



**Seminar organized by the Supreme  
Administrative Court of Poland  
and ACA-Europe**

***“Public order, national security and the rights  
of the third-country nationals in immigration  
and citizenship cases”***

Cracow 18 September 2017

**Answers to questionnaire: Hungary**



Seminar co-funded by the «Justice » program of the European Union

**Public order, national security and the rights of the third-country nationals in  
immigration and citizenship cases**

ACA seminar in Kraków (Cracow) 18–19 September 2017

**HUNGARY**

**I. Introduction.**

1.1. This seminar will focus on striking a balance between the rights of third-country nationals and the protection of national security and public order in immigration and citizenship cases. The most common categories of the administrative acts that are relevant to this topic are visa decisions, refusal of entry, entry bans, all types of decisions on granting a residence permit (permanent or temporary), return decisions, and decisions relating to the acquisition and loss of nationality.

1.2. The topic of this seminar does not cover the situation of refugees in cases where the procedure for international protection has not been finally completed, although the returning of unsuccessful asylum seekers is within the topic hereof. The situation of EU citizens and their family members is also not covered by this seminar, since they are not considered to be third-country nationals within the meaning of EU law. For these reasons when answering the questions please do not include information relevant to asylum seekers or EU nationals or their family members within the meaning of Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

1.3. Neither EU law nor the jurisprudence of the Court of Justice of the European Union (CJEU) or the European Court of Human Rights (ECtHR) give us a clear definition of public order and national security (external and internal security of the member states). It should also be noted that not one single term but instead often a number of different terms are used in relation to national security and public order. That alone may lead to a lack of consistency of judicial practice in Member States and cause confusion in terminology. For example, in Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for the returning of illegally present third-country nationals (referred to as the Returns Directive) in relation to an entry ban the term “a threat to public policy, public



security or national security” is used, in Art. 11(3) thereof. In relation to refraining from granting a period for voluntary departure the term “a risk to public policy, public security or national security” is used, in Art. 7(4), and in relation to an entry ban which is more than five years in length the term “a serious threat to public policy, public security or national security” is used, in Art. 11(2). In Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents the term “a threat to public policy or public security” is used and excludes the acquiring and maintaining of long-term resident status in a Member State, in Recital 8, Art. 6(1), Art. 9(7), Art. 17(1) and Art. 22(1)(3), and “actual and sufficiently serious threat to public policy or public security” is found in Art. 12 (1). The term “a threat to public policy or public security or public health” is used by Directive 2003/86/EC of 22 September 2003 on the right to family reunification and it is permitted to withdraw a family member’s residence permit or to refuse to renew the said permit (Recital 14, Art. 6 (2) of the Family Unification Directive). On the other hand, under Art. 8 (2) of the ECHR the right to family life may be denied, inter alia on the grounds of “national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. The Visa Code (Regulation (EC) No 810/2009 of 13 July 2009 establishing a Community Code on Visas) allows the verification of entry conditions and risk assessments in the light of risks to the security of the Member States (Art. 21(1)) or whether a person constitutes a “threat to public policy, internal security or public health as defined in Art. 2(19) of the Schengen Borders Code or to the international relations of any of the Member States”, Art. 21(3d) and Art. 32(1a vi). One of the entry conditions for third-country nationals under the Schengen Borders Code (Regulation (EU) 2016/399 of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (the Schengen Borders Code)) is to not be considered to be “a threat to public policy, internal security, public health or the international relations of any of the Member States” (Art. 6(1e)). In Decision No 1/80 of the EEC/Turkey Association Council of 19 September 1980 on the Development of the Association “grounds of public policy, public security or public health” were invoked in relation to employment and the free movement of workers of Turkish nationality (Art. 14(1)).

1.4. Along with national security and public order, the term “public health” is often used. Since the focus of the questionnaire is on public order and national security only, issues



related to the public health have not been included and there is no need to present them when answering the questions.

1.5. There are consequences of establishing risks to public order and national security from third-country nationals in both substantive and procedural immigration and citizenship laws in Member States. Many of those derive directly from EU law. It is important to examine not only whether there is a common understanding of these concepts but also their similarities and differences and how a judge in the administrative court can strike a balance between the rights of third-country nationals and the protection of national security and public order in immigration and citizenship cases.

## **II. Questions**

### **A. General questions. National judicial and legal framework in the field of migration of third-country nationals and in citizenship cases.**

1. What is the national legal framework in the field of immigration of third-country nationals in relation to national security and public order? Please provide in particular information on the relevant legislation, the organisation of the courts responsible for immigration cases (special tribunals, general administrative courts and others), the number of tiers of the court system and also at the administrative level, if there is a prior administrative procedure. Please give links to websites with the relevant national legislation, if available.

**In Hungary, the national legal framework in the field of migration of third-country nationals is based on Act no. II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter referred to as the Third-Country Nationals Act) and on Government Decree no. 114/2007 of 24 May 2007 on the Implementation of Act no. II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter referred to as the Implementing Decree).**

**Section 1 of the Implementing Decree stipulates as follows:**

**The administrative proceedings specified in the Third-Country Nationals Act (hereinafter referred to as immigration proceedings) shall be conducted by the following authorities (hereinafter referred to as immigration authorities):**



- a) the minister in charge of immigration and asylum cases;**
- b) the minister in charge of foreign policies;**
- c) the Immigration and Asylum Office (hereinafter referred to as the Office);**
- d) the local branches of the Office (hereinafter referred to as regional directorates);**
- e) the consulate officer of Hungary authorised to issue visas (hereinafter referred to as consulate officer);**
- f) the body established for carrying out law enforcement activities (hereinafter referred to as the Police);**
- g) in the application of the immigration rules on third-country nationals, the refugee authority in connection with expulsion, voluntary departure, deportation and exclusion measures ordered by it.**

**In Hungary, administrative proceedings are, in general, conducted in a two-tier system, hence, immigration cases are dealt with by the first and second instance bodies of one of the aforementioned authorities in accordance with the provisions of the Third-Country Nationals Act. The latter act, however, provides for cases in which no appeal can be submitted (e.g. decisions on applications for national visas and on the revocation of such visas cannot be appealed).**

**The Hungarian judiciary operates in a multi-tiered court system, which includes the following judicial forums: the Curia, the regional appellate courts, the high courts, and the circuit and district courts (hereinafter referred to as district courts), as well as the administrative and labour courts. Administrative decisions are reviewed by the administrative and labour courts that have a general competence in administrative matters. In certain immigration cases, the Third-Country Nationals Act provides for the exclusive competence of the Metropolitan Administrative and Labour Court in Budapest.**

**The aforementioned pieces of legislation can be found at the following links:**

**[https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0700002.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700002.TV)**

**[https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0700114.KOR](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700114.KOR)**



2. What is the national legal framework in the field of citizenship cases in relation to national security and public order? Please provide in particular information on the relevant legislation, the organization of the courts responsible for citizenship cases (special tribunals, general administrative courts and others), the number of tiers of the court system and also at the administrative level, if there is a prior administrative procedure. Please give links to websites with the relevant national legislation, if available.

**In citizenship cases, the national legal framework is based on Act no. LV of 1993 on Hungarian Citizenship (hereinafter referred to as the Hungarian Citizenship Act) and on Government Decree no. 125/1993 of 22 September 1993 on the Implementation thereof (hereinafter referred to as the Hungarian Citizenship Decree).**

**By virtue of the relevant provisions of the Hungarian Citizenship Act, a legal action for court review against the decision of an authority competent in citizenship cases may – if not precluded by law – be lodged with the Metropolitan Administrative and Labour Court in Budapest.**

**Pursuant to Article 9, paragraph (4), point i) of the Fundamental Law of Hungary, the President of the Republic shall decide upon cases related to the granting and termination of citizenship.**

**The decision-making process of the President of the Republic is primarily prepared by the Immigration and Asylum Office. The President of the Republic is not entitled to adjudicate citizenship cases on his own motion, since he may proceed only upon the initiative of the competent minister.**

**By virtue of section 13, subsection (1) of the Hungarian Citizenship Act, the declaration and petition for citizenship, the declaration of renunciation of citizenship, and the application for the issue of a citizenship certificate (hereinafter referred to collectively as petition for citizenship) may be submitted:**

**a) to the district (Budapest district) offices of Budapest and county government agencies (hereinafter referred to as district office);**



- b) to the integrated customer service centre of the competent Budapest or county government agency (hereinafter referred to as integrated customer service centre);**
- c) to the officer of the competent Hungarian consulate; or**
- d) to the body in charge of naturalisation and citizenship matters.**

**Based on the Hungarian Citizenship Decree, the Government appointed the Budapest Government Agency to act as a body in charge of citizenship matters.**

**The relevant pieces of legislation can be consulted at the following links:**

**[https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99300055.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99300055.TV)**

**[https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99300125.kor](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99300125.kor)**

3. Please give the number of immigration and citizenship cases brought before the courts in 2016 (1 January to 31 December 2016) involving third-country nationals (please exclude cases concerning EU nationals and refugees). Please provide separately information on the number of cases brought before the court of last resort (the Supreme Administrative Court) and before the lower courts. If possible, please provide information on the percentage of cases in which grounds related to national security and public order were decisive. Are cases in which issues related to national security and to public order have to be considered registered with the court separately and are they given priority when listed for hearing?

**In 2016, 178 immigration and citizenship cases were brought to the Curia: 3 from the Administrative and Labour Court of Szeged, 3 from the Administrative and Labour Court of Győr, 7 from the Administrative and Labour Court of Debrecen, 1 from the Administrative and Labour Court of Székesfehérvár, 1 from the Administrative and Labour Court of Pécs and 163 from the Metropolitan Administrative and Labour Court in Budapest. No additional statistical data are available.**

4. Briefly describe the judicial procedure in immigration cases in your country. Please address in your answer, *inter alia*, the following questions:

- a. Are there any differences in the judicial procedure between immigration cases and other administrative cases?



**In general, the rules of administrative litigation (on dealing with administrative cases by the courts) also apply to immigration cases, unless otherwise provided for by law.**

b. Do the elements of national security and public order make procedures in immigration cases involving the issue of national security and public order different from the procedures in immigration cases in which an issue related to national security and public order does not exist?

**The elements of national security and public order do not make procedures in immigration cases involving the issue of national security and public order different from the procedures in immigration cases in which an issue related to national security and public order does not exist.**

c. What is the power of the judge of a first instance administrative court, in particular is he/she limited to control legality (conformity with law) of the challenged administrative decision or is the role of the judge broader and the judge has the power not only to quash an administrative decision but also to change it (judgement on the merits) and is it a judicial review *ex nunc* or *ex tunc*?

**With the exception of procedural infringements not touching upon the merits of the case, the administrative court of first instance shall, in principle, quash unlawful administrative decisions and may, if necessary, order the administrative authorities concerned to reopen their proceedings. In the cases specified by law, the court may also change the reviewed administrative decisions.**

d. What is the power of the court of the last resort? Please indicate which court that is (the Supreme Administrative Court, the Supreme Court or the Council of State or another court).

**The highest instance judicial forum (the Curia) is entitled only to conduct a judicial review: a petition for the judicial review of a final judgement or a final**



**order adopted on the merits of the case may be submitted to the Curia – on the grounds of the infringement of the law – by the party, the intervener or by any other person to whom any provision of the impugned court decision may be of concern, against the relevant provision(s). No petition for judicial review may be lodged against court decisions rendered in connection with the issue of visas.**

**With the exception of procedural infringements not touching upon the merits of the case, the court shall quash unlawful administrative decisions and may, if necessary, order the administrative authorities concerned to reopen their proceedings. No appeal may lie against the court’s judgement. The court has to decide on the merits of the case’s review within thirty days.**

e. Can a party in every immigration case apply for his/her appeal to be heard by the Supreme Administrative Court or is in some situations that right excluded or restricted (e.g. is leave required)?

**By virtue of the legal provisions in force, there is no admissibility procedure prior to the Curia’s judicial review proceedings.**

5. Briefly describe judicial procedure in citizenship cases in your country. Please address in your answer, *inter alia*, the following questions:

a. Are there any differences in the judicial procedure between citizenship cases and other administrative cases?

**Citizenship cases are dealt with by the courts on the basis of the provisions of the Hungarian Citizenship Act which derogate from the general rules of administrative litigation. Pursuant to the relevant Act, an administrative decision may be reviewed by the Metropolitan Administrative and Labour Court, if the administrative body in charge of citizenship cases established in the impugned decision**

- **that any of the criteria for accepting a declaration to be made for the acquisition of citizenship had been missing,**



- **that the criteria for the acceptance of the renouncement had not been satisfied,**
- **the existence of any grounds for the withdrawal of citizenship.**

b. Do the elements of national security and public order make the procedure in citizenship cases involving the issue of national security and public order different from the procedure in citizenship and immigration cases in which an issue related to national security and public order does not exist?

**With regard to naturalisations, the Hungarian Citizenship Act stipulates that a non-Hungarian citizen may be naturalised upon request if his naturalisation is not considered to be a threat to public policy or the national security of Hungary.**

c. What is the power of the judge of a first instance administrative court, in particular is he/she limited to control legality or is the role of the judge broader and then judge has the power not only to quash an administrative decision but also to change (reform) it (judgement on the merits) and is it a judicial review *ex nunc* or *ex tunc*?

**An administrative decision for the issuance or for the rejection of the issuance of a certificate of citizenship may be reviewed by the Metropolitan Administrative and Labour Court. For the remainder, the rules of administrative litigation (the court review of administrative decisions) apply to such matters. With the exception of procedural infringements not touching upon the merits of the case, the court shall quash unlawful administrative decisions and may, if necessary, order the administrative authorities concerned to reopen their proceedings.**

d What is the power of a judge of the last resort court? Please indicate which court that is (the Supreme Administrative Court, the Supreme Court or the Council of State, or another court).

**The highest instance judicial forum (the Curia) is entitled only to conduct a judicial review, *i.e.* to review the legality of final judgements and final orders adopted on the merits of the case. No appeal may lie against the court's**



**judgement. The court has to decide on the merits of the case's review within thirty days.**

e. Can a party in every citizenship case apply for his/her appeal to be heard by the Supreme Administrative Court or is in some situations that right excluded or restricted (e.g. is leave required)?

**By virtue of the legal provisions in force, there is no admissibility procedure prior to the Curia's judicial review proceedings.**

## **B. Substantive issues. The notion of public order and national security.**

6. Does the national law in your country define such terms such as “public order”, “national security” or other terms that play a similar role in immigration and citizenship cases and aim to protect those values? Please quote definitions of such terms if possible. If those terms have been defined in case law only, please explain how they are understood in jurisprudence.

**Although the notion of “public order” is used by several pieces of legislation, there is no legal definition as to its content in Hungarian law. For instance, the Fundamental Law of Hungary, the Police Act and the acts of law on aliens (the Third-Country Nationals Act as well) apply the notions of “public order” and “public security”, but they give no definition as to their content. In order to clarify their definition, the relevant legal literature, the decisions of the Hungarian Constitutional Court and the courts' case-law are to be consulted. The legal literature has elaborated a number of definitions that are more or less similar as to their essential elements. One of the most common and most widely used definitions is as follows: “Public order refers to a set of unwritten rules that govern the conduct of individuals in public and the respect of which, according to the prevailing views, is an indispensable prerequisite for the orderly coexistence of citizens” (Vogel-Martens).**

**In this context, public security is normally defined as follows: “Public security... refers to the inviolability and unimpedibility of the life, physical integrity, honour, freedom and property of individuals and of the functioning of the State and its institutions, in**



particular to the protection of the aforementioned subject-matters against criminal offences and infringements (petty offences)“ (Szamel).

According to the Constitutional Court, the protection of public security is one of the State’s constitutional objectives. In the Court’s point of view, public security may be a part of public order or vice versa, or they may be two equivalent categories.

The relevant act of law, namely Act no. CXXV of 1995 on National Security Services (hereinafter referred to as the National Security Services Act) does not define the notion of “national security”, but instead gives a definition of national security interest as follows: “national security interest: the ensuring of the sovereignty and the safeguarding of the constitutional order of Hungary, including the detection of any endeavours with offensive intentions against the independence and territorial integrity of the country, detection and warding off of any concealed endeavours interfering with or threatening the political, economic, and defence interests of the country, acquisition of information on foreign countries or of foreign origin required for government decisions, detection and warding off of any concealed endeavours aimed at the alteration or disturbance of the constitutional order of the country ensuring the exercising of fundamental human rights, the democracy of representation based on a multi-party system, and the operation of constitutional institutions, detection and preventing of acts of terrorism, illegal arms and drug trafficking, as well as the illegal circulation of internationally controlled products and technologies”.

7. Has the meaning of the terms “public order” and “national security” evolved in case law in recent years? In particular, are both terms given wider comprehension in comparison to their scope in the past, and does a broader meaning result in them covering current situations that were unlikely to have constituted a risk to public order and national security in the past? Is this evolution a result of the jurisprudence of the ECtHR or the CJEU?

**The above terms have not changed in the Curia’s case-law.**

8. Does risk to public order and national security constitute grounds in your national law for refusing to allow a third-country national:



- a. to enter the territory of your state;
- b. to stay for 90 days in any 180-day period (short stay);
- c. to be granted resident permits (temporary or permanent);
- d. to acquire nationality?

If the answer to one of the above sub-questions is “yes”, please describe whether public order or national security grounds may be applied in every case or in some categories of cases only. In particular, are there any exceptions if the third-country national is married to a national or there are strong family life concerns (Art. 7 of the Charter of Fundamental Rights of the European Union, Art. 8 of the ECHR) or prohibition of torture and inhuman or degrading treatment or punishment is at stake (Art. 4 of the Charter, Art. 3 of the ECHR)?

**Based on the provisions of the Third-Country Nationals Act, a third-country national who may pose a threat to Hungary’s public order or national security may be refused to enter the country’s territory, to be granted a short-stay visa or a temporary or permanent residence permit or to acquire Hungarian citizenship. Public order or national security concerns shall be taken into consideration in all types of immigration cases.**

9. Does risk to public order and national security constitute grounds in your national law for decisions resulting in:

- a. the removal of a third-country national from the territory of the country (a return decision);
- b. the issuing of a return decision without providing an appropriate period for voluntary departure;
- c. the withdrawal of residence permits (temporary and permanent);
- d. the loss of nationality that had been acquired?

If the answer to one of the sub questions is “yes”, please describe whether public order or national security grounds may be applied in every case or in some categories of cases only. In particular, address whether there are any exceptions if the third-country national is married to a national or there are strong family life concerns (Art. 7 of the Charter of Fundamental



Rights of the European Union, Art. 8 of the ECHR) or prohibition of torture and inhuman or degrading treatment or punishment is at stake (Art. 4 of the Charter, Art. 3 of the ECHR).

**A threat to public order or national security – by virtue of the Third-Country Nationals Act – may constitute a ground for the competent authority to expel a third-country national from the country’s territory, to decide on the refoulement (returning) of the person concerned or to withdraw the residence permit of the person concerned. The application of these measures may be restricted by the principle of non-refoulement.**

10. Please give examples from your court’s practice in often repeated situations that have fallen within the scope of the terms “public order” and “national security” in:

- a. immigration cases;
- b. citizenship cases.

**As regards the courts’ jurisprudence in immigration and citizenship cases, the issue of public order and national security is, in general, risen and examined during the decision-making process in respect of the acquisition of certain statuses and permits in connection with immigration policing activities.**

11. Are the following criteria in your case law or the national law used to determine a threat to national security and public order:

- a. personal conduct;
- b. the fundamental interest of society;
- c. genuine, present and sufficiently serious threat;
- d. other?

Please specify whether the above are applicable in immigration or citizenship cases.

**In immigration cases, the Third-Country Nationals Act provides for the examination – primarily in connection with the issuance of residence permits and the adoption of prohibitive and restricting measures – of the conduct of the person concerned (a third-country national), but this examination does not include the assessment of the fundamental interest of society or of the existence of genuine, present and sufficiently**



**serious threat. However, these elements are to be assessed by virtue of Act no. I of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence (EEA nationals).**

12. Would you consider the following to be a violation of public order that would lead a third-country national being denied a residence permit or given return decision if the third-country national cannot rely on the protection of family or private life and is found guilty of:

- a. shoplifting;
- b. drink driving;
- c. tax avoidance;
- d. fare avoidance;
- e. parking offences;
- f. traffic offences;
- g. smuggling small quantities of alcohol/cigarettes (duty avoidance);
- h. hate speech;
- i. contracting a marriage of convenience (a sham marriage).

**The previous commission of an infringement or criminal offence by a foreign national may result in the refusal to grant a residence permit to the offender in Hungary on the basis of the violation of the country's public security or public order or a threat thereto. As the Hungarian Criminal Code no longer includes criminal offences that may be committed only by foreign nationals (in the past, the criminal offences of illegal residence in Hungary and the violation of restrictions of entry and stay constituted such criminal acts), the latter typically commit offences that involve foreigners (third-country nationals), such as smuggling in human beings, aiding in illegal residence, the abuse of family ties and the unlawful employment of third-country nationals.**

**The criminal offence of the abuse of family ties was introduced by the new Criminal Code. In the case of the commission of border barrier-related criminal offences, expulsion may not be omitted.**

**Concerning criminal offences other than the ones referred to above committed by third-country nationals, the court has to render a decision – with prime regard to the**



**principle of proportionality – as to when it is necessary to deny the issuance of permits or to expel the offender.**

13. If a third-country national can rely on the protection of family/private life, could the situations described above (in question 12, points a–i) ever lead to the denial of a residence permit or a decision on return? Could removal or denial of a residence permit be dependent on a proportionality test? Please differentiate between situations a–i if necessary.

**Pursuant to the relevant provisions of the Third-Country Nationals Act, a third-country national may be granted a residence permit only if his entry into or stay in Hungary does not represent a threat affecting the country’s public policy, public security, national security or public health. There are no exceptions to the above provisions, therefore, a third-country national cannot oppose his expulsion on the grounds of the right to the protection of his private or family life. The acts listed under question 12 can be divided into two categories depending on whether they constitute a criminal offence under Hungarian law or not; from a proportionality point of view, criminal offences (theft, drink driving, tax avoidance) are considered to be more serious infringements and they entail more severe sanctions that may also lead to the rejection of the issuance of a residence permit.**

**No expulsion order under immigration laws or independent exclusion order can be executed to the detriment of a third-country national for the commission of a criminal offence that had not been sanctioned with an expulsion by the competent criminal court.**

14. How do you protect the best interests of a child with regard to national security and public order? Please illustrate with examples. Can a third-country national be removed from your country if he/she is the only ‘home maker’ guardian to a national of your country (for example, if the national of your country is a minor) and there are strong indications that the third-country national continuing to stay in your county is a threat to national security or public order?

**With regard to Hungary’s international legal obligations and the national legal background, the best interests of a child shall prevail in immigration proceedings as**



**well. Pursuant to the Third-Country Nationals Act, the immigration authority shall have regard for the following factors before adopting an expulsion order under immigration laws concerning a third-country national who is holding a residence permit issued on the grounds of family reunification: the duration of stay; the age and family status of the third-country national affected, possible consequences of his expulsion on his family members; links of the third-country national to Hungary, or the absence of links with the country of origin. Any third-country national who is bound to a third-country national residing in the territory of Hungary under immigrant or permanent resident status by marriage or registered partnership and has a residence permit may be expelled only if his continued residence represents a serious threat to national security, public security or public policy.**

**The Third-Country Nationals Act defines the category of persons eligible for preferential treatment, which includes unaccompanied minors, or vulnerable persons such as minors, elderly people, disabled people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, if they are found to have special needs after an individual evaluation of their situation.**

**According to the Third-Country Nationals Act, where justified by the personal circumstances of the person expelled – such as the length of stay in the territory of Hungary, on account of which more time is required for making preparations for departure, or the existence of other family and social links –, the immigration authority may – upon request or on its motion – extend the period for voluntary departure by a period of up to thirty days. If the child who is in the parental custody of an expelled third-country national pursues studies in a public education institution, the immigration authority may – upon request or on its motion – extend the period for voluntary departure by a period up to the end of the running semester.**

**Regarding the detention of third-country nationals under immigration laws, the Third-Country Nationals Act stipulates that families with minors shall only be detained as a measure of last resort and for not more than thirty days where the best interests of the child shall be a primary consideration.**



**Any third-country national who was born in the territory of Hungary and who has been removed from the custody of his guardian having custody according to Hungarian law, and unaccompanied minors shall be granted a residence permit on humanitarian grounds.**

**An unaccompanied minor may be expelled only if adequate protection is ensured in his country of origin or in a third country by means of reuniting him with other members of his family or by State or other institutional care.**

15. Would you consider terrorism, smuggling of people, child abuse, trading in weapons, crimes committed by repeat offenders or drug dealing to be offences with regard to public order or national security that may lead to:

- a) loss of nationality that had been acquired;
- b) the denial of a residence permit or issuance of a return decision?

**The criminal offences listed under the present question are considered to be serious offences under Hungarian law the commission of which may lead to the rejection of the issuance of a residence permit or to the delivery of a decision on returning the offender on the grounds of threat to public order or national security. On the other hand, the revocation of an acquired nationality cannot be applied as a criminal sanction.**

16. If a third-country national has been excluded from protection on the grounds of Art. 1F of the 1951 Refugee Convention, is he/she automatically considered to be a [serious] threat to public order or national security and does he/she have to be removed from the country without any additional examination of the actual and current risk? If a separate procedure is required in order to take a return decision, is it necessary to take into account the following criteria:

- a. personal conduct;
- b. the fundamental interest of society;
- c. genuine, present and sufficiently serious threat;
- d. other?



**A third-country national who has been excluded from protection on the grounds of Article 1, point F of the 1951 Refugee Convention – because of the gravity of the acts listed therein – is considered to be a serious threat to public order or national security and, therefore, may be ordered to leave the country.**

17. Can you give examples of cases in which family or private life is given priority over national security or public order? Please describe them briefly.

**No such cases have been dealt with so far by the Curia.**

18. Do you experience tensions between the automatic protection given by Art. 4 of the Charter of Fundamental Rights of the European Union (Art. 3 of the ECHR) and national security that calls for removal? Could you give examples of your national practice?

**There are no such tensions. According to the Third-Country Nationals Act, third-country nationals may not be turned back or expelled to the territory of a country that fails to satisfy the criteria of safe country of origin or safe third country regarding the person in question, in particular where the third-country national is likely to be subjected to persecution on the grounds of his race, religion, nationality, social affiliation or political conviction, nor to the territory or the frontier of a country where there is substantial reason to believe that the expelled third-country national is likely to be subjected to the actions or conduct defined in Article XIV, paragraph (2) of the Fundamental Law of Hungary (non-refoulement). The immigration authority shall take into account the principle of non-refoulement in the proceedings relating to the ordering and enforcement of expulsion measures. A ban on the enforcement of expulsion measures ordered by the court may be imposed by the sentencing judge. If there is no safe third country offering refuge to the third-country national affected, if assisted return or expulsion is not an option, the refugee authority shall extend temporary protection to the third-country national in question, and shall issue a humanitarian residence permit.**

**C. Procedural issues. Fairness of the procedure.**



19. If a decision reviewed by a judge is based on national security or public order grounds, does it always contain legal and factual reasons? On what conditions can an administrative authority refrain in full or in part from justifying such a decision?

**Act no. CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter referred to as the Administrative Proceedings Act) contains no provision which would enable the administrative authority to refrain from justifying its decision based on national security or public order grounds, therefore administrative decisions always contain legal and factual reasons. However, the Administrative Proceedings Act provides for the option of confidential data processing.**

20. If a decision is based on national security or public order grounds, do the party, his/her lawyer and a judge reviewing a decision have the same access to the legal and factual reasons of this decision provided by the administrative authority?

**The Administrative Proceedings Act stipulates that a decision shall be permitted to contain privileged information of the type that can be made available to the person to whom the decision is communicated. The decision shall be phrased without revealing the privileged information to which it contains any reference. Furthermore, the decision shall be phrased without making any implication as to the identity of the person, whose natural identification data and home address is considered confidential information. By virtue of the Administrative Proceedings Act, the authority shall make available to the general public the final decision and those declared enforceable irrespective of any appeal, if such decisions had been adopted for reasons of public security and public order.**

21. Is evidence that substantiates the establishing of facts (grounds) that constitute a risk to national security or public order always open to:

- a. a judge;
- b. a party to the procedure;
- c. a counsellor (lawyer) representing a party?



**Pursuant to the Administrative Proceedings Act, clients shall be allowed access to the documents of the proceedings any time during the proceedings. This right shall prevail also if the client did not previously participate in the proceedings. A third person may be allowed access to documents containing any personal data or privileged information, if he is able to substantiate that the inspection of the document is necessary for the enforcement of his right, or for the fulfilment of his obligation conferred upon him by the relevant legislation or an official ruling, and if the legal requirements for access to privileged information are satisfied.**

**If the pieces of evidence that substantiate the establishing of facts (grounds) that constitute a risk to national security or public order contain classified information, then the provisions of Act no. CLV of 2009 on the Protection of Classified Information (hereinafter referred to as the Classified Information Act) shall be applied as follows:**

**The person concerned is entitled to access his personal data with national classification on the basis of the access licence issued by the information classifier and without personal security certificate. The person concerned is obliged to make a confidentiality declaration in written form prior to his access to the national classified information and follow the rules on the protection of national classified information.**

**Where an authorisation for access is refused, the person concerned may turn to the Metropolitan Administrative and Labour Court within 15 days after receipt of such decision. The plaintiff, the person intervening on the plaintiff's side and their representatives may not learn the classified information in the course of the proceedings. Other persons participating in the lawsuit and their representatives may only learn the classified information, if they underwent the highest level national security vetting as defined in the National Security Services Act.**

**Unless otherwise required by law, judges are entitled to exercise their rights of disposal necessary for the consideration of cases assigned to them according to the assignment order without national security control, personal security certificate, confidentiality declaration or user licence.**



22. Is every judge allowed to have access to classified evidence or is it necessary to obtain a special certificate (security clearance) and undergo a vetting process? Is this procedure mandatory for all judges or only to those who are ruling on national security cases and have access to classified evidence?

**According to the Classified Information Act, unless otherwise required by law, judges are entitled to exercise their rights of disposal necessary for the consideration of cases assigned to them according to the assignment order without national security control, personal security certificate, confidentiality declaration or user licence.**

23. If facts or evidence that constitute a risk to national security or public order are not open to a party to a procedure and his/her counsellor (lawyer) representing the party, are there any mechanisms in your law or courts' practice that ensure 'Equality of Arms' between the parties to the proceedings and make evidence that was not disclosed to the party and his/her lawyer available in another way with a view to adversarial argument (e.g. a summary of the evidence is presented to the party or a specially vetted lawyer is allowed to see the case file in order to defend the interests of the third-country national)? Please describe how this mechanism works in practice, when it was established and its legal grounds.

