ORDER

Sofia, 29.05.2023

ADMINISTRATIVE COURT - SOFIA-CITY, First Division, Chamber 69, in closed session on 29.05.2023, composed as follows:

JUDGE: M.S.

Having considered Court case number ***** of the inventory for the year 2022 reported by the Judge, and for the purpose of its ruling has considered the following:

The proceeding is under the procedure laid down in Articles 145 to 178 of the Administrative Procedure Code (APC), in conjunction with Article 84, para. 3 of the Law on Asylum and Refugees (LAR), in conjunction with Article 267 of the Treaty on the Functioning of the European Union (TFEU).

Proceedings are brought by a complaint by K., through his lawyer K. S., against Court Decision of the Deputy Chair of the State Agency for Refugees (SAR) to the Council of Ministers (CM), who, pursuant to Article 75 paragraphs 1(2) and (4), in conjunction with Article 8 and Article 9 of LAR, rejects K's application to be granted refugee and humanitarian status.

I. Parties and subject of the case:

The applicant, K.

The respondent is the Deputy Chair of SAR, who under Article 52, in conjunction with Article 48, paragraph 1, point 1 of LAR is the competent body to grant or refuse international protection in the Republic of Bulgaria.

The proceedings before the Administrative Court Sofia-City (ACSC) are of first instance. Pursuant to Article 85, paragraph 4 of LAR, the decision of the ACSC is subject to cessation appeal before the Supreme Administrative Court (SAC).

The applicant claims the annulment of the judgment. He claims that he settled in Bulgaria in 1996 and that since then he has been subjected to several compulsory administrative measures (CAM) under the Bulgarian Foreigners' Act (FA) for his forceful return to his country of origin. None of these measures have been implemented. Since he cannot leave the country and the FA could not be applied to him, the only possible procedure for settling his status and residence in the Republic of Bulgaria is the provision of Article 9, paragraph 8 of the LAR - humanitarian status on other humanitarian grounds. He claims that he has been living in the territory of the country for nearly 27 years and has the right to privacy, dignity, and respect, as well as to fundamental human rights. The legal vacuum in which he found himself constituted inhumane and degrading treatment in violation of Article 3 of the ECHR, based on which there should be a legal remedy through the provision of Article 9, paragraph 8 of the LAR.

The defendant - the Deputy Chair of SAR contested the appeal and upholds its rejection. It considers that the circumstances alleged by the applicant do not constitute grounds for granting status under Article 8 and Article 9 of the LAR and that his legal position should be settled in accordance with the Foreigners 'Act.

II. Factual background

The applicant submitted his **first** application for international protection on 09.10.1997. He declared in it that he had left his country of origin illegally on 30.12.1993. In July 1996 he ended up in the Bulgarian port of Varna. One day he was arrested by the police in Plovdiv and detained for 62 days. Upon his release, he was sent to the National Bureau for Territorial Asylum and Refugees under the Council of Ministers (NBTAR-CM). He had no money and could not obtain a passport. He wanted to secure documents to live in Bulgaria seamlessly. When asked about his reasons for seeking protection in Bulgaria, the applicant pointed out that his level of education was low and insufficient to find suitable employment in his country of origin. From the NBTAR-CM, he expected accommodation, food and a job.

A decision of the Director of the NBTAR-CM refusing to grant him a refugee status was issued. The decision stated that the applicant was an economic migrant, and that this excluded him from the substantive requirements of Article 1A of the Convention relating to the Status of Refugees.

The appeal against the Decision of the Director of the NBTAR-CM was rejected by a Decision of SAC, which entered into force as final.

The applicant lodged a **second** application for protection on 09.03.2004, in which he stated that there were many conflicts in his country of origin, most of the people were fleeing the country, and his father had been arrested. In an interview conducted on 10.03.2004 he stated that he had a lot of problems in Bulgaria because he did not have any documents. In Bulgaria he had been sentenced to for three years of prison- for drug use and drug dealing. He was released on 27.02.2004. He pointed that the reason for his application was because he wanted to legalize his stay and have no more issues.

A Decision of the interviewing authority of the SAR-CM was issued, by which, on the basis of Article 70, paragraph 1, point 1, in conjunction with Article 1, paragraphs 1 and 2 of the LAR, the application for protection was rejected as manifestly unfounded, claiming that the applicant relied on grounds outside of the LAR and did not demonstrate any reasons for fear of persecution in the country of origin. The applicant's appeal was rejected by a decision of the Sofia City Court, upheld by the SAC.

In a **subsequent application** for protection dated 20.06.2005, the applicant stated that he had been in Bulgaria for nine years but was living in fear. He did not have valid documents to show to police authorities and had no means to return to his country of origin. There is no record of any decision by a SAR-CM authority on this application as on 21.06.2005 it was recorded as “on file”.

A **third** application for protection was lodged on 11.10.2006, registered on 19.12.2006, in which the applicant claimed political asylum on humanitarian grounds. He claimed that he had been in police detention for a long time for reasons he did not understand, namely since 28.06.2005, and that he had no normal means of securing his living conditions in Bulgaria. He had no documents proving that he had been in an asylum procedure during this time since his application for protection was rejected on 27.06.2005**,** when he was detained. He had been in prison in Busmantsi (Registration and Reception center of a closed type of the SAR) for a long time, he was desperate and hoped that he could spend the rest of his life like the other free and normal people.

Attached are Orders of the Director of Sofia Directorate of the Ministry of Interior (SDMI), by which the Applicant was subjected to a "forced removal to the border" measure, and Order of the Director of the SDMI, by which the foreign national was placed in the Detention Centre of the Migration Directorate – Ministry of Interior based on Article 44, paragraphs 6 and 8 of the FA.

A Decision of the interviewing authority at the SAR-CM was issued, by which the proceedings for granting international protection were terminated based on Article 70, paragraphs 1 and 2, in conjunction with Article 16, paragraphs 1 and 9 of the LAR. In the administrative act it was held that the reasons for the applicant's stated unwillingness to return to his country of origin were personal and did not fall within the scope of Articles 8 and 9 of the LAR. The court appeal was rejected by a decision of the Sofia City Court, which entered into force without the right to appeal.

In the following years, the applicant submitted subsequent applications for protection to SAR, which were rejected pursuant to Article 70, paragraph 1, point 1 in conjunction with Article 13, paragraph 1, point 5 of the LAR on the grounds that Article 8 and Article 9 of LAR are not applicable to him. Those administrative decisions were confirmed by the Court.

These are: a fourth application dated 12.01.2007, a fifth application dated 05.08.2008 and a sixth application dated 09.10.2008, in which the applicant stated that he had spent 10 years in Bulgaria waiting. He did not have any documents and he had been asked to present such everywhere. He was therefore working 'on the black market'. He had applied for international protection again because he wanted to obtain documents. The administrative authority's reasons for not granting him protection, confirmed by the Court, were that the foreigner's wish to legalize his stay in the country did not fall under the scope of the LAR.

In the **seventh** and **eighth** application, dated respectively on 06.02.2009 and 30.04.2009, the applicant indicated that he wished to return to his country of origin because, despite all the reasons he had provided, he understood that the law was not on his side. He applied to the SAR because he did not have any money nor documents with which to return. He hoped that the SAR would help him in the return procedure. By Decision of the Chairperson of the SAR this asylum procedure was terminated as the foreigner had not appeared before the administrative authority for three months. The Decision of the Chairperson of the SAR was annulled by a ruling of the Administrative Court Sofia-City, upheld by the Supreme Administrative Court.

In an **eighth** application dated 10.10.2012, the applicant claimed that "in his 15th year of applying for refugee status, he had been in SAR for a long time. He had no support, he was still alive as if by a miracle. It was as if God was looking after him because he had fallen to the status of a beggar. When he was sick, there was nowhere to get treatment. He couldn’t get any help. He absolutely did not want to go back to his country of origin. Bulgaria was his home".

A decision of 30.08.2012 of the President of the SAR-CM was issued, by which on the basis of Article 75, paragraph 1, points 2 and 4, in conjunction with Article 8 and Article 9 of the LAR, the granting of refugee and humanitarian status was refused. It is stated in the decision that the applicant did not qualify as a refugee as he has not been persecuted in his country of origin for the reasons set out in Article 8, paragraph 1 of the LAR. There were also no grounds for granting

him a humanitarian status under Article 9 of the LAR. The court appeal was rejected by a decision of the ACSC, upheld by the SAC.

By a **ninth** application dated 22.07.2014, the applicant again requested protection from SAR. At the interview held on 07.10.2014, the foreigner stated that there were no new facts nor circumstances different from the previous proceedings. Despite this, he had a serious problem, as he had been in Bulgaria for years without any documents. For this reason, he could not return to his country of origin. And he had not been in contact with his relatives for years.

A decision of 11.12.2014 of the Deputy Chair of the SAR-CM was issued, by which on the basis of Article 75, paragraph 1, point 2 and point 4, in addition to Article 8 and Article 9 of the LAR, refugee and humanitarian status were refused, the decision was confirmed by the Court.

A **tenth** application dated 12.12.2017 was submitted to SAR, to which the applicant attached written evidence of a heart condition which he could get treated in his country of origin due to a lack of access to medical services. In it, he stated that he had been residing in Bulgaria for 21 years and had lost connection to his country of origin. He was applying for humanitarian status. Attached to the application was a medical report from the University hospital for active treatment and emergency medicine N.I. Pirogov EAD-Sofia, regarding the hospital treatment of the applicant in the period from 27.11.2017 to 01.12.2017 with the following diagnosis: acute pericarditis, pericardial effusion, second degree arterial hypertension, severe LC hypertrophy, mild mitral regurgitation. The report indicated that the patient had been hospitalized in an impaired general condition. Outpatient sheet was issued with the diagnosis: hypertensive heart without (setting) heart failure.

A decision of 22.12.2017 of the interviewing authority at SAR-CM was issued, by which, on the basis of Article 76b, paragraph 1, point 2 of the LAR, the subsequent application of 12.12.2017 was found inadmissible. The decision states that in September 2015, a nationwide specialized university hospital for cardiovascular care, was opened in the applicant’s country of origin, serving patients from all regions of the country. Based on that information, the administrative authority considered that the applicant's alleged new circumstance of ill-health did not constitute grounds for allowing his application to be examined on its merits, since special care was taken in his country of origin to improve and extend access to health services to all citizens.

The court appeal was dismissed by a decision of the ACSC, which had entered into force as final. The Court accepted the administrative authority's argument that significant efforts are made in the country of origin to improve access to medical and health care services. The applicant's claim that he had been residing in Bulgaria for a considerable period was discussed, but it was held it was not a relevant circumstance to the scope of Articles 8 and 9 of the LAR.

On 13.04.2021, the **eleventh application for international protection** was filed, in which the applicant claimed that he had been residing in Bulgaria for 25 years and that during this period

he had repeatedly tried to settle his status in Bulgaria. There was no Embassy of his country of origin in Bulgaria. Since 2018, that country has introduced the possibility of electronic application for a passport, but it was necessary to appear in person to obtain it. He submitted an online form filled out on 14.11.2019 to the Ministry of Internal Affairs of his country of origin, for which there is no record on file of a ruling by a competent authority in the country of origin.

In the subsequent application, the applicant again claimed that he had no money and could not travel to the nearest embassy. On the other hand, he had spent more than half of his adult life in Bulgaria, had integrated into society and spoke Bulgarian. In addition, the foreign national pointed out that his health had seriously deteriorated and, because of the legal vacuum in which he found himself in Bulgaria, he had no access to health insurance and medical follow- up of his serious illnesses. Those prevented him from moving normally, and longer journeys would have directly endangered his life.

Decision of the interviewing authority of the SAR-CM was issued, by which, on the basis of Article 76b, paragraph 1, point 2 of the LAR, the subsequent application was found inadmissible. The administrative authority traced the ten previous applications for international protection submitted by the foreigner, on which the applicant's asylum history had been discussed on numerous occasions. It took the view that his return to the country of origin should be executed by the Migration Directorate - MOI or through the International Organization for Migration (IOM). The right of residence of foreigners was governed by the FA, while the LAR had a different subject matter and scope.

The decision of the interviewing authority of the SAR-CM has been annulled by judgment of the ACSC, which had entered into force. The Court held that, in his eleventh application for protection, the applicant had expressly relied on the principle of non-refoulement applicable to him in connection with his claims that the long journeys directly endangered his life. The judgment referred to Article 4 of the Charter of Fundamental Rights of the European Union (CFREU), which establishes a prohibition identical to Article 3 ECHR. Violation of that prohibition constituted a ground under Article 9, paragraph 1, point 2 of the LAR for granting humanitarian status, which also made the subsequent asylum application admissible.

On 06.12.2021 the foreigner was called for a new registration at the SAR, but he appeared at the reception of the ROC-Sofia in a visibly inadequate condition (perhaps under the influence of drugs). According to a fact-finding report dated 08.12.2021, the applicant did not carry a tenancy contract or any other proof of external address, which therefore postponed the registration.

With the help of an authorized attorney, an application for protection was prepared in which the foreigner requested accommodation and shelter form SAR as he was homeless and in poor health. He enclosed a copy of an outpatient report dated 22.11.2021 with a diagnosis of "embolism and thrombosis of the arteries of the lower limbs", on the basis of which the foreign

national maintained that he fell within the meaning of the term vulnerable persons under paragraph 1, point 17 of LAR.

The Migration Directorate - MoI has provided information that a compulsory administrative measure "Return to the country of origin, country of transit or third country" has been imposed against the applicant by Order of the Head of the Migration Sector at the Burgas Police Department. In order to execute the imposed compulsory administrative measure, monthly consultations were held with the person. On 25.03.2021 the foreign national filled in a declaration for voluntary return. The applicant made personal contact with representatives of the Embassy of his country of origin, whereby he took action to issue a passport, but there was no decision on that issue at the time. As of 21.02.2023, the applicant was with unidentified national identity and had not been issued with an identity document. On the basis of a registration card issued to him by the SAR, he had asylum seeker status. At the time of providing the information on 21.02.2023, there were no applications registered with the Migration Directorate - MoI by the applicant for granting the right of residence in the Republic of Bulgaria under the FA.

Following the judgment of the ACSC, the application for international protection was registered on 30.12.2021. The applicant wished to be accommodated and provided with shelter in the Registration and Reception center of the SAR, as he was unable to secure housing and food, he was homeless during the cold months, he did not have the right to work and hence, could not meet his basic living needs, including housing and food.

Attached is a statement dated 29.04.2022 of a Chief Expert "PMZ- Ovcha Kulel" at the MoI - Sofia, with a proposal to refuse the applicant a refugee status *and to* grant him *humanitarian one.*

Attached is an inquiry dated 29.03.2022 from the Central Criminal Records Bureau at the Ministry of Justice, according to which the applicant has 5 convictions in force, all for offenses under Article 354A, paragraph 1 or paragraph 3 of the Penal Code - for acquisition or possession of narcotic drugs or their analogues.

At an interview held on 06.01.2022, the candidate stated that he did not have a formal marriage but had two children born in F., whom he had not legally recognized as his own because he did not have an identity document. Asked about his request to Bulgaria, he replied "I just want to live normally."

The appealed Decision of the Deputy Chair of the SAR was issued, which ruled that on the basis of Article 75, paragraph 1, points 2 and 4, in conjunction with Article 8 and Article 9 of the LAR, the granting of refugee status and humanitarian status was refused, as the applicant's reasons did not constitute a well-founded fear of persecution or a real risk of serious harm. The administrative authority held that the personal reasons cited, relating to integration into the Bulgarian society, could not constitute grounds for granting humanitarian status within the meaning of Article 9, paragraph 8 of the LAR. The Court cited a criminal record inquiry,

according to which the foreigner had been convicted several times in the country, which proved his lack of integration into the Bulgarian society and his recidivism. The prolonged stay in the country and the impossibility to return to his country of origin were not grounds for protection under the LAR but could justify a request for administrative status under the FA.

II. Applicable legal provisions

A. International law

The Convention relating to the status of refugees, adopted on 28.07.1951 in Geneva by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened pursuant to United Nations General Assembly resolution 429 (V) of 14.12.1950 (hereinafter referred to as the "Geneva Convention").

Preamble

The High Contracting Parties

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on the 10th of December 1948, reaffirm the principle that all people shall enjoy fundamental rights and freedoms without discrimination,

Expressing the wish that all States, recognizing the social and humanitarian nature of the refugee problem, will do everything within power to prevent tensions between States arising from this problem…

Convention for the Protection of Human Rights and Fundamental Freedoms

Article 1, "Obligation to respect Human Rights"

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention

Article 3, "Prohibition of torture"

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8, paragraph 1

"Everyone has the right to respect for their private and family life, his home, and his correspondence."

B. **European Union Law**

Treaty on the Functioning of the European Union C 202, 7.6.2016, pp. 1-388, Celex number: 12016E.

Article 78, paragraph 1: "The Union shall develop a common policy on asylum, subsidiary protection and temporary protection, with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967, and other relevant treaties."

Charter of the Fundamental Rights of the European Union, OJ C 326, 26.10.2012, pp. 391-407, Celex number: 12012P/TXT.

Article 1: "Human dignity is inviolable. It must be respected and protected."

Article 4: "No one shall be subjected to torture, inhuman or degrading treatment or punishment."

Article 7: "Everyone has the right to respect for their private and family life, home and communications."

Article 18: "The right of asylum shall be guaranteed with due respect to the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.'

Directive 2011/95/EC 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, the uniform status for refugees or as persons eligible for subsidiary protection and the content of the protection granted, *Official Journal of the European Union 2011, p. 1. L OB. No. 337 of 20 December 2011,* OBL 337, 20.12.2011, pp. 9-26, Celex number: 32011L0095.

Recital (15) Those third-country nationals or stateless persons who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds fall outside the scope of this Directive.

Recital (16) This Directive respects fundamental rights and observes the principles recognised in particular in the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the human dignity and the right to asylum of asylum seekers and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of the said Charter, and should therefore be implemented accordingly.

Recital (34) It is necessary to introduce common criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.

Article 2, a: “international protection” means refugee status and subsidiary protection status as defined in paragraphs (e) and (g);

b. "a person who has eligible conditions for subsidiary protection" means a third-country national or a stateless person who does not qualify as a refugee but for who there are substantial grounds for believing that, if sent back to their country of origin or, in the case of a stateless person, to the country of their former habitual residence, would be exposed to a real risk of serious harm within the meaning of Article 15, and to whom Article 17, paragraphs 1 and 2 do not apply, and who are unable or, owing to such risk, unwilling to receive the protection of that State;

(h) ‘application for international protection’ means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately

Article 3. More favorable standards

"Member States may introduce or retain more favorable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection and for determining the content of international protection, as long as these standards are compatible with this Directive."

Article 15. Serious harm consists of:

(a) the death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment inflicted on the applicant in the State of origin; or

(c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Directive 2013/32/EC of the European Parliament and of the Council of 26.06.2013 on common procedures for granting and withdrawing international protection (OBL 180, p. 60).

Article 2, item p " ‘remain in the Member State’ means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined;

Article 9. "Right to remain in the Member State pending examination of the application":

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. That right to remain shall not constitute an entitlement to a residence permit.

2. Member States may make an exception only where a person makes a subsequent application referred to in Article 41 or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant (2) or otherwise, or to a third country or to international criminal courts or tribunals.

Directive 2008/115/EC of the European Parliament and of the Council of 16.12.2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OBL 348, 24.12.2008, p. 98-107, Celex number: 32008L0115).

Recital (8) It is recognised that it is legitimate for Member States to return illegally staying third-country nationals, provided that fair and efficient asylum systems are in place which

fully respect the principle of non-refoulement.

Recital (9) In accordance with Council Directive 2005/85/EC of 1.12.2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, a third-country national who has applied for asylum in a Member State should not be regarded as

staying illegally on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force. Recital (12) The situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the

event of administrative controls or checks, such persons should be provided with written confirmation of their situation.

Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive

Recital (24) The current Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

Article 3, item 2: "illegal stay" means any presence on the territory of a Member State of a third-country national who does not fulfill or no longer fulfills the conditions as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State;

Article 4, paragraph 3: This Directive shall be without prejudice to the right of the Member States to adopt or maintain provisions which are more favorable to the persons to whom it applies, provided that such provisions are compatible with this Directive.

Article 6, paragraph 1: Member States shall issue a return decision to any third-country national who is staying illegally in their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.

Article 6, paragraph 4: Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In that event no return decision shall be issued. Where a repatriation decision has already been issued, it shall be withdrawn or suspended for the duration of the validity of the residence permit or other authorisation offering a right to stay.

Article 14: Safeguards pending return

Paragraph 1: Member States shall, with the exception of the situation covered in Articles 16 and 17, ensure that the following principles are taken into account as far as possible in relation to third-country nationals during the period for voluntary departure granted in accordance with Article 7 and during periods for which removal has been postponed in accordance with Article 9.

Paragraph 2: Member States shall provide the persons referred to in paragraph 1 with a written confirmation in accordance with national legislation that the period for voluntary departure has been extended in accordance with Article 7(2) or that the return decision will temporarily not be enforced.

B . **National Law**

Law on Asylum and Refugees (LAR)

Article 1A, para (1) (new - SG 80/2015, in force from 16.10.2015) The Republic of Bulgaria shall grant, in accordance with the provisions of this law, international protection and temporary protection.

Para (2) International protection shall be granted in accordance with the Convention relating to the status of refugees, composed in Geneva on the 28th of July 1951, and the Protocol relating to the status of refugees from 1967, ratified by Decree (State Journal 36/1992; Supplement No 30

of 1993), of the international human rights acts and this law, and shall include refugee status and humanitarian status.

Article 8, para (1) (amend. - SG 80/2015, in force from 16.10.2015) Refugee status in the Republic of Bulgaria shall be granted to a foreigner who, due to a well-founded fear of persecution for reasons of their race, religion, nationality, political opinion or belonging to a particular social group, is outside their country of origin and for these reasons is unable or unwilling to enjoy the protection of that country or to return to it.

Article 9, para (1) (amend. - SG 52/2007) (amend. SG 80/2015, in force from 16.10.2015) Humanitarian status shall be granted to a foreigner who does not meet the requirements for refugee status and who is unable or unwilling to obtain protection from his/her country of origin because he/she may be exposed to a real risk of serious harm, such as:

1. death penalty or execution, or

2. torture, inhuman or degrading treatment or punishment, or

3. serious threats against the life or person of a civilian due to indiscriminate violence in the event of armed international or internal conflict.

para (8) Humanitarian status may be granted for other reasons of a humanitarian nature as well as for the reasons stated in the conclusions of the Executive Committee of the United Nations High Commissioner for Refugees.

Article 29, paragraph 1 (revision up to SG 52/29 June 2007) Until the entry into force of the decision under Article 70, paragraph 1, points 1 and 2, Art. 75, paragraph 1 or Article 78, the foreigner seeking protection shall be entitled to:

1. an interpreter or translator registered with the State Agency for Refugees, when he or she does not know Bulgarian;

2. obtain a temporary refugee identity card;

3. of shelter and food at transiting or registration and reception center;

4. of social assistance, psychological support, health insurance, accessible healthcare, and free medical care in the order and in the amount determined for Bulgarian citizens.

Para (2) The accommodation referred to in paragrpah 1, point 3 shall be carried out by the State Agency for Refugees in a center or other accommodation location after an assessment of the

health, family and financial situation of the foreigner under the conditions and in the manner determined by the Chairman of the State Agency for Refugees.

Article 29, para 1 (amend. - SG 52/2007) The foreigner shall have the right to:

1. remain on the territory of the Republic of Bulgaria;

2. (new - SG 80/2015, in force from 16.10.2015, amendment - SG No. 97 of 2016) to move within the designated area on the territory of the Republic of Bulgaria;

3. (former point 2 - SG 80/2015, in force from 16.10.2015) to shelter and food;

4. (former point 3 - SG 80/2015, in force since 16.10.2015) of social assistance in the order and in the amount determined for Bulgarian citizens;

5. (former point 4 - SG 80/2015, in force from 16.10.2015) to health insurance, accessible healthcare and free access to medical care under the conditions and in the order for Bulgarian citizens;

6. (former point 5 - SG 80/2015, in force from 16.10.2015) of psychological assistance;

7.(former point 6 - SG 80/2015, in force from 16.10.2015) to obtain a registration card;

8. (former point 7 - SG 80/2015, in force from 16.10.2015) to an interpreter or translator.

(3) (amend. 80 of 2015, in force from 16.10.2015, amend. SG 33/2016, in force from 21.05.2016, amend. - SG No. 97 of 2016) The foreigner shall have the right to access the labor market, including to participate in programmes and projects financed by the state budget or under the international or European funding, if the proceedings are not completed within three months from the submission of his/her application for international protection due to reasons beyond his/her control.

(4) The foreigner shall be placed in transit, registration and reception center or another place of accommodation by the State Agency for Refugees after an assessment of the health, family and financial situation of the foreigner under the conditions and in the manner determined by the President of the State Agency for Refugees. The foreigner shall undergo a medical examination and tests and shall remain in quarantine until the results are known. The medical examination shall determine whether the foreigner seeking international protection belongs to a vulnerable group and whether he/she has special needs.

(5) (amend. from SG No. 52/29.06.2007 until SG No. 80/16.10.2015) The rights under para (1) points 2 and 3 *shall not be* granted *to a* foreigner who does not belong to a vulnerable group, and:

1. filed a subsequent application for a granting of status;

2. the proceedings on their application for status have ceased.

(7), (former para (5), amend. - SG 80/2015, in force from 16.10.2015, amend. - SG 101/10/2015, amend. - The *rights* under item (*1), points 3 and 4 shall not be granted to a foreigner with an admitted subsequent application for international protection,* except for *persons belonging to a vulnerable group.*

Article 40, para 1 (amend. - SG 5 2 /2007) The following types of documents shall be issued to foreigners seeking or granted protection:

1. registration card;

2. card of a foreigner granted asylum;

3. refugee card;

4. card of a foreigner with humanitarian status;

5. a travel certificate to travel abroad for a foreigner who has been granted asylum;

6. a refugee's foreign travel certificate;

7. certificate to travel abroad for a foreigner with humanitarian status;

8. certificate of return to the Republic of Bulgaria of a foreigner;

9. transfer authorization.

Para (3) The registration card does not certify the identity of the foreigner.

Section III. Procedure for preliminary examination of a subsequent application for international protection (New - SG 101/2015)

Article 76a, (new - SG 101/2015, amend. - SG 89/2020) Before proceeding to the examination of the merits of a subsequent application for international protection, its admissibility pursuant to Article 13 paragraph 2 shall be assessed.

Article 76c, (New - SG 101 /2015)

(1) (amend. - SG 89/2020)

In the case of proceedings under this section, foreigners shall enjoy the rights referred to in Article 23, item 1, article 29, item 1 and Article 29a.

(2) The procedure under this section shall not confer the rights referred to in Art. 1 item 1 to a foreigner when he/she:

1. (amend. - SG 97/2016) submits a first subsequent application for international protection solely for the purpose of delaying or hindering the execution of the coercive administrative measure imposed on his/hers "withdrawal of the right of residence in the Republic of Bulgaria", "return" or "expulsion", or

2. submits another subsequent application for international protection, and his/her previous subsequent application is deemed inadmissible under Art. 76b, item 1, point 2 or has been examined on the merits, and for whom return to his/her country of origin or to a third safe country would not entail a threat to his/her life or to his/her liberty on grounds of race, religion, nationality, political opinion or membership of a particular social group, or expose him/her to the risk of torture or other cruel, inhuman or degrading treatment or punishment.

3. *The rights under Art.29, item1, points 3-7 shall not be granted to a foreigner who is in the procedure of preliminary examination of a subsequent application for international protection.*

The Law for Foreigners' in the Republic of Bulgaria (FA)

Article 9e. (New - SG 29/2007, amend. and suppl. - SG, 9/2011, amend. - SG, 97/2016) As an exception, where it is required by the state interest, by exceptional circumstances or humanitarian reasons, the border control authorities at the border crossing points may issue single-entry visas for short-term stay with validity and authorized period of stay for up to 15 days.

Article 9h, para 1 (New, SG 9/2011, amend. SG 97/2016) Where the visa applicant has not presented a regular passport or a regular travel document in lieu thereof, or has refused to have his/her biometric data collected, or the visa fee has not been paid, the visa application shall be inadmissible.

Para (4) Except where the requirements under item 1 are not fulfilled, the application may be admissible where there are reasons of a humanitarian nature or the public interest so required.

Article 10, para (2) AA (amend. - SG 9 / 2011) In the cases under item 1, a visa may be issued or entry into the territory of the Republic of Bulgaria may be permitted for *humanitarian reasons* or where this is necessitated by State interest or by the implementation of international obligations.

Article. 22. (1) The residence of foreigners in the Republic of Bulgaria shall be based on:

1. (amend. - SG 29/2007, amended and supplemented - SG 97/2016) visa under Article 9a,

2, points 3 and 4;

2. (amend. and supplemented - SG 97/2016) international agreements or treaties of the European Union with third countries on a visa-free regime;

3. (new - SG 97/2016) acts of European Union law which are in force and applied by the Republic of Bulgaria;

4. (former point 3 - SG 97/2016) permission of the authorities for administrative control of foreigners.

Article 23. (amend. - SG 97/2011) (1) Foreigners shall reside in the Republic of Bulgaria:

1. (amended, SG No. 23/2013, SG No. 97/2016) **short-term** - up to 90 days within each 180-day period from the date of entry into the country;

2. (suppl. - SG 97/2017) **on a continuous basis** - for a period not exceeding one year, except in the cases provided for in this law;

3. **Long-term** - with an initial period of 5 years and the possibility of renewal after an application has been lodged;

4. **Permanently** - authorized indefinitely

Article 14, para 1 A short-stay visa may be issued to a foreigner who intends to transit through the territory of the Republic of Bulgaria or to stay on its territory for a short period of up to 90 days within each 180-day period.

Para 5 The short-stay visa may be issued for multiple entries and with a validity period of up to 5 years when the foreigner:

Point 1. holds a valid travel document which entitles him/her to enter into the territory of the Republic of Bulgaria, issued within the last 10 years and valid for at least three months after the planned date of departure from the territory of the Republic of Bulgaria, except in exceptional circumstances or for humanitarian reasons;

Article 27, para 1 (amend. - SG 97/2016) The validity period of a short-stay visa and its permitted length of stay may be extended once by the administrative control authorities for foreigners for reasons of a humanitarian nature, in exceptional circumstances or in the case of state interest by affixing a personalized visa sticker and a stamp of the issuing authority in the passport or a replacement residence document in accordance with the procedure laid down in the regulations for the implementation of the law.

Para (2) The period of residence of persons who have entered the country under the visa-free regime may be extended once by the authorities of administrative control of foreigners for humanitarian reasons related to exceptional circumstances or in the case of state interest in accordance with the procedure established by the regulations for the application of the law.

Article 28a, para 1, (New - SG issue 42/2001, amend. - SG 34/2019, in force as of 24.10.2019) Unaccompanied foreign children, as well as foreigners under the age of 18 who have entered the territory of the Republic of Bulgaria with an accompanying person but have been abandoned by him/her, who have not requested protection under the Law on Asylum and Refugees or whose asylum applications were rejected with a final decision, may be granted only continuous residence permit on the territory of the Republic of Bulgaria until they reach the age of maturity. The permit shall be issued in accordance with the procedure laid down in the regulations for the implementation of the law.

Para (2) After the foreigners referred to in paragraph 1 have reached the age of maturity, they may be granted continuous residence permit on humanitarian grounds.

Article 44b, para 1 (new - SG 42/2001, previous text of Article 44b - SG 52/2007, amend. – SG 97/2016) Where the immediate expulsion or return of a foreigner is impossible or the execution of these measures has to be postponed due to legal or technical reasons, the authority which issued the order for the execution of the coercive administrative measure shall postpone its execution for a period until the obstacles to its implementation are removed.

Para (2) (New, SG 52/2007, amended, SG 97/2016) Where, after the expiry of the temporary protection period under the Law on Asylum and Refugees, the expulsion or return of a foreigner is impossible or the implementation of these measures must be postponed for reasons of a health or humanitarian nature, the authority which issued the order for the application of the administrative measure shall postpone its implementation until the obstacles to its implementation are removed.

Point 16 of the Additional Provisions (new SG 97/2016) "Humanitarian reasons" exist when the non-admission or departure from the territory of the Republic of Bulgaria of a foreigner would create a serious danger to his/her health or life due to the existence of objective circumstances, or to the integrity of his/her family, or the best interests of the family or the child require his/her admission or stay on the territory of the country.

Regulations for the Implementation of the Law for Foreigners in the Republic of Bulgaria

Article 3, Para 1 (amend. - SG 51/2017, in force since 27.06.2017)

A foreigner, who does not meet the requirements for entry to the Republic of Bulgaria *shall not be admitted into the country* by the border control authorities. For the refusal, a single standard

form for refusal of entry at the border shall be filled out, in accordance with Part "B" of Annex V of Regulation (EO) № 2016/399 of the European Parliament and of the Council of 9 March 2016 on the Union Code on the regime governing the movement of persons across borders (Schengen Borders Code) (OJL 77, 23.3.2016, pps. 1 - 52).

Para 2 (amend. - SG 51/2017 in force from 27.06.2017) In case a foreigner, for whom a refusal of entry signal has been submitted in the Schengen Information System, is allowed to enter the country for humanitarian reasons or when this is required by the state interest or by the implementation of inter-country treaties to which the Republic of Bulgaria is a party, the Border Control Authorities shall inform the Directorate for International Operational Cooperation of the Ministry of the Interior (MOI), which shall inform the States implementing the Schengen legislation.

Article 11, para 1 (amend. - SG 51/2017, in force from 27.06.2017) In case of exceptional circumstances, in the presence of humanitarian reasons or in the state interest, the services for the administrative control of foreigners may extend the validity period of a short-stay visa and the period of residence authorized by it once in accordance with the procedure laid down in Article 27, paragraph 1, item 1 of the AA by affixing a personalized visa sticker and the stamp of the issuing authority in the passport or in the replacement travel document.

Para (2) In exceptional circumstances, for humanitarian reasons or in the public interest, the administrative control authorities for foreigners may extend the period of residence of foreigners who have entered the country under the conditions of a short-term residence under a visa-free regime.

Para (3) For the *extension of the validity period of a* short-stay visa and of the period of residence authorized by it under para 1 or of the term for residence under para 2, the foreigner shall submit a personal application in accordance with Annex № 2 to the Migration Directorate of the MOI or to the Migration Sectors and Groups of the Ministry of Internal Affairs before the expiry of the authorized period of residence, to which he/she shall attach:

1. his/her passport or other relevant travel document and a copy of the pages with the photograph, personal data, the stamp of the border control authorities at the last entry into the Republic of Bulgaria and, where relevant, the visa held;

2. documents substantiating the existence of exceptional circumstances or humanitarian reasons within the meaning of para s 1 and 2;

3. evidence of stable, regular, foreseeable, and sufficient means of subsistence, housing and medical insurance for the duration of the requested extension of the visa and residence in the country.

The Bulgarian ID Act

Article 14, para 1 (amend. - SG 82 / 2009) The following identity documents shall be issued to foreigners residing in the Republic of Bulgaria:

1. refugee card;
2. card of a foreigner granted asylum;
3. card of a foreigner with humanitarian status;
4. temporary card of a foreigner;
5. a refugee's foreign travel certificate;
6. an asylum seeker's foreign travel certificate;
7. a foreign travel certificate of a foreigner with humanitarian status;
8. a stateless person's foreign travel certificate;
9. a temporary certificate of exit from the Republic of Bulgaria;
10. a certificate of return to the Republic of Bulgaria of a foreigner

Article 55, para 1 (amend. - SG 82/2009) (amend. - SG 58/2019) Every foreigner who has been granted asylum, refugee status or humanitarian status under the terms and conditions of the Law on Asylum and Refugees shall be issued a Bulgarian identity document within 30 days in the case of ordinary service and within 10 working days in the case of expedited service.

Para (3) Any foreigner who is allowed to reside in the Republic of Bulgaria under the terms and conditions of the Aliens Act for a period of more than three months shall be issued a residency permit in accordance with Regulation (EC) № 1030/2002.

Article 57, para 1 (amend. - SG 82/2009) Foreigners who are allowed to reside in the Republic of Bulgaria under the conditions and in accordance with the procedure of the Aliens Act in the Republic of Bulgaria shall identify themselves with a travel document and certify their right of residence with a residence permit in accordance with the requirements of Regulation (EC) № 1030/2002.

Para (2) (Amended by - SG 54/2002, in force from 01.12.2002 , amend.- SG issue 52/2007 - Stateless persons and foreigners granted asylum, refugee status or humanitarian status under the Law on Asylum and Refugees may certify their identity only by means of a Bulgarian identity document.

II. **Grounds for referring the case to a preliminary ruling**

The Administrative Court Sofia-City (ACSC) considers that the necessary conditions for a reference to a preliminary ruling to the CJEU are present.

Admissibility of the request: The factual and legal background of the case falls within the scope of the EU law - Article 78, paragraph 1 TFEU, Directive 2011/95/EU and Directive 2008/115/EC. There is no judgment of the CJEU on identical issues to those in the present proceedings, which to aid the Administrative Court Sofia-city to resolve the dispute before it concerning the existence of grounds for international protection of a humanitarian character.

Reasons:

I. Refugee status and subsidiary protection:

According to the Court, there are no to grant refugee status to the applicant under Article 8, paragraph 1 of the LAR or humanitarian status under Article 9, paragraph 1 of the LAR. Authorizations granting the possibility of subsidiary protection are excluded by means of a forensic medical examination on the grounds of the person's alleged deterioration of his/her health, which prevent his/her continued travel to the country of origin. It is the latter circumstance that is accepted as new within the meaning of Article 33, paragraph 2b "d" of Directive 2013/32/EU, accordingly, it gave grounds to the ACSC Chamber to annul the previous Decision of the interviewing authority at SAR-CM on the inadmissibility of the subsequent, 11th asylum application. This Chamber of the ACSC has given instructions for the examination of the deteriorated state of health of the person and its consideration in relation to applying the principle of non-refoulement as defined in Article 33 of the Geneva Convention, Article 19, paragraph 2 of the CFREU and Article 21, paragraph 1 of Directive 2011/95/EC. The present ACSC Chamber agrees with the view that this principle cannot have a different content in the assessment of an application for international protection from its regulation and interpretation given in Directive 2008/115/EC, especially since its violation may raise issues as to the application of Article 3 ECHR and Article 4 in conjunction with Article 1 of the Charter.

According to the Respondent, the applicant has been subject to international protection proceedings since 09.10.1997. The periods of registration with the SAR on the basis of asylum applications are as follows: from 09.10.1997 to 31.03.2000, from 09.03.2004 to 08.02.2005, from 19.12.2006 to 13.07.2007, from 22.11.2007 to 22.02.2008, from 05.08.2008 to 18.08.2008, from 26.11.2008 to 21.01.2009, from 25.03.2009 to 25.05.2009, from 14.07.2009 to 24.04.2014, from 02.10.2014 to 02.12.2021 and from 30.12.2021 to the present moment.

The periods in which the person was not in asylum proceedings are from: 01.04.2000 to 08.03.2004, from 09.02.2005 to 18.12.2006, from 4.07.2007 to 21.11.2007, from 23.02.2008 to 04.08.2008, from 19.08.2008 until 25.11.2008, from21.01.2009 until 24.03.2009, from

6.05.2009 until 13.07.2009, from 25.04.2014 until 01.10.2014 and from 03.12.2021 until 29.12.2021.

Taking into account the significant duration of the foreigners' stay in Bulgaria, which in July 2023 will reach 27 years, during which he does not possess an identity document within the meaning of the Bulgarian Identity Documents Act, and during a significant part of this stay is also without basic material guarantees for life in violation of Article 14 of Directive 2008/115, the Court considers that the applicant's situation at the present time is similar to that described in the judgments of the CJEU from 19.03.2019 in the Case Jawo (C-163/17, EU:C2019:218, para 92) and from 19.03.2019 in Case lbrahim and others (C-297/17, C-318/17, C319/17 and C-438/17 C:2019:219, para 90) and ECtHR Judgment of 21 January 2011 in M.S.S. v. Belgium and Greece CE:ECHR:2011:0121JUD003069609: " this person "because of the indifference of the authorities of [that] Member State" is "wholly dependent on public assistance [...] [and the same] would, regardless of his/her will and personal choice, find him/herself in a situation of extreme material destitution, unable to satisfy his/her most basic needs, in particular food, personal hygiene and a home, which would impair his/her physical or mental health or lead to a deterioration of his/her situation incompatible with human dignity".

The ECtHR has repeatedly reaffirmed its approach (e.g. in Pretty v. United Kingdom) whereby: "suffering due to a naturally occurring illness may fall within the scope of Article 3 ECHR if it appears to be exacerbated, or is in danger of being exacerbated, by treatment resulting from conditions of detention, from expulsion or from other measures for which the authorities may be held responsible".

The specificity of the present proceedings is not the existence of measures taken by a Member State, but their absence - the national legislation allows a third- country national to stay in the country without a document confirming his/her status for an extremely long period of time (27 years).

In *D. v. United Kingdom*, the ECtHR emphasized that although foreign nationals subject to an expulsion order could not in principle claim that they had a right to remain in the territory of the host state in order to continue to benefit from the medical and social care provided by that state, the violation of Article 3 ECHR was justified by the "very exceptional circumstances" and the "imperative humanitarian considerations".

The present Chamber finds that the applicant’s situation is different from that dealt with in the cited case-law of the ECtHR and the CJEU, in so far as the question of the assessment and the measures to be taken by the competent national authorities in respect of him is not one of persecution in the country of origin or of the risk of serious harm if he were returned there, but whether there is a basis in international law (Article 3 ECHR) or European Union law for settling the status of the foreign national in Bulgaria by granting him international protection for “reasons

of a humanitarian character", including the length of his uninterrupted stay in Bulgaria which (according to the Court) is in violation of Articles 1 and 4 of the Charter.

The present chamber did not find practice of the Court of Justice of the European Union (CJEU) on the interpretation of Directive 2011/95 relevant to the case of the applicant, who claims subsidiary protection on the basis of Article 9, para 8 of the LAR, given his specific situation in Bulgaria and not in his country of origin. The Court must examine the applicant's situation in the light of his alleged violation of his fundamental rights (under Articles 1, 4 and 7 of the Charter) connected to the extremely long continuity of his residence in Bulgaria without a regulated status, including without an identity document. The applicant rightly raises the question in that connection - in the event of the foreign national's death, with what identity document will he be buried, or how, during that prolonged period, is his ability to enter a rental contract in order to arrange for shelter or a work contract in order to secure his means of subsistence.

It should be noted that this case is not unique for Bulgaria. For example, Administrative Case No. 5236/2021 of the ACSC concerns the case of the rejected as inadmissible application for international protection of Mr. I., who has been identically residing in Bulgaria since 1993. Another Administrative Case of the ACSC concerns the case of accompanied minor A., born in Bulgaria from a mother - an applicant for international protection, whose child has not been issued an identity document in Bulgaria. Should this child, if not displaced from Bulgaria, live for the next 30 years in the situation of the current applicant or Mr. I.? Is there a legal possibility for him to enter into a civil marriage?

It refers to individuals who had spent their conscious life in Bulgaria without the State issuing them with any identity document, i.e. without actually and de facto settling their legal status by recognizing their rights related to the possibility of legally securing their shelter and livelihood, and thus a decent life within the meaning of Article 1 of the of the Charter, without being subjected to inhuman or degrading treatment in violation of Article 4 of the Charter and Article 3 ECHR, in particular by guaranteeing them the right to privacy in accordance with Article 7 of the Charter and Article 8 ECHR.

The questions raised by the present dispute, according to the Chamber, are - does the inaction/indifference of the national authorities to regulate, in accordance with the existing national legal framework, over a prolonged period of time (27 years) the status of a third-country national on the territory of Bulgaria, constitute a violation of Article 1 of the Charter, of Article 4 of the Charter and Article 3 of the ECHR, of Article 7 of the Charter and Article 8 of the ECHR, as alleged by the applicant?

In the event that violations of Articles 1 and 4 of the Charter are found in the situation of a third-country national identical to that of the applicant, in the absence of a national provision granting the right of residence on 'humanitarian grounds' and in the absence of a mandatory obligation under Article 6, paragraph 4 of Directive 2008/115 to introduce such a clause, do those

infringements constitute 'imperative humanitarian considerations' which give reasons to interpret the national provision in Article 9, paragraph 8 of the LAR for the grant of 'humanitarian status' in accordance with Recital (15) of the Preamble and Article 2b(h) of Directive 2011/95, i.e. as "another type of protection" left entirely to the discretion of the Member State?

If violations of Article 1 and Article 4 of the Charter and Article 3 of the ECHR, of Article 7 of the Charter and Article 8 of the ECHR are established and they constitute

"imperative humanitarian considerations", insofar as some of the guaranteed rights are of an absolute nature, how should this circumstance be taken into account under the current national legal framework in Bulgaria - by granting subsidiary protection under Directive 2011/95 under the national provision of Article 9, paragraph 8 of the LAR or the right of residence on humanitarian grounds within the meaning of Article 6, paragraph 4 of Directive 2008/115 (which possibility is not provided for in the national legislation), but in the light of the assertions of the defendant administrative authority of the SAR, that the legal situation of the foreign national is governed entirely and solely by the FA.

II. Excluding the application of the FA "on humanitarian grounds" regarding the applicant:

1. The foreign national has already entered Bulgaria irregularly and is staying illegally, except for the periods of examination on the merits, and not on the admissibility, of his applications for protection under the LAR. For these reasons, the Court holds inapplicable to his case the provisions of Article 9e of the FA - issuance of a single-entry visa for short- term stay on humanitarian grounds; Article 9h of the FA - issuance of an entry visa on humanitarian grounds; or Article 10, para 2 of the FA - issuance of a visa or authorization to enter the territory of the Republic of Bulgaria on humanitarian grounds.

This is because the applicant is already on our territory, and it is therefore unthinkable that he should apply for a visa or residency in his situation. This circumstance is established by the statements of the person himself - he has not submitted any documents to settle his right of residence in Bulgaria and this is confirmed by a letter dated 21.02.2023 of the Migration Directorate - MOI.

Article 27 of the FA, read in conjunction with Article 11 of the LAR, is inapplicable, as the applicant has no visa or residence permit that has been issued and whose period of stay is to be extended.

Article 28a of the LAR is inapplicable, as he is not an unaccompanied foreign child nor a foreigner under the age of 18 who has entered the territory of the Republic of Bulgaria accompanied by an adult.

The applicant does not meet the requirement under Article 3, paragraph 2 of the LAR - he is not a foreigner for whom a refusal of entry alert has been lodged in the Schengen Information System in order to be allowed to enter the country on humanitarian grounds.

In the Court's view, the conclusion is that the national legislation does not contain a provision regulating the applicant's stay/residence on the territory of the country on humanitarian grounds within the meaning of Article 6, paragraph 4 of Directive 2008/115. And if the latter provision does not oblige a Member State to regulate such a clause at national level, it should be noted that in Bulgaria, under the FA, the national legislation does not contain a provision which grants a foreign national in a situation such as that of the applicant the right to be granted written confirmation of his situation pursuant to Recital (12) of the Preamble or Article 14, paragraph 2 of Directive 2008/115.

Thus, the application of the FA and Directive 2008/115 to the case of the applicant is limited to the imposition of a coercive administrative measure - a return order to the country of origin. In the present case, Order of the Director of the Sofia Directorate of Internal Affairs (SDIA) imposing on the foreigner the measure of 'forced removal to the border' and Order of the Regional Directorate of Internal Affairs, Burgas city regarding the imposed CAM "Return to the country of origin" have been issued. These return decisions have apparently not been enforced.

There is no evidence that the implementation of the measures imposed against the foreign national have been postponed for the period until the obstacles to their implementation are removed or for reasons of health or humanitarian nature pursuant to Article 44b of the FA. However, even if such a postponement was to be granted, the question remains as to the lack of legal status and of documents certifying the identity of the person in violation of Recital (12) of the Preamble or Article 14, paragraph 2 of Directive 2008/115. The latter circumstance (lack of an identity document) applies, not only during the period of application of the FA to the person, but also during the period of application under the LAR. So far as the registration card issued to an asylum seeker does not certify his identity (Article 40, paragraph 3 of the LAR and Article 6, paragraph 3 of Directive 2013/33), i.e. for the entire conscious lifetime of the applicant, as he himself claims.

