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

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

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Replies of the Supreme Court of Estonia

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

1. The **Aliens Act**[1] (henceforth AA) regulates the bases for the entry of aliens into Estonia, their temporary stay, residence and employment in Estonia and their legal liability for the violation of obligations provided for in the act. The notions of public order and national security frequently appear in this act: for example, according to Section 52(1)(7) of the AA, the period of stay of an alien may be terminated prematurely if an alien may constitute a threat to public order, national security, international relationships or public health of any member state of the European Union.

The **Obligation to Leave and Prohibition on Entry Act**[2] (henceforth OLPEA) regulates the bases and procedure for the application to aliens of the obligation to leave Estonia and the prohibition on entry into Estonia and the regime for the passage of an alien through Estonia. The fact that the alien constitutes a threat to public order or national security can, for example, give a basis for the immediate enforcement of the precept to leave, without giving a term for voluntary compliance (Section 7^2(2)(4) of the OLPEA).

Administrative procedure in the field of immigration of third-country nationals is carried out by the **Police and Border Guard Board.** The competences of the Police and Border Guard Board in this respect are specified in the relevant legislation and further explained on their web site.[3] The Ministry of Foreign Affairs, the Police and Border Guard Board or the Estonian Internal Security Service also have the competence to decide on the premature termination of the period of stay of an alien (Section 55 of the AA). With some exceptions, challenges can be filed against the decisions in administrative procedure. Decisions on the challenges can usually be contested in administrative courts. In some cases provided for in the Aliens Act, an alien can lodge an appeal on a visa-related decision of the Police and Boarder guard or the Estonian Internal Security Service with the Ministry of the Interior.

Immigration cases are dealt with by **general administrative courts.** Estonia has a three-level court system and no special courts or tribunals exist for immigration cases. **Circuit courts**

[1] Available online in English: https://www.riigiteataja.ee/en/eli/501022017001/consolide.
[2] Available online in English: https://www.riigiteataja.ee/en/eli/517012017004/consolide.
[3] See for example https://www.politsei.ee/en/teenused/residence-permit/.

review the judgments of administrative courts as the courts of second instance. The **Supreme Court** is the court of the highest instance, and judgments of circuit courts are reviewed by the Administrative Law Chamber of the Supreme Court.

2. The **Citizenship Act**[4] (henceforth CA) regulates the acquisition, resumption and loss of Estonian citizenship. According to Section 22(1) of the CA, having engaged in actions against the Estonian state and Estonian national security is among the reasons for refusing to grant or restore Estonian citizenship to an applicant.

The administrative and judicial proceedings in citizenship cases as well as in immigration cases fall under general procedure. No special courts or tribunals exist for citizenship cases. The cases are dealt with by general administrative courts in the Estonian three-level court system. The applications concerning Estonian citizenship are submitted to the Police and Border Guard Board.[5]

3. Immigration and citizenship cases brought before the Estonian courts in 2016:

	Administrative Courts (I instance)	Circuit Courts (II instance)	Supreme Court (III, last instance)
Citizenship	-	3	-
Passports, ID	5	1	-
Placing an alien in a detention centre	192	115	1
Immigration	59	30	2

Please note that the excluding of cases concerning EU nationals is not supported in our statistics database. Cases concerning refugees are excluded.

The cases in which the issues related to national security and public order have to be considered are not registered separately nor given priority when listed for hearing. There are no specific statistics available about the cases in which the grounds related to national security and public order were decisive. Out of the three relevant decisions of the Supreme Court made in 2016, one[6] concerned the revoking of a residence permit for a long-term resident. The Supreme Court found that in order to revoke this permit, the threat the alien constitutes to public order or national security must be real and sufficiently severe, if the alien is also

[4] Available online in English: https://www.riigiteataja.ee/en/eli/513012017001/consolide.
[5] See for example https://www.politsei.ee/en/teenused/eesti-kodakondsus/.
[6] Judgment no. 3-3-1-2-16 (13.04.2016) of the Administrative Law Chamber of the Supreme Court, available in Estonian: http://www.riigikohus.ee/?id=11&tekst=222580641; English and French summaries available on JuriFast.

obliged to leave the country. The other two decisions in immigration cases[7] made in 2016 did not relate to the notions of national security or public order.

4. a) There is no special judicial procedure for immigration cases compared to the general administrative court procedure regulated by the **Code of Administrative Court Procedure**[8] (henceforth CACP).

b) There are no differences in the court procedure.

c) Section 5(1) of the CACP constitutes that when granting an action, the court may, in the operative part of the judgment:
1) annul the administrative act in part or in full;
2) order that an administrative act be made or an administrative measure be taken;
3) prohibit the making of an administrative act or the taking of an administrative measure;
4) award compensation for harm caused in a public law relationship;
5) issue an enforcement order requiring elimination of the consequences of the administrative act or administrative measure;
6) ascertain that the administrative act is null and void, that the administrative act or measure is unlawful, or ascertain a fact that is of material importance in the public law relationship.

The court may exercise the powers either cumulatively or separately.

According to Section 158(2) of the CACP, the court ascertains any fact of the matter as that fact stands at the time of entering the judgment. The court assesses the lawfulness of an administrative act or measure by reference to the time that the act was issued or the measure taken.

In assessing the lawfulness of an administrative act issued or an administrative measure taken as a result of the exercise of a discretionary power, the court also verifies compliance by the administrative authority with the limits and objective of the power, and with other rules which govern the exercise of discretion. The court does not conduct a separate assessment of the expediency of a discretionary decision. When verifying the lawfulness of an administrative act or measure, the court does not engage in an exercise of the discretionary power in the place of the administrative authority (Section 158(3) of the CACP).

d) As the court of highest instance in Estonia, the Supreme Court is the court of last resort. On the basis of an appeal in cassation, the Supreme Court verifies whether the circuit court has correctly applied relevant rules of substantive law and observed the rules of procedure (Section 229(1) of the CACP). When verifying whether an appeal in cassation is well founded, the Supreme Court has regard to the facts as ascertained in the judgment of a lower court. In addition, the Supreme Court has regard to the facts submitted in order to state the reasons of the assertion concerning significant infringement by the circuit court of a rule of procedure, including any facts apparent from the minutes of the court session (Section 229(2)

[7] Decisions no. 3-3-1-11-16 (22.03.2016; available in Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-11-16) and no. 3-3-1-1-16 (27.05.2016; available in Estonian: http://www.riigikohus.ee/?id=11&tekst=222581000) of the Administrative Law Chamber of the Supreme Court.
[8] Available online in English: https://www.riigiteataja.ee/en/eli/506042016001/consolide.

of the CACP). The Supreme Court has the power to dismiss the appeal in cassation and uphold the judgment of the circuit court; annul the judgment of the circuit court or the administrative court and the circuit court and return the matter for a new hearing to the circuit court or administrative court; annul the judgment of the circuit court and uphold the judgment of the administrative court; vary the judgment of the circuit court or the administrative court; enter a new judgment without returning the matter for a new hearing (only if it is not necessary to take new evidence or vary the assessment of that evidence), or vary the reasons stated in the judgment of the circuit court or the administrative court while upholding the operative part of the judgment (Section 230(5) of the CACP).

e) In principle, it is possible to lodge an appeal in cassation with the Supreme Court in every immigration case. According to Section 211(1) and (2) of the CACP, in the case that the circuit court has wrongly applied a rule of substantive law or significantly infringed a rule of court procedure, a party or third party of the matter has the right to lodge an appeal against the judgment of the circuit court with the Supreme Court. The reasons stated in the judgment may only be contested if the operative part of the judgment is contested, except in the case that such reasons affect the rights or duties of a participant of the proceedings independently of the operative part. The judgment of the circuit court may not be appealed in cassation with respect to a claim concerning which the judgment of the administrative court was not contested in the appeal against that judgment. According to Section 211(3) of the CACP, a participant of proceedings does not have the right of cassation if the participant has waived that right in simplified proceeding.

According to Section 219(3) of the CACP, The Supreme Court opens proceedings on an appeal in cassation if:
1) the positions stated in the appeal warrant the conclusion that the circuit court has incorrectly applied a rule of substantive law, or has significantly infringed the rules of court procedure, which has resulted or could have resulted in an incorrect judgment being entered;
2) regardless of the provision of point 1 of this subsection, the determination of the appeal is of considerable import from the point of view of ensuring legal certainty or uniformity of approach in the case-law of the courts.

Section 219(6) of the CACP states that the Supreme Court refuses to open proceedings on an appeal in cassation if it is convinced that none of the grounds provided in subsection 3 of this section exists for the opening of proceedings in relation to the appeal. Proceedings do not need to be opened on the appeal also in the case that the Supreme Court is convinced that the conduct of proceedings on the appeal does not allow the aim of the appeal to be achieved.

5. a) There are no differences in the judicial procedure between citizenship cases and other administrative cases.

b) There are no differences in the administrative court procedure depending on the existence of an issue related to national security and public order.

c) See answer to question 4c.

d) See answer to question 4d.

e) See answer to question 4e.

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

6. **Public order** is defined in the **Law Enforcement Act**.[9] According to Section 4(1) of this act, public order is a state of society in which the adherence to legal provisions and the protection of legal rights and persons' subjective rights are guaranteed. Section 5 also defines a threat to public order and disturbance: a disturbance is a violation of a legal provision within the area of protection of public order or of a person's subjective right, or damage to a legal right, and a threat is a situation where based on an objective assessment of the circumstances which have appeared it can be deemed likely enough that a disturbance will occur in the near future. A threat may be significant, serious or immediate. There can also exist a suspicion of a threat. This classification and criteria can be found in the aforementioned provision. The **Aliens Act** does not refer to the Law Enforcement Act, but it also does not define the notion of public order. Section 124(1) and (2) of the AA provides some examples of grounds that could constitute a threat to public order, but according to Section 124(4), this does not preclude considering other facts as a threat to public order.

National security is a frequent term in legal acts, although it has no strict legal definition apart from generally preserving the constitutional order. According to Section 14(2) of the Aliens Act, upon issue of an administrative act or performance of an act, relying on considerations for prevention of danger, uncertainties may be taken account of during proceedings in order to protect public order and national security. Section 21(3) of the CA provides that the Estonian citizenship is not granted or restored to an applicant who has engaged in actions against the Estonian state and Estonian national security. According to the Security Authorities Act[10], the objective of the activity of security authorities is to ensure national security by the continuance of constitutional order through the application of non-military means of prevention, and to collect and process information necessary for formulating the security policy and for national defence. Section 124(3) of the AA lists some circumstances which shall be considered a threat to the national security, but does not preclude considering other facts as a threat to the national security.

The interpretation of these notions is developed by courts in both criminal and administrative matters, and are further elaborated below in cases concerning immigration.

7. In recent years, the Supreme Court has made two decisions which address public order and national security. It is unfortunately not possible to compare them with the previous case law, as there are not enough decisions of the Supreme Court containing these notions to draw far-reaching conclusions.

In judgment no. 3-3-1-1-14 (27.02.2014) of the Administrative Law Chamber of the Supreme Court[11], the court interpreted Section 241(1)(2) of the AA together with Art. 12(1) of the directive 2003/109/EC and found that an alien constitutes a danger to public order in two cases: if the person has not committed a crime, but the information gathered and circumstances revealed affirm a real and actual danger to public order and, thus, to national security, as well as if the person has committed a criminal offence proved by a judgment of

[9] Available online in English: https://www.riigiteataja.ee/en/eli/507122016001/consolide.
[10] Available online in English: https://www.riigiteataