Are documents or other equivalent evidence issued for persons who comes to your Member State and receives temporary protection under the provisions regarding family reunification?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Article 39a (4) of LAR states that in case of reunification members of the family enjoy all the rights granted to the foreigner who enjoys temporary protection. It can be assumed that this includes the right to obtain documents.

Q.14.J. Does the national norms of transposition in your Member State comply with the provision in article 15(8) stating that a Member State shall at the request of another Member State, provide information on a person receiving temporary protection which is needed to process a matter of family reunification? See mandatory provision in article 15(8).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation:

Q.15. Questions regarding unaccompanied minors: *See article 16:*

Q.15.A. Explain how the representation of unaccompanied minors enjoying temporary protection in your Member State is arranged according to national law. See mandatory provision in article 16(1).

According to the general procedure the minor shall be represented by a guardian who, pursuant to the Family Code, shall be appointed by the mayor of the relevant municipality where the address of the child is. In case the child has no close relatives (as it is in the cases of unaccompanied minors) a special authority - the Social Support Directorates - conducts the representation. The Social Support Directorates are the local branches of the Social Support Agency which is an agency at the Ministry of Labour and Social Policy.

Q.15.B. Does your Member State provide for unaccompanied minors to be placed with: See mandatory provision in article 16(2).

(Please indicate by ticking the correct box/boxes and **EXPLAIN YOUR ANSWER**)

Adult relatives ?

A foster-family ?

In reception centres with special provisions for minors, or in other accommodation suitable for minors ?

With the person who looked after the child when fleeing ?

Explanation:

As for the 'person who looked after the child when fleeing', the LAR uses the term 'close people' when it refers to the placement of the child.

Q.15.C. Do the national norms of transposition in your Member State meet the requirement that the views of the child shall be taken into account when arranging placement for the minor? See mandatory provision in article 16(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation:

According to article 15 of the Law on Child Protection every child who turned the age of 10 should be heard in every administrative or court proceeding which affects his/her rights. If the child has not turned 10, he/she might be heard in accordance with his/her growth.

Access to the asylum procedure in the context of temporary protection

Q.16. Questions regarding access to the asylum procedure. *See article 3 and 17-19:*

According to mandatory provision in article 3(1) temporary protection shall not prejudice recognition of refugee status under the Geneva Convention.

Q.16.A. Does temporary protection in any way prejudice recognition of refugee status under the Geneva Convention in your Member State?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Art. 58 (5) of LAR states that a foreigner who enjoys temporary protection is entitled to submit a request for refugee status or humanitarian status. However, pursuant to art. 72 (1), item 3 the procedure for deciding on the case should be initiated after the termination or withdrawal of the temporary protection and following the general procedure.

Q.16.B. Does your Member State allow persons enjoying temporary protection to apply for asylum at any time during the period of temporary protection? See mandatory provision in article 17(1).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

The chairperson of the State Agency for Refugees reviews the application and takes the decision after the termination or withdrawal of temporary protection.

Q.16.C. Does your Member State allow persons enjoying temporary protection to stay in the Member State during the examination of their asylum claim, even though the period of temporary protection has ended? See mandatory provision in article 17(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

This falls under the scope of the general provisions which regulate the refugee status/humanitarian status procedure and which permit the applicant to stay on the territory of Bulgaria by the time the decision comes into force.

Q.16.D. What criteria are provided by the norms of transposition in your Member State to determine the responsibility amongst Member States for examining an asylum application submitted by a person enjoying temporary protection in another Member State? See mandatory provision in article 18.

There are no specific criteria which apply in cases of temporary protection. The general regime for the review of applications for refugee/humanitarian status apply.

Q.16.E. Has your Member State decided that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration? See optional provision in article 19.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: If the answer is “yes”, please provide details concerning differences between the reception conditions for asylum seekers and persons enjoying temporary protection in your Member State which might lead to withdrawal or reduction of rights for a temporary protected who lodges an application for asylum.

The provision (art. 39 (5) of LAR) states that a foreigner who enjoys temporary protection and at the same time submits an application for refugee status or humanitarian status cannot enjoy the rights of the asylum seekers. This means that the person does not lose its temporary protection rights. However, he/she cannot enjoy the rights of the asylum seeker and his application will be reviewed after the termination or withdrawal of the temporary protection.