According to the applicant's explanations in open court hearing on 09.11.2022, everywhere in the country he was asked for documents and his SAR-issued card was not accepted.

2. With regards the application of the FA and Directive 2008/115, the Court takes into account the following case law of the CJEU and the ECtHR:

A. Judgment of the Court (Third Chamber) of 5 June 2014 in Case C-146/14 PPU, Bashir Mohamed Ali Mahdi, ECLI:EU:C:2014:1320; Evident from the purpose of Directive 2008/115, as recalled in paragraph 38 of the current judgment, that directive is not intended to regulate the

conditions of residence on the territory of a Member State of third-country nationals who are staying illegally and whose return decision cannot or has not been enforced.

However, Article 6, paragraph 4 of Directive 2008/115 allows Member States to grant a third-country national who is staying illegally on their territory an autonomous residence permit or another permit conferring the right to stay on humane, humanitarian or other grounds. Recital (12) of that Directive also provides that Member States should provide written confirmation of their situation to third-country nationals who are staying illegally but cannot yet be removed. Member States have discretion as to the model and format of the written confirmation.

In the light of the foregoing, the answer to the fourth question is that Directive 2008/115 must be interpreted as meaning that a Member State cannot be obliged to issue an independent residence permit or other authorization conferring the right to stay to a third-country national who does not have identity documents and has not obtained such documents from his country of origin after the national court has released him on the ground that there is no longer a reasonable prospect of return within the meaning of Article 15, paragraph 4 of the Directive. However, in such cases, that Member State must issue the national concerned with a written confirmation of his situation.

At present, there is no national legal framework for such written confirmation in Bulgaria and the Court is not aware of any practice of a competent administrative authority for the control of migration processes to issue such confirmation.

B. The judgment of the Court of Justice (Grand Chamber) of 22 November 2022 in Case C-69/21, EU:C:2022:913, recalls that the common standards and procedures laid down by Directive 2008/115 concern only the adoption of *return decisions and their implementation,* since that directive *does not* seek to harmonize the Member States rules on *residence* of foreign nationals. Therefore, the mentioned Directive does not regulate neither the manner in which third-country nationals must be granted the right of residence nor the consequences of the unlawful residence in the territory of a Member State of third-country nationals in respect of whom no return decision to a third country can be adopted.

With regards in particular to Article 6, paragraph 4 of Directive 2008/115, that provision only allows Member States to grant, on humane or humanitarian grounds, a right of residence on the basis of their national law, and not (on the basis of) EU law, to third-country nationals illegally staying on their territory. However, according to Article 51, paragraph 2 of the Charter, its provisions do not extend the scope of EU law. Therefore, it cannot be held that, under Article 7 of the Charter, a Member State may be obliged to grant a right of residence to a third-country national who falls within the scope of that directive.

C. It has to be acknowledged that Directive 2008/115 is silent on the legal consequences of a finding by the competent national authorities that the execution of return would result in a violation of the right of a third-country national to respect his or her privacy. In fact, no

provision of Directive 2008/115 regulates such consequences, as they are under the competence of the national legislator (paragraph 121 of Attorney General R. Pikamde's Conclusion submitted on 9.06.2022 in Case C-69/21, EU:C:2022:451).

D. The Court has already held that, when faced with an illegally residing third-country national, Member States are obliged to adopt a return decision in respect of him or her, as "it would be contrary to both the object of Directive 2008/115 [...] and the text of paragraph 6 of that directive, to tolerate the existence of an intermediate status for third-country nationals who are present in the territory of a Member State without a right or permit of residence [...] but in respect of whom there is no valid decision" (Judgment of 3.06.2021, Westerwaldkreis (C-546/19, EU:C:2021:432, paragraphs 56 and 57).

E. According to paragraph 56 Conclusion of Attorney General R. Mengozzi, delivered on 15 June 2017 in Case C-181/16 Gnandi, EU:C:2018:465 - However, as emphasized by the Commission in the hearing and as clarified in the Return Manual issued by that institution, from the point of view of Directive 2008/115, any third-country national who is physically present in the territory of a Member State resides there either legally or illegally. There is no third option.

On the basis of the foregoing and in the absence of a national humanitarian clause in Bulgaria in accordance with Article 6, paragraph 4 of Directive 2008/115, it is beyond doubt for the Court that any breach of Article 14, paragraph 2 of Directive 2008/115 or of Article 12 of that directive cannot entail an obligation for the Member State to grant a right of residence to a third-country national.

3. It is beyond doubt, however, that both the national legislature and the national judicial authority (Judgment of 19 November 1991, Francovich and Others (C-6/90 and C-9/90, EU:C:1991:428, paragraph 42, and the case-law cited) are called upon to ensure respect for fundamental rights, especially the absolute ones (Articles 1 and 4 of the Charter).

Since reliance on the Charter, and in particular on Article 7 thereof, in conjunction with Directive 2008/115, can in no way lead to the recognition of a right of residence arising under EU law, the Court asks itself the question:

What is the legal framework which governs the discretion and obligation of the competent national authorities to regulate the legal status of a foreign national in the applicant's situation in Bulgaria, with view to respecting his human dignity, avoiding degrading treatment and respecting his right to privacy, including:

A. Whether the prolonged residence without a settled status i a violation of Article 1, Article 4 and Article 7 of the Charter, in conjunction with Article 3 and Article 8 of the ECHR?

B. If it constitutes such a violation, how should it be taken into account when regulating the status of the foreign national in Bulgaria in accordance with the national legislation in force, so that the Member State does not commit violation of Article 1, Article 4 and Article 7 of the Charter, in conjunction with Article 3 and Article 8 of the ECHR?

4. The applicant has been residing in the Republic of Bulgaria since July 1996, i.e. by July 2023, those are 27 years, as he himself claims, of his conscious life.

Upon his illegal entry into our country and in order to settle his right to stay there, the applicant was forced to submit numerous applications for international protection under the LAR, without these being related to the nature and the meaning of this protection, as the competent national authority (SAR) and the Court have ruled on numerous occasions.

As stated above, the national legislation in the AA does not provide for any other possibility to regulate the residence status on "humanitarian grounds" of the illegally entered and staying third country nationals. The application of the AA to the applicant is limited to the imposition of a "return to country of origin" measure, which has not been implemented. Therefore, under both EU and national law, the submission of an application for international protection is the only legal possibility for the foreign national to obtain a "right to stay in the country" while his application for protection is being examined (Article 9, paragraph 1 of Directive 2013/32). However, this inevitable results in a large number of successive applications for international protection - in this case 11 in total.

5. The national legislation, in the matter of the AA, does not contain a provision granting the right of residence on humanitarian grounds, although these are explicitly defined in paragraph 1, point 16 of the Additional Provisions of the AA. There is no provision in the AA, adopted pursuant to Recital (12), Article 6, paragraph 4 or Article 14, paragraph 2 of Directive 2008/115, which grants the right to a written confirmation of the status of a foreign national who is illegally residing in Bulgaria but cannot be returned.

It must be concluded that the national regulation of the status of a foreign national on humanitarian grounds is contained only in the provision of Article 9, para 8 of the LAR. In its application, it is undisputed that the norms of EU law, specifically Recital (15), article 2, b. "h" and the more favorable clause of Article 3 of Directive 2011/95, the interpretation of which the present Chamber finds relevant to the present case.

III. Application of Directive 2011/95 harmonizing standards on the granting of international protection to third-country nationals and stateless persons by the Member States, on a uniform status for refugees or persons eligible for subsidiary protection and on the content of the protection granted on the European Union level.

By defining refugee and subsidiary protection status, the EU framework also allows for "other types" of international protection. The Court finds the basis for that conclusion in Recital (15) of the Preamble and Article 2b (h) of Directive 2011/95.

In Recital (15) of the Directive, the Union legislator has indicated that third-country nationals or stateless persons who are allowed to reside in the territory of the Member States not because of the need for international protection but on the basis of a judgment based on compassionate or humanitarian grounds do not fall within the scope of this Directive.

In the present case, the foreign national does not hold a residence permit, but his unsettled status is "tolerated" by the State, i.e., it has allowed him to reside on its territory with an unsettled status in the absence of written confirmation of his situation pursuant to Recital (12) of the Preamble or Article 14, paragraph 2 of Directive 2008/115.

By the provision of Article 2b. "h" of the Directive, the Union legislature allows a person to explicitly request "another type of protection outside the scope of this Directive which may be the subject of a separate application". Obviously, the Union Act provides for the possibility for a Member State to provide in its national legislation for 'another type of protection', including for reasons of a humanitarian nature which does not fall entirely within the scope of Directive 2011/95.

On the other hand, the provision of Article 3 preserves the possibility for Member States to establish at national level more favorable standards for determining a person as a refugee or as a person eligible for subsidiary protection, provided that these standards are compatible with this Directive.

It remains unclear to the Court whether the two statutory hypotheses are two distinct and separate independent possibilities for the introduction of national regulation or whether they are a single such possibility. In other words, whether it is possible for a Member State to introduce national regulations to provide protection, based on compassion and humanitarian grounds which has no connection with the nature and grounds of Directive 2011/95 under Recital (15) and Article 2b (h) of Directive 2011/95, or, nevertheless, the settled national possibility of providing protection on "humanitarian grounds", such as that in Article 9, para 8 of the LAR, must be compatible with the standards of international protection at EU level under Article 3 of Directive 2011/95?

IV. The Court doubts that the humanitarian grounds set out in Article 9, para 8 of the LAR are relevant to subsidiary protection status as set out in Article 15 of Directive 2011/95 and Article 9, para 1 of the LAR. Notwithstanding the fact that in Bulgaria subsidiary protection is referred to as "humanitarian status", the Court finds that the grave violations referred to in Article 15 of Directive 2011/95 and Article 9, para 1 of the LAR are exhaustively regulated and do not

require an expansive interpretation in "humanitarian aspect", all the more so because they are relevant to the country of origin.

In this regard, the Court considers the following case-law of the Court of Justice of the European Union:

1. Judgment of the Court (Grand Chamber) of 18 December 2014 in Case C- 542/13, Mohamed M'Bodj v Etat Belge, ECLI:EU:C:2014:2452, according to which Mr M'Bodj was granted indefinite leave to remain in Belgium on account of his state of health.

Bulgarian legislation does not regulate this type of residence permit. The foreign national does not hold a residence permit for "humanitarian reasons", nor is there a national legal framework based on which to obtain a residence permit on humanitarian grounds.

In the M'Bodj judgment, it was recalled that the three types of serious harm set out in Article 15 of Directive 2004/83 constitute the conditions that must be met in order for a person to be granted subsidiary protection when, under Article 2e of the Directive, there are serious and substantiated grounds for believing that the applicant would be in real danger of being subjected to such harm if returned to the country of origin (Decisions Elgafaji, C-465/07, EU:C:2009:94, paragraph 31 and Diakitj, C-285/12, EU:C:2014:39, paragraph 18).

It is clear from this provision that it applies only to inhuman or degrading treatment of the applicant in his/her country of origin. It follows that the EU legislature has provided for the grant of subsidiary protection only in cases where those types of treatment are present in the applicant's country of origin.

These conclusions are confirmed in paragraph 46 of the reasoning of the decision of the Court in M'Bodj - Granting by a Member State of such a national protection status on grounds other than the need for international protection within the meaning of Article 2a of the Directive, that is to say at the discretion of the State, as an act of goodwill or for humanitarian reasons, does not fall within the scope of the Directive, as specified in Recital (9) thereof (judgment C and D, EU:C:2010:661, para. 118).

On the basis of this decision the CJEU, according to the present Chamber, we must conclude that the Member State's discretion, as a manifestation of good will or for humanitarian reasons, analogical to the national provision of Article 9, para 8 of the LAR, does not fall within the scope of Directive 2011/95, i.e. the standards set out therein must not be taken into account, as expressly stated in Recital (15) of the Preamble and Article 2b ‘h’ of Directive 2011/95. On the other hand, however, it remains unclear how Article 3 of Directive 2011/95 applies to the present case, namely, is it possible that this assessment is completely unrelated to the logic of international protection?

The current Court Chamber asks whether the Union's legal framework in Recital (15) of the Preamble and Article 2b(h) of Directive 2011/95 to grant protection "on imperative humanitarian grounds", which has no connection to the nature and basis of Directive 2011/95, to a third-country national in a situation such as that of the applicant, who has been allowed to reside in a Member State for 27 years without written confirmation of his legal status pursuant to Recital (12) of the Preamble and Article 14, paragraph 2 of Directive 2008/115 and without the possibility of obtaining a residence permit in Bulgaria "on humanitarian grounds".

2. Judgment of the Court (Grand Chamber) 24 April 2018 on Case C-353/16, ECLI:EU:C:2018:276: In this situation, the national jurisdictions have held that Directive 2004/83 is not intended to cover cases under Article 3 ECHR where the risk relates to health or the commission of suicide rather than persecution. It is clear from the reference for a preliminary ruling that the domestic courts have held that Article 3 ECHR does not allow MR to be sent back to Sri Lanka from the UK. Thus, the present case does not concern the protection against return which under Article 3 ECHR arises from the prohibition on subjecting a person to inhuman or degrading treatment, but something different, namely whether the host Member State is obliged to grant subsidiary protection status under Directive 2004/83 to a third-country national, who has been tortured by the authorities in his/her country of origin and whose severe mental health complications would be substantially aggravated, with a serious risk of suicide, if he/she were to be returned to that country.

The Court has already held that the fact that, in certain very specific cases, Article 3 ECHR does not allow a third-country national suffering from a serious illness to be returned to a country where no appropriate treatment is available does not mean that he must be allowed to reside in a Member State under the subsidiary protection of Directive 2004/83 (see, to that effect, judgment of 18 December 2014, M'Bodj, C-542/13, EU:C:2014:2452, paragraph 40).

According to the Court and in accordance with the case-law cited, it is concluded that international protection under Directive 2011/95 in its two forms - refugee status under Article 8, para 1 of the LAR and subsidiary protection under Article 9, para 1 of the LAR is inapplicable to the applicant's situation. The applicant does not allege a well-founded fear of persecution for the reasons set out in Article 8, para 1 of the LAR, nor does he have a real risk of being exposed to the grave harm in his country of origin defined in Article 9, para 1 of the LAR. It was pointed out that the only national provision in Bulgaria regulating the status of a third-country national on humanitarian grounds is Article 9, paragraph 8 of the LAR. The Court is in doubt as to how this national provision should be interpreted, including in the light of its systematic position - the last possible option under Article 9 of the LAR, which is set out in the last paragraph of the provision. Whether, as a wholly 'different type of protection' under Recital (15) of Preamble and Article 2b (h) of Directive 2011/95, which allow for national regulations that have no relation to the nature and grounds under Directive 2011/95, or should these national regulations still comply

with the standards of the international protection on EU-level regulation under Article 3 of Directive 2011/95?

However, the State's positive obligation to protect the applicant's fundamental rights, some of which are absolute in nature (Article 1 and Article 4 of the Charter), which he claims have been violated, is beyond doubt.

Having this doubt, the Court is hesitant whether it can find a basis for the application of a "humanitarian imperative clause" for subsidiary protection in international law or EU law, given the declared in the Preamble to the 1951 Geneva Convention relating to the Status of Refugees, purpose which recognizes the social and humanitarian nature of the refugee problem, and the objectives declared in Recital (16) and Recital (34) of the Preamble to Directive 2011/95.

III. **Fundamental Rights:**

1. According to the Judgment of the Court (Grand Chamber) of 19 June 2018 in Case C-181/16, Sadikou Gnandi v Etat Belge, ECLI:EU:C:20183465: As regards the necessity of complying with the requirements arising from the right to an effective remedy and the principle of non-refoulement, which is highlighted in the question referred by the referring court, it must be emphasized that the interpretation of Directive 2008/115, as well as that of Directive 2005/85, must be carried out, as is clear from Recital (24) of Directive 2008/115 and Recital (8) of Directive 2005/85, in full respect of the fundamental rights and recognised principles, namely those of the Charter (see in this respect, Judgment of 17.12.2015, Tall, C-239/14, EU:C:2015:824, paragraph 50).

2. Also in the Opinion of Attorney General M. Wathelet, submitted on 25 July 2018, Bashar lbrahim and Others v. Bundesrepublik Deutschland and Taus Magamadov, Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17, ECLI:EU:C:2018:617: In contrast to the circumstances of the cases in which the Judgments of 21 December 2011, N. S. and Others (C-411/10 and C-493/10, EU:C:2011:865), and on 16 February 2017, C. K, and Others (C-578/16 PPU, EU:C:2017:127), which relate, in the first case, to systemic deficiencies in the asylum procedure and reception conditions for asylum seekers and, in the second case, to the actual transfer of an asylum seeker, cases C-297/17, C-318/17 and C-319/17 concern the consideration of the situation that could arise following the granting of international protection in the competent Member State.

I consider that from paragraphs 253 and 254 of the ECtHR judgment of 21 January 2011 , M. S. S. v. Belgium and Greece, CE:ECHR:2011:0121JUD003069609, and from paragraph 80 of the judgment of 21 December 2011, N. S. and Others (C-411/10 and C-493/10, EU:C:2011:865), it follows, by analogy, that a Member State would violate Article 4 of the Charter if beneficiaries of international protection who are wholly dependent on public assistance encounter the

indifference of the authorities in such a way as to place them in a situation of deprivation or destitution which is so severe as to be incompatible with human dignity.

In the light of the cited CJEU case law, the present Chamber doubts how it should interpret both the national provision of Article 9, para 8 of the LAR and EU provisions providing for the possibility of "other types of protection" than that provided for in Directive 2011/95, which interpretation must be consistent with the fundamental rights which the Member State must ensure are respected. On the other hand, are the declared principles in Recital (16) and Recital (34) of the Preamble to Directive 2011/95, residual enough to hold that a national measure such as that provided for in Article 9, para 8 of the LAR "other humanitarian grounds" is compatible with the standards of the Union act?

As already indicated, the Court finds that the applicant is in a situation that violates his fundamental rights under Article 1, Article 4 and Article 7 of the Charter. It is disputed what would the remedy in this situation be for the purposes of international protection and more specifically in the application of the domestic measure under Article 9, para 8 of the LAR.

In the event that the national provision of Article 9, para 8 of the LAR is interpreted to apply only to Recital (15) and Article 2b, (h) of Directive 2011/95, i.e. that it was introduced entirely at the discretion of the State as an act of goodwill or for humanitarian reasons and does not fall within the scope of Directive 2011/95, then the applicant’s legal situation can be assessed not in light of his possible return to his country of origin but in light of his situation in the Member State, including taking into account fundamental human rights in relation to the duration of his stay in Bulgaria.

In other words, what interpretation of the national measure under Article 9, para 8 of the LAR, in light of Article 1 and Article 4 of the Charter is implied by the consideration of the fundamental rights and the situation of the applicant in Bulgaria, so that the State is not found in violation of these absolute rights?

V. Interpretation in CJEU practice of the notion of "reasons of a humanitarian character":

1. Opinion of Attorney General E. Sharpston, submitted on 8 June 2017 on case C-490/16 A.S. v. Republic of Slovenia, ECLI:EU:C:2017:443,(para 202): The Schengen Borders Code lacks a definition of " on humanitarian grounds". Attorney General Melgozzi recently expressed the view that the expression is an independent concept of the Union law. I agree with that position. The concept is indeed broad and includes the situation of persons fleeing persecution for whom the principle of non-refoulement applies. Furthermore, the interpretation of this expression in Article 5, paragraph 4c must be consistent with the obligation, laid down in Article 3a, that the actions of Member States must be in full compliance with the applicable Union law, including the Charter, the Geneva Convention and the fundamental rights.

2. Judgment of the Court (Fifth Chamber) of 20 October 2022 in Case C- 825/21 UP v. Centre public d'action sociale de Liege, ECLI: EU:C:2022:810: It is pertinent to note that, pursuant to the first sentence of Article 6, paragraph 4 of Directive 2008/115, Member States may "at any time" to grant a third-country national who is illegally staying on their territory an "autonomous residence permit" or "another permit conferring the right to stay" by reason of "humane, humanitarian or other reasons". It is thus clear from the text of this provision itself, and in particular the reference to 'other' reasons, that it allows Member States at any stage to grant such nationals the right of residence not only for the reasons expressly listed, namely humane or humanitarian reasons, but for any other reason they consider appropriate.

It is further stated in the cited CJEU decision that despite this, it follows from both the requirement of loyalty of Member States, which derives from Article 4, paragraph 3 TEU, and the requirements of effectiveness, which are set out in particular in Recital (4) of Directive 2008/115, that the obligation which Article 8 of that Directive imposes on Member States, in the hypotheses referred to in Article 8, paragraph 1, to proceed with removal must be complied with as soon as possible (see, to that effect, the judgment of 6 December 2011, Achughbabian, C-329/11, EU:C:2011:807, issue 45) "that requirement has clearly not been met in respect of the applicant, who has been resident in Bulgaria for nearly 27 years under the imposed measures 'return to country of origin".

Applied to the case at hand, this interpretation leads to the conclusion that a Member State's possible decision to grant residence status (in Bulgaria under the AA) may concern not only humane or humanitarian reasons, but also any reasons of a different kind that a Member State deems appropriate. In the AA such reasons, including those analogous to Article 6, paragraph 4 of Directive 2008/115 are not regulated. On the basis of the foregoing, the Court holds that the place of the sole national measure under Article 9, para 8 of the LAR, which in Bulgaria complies with 'humanitarian considerations" to status of an illegally residing third-country national is not a matter of national law governing the right to international protection (LAR), but of national law, governing law of residence (LAR). That is why even under the current legal framework of the AA and the LAR, the national judicial authority should give broad interpretation to Article 9, para 8 of the LAR, in accordance with Recital (15) in the Preamble and Article 2b (h) of Directive 2011/95, i.e. without reference to the nature or grounds of Directive 2011/95, but taking into account the fundamental principles as declared by the act of secondary EU law.

For the purposes of the present case, under the national framework in Bulgaria, which does not provide for the possibility of granting the right of residence - could the failure to grant protection to the applicant under Article 9, para 8 of the LAR result in a failure by the Member State to respect its obligations under Article 1 and Article 4 of the Charter?

3. Opinion of Attorney General R. Mengozzi, delivered on 7 February 2017 on Case C-638/16 PPU, X X v. Etat Belge, ECLI: EU:C:2017:93: The ECHR and the Geneva Convention indisputably constitute both a parameter for the interpretation of Union law in the field of entry, residence and asylum, as well as for the principle of legality of the Member States' action in implementing that law.

It must be recognised that the expression "reasons of a humanitarian nature" is very broad and that in particular it cannot, in my view, be limited to cases of medical or healthcare assistance to the third-country national concerned or to his relative such as those referred to in the disputed decisions in the main proceedings and relied on by the Belgian Government in the hearing before the Court. The wording of article 25, paragraph 1 of the Visa Code does not admit an interpretation which, considering as humanitarian reasons an unstable state of health or illness, would lead to an extreme restriction of the spirit of the provision.

The discretion of the Member State to which the application is made must therefore be exercised with due respect for the rights guaranteed by the Charter.

In other words, in order to respect the limits of its discretion, the Member State to which the application is made must conclude that, by refusing to apply Article 25, paragraph 1a of the Visa Code despite the reasons of a humanitarian nature put forward by the third-country national concerned, it is not infringing the rights enshrined in the Charter. If it reaches a conclusion to the contrary, the Member State should not apply the grounds for refusal under Article 32, paragraph 1 of the Visa Code and issue the visa with limited territorial validity in accordance with Article 25, paragraph 1A of that Code.

In such a case, it must be ascertained whether the failure to take into account the specific humanitarian grounds of the case, the refusal to do so or to issue a visa with limited territorial validity leads to the Member State's failure to comply with its obligations under the Charter.

In this respect, I would recall, by the way, that in the 21 December 2011, N. S. and Others (C-411/10 and C-493/10, EU:C:2011 :865, paragraphs 94-98), concerning the determination of the Member State responsible for processing an asylum application, the Court has already held that the mere possibility which an act of secondary Union law provides in favor of a Member State may become its actual obligation in order to ensure compliance with Article 4 of the Charter.