**According to the Classified Information Act, where an authorisation for access is refused, the person concerned may turn to the Metropolitan Administrative and Labour Court within 15 days after receipt of such decision. Should the court approve the application, the classifier shall issue the need-to-know clearance.**

24. If evidence that substantiates the establishing of facts (grounds) that constitute a risk to national security or public order is not open to a party to a procedure or his/her counsellor (lawyer), is the judge allowed to verify the lawfulness of the denial of access to such evidence and does the judge have the competence to disclose such evidence to the party to the procedure? Please describe the grounds and mechanism of judicial control in relation to the denial of access to a case file due to its confidentiality on grounds of its classified character (state secrecy or similar).



The *classifier* may provide access to national classified information in public administrative, court, contravention or other official procedures, with the exception of criminal procedures. The issue of a licence to use national classified information may not be refused in the prosecutor's legality inspection procedure or in a civil law procedure which may be launched by the prosecutor for a public interest. A decision on issuing the access licence shall be taken by the information classifier within 15 days upon the request of the person concerned. The information classifier shall deny the issue of an access licence in case the access damages public interest that serves as the basis of classification. The information classifier shall justify the denial of the issue of the access licence. Where an authorisation for access is refused, the person concerned may turn to the Metropolitan Administrative and Labour Court within 15 days after receipt of such decision. Should the court approve the application, the classifier shall issue the need-to-know clearance. The provisions of the Code of Civil Procedure applicable to public administration lawsuits shall apply to the procedure to be conducted by the court with the proviso that the court shall proceed in camera and as a matter of urgency. The suit may only be conducted by a judge who underwent the highest level national security vetting as defined in the National Security Services Act.

25. Is evidence admitted by judges during court procedures in immigration and citizenship cases always available to the parties with a view to adversarial argument or are special protective measures applied to sensitive documents that do not allow the disclosing of such evidence to a party? Are there any special mechanisms applied to ensure 'equality of arms' between the parties to proceedings if a document is not disclosed to a party?

The parties, the public prosecutor and other persons participating in the action, and their representatives may exercise the right to access documents for inspection and to make copies, where such documents contain business secrets, privileged information and other secrets described in specific other legislation – subject to a confidentiality agreement made out in writing – according to the rules and under the conditions laid down by the judge hearing the case. If, however, the party entitled to grant an exemption from the obligation of confidentiality made a statement in due time in which he refused to allow access to the document containing any business secret or privileged information, apart from the court and the clerk keeping the records (transcriber), no



**other person shall be allowed to have access to that part of the document containing such secrets, and it may not be copied and no extracts can be made thereof.**

26. Are full judgements and their legal and factual reasons in immigration and citizenship cases always open to the parties and their counsellors? Are there any restrictions regarding the reasons for a judgement in relation a party or their counsellor if that judgement is based on national security or public order grounds?

**Apart from the parties, the public prosecutor and other persons participating in the action, and their representatives, information on the proceedings may only be given to persons with legitimate interest as to the conduct and the outcome of the proceedings. The president of the court seized – subject to verifying legal interest – shall authorise access to documents and the making of copies and extracts thereof, and/or the release of information. Access to court records and documents containing secret data, and the release of information as to their contents, furthermore, the making of copies and extracts of any document containing secret data may be permitted only to a person indicated in the clearance for inspection granted by the original classifier or the party entitled to grant an exemption from the obligation of confidentiality.**

27. Are the same standards applied in relation to access to classified case files for nationals, EU citizens and their family members and third-country nationals? If there are differences in treatment of the third-country nationals in immigration and citizenship cases and other categories (nationals or EU nationals and their family members), please describe those differences.

**The same standards apply in relation to access to classified case files for nationals, EU citizens and their family members and third-country nationals.**

28. Are national security cases (immigration or citizenship) decided by a judge more quickly or given any priority when listed for hearing? Is every judge eligible to decide such cases or are there any special conditions provided by applicable law (e.g. security clearance)?



**Immigration and citizenship cases involving national security concerns are not decided by judges more quickly and they are not given any priority when listed for hearing. According to the Classified Information Act, unless otherwise required by law, judges are entitled to exercise their rights of disposal necessary for the consideration of cases assigned to them according to the assignment order without national security control, personal security certificate, confidentiality declaration or user licence.**