Q.16.F. If refugee status or, where applicable, other kind of protection is not granted to a person who is eligible for or already enjoys temporary protection is that person allowed to enjoy or continue to enjoy temporary protection in your Member State? See mandatory provision in article 19(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

As it was explained above, the procedure is initiated and the application for refugee/humanitarian status is reviewed after the termination or withdrawal of temporary protection. The application is not considered during the temporary protection period.

Return and measures after temporary protection has ended

Q.17. Questions regarding the voluntary return of persons enjoying temporary protection:

Q.17.A. According to mandatory provision in article 21(1) the Member States shall ensure that the provisions governing voluntary return of persons enjoying temporary protection facilitate their return with respect for human dignity. How is that reflected in the national norms of transposition in your Member State?

According to art. 80 (1), item 6 of LAR the Council of Ministers undertakes measures which facilitate the voluntary return of persons enjoying temporary protection or persons for who the temporary protection has terminated. However, there is no provision which states that this should be conducted with due respect for human dignity.

Q.17.B. Please explain how your Member State ensures that a decision of persons enjoying temporary protection, or whose temporary protection has ended, to return voluntarily is taken in full knowledge of the facts. See mandatory provision in article 21(1).

There is no specific provision in this respect.

Q.17.C. Is it possible for the temporary protected in your Member State to make exploratory visits to the home country? See optional provision in article 21(1).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Art. 83 (2) (its content is explained in Q 17D) might be interpreted as regulating the exploratory visits

Q.17.D. Please explain if and how your Member State has transposed article 21(2) stating that Member States shall, for such time as the temporary protection has not ended and on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to a voluntary return?

According to art. 83 (2) of LAR the Republic of Bulgaria receives back on its territory foreigners, registered in the country as enjoying temporary protection, who had exercised their right of voluntary return in their country of origin. This means that return to the country of origin does not automatically terminates the temporary protection and the beneficiaries are free to return to Bulgaria. The LAR does not give more detailed regulation on the matter.

Q.17.E. Is it possible, under the national norms of transposition in your Member State, for persons enjoying temporary protection to continue receive their benefits as temporary protected after the period of temporary protection has ended, if they benefit from a voluntary return programme? See optional provision in article 21.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Q.18. Questions concerning enforced return of persons who have enjoyed temporary protection. *See articles 22:*

Q.18.A. Explain if and how the laws of your Member State comply with the mandatory provision in article 22(1), obliging Member States to ensure that the enforced return of persons whose temporary protection has ended and who are not eligible for admission shall be conducted with due respect for human dignity.

There are no specific provisions in this respect. In my opinion in this specific case the reference to the human dignity in the national norm of transposition should be made. The enforced return of persons is a situation where the foreigners are particularly vulnerable. It is also a situation which creates risk for human rights violations and misconduct. Therefore, the principle should be implemented in the act for transposition so that state authorities can apply with it.

Q.18.B. Explain if and how the laws of your Member State comply with the mandatory provision in article 22(2) obliging Member States to consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.

According to article 44b (2) of the Law on Foreigners in Republic of Bulgaria the foreigner who is subject to an expulsion order because the temporary protection has terminated should not be expelled or forcibly taken to the border if there are reasons of humanitarian or health related character.. The general rule of non-refoulement also applies - according to art. 44a of the above mentioned law a foreigner who is a subject to an expulsion order should not be expelled to a country where his/her life and freedom are threatened and he/she is threatened by persecution, torture, inhumane or humiliating attitude.

Q.18.C. In the national law of your Member State, are there any other grounds (except for the one referred to in Q.18.B) for allowing persons who have enjoyed temporary protection to stay in your Member State?

There are no other specific grounds. The general aliens law rules apply.

Q.19. Questions concerning forcible return of persons who have enjoyed temporary protection. *See article 23:*

Q.19.A. Does the national law and practice of your Member State comply with the mandatory provision in article 23, providing that persons who have enjoyed temporary protection and who cannot, in view of their state of health reasonably be expected to travel, are not expelled as long as that situation continues? The provision exemplifies with persons who would suffer serious negative effects if their treatment was interrupted.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation: The answer is the same as in Q18B..

Q.19.B. Does your Member State allow families whose children attend school in a Member State, to benefit from residence conditions allowing the children concerned to complete the current school period before return? *See optional provision in article 23.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: There are no provisions in this respect.

Solidarity

Q.20. Please describe how your Member State ensures that persons eligible for temporary protection defined in a Council Decision under article 5 and who have not arrived in the Community have expressed their will to be received on their territory? *See mandatory provision in article 25(2).*

There are no provisions in this respect.

Q.21. Questions concerning the transferral between Member States of persons enjoying temporary protection. *See article 26:*

Q.21.A. According to mandatory provision in article 26(1) the Member States shall cooperate with each other with regard to transferral of the residence of persons enjoying temporary protection from one Member State to another, subject to the *consent* of the persons concerned to such transferral.

Does the national law of your Member State comply with article 26(1) regarding the *consent* of the person who are about to be transferred?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: There are no provisions in this respect.

Q.21.B. Do the national norms of transposition in your Member State comply with article 26(2) stating that a Member State shall communicate requests for transfers to the other Member States and notify the Commission and UNHCR?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

There is a provision which concerns the exchange of information between the Member States, European Commission, and with UNHCR but it is very general.

Q.21.C. According to the national norms of transposition, is your Member State obliged to, at the request of another Member State, provide information as set out in Annex II of the Directive, on a person enjoying temporary protection, which is needed to process a matter of transferral? (See mandatory provision in article 26(3)).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: There are no provisions in this respect.

Q.21.D. According to the national law in your Member State, will the residence permit of a person who is transferred, from your Member State to another Member State, expire? See mandatory provision in article 26(4)

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

There is no general provision in this respect although the specific provision of art. 39a (5) of LAR states that in case of reunification on the territory of another Member State the person who has been granted temporary protection in Bulgaria no longer enjoys it.

Q.21.E. When a person, who has been enjoying temporary protection in your Member State is transferred to another Member State, will the obligations relating to temporary protection in your Member State come to an end upon the transferral? See mandatory provision in article 26(4)

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

There are no provisions in this respect.

Q.21.F. If a person, who previously has enjoyed temporary protection in another Member State, is transferred to your Member State, will your Member State grant temporary protection to that person? See mandatory provision in article 26(4), last sentence.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

There are no provisions in this respect.

Q.21.G. Will the ‘model pass’ set out in annex I of the Directive be used in a foreseen transferral procedure?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

It exists as an Annex to the LAR despite the lack of provisions on the procedure and LAR refers to it.

Q.22. What authority in your Member State is appointed as national contact point according to the mandatory provision in article 27?

The name and function of the authority is: In cases of mass influx the Council of Ministers appoints a national point of contact and informs the other Member States and the European Commission.

Q.23. Questions regarding exclusion from temporary protection:

Q.23.A. Are there any criteria for exclusion from temporary protection in your Member State? *See optional provision in article 28.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (If yes, specify the criteria).

The criteria are almost the same as in the Directive. However, the person may be considered a danger to the community even if he/she has not been convicted by a final judgement of a particularly serious crime.

Q.23.B. If the answer to A. is “yes”, please indicate whether they in any way exceed the exhaustive list of criteria in article 28(1)(a) and (b).

Yes No

Explanation: It was explained in Q.23.A.

Q.23.C. Do the national norms of transposition in your Member State meet the terms in article 28(2) stating that the grounds for exclusion shall be based solely on the personal conduct of the person concerned?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Q.23.D. Do the national norms of transposition in your Member State meet the terms of article 28(2) stating that exclusion decisions or measures shall be based on the principle of proportionality?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Q.24. Questions concerning the right to legal challenge:

Q.24.A. Do the laws of your Member State allow a person to mount a legal challenge if he/she has been: *See mandatory provision in article 29.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

excluded from the benefit of temporary protection Yes No

denied family reunification Yes No

Explanation:

The decision for withdrawal of temporary protection and the denial for family reunification of the chairperson of the State Agency for Refugees may be appealed before the Supreme Administrative Court.