In the light of these arguments Attorney General R. Mengozzi in his opinion delivered on 7. 02.2017 in Case C-638/16 PPU, the present Chamber asks: Is it possible for the positive obligation of a Member State to ensure compliance with Article 4 of the Charter in respect of Mr. Machanon to call for broad interpretation of the national measure under Article 9, para 8 of LAR, which goes beyond the logic and standards of international protection under Directive 2011/95, and if this interpretation is only consistent with respect for fundamental rights of an absolute nature as per Article 1 and Article 4 of the Charter, then is it not again in the spirit and

standards of international protection under Directive 2011/95, since the same is referred to in Recital (16) and Recital (34) of the Preamble to the fundamental rights guaranteed in international instruments and the EU Charter?

4. Notwithstanding the arguments in the opinion of Attorney General R. Mengozzi, the Court has delivered its Grand Chamber Judgment of 7.03.2017 in Case C-638/16 PPU X X v Etat Belge, ECLI: EU:C:2017:173, according to which the European Union legislature has not yet adopted any act on the basis of Article 79, paragraph 2a TFEU on the conditions for Member States to grant visas or long-term residence permits to third-country nationals on humanitarian grounds, so that the applications concerned in the main proceedings are governed solely by national law.

Conclusions: The arrangement of a humanitarian clause to legalize the status/stay of an illegally staying third-country national is entirely a matter of national discretion. In the area of entry and residence of such nationals, EU law does not contain a mandatory rule obliging Member States to grant access to their territory or the right of residence on humanitarian grounds. Bulgaria does not provide for such a possibility that would be applicable to the applicant's legal situation.

On the other hand, in Bulgaria his situation is not regulated even according to Recital (12) of the Preamble and Article 14, paragraph 2 of Directive 2008/115. The foreign national is in our country for a prolonged period of time, during which he has no identity document and no legal means of satisfying his basic human needs such as food and shelter. The Court considers that his situation in Bulgaria is in violation of Article 1 and Article 4 of the Charter and asks the question - is it possible to regulate the status of the person under Article 9, paragraph 8 of the LAR, which is the only measure provided for in the national legislation in respect of an illegally staying foreign national claiming humanitarian status considerations and what interpretation should be given to this national rule, such that it is compatible with the applicable Union provisions?

VI. Consistency of the national legislation with the Union legislation and its interpretation:

1. In the light of the envisaged EU legal framework under the provisions of Recital (15) of the Preamble, Article 2b (h) and Article 3 of Directive 2011/95 and the national law, the current Court Chamber finds that the granting of protection on humanitarian grounds under Article 9, paragraph 8 of the LAR does not fall within the scope of Directive 2011/95 but constitutes "other type of protection" within the meaning of Recital (15) of the Preamble and Article 2b (h) thereof. At the same time, it is hesitant to accept that this other type of protection is subject to the limitation in Article 3, namely that protection under Article 9, paragraph 8 of the LAR to be compatible with that provided for at EU level in Directive 2011/95, specifically in view of the requirement of a risk of serious harm in the country of origin, which is not established in the present case.

It complies with the following national practice of the Supreme Administrative Court on the application of Article 9, paragraph 8 of the LAR:

A. Cases in which no grounds for granting humanitarian status under Article 9, paragraph 8 of the LAR have been found:

Judgment No. 2806 of 16.03.2023 in administrative Case N.: 10643/2022 C., IV division of the SAC: The administrative court was justified in holding that the prerequisites under Article 9, paragraph 8 of the LAR for the granting of humanitarian status are not present, insofar as, in order for that provision to apply, the reasons must be of such a nature as to reveal a real danger of harm to the foreigner's person, as well as the impossibility of access to protection in the country of origin, which, according to the evidence in the case, are not present.

Decision No.3015 of 31.03.2022 in administrative case No. 8672/2021, IV Department of the Supreme Administrative Court, Decision No. 11784 of 18.11.2021 in Administrative Case No. 8044/2021, IV Department of the Supreme Administrative Court, Decision No. 12469 of 07.12.2021 in Administrative Case No. 6610/2021, IV Department of the Supreme Administrative Court, Decision No. 4218 of 01.04.2021 in Administrative Case No. 1466 /2021 IV Department of the Supreme Administrative Court: The term "other reasons of a humanitarian nature" within the meaning of Article 9, paragraph 8 of the LAR does not refer to any reason, regardless of its nature, but refers to the cases other than those expressly provided for in paragraph 1, on the basis of which a real danger of serious harm to the person of the foreigner on his return to the country is established in this specific case such are not put forward.

The present Court Chamber considers correct and reasonable the administrative authority's conclusion that the foreigner's stated personal reasons for the protection sought are of a personal and criminal nature, therefore the refugee's stated reason for leaving his country or origin cannot be classified as a reason for granting humanitarian status under Article 9, paragraph 8 of the LAR.

Judgment No. 12077 of 25.11.2021 of administrative case No. 7894/2021 IV department of the SAC: Interpreting of the legislator's intention in adopting the LAR and the case law lead to the firm conclusion that the granting of humanitarian status, among other forms provided for in Article 1, paragraph 2 of the LAR, constitutes a special type protection which is allowed in exceptional cases. The term 'other reasons of a humanitarian nature' within the meaning of Article 9, paragraph 8 of the LAR does not refer to any reason, whatever its nature, but refers to other cases than those expressly provided for in paragraph 1, on the basis of which a real danger of serious harm to the person of the foreigner on his/her return to the country of origin is established. Although not expressly mentioned, these reasons must be such as to reveal a real risk of harm to the foreigner's person upon his/her return to the country of origin. In the current case, no such evidence was found, insofar as the evidence gathered showed that the foreign nationals were economic migrants who had left their country voluntarily in order to achieve a better living standard.

Judgment No. 7520 of 22.06.2021 in administrative case No.: 4456/2021 IV Department of the Supreme Administrative Court: The granting of subsidiary protection to a foreigner should be based on reasons relating to the situation in his/her country of origin to which he/she cannot return. The nature of the protection excludes economic, social, family and other reasons wholly dependent on the will of the foreigner. Indeed, under Article 9, paragraph 8 of the LAR, humanitarian status may be granted for reasons other than those expressly mentioned in the law, but, although unnamed, these reasons must be such as to reveal a real risk of attacks on the person of the foreigner upon his/her return to the country. The fact that W. has pain and swelling in his left knee due to an operation he underwent two years before is not a ground for granting him humanitarian status. The need for further treatment - surgery, which could not be carried out in his country of origin, cannot be regarded as a sufficient circumstance to justify the granting of humanitarian status because the applicant received medical assistance after the attack and underwent medical surgery in his country of origin.

B. Cases in which a ground for humanitarian status under Article 9, paragraph 8 of the LAR has been found:

Decision No. 3970 of 26.04.2022 in administrative case No. 374/2022, IV Department of the Supreme Administrative Court:

The Court held that the administrative authority had not carried out the necessary assessment of the existence of other humanitarian grounds within the meaning of Article 9, paragraph 8 of the LAR. The court found that the foreign national was in a deteriorated physical and mental condition caused by the violence inflicted upon her over a long period of time, involving her ex-husband, who is also the father of her child. The court accepted that this physical and sexual abuse had had a lasting impact on her well-being, as was evident from the woman's personal hearing, and it relied on the conclusions of the experts who had worked with the foreign national - a psychiatrist and psychologists. A similar assessment of the application of Article 9, paragraph 8 of the LAR was required in the best interests of the child.

Decision No. 10555 of 21.11.2022 of administrative case No. 3815/2022, IV Department of the Supreme Administrative Court: In summary of all that has been stated so far and having assessed the best interests of the minor children in the light of the factual findings in the case in accordance with the applicable international, European and national legal framework, regulated in particular by Article 6a LAR, the Court Chamber finds that the best interests of the asylum-seeking children require that their application for protection be accepted under the terms of Article 9, paragraph 8 of the LAR, by granting them humanitarian status. The best interests of the two minors also requires that they are not separated from their mother, who is also eligible for humanitarian status under Article 9, paragraph 8 of the LAR.

Judgment No. 3856 of 25.03.2021, in Administrative Case No. 1514/2021, IV Department of the SAC: The administrative court correctly found that it did not examine the danger to A., from the

consequences of this unceasing armed conflict in Yemen, the grave deepening humanitarian crisis, and the danger to the population from disease and famine. Even if one accepts the submission that there is insufficient evidence that the armed conflict in Yemen is characterized by indiscriminate violence (Article 9, paragraph 1, point 3 of the LAR), there has been no examination of the danger to the foreigner from the consequences of this ongoing armed conflict in Yemen, as well as the grave and deepening humanitarian crisis, and the danger of disease and famine (Article 9, paragraph 8 of the LAR). These indications of a severe humanitarian crisis in Yemen have not been analyzed in the examination of the application for protection in the context of Article 9, paragraph 8 of the LAR, to the exclusion of other humanitarian grounds, and the conclusion that none of the prerequisites of Article 9 of the LAR for the granting of humanitarian status existed was not proven by the administrative authority.

Judgment No. 936 of 17.02.2021 in administrative case No. 9176/2018 of the Administrative Court - Sofia City, upheld by Decision No. 7724 of 29.06.2021 in Administrative Case No. 4139/2021, IV Department of the Supreme Administrative Court: The assessment of the existence in this case of the prerequisites under Article 9 of the LAR for granting humanitarian status should also be carried out taking into account the fact that the applicants for protection are also the children E. P. and M. C. The children belong to a vulnerable group with special needs within the meaning of Directive 2013/HC/EC of 26.07.2013 on setting standards for the reception of applicants for international protection. The administrative authority did not consider their situation and the consequences for them in the event of their return to their country of origin. The data on the child's state of health, the opinion of the social workers and the information contained in the report of the Directorate of International Activities of the SAR at the CM on the implementation of the rights of Russian - speaking citizens in K. determine the necessity to assess the existence of other humanitarian grounds within the meaning of Article 9, paragraph 8 of the LAR for granting humanitarian status to the applicant and her children.

Decision No. 7742 of 29.06.2021 in administrative case No 5201/2021, IV of the SAC: The contested decision annulled the decision of the President of the SAR under the CM and returned the administrative file for a new decision on the applications for international protection of B., personally and *as* the legal representative of his minor children. The court held that the existence of a ground under section 9, paragraph 8 of the LAR on medical grounds had been established in respect of a family member. It held that the administrative authority had not acted in accordance with the requirements of Directive 2011/95/EC, namely: preserving the integrity of the family and the best interests of the minor children. It concluded that, in assessing the grounds for granting such protection, the "best interests of the child" were of a paramount importance, and it emphasized that the administrative act had not assessed the potential risks of returning the minors to their country of origin. The Court's finding that the administrative authority failed to consider the relevant facts and circumstances in accordance with the requirements of Article 9, paragraph 8 of the LAR is lawful. From the evidence in the case, it cannot be fairly concluded

that the best interests of the children, respect for their human rights and dignity will be preserved if they are returned to the city of Mosul.

Judgment No. 5027 of 20.04.2021 in Administrative Case No 1728/2021, IV Department of SAC: Lastly, the administrative court reasoned that the personal refugee history of F., relating to evidence of FGM, forced marriage and domestic violence, which should have been assessed in the light of the provision of Article 9, paragraph 8 of the LAR, remained outside the consideration of the determining authority. The Court pointed out that the risks to the foreigner and, respectively, to the minor N. on their eventual return to Burkina Faso had not been considered, since she had fled her family and given birth to a child by another man /Christian/. In this context, it is a commonly known fact that women in similar personal situations are subjected to persecution by their relatives in countries that profess the religion of Islam.

As regards the legal significance of the length of stay of an applicant for international protection in our country, the national case law is unanimous: this circumstance is irrelevant to the grounds for granting refugee status and humanitarian status. No national jurisprudence on the application of Article 9, paragraph 8 of the LAR in light of the duration of the foreign national's stay in Bulgaria has been found.

2. All of the foregoing gives the present Court Chamber grounds to give broad interpretation of the national provision of Article 9, paragraph 8 of the LAR, in accordance with the case law of the CJEU and the ECtHR on the application of fundamental human rights - Article 1 of the Charter, Article 4 of the Charter, read in conjunction with Article 3 of the ECHR and Article 7 of the Charter, read in conjunction with Article 8 of the ECHR. The Court holds that such an interpretation does not in breach Article 3 of Directive 2011/95, in so far as the latter declared an aim to ensure that the standards of international protection were consistent with the fundamental rights guaranteed by international acts and the EU Charter?

The Court finds the basis for such an interpretation in the national legislation which, in the matter of the AA, does not provide for a right of residence "on humanitarian grounds" relevant to the applicant's legal situation.

EU law also does not contain a peremptory ground for Member States to adopt such regulations concerning the right of entry and residence of foreign nationals solely on "humanitarian grounds". This matter is left to the discretion of the national legislator.

EU law provides for a complete harmonization of the grounds for granting international protection, which is, however, vague (according to the Court) as regards the discretion of Member States to grant such protection "on humanitarian grounds". Notwithstanding the interpretation of Directive 2011/95 and Directive 2008/115, however, the application of fundamental rights under the Charter and the ECHR to the applicant's case is beyond doubt.

It is the latter (fundamental rights) which, in the absence of a legal provision in the AA for granting the right of residence "on humanitarian grounds" or even for providing "written confirmation" of the foreigner's legal situation within the meaning of Recital (12) and Article 14, paragraph 2 of Directive 2008/115, require the sole national legal provision under Article 9, paragraph 8 of the LAR, which introduces a 'humanitarian clause' in respect of a legal position similar to that of the applicant, be given a broad interpretation, in line with the case-law of the CJEU and the ECtHR in the field of fundamental rights, by relying on Recital (15) of the Preamble and Article 2b (h) of Directive 2011/95, leaving Article 3 of Directive 2011/95 inapplicable.

Under the current national legal framework, this is the only possible basis for settling the status of a third-country national in the applicant's situation while ensuring that Bulgaria does not violate Articles 1 and 4 of the Charter.

The court finds confirmation of such an interpretation in:

A. Opinion of Attorney General Bot delivered on 4.09.2014 in Case C- 562/13, Centre public d 'action sociale d'Ottignies-Louvain-La-Neuve v Moussa Abdida, ECLI:EU:C:2014:2167: In the light of the foregoing, I therefore consider that Directives 2003/9, 2004/83 and 2005/85 must be interpreted as meaning that the procedural safeguards and social benefits established by the EU legislature under those directives are not applicable to an application for leave to reside on medical grounds based on Article 9b of the Law of 15 December 1980 the entry, residence and settlement of foreigners in the territory of the country and their removal from it, since it does not fall within the scope of a form of subsidiary international protection.

According to the text at the end of Article 2e of that Directive, there is "another type of protection" which does not fall within the scope of that Directive. In the latter case, the execution of the decision to expel the person concerned by the host Member State, combined with the lack of adequate medical resources in the country of origin, may constitute inhuman treatment. As the Court has pointed out in Judgement B and D (C-57/09 and C-101-09, EU:C:2010:661) from Article 2 e *in fine* of Directive 2004/83 follows that it allows a person to claim protection under “another type of protection” which does not fall within its scope.

However, the EU legislature clearly wished to exclude situations based on humane grounds from the scope of Directive 2004/83.

Fourthly, I could not ignore the extremely long duration of the proceedings under examination, which began on 7.07.2011. Apart from the difficulties linked to the uncertainty of the legal position of the person concerned, to his material situation, which is a matter of extreme concern, and to the gravity of the complaints raised by him before the Court, it may be asked whether, given its length, such proceedings are adequate and provide all the guarantees which must accompany the exercise of effective legal remedies.

I am under the impression that the person concerned does not enjoy his/her rights recognized by the Charter, in particular the right to an effective remedy within the meaning of Article 47 of the Charter.

Further, I consider that the guarantees provided for by the Union legislator in that provision (Article 14 of Directive 2008/115 in conjunction with Recital (12)) do not cover all rights, and in particular the rights which seem to me of the greatest importance for the period during which the person concerned has no source of income and has to be removed from the territory of the country, namely the possibility of being fed, clothed and accommodated.

Finally, it should not be forgotten that not covering expenses for the most basic needs of migrants reinforces their marginalization. The fact that a third-country national who has lodged a complaint is deprived, for such a long period of time pending his removal, of the basic necessities he needs creates the risk that he will be forced to leave the territory of the host country and go to another Member State, thus increasing the secondary movement of illegal migrants and thus illegal immigration within the Union's borders. This situation may also lead the migrant to find himself as an unlawfully or illegal resident, as he is already in such a situation to commit a criminal offense in order to satisfy their needs. Clearly, these circumstances are quite far from the objective set out by the Union legislator in Recital (4) of Directive 2008/115, according to which "clear, transparent and fair rules should be put in place in order to establish an effective return policy as a necessary element of a well-managed migration policy".

Respect for human dignity and the right to life, to the inviolability of the person and the protection of health, proclaimed respectively in Articles 1, 2, 3 and 35 of the Charter, as well as the prohibition of inhumane and degrading treatment enshrined in Article 4 of the Charter, do not, in my view, preclude, in a situation such as that at issue in the main proceedings, an illegally staying third-country national whose removal is effectively suspended pending the examination of their appeal from being deprived of the opportunity to meet their basic daily needs.

Meeting the most basic needs is a right which cannot depend on the legal situation of the interested person. In my opinion, the relevant conclusion to the present case is that there is evidence in the case that the applicant has been repeatedly convicted for possession and distribution of drugs. Notwithstanding the extremely serious nature of those offenses, in the present case the Member State has deprived him, for an extremely prolonged period of time, of an identity document and, with it, of the possibility of legally working in order to secure his shelter and livelihood. Moreover, the respondent SAR draws an unfavorable conclusion from the applicant's conduct, who immediately after registering his (current) subsequent application for protection, applied for access to the labor market, that he was not interested in his health condition. On the contrary, it is vitally logical for the person to first have access to means to meet their basic needs (food and shelter) by work and only then to settle his health problems, which again require money, which can be obtained through work.

B. Attorney General Bot's conclusion delivered on 17 July 2014 in Case C-542/13, Mohamed M'Bodj v Belgian State, ECLI:EU:C:2014:2113: This case will enable the Court to clarify the scope of Directive 2004/83 in relation to a person suffering from a serious illness and, in particular, what are the conditions laid down by the Union legislature for granting subsidiary protection status.

In this connection, I will maintain that a third-country national who, after being returned to his or her country of origin, would be exposed to a real risk of inhuman or degrading treatment because of his or her state of health and the lack of appropriate medical treatment in that country should not fall within the scope of Article 2(e) of that Directive.

I will emphasize, that in a similar hypothesis there is a lack of international protection, such as that on which the common European asylum system is based, since the inhuman treatment due to the person's state of health and the lack of sufficient medical resources in the country of origin is not the result of intentional acts or omissions by the authorities of that country or by independent bodies. However, I would point out that, in such a situation, *the Member State may be obliged to grant national protection dictated by imperative humanitarian considerations*, based on Articles 4 and 19, paragraph 2 of the Charter of Fundamental Rights of the European Union and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

In a similar hypothesis, in view of considered imperative humane considerations, the Contracting States cannot therefore enforce their expulsion decisions, as otherwise their responsibility under Article 3 ECHR would be engaged. Indeed, the referring court asks whether such circumstances can fall within the concept of 'serious violations' under Article 15 of Directive 2004/83 and due to this to justify the granting of subsidiary protection status.

In my opinion, it is not possible for a person who suffers from a serious illness to fall within the scope of this directive on this basis. In such a situation, the protection granted by the Member State does not serve a need for international protection within the meaning of Article 2a of this Directive and therefore cannot be incorporated into the common European asylum system.

According to the text at the end of Article 2g of that Directive, there is “another type of protection” which does not fall within the scope of that Directive. This protection is granted for a different reason, based on the States' own discretion and on compassionate or humanitarian considerations based on respect for Article 3 ECHR as well as Articles 4 and 19, paragraph 2 of the Charter. The EU legislator clearly wished to exclude situations based on humanitarian grounds from the scope of Directive 2004/83.

CONCLUSIONS: The present case does not concern a residence permit, such as the one granted to Mr. M'Bodj in Belgium, but a question of granting the current applicant international protection on humanitarian grounds in view of his situation as a third-country national in a

Member State, which (in the Court's view) is in breach of his fundamental human rights by reason of the absence of adequate measures in that Member State to regularize his status over an extended period.

According to the present Chamber, the national legislator has wrongly considered that "humanitarian considerations" for regulating the status of an illegally residing foreign national should find a place in the LAR. Recitals (12) and article 2b "h" of Directive 2011/95 are an indication that these considerations are excluded from the scope of that Directive. At the same time, a legal definition of "humanitarian reasons" is contained in the AA, but the national legislator has not provided for a possibility analogous to Article 6, paragraph 4 and Article 14 of Directive 2008/115.

Under this national framework, the applicant's position in Bulgaria, which has a positive obligation to ensure that the fundamental rights of the foreign national are respected, requires broad interpretation of the only possibility in national law for the application of a "humanitarian clause" consistent with the State's obligation to respect fundamental rights under Article 1 of the Charter, Article 4 of the Charter and Article 3 of the ECHR, Article 7 of the Charter and Article 8 of the ECHR.

In these circumstances, the Administrative Court Sofia-City considers that, in order to be able to resolve the dispute pending before it, it should address the following reference for a preliminary ruling to the CJEU.

For the above reasons and on the basis of Article 628 - Article 633 of the Code of Civil Procedure in conjunction with Article 144 of the Code of Civil Procedure, the ADMINISTRATIVE COURT OF SOFIA-city,

ORDERS

ANNULS the order of 21.04.2023 granting proceed to the merits

REFERS A REFERENCE FOR A PRELIMINARY RULING TO THE EUROPEAN COURT OF JUSTICE pursuant to Article 267, paragraph 2 CEJ with the following questions:

1. Are Recital (15) of the Preamble, Article 2b (h) and Article 3 of Directive 2011/95 of the European Parliament and of the Council of 13 December 2011 on standards for the identification of nationals of third countries or stateless persons as beneficiaries of international protection, on the uniform status of refugees and on persons eligible for subsidiary protection, and on the content of the protection granted – to be interpreted as conferring the possibility on a Member

State to introduce national arrangements for granting international protection based on compassionate or humanitarian grounds, which have no connection with the logic and spirit of Directive 2011/95 under Recital (15) of the Preamble and Article 2b, “h” thereof (other type of protection), or, in this case, the regulated national possibility for provision of protection "on humanitarian grounds" must be compatible with the standards of international protection under Article 3 of Directive 2011/95?

2. Do Recital (12) of the Preamble and Article 14, paragraph 2 of Directive 2008/15 of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for repatriating illegally staying third- country nationals, in conjunction with Article 1 of the Charter and Article 4 of the Charter, imply an obligation for a Member State to issue written confirmation to third-country nationals certifying that they are in an irregular situation but cannot yet be removed?

3. Considering there is a national legal framework in which the only legal provision for governing status of a third country national on "humanitarian grounds" is contained in Article 9, paragraph 8 of the LAR, is an interpretation of this national provision which has no connection with the nature and grounds of Directive 2011/95 compatible with Recital (15) of the Preamble and Article 2b “h” and Article 3 of Directive 2011/95?

4. For the purposes of the application of Directive 2011/95, do Articles 1, 4 and 7 of the Charter require an assessment of whether a third-country national’s prolonged stay without settled status in a country constitutes an independent ground on “imperative humanitarian grounds” for the granting of international protection?

5. Does the positive obligation of a Member State to ensure compliance with Article 1 and Article 4 of the Charter allow for broad interpretation of the national measure under Article 9, paragraph 8 of the LAR that goes beyond the logic and standards of international protection under Directive 2011/95 and requires an interpretation that is consistent only with the compliance with the fundamental rights of an absolute nature under Article 1 and Article 4 of the Charter?

6.Could the failure to grant protection under Article 9, paragraph 8 of the LAR to a third-country national in the applicant's situation lead to the State party failing to comply with its obligations under Article 1, Article 4 and Article 7 of the Charter?

SUSPENDS THE PROCEEDINGS on administrative case No. 9280/2022 pending a decision of the CJEU the pursuant to Article 23 of the Statute of the CJEU.

This order is not subject to appeal.

Judge:

/M.S./