Q.24.B. If the answer on any of the questions in Q.24.A is “yes”, please describe the applicable legal procedures for challenging the decision, in your Member State.

The decision for withdrawal/the decision for denial should be handed to the person and he/she can appeal it through the State Agency for Refugees before the Supreme Administrative Court in a 14-day period. The decision of exclusion should be based on the grounds in art. 28 of the Directive and can be appealed as such. However, it is possible to appeal the decision on another ground but following the general rule, proclaimed by the Bulgarian Constitution, that all administrative acts in Bulgaria are subject to appeals. Exceptions of this general rule can be established only in law. There is no specific provision in the LAR which states that the administrative act might be appealed on the ground that the person is excluded from the temporary protection as it was in your example. But there is no specific provision which excludes these acts of the general rule either. Consequently, the person is entitled to protect his/her rights and appeal the act before the court based on the general rule for appealing all administrative acts.

Q.25. Questions regarding penalties applicable to infringements of the national provisions.

Q.25.A. Are there penalties applicable to infringements of the national provisions in your Member State? See mandatory provision in article 30.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (If yes, specify the penalties).

Q.25.B. Explain if the penalties, according to your opinion, comply with the Directive concerning them being effective, proportionate and dissuasive? See mandatory provision in article 30.

There are no provisions in this respect.

Final questions

Q.26. Can you refer us to any study, report or research by any source on the practice of granting temporary protection in the event of a mass influx in your Member State?

As far as I know there are no publications on the matter.

Q.27. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate

No, there has not.

Q.28. Are there any problems of legislation or practice in your Member State which relate to temporary protection and have not been covered in preceding questions?

Certainly, the basic problem is the partial transposition of the Directive.

THIRD PART

IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29 Question regarding the evolution of national law: **Did the transposition of the Directive make the rules related to the protection of third country nationals in cases of a mass influx become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below**

OBJECTIVE <i>To enhance the protection of displaced persons in cases of a mass influx</i>		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
<p>Explain the situation <u>before</u> transposition</p> <p>There are provisions on the temporary protection status in the Law on Asylum and Refugees but they have never been implemented in practice. Besides, the protection they ensured is not as detailed as the one in the Directive.</p>	<p>Explain the situation <u>after</u> transposition</p> <p>The LAR is not perfect but at least it gives more detailed regulation of the matter.</p>	<p><input type="checkbox"/> <i>Less favourable than previous national rules</i></p> <p><input type="checkbox"/> <i>Status quo</i></p> <p><input checked="" type="checkbox"/> <i>More favourable than previous national rules</i></p>	<p><input checked="" type="checkbox"/> <i>Less favourable than the Directive</i></p> <p><input type="checkbox"/> <i>In line with the directive</i></p> <p><input type="checkbox"/> <i>More favourable than the directive</i></p>

Q. 30. **From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below**

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

OBJECTIVE (to be indicated by the national rapporteur)		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
Explain the situation before transposition	<p>Explain the situation after transposition</p> <p>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</p>	<p><input type="checkbox"/> <i>Less favourable than previous national rules</i></p> <p><input type="checkbox"/> <i>Status quo</i></p> <p><input type="checkbox"/> <i>More favourable than previous national rules</i></p>	<p><input type="checkbox"/> <i>Less favourable than the Directive</i></p> <p><input type="checkbox"/> <i>In line with the directive</i></p> <p><input type="checkbox"/> <i>More favourable than the directive</i></p>

Q.31.A. Question regarding the method of transposition: **Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.**

YES NO

Q.31.B. **If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).**

YES NO

Q.31.C. **If yes, give some of examples:**

Q.31.D. **If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.**

The problem is not that some of the provisions have been copied, the problem is that a number of provisions have not been implemented at all. The latter makes the implementation of the Directive partial and the regulation of the temporary protection status uncomplete.

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

DECISION OF SUPREME COURTS	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>
DECISION OF APPEAL COURTS	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>
DECISION(S) IN FIRST RESORT	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

There are no problems with the translation of the directive.

There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

OBJECTIVE OF THE PRACTICE	EXPLANATION

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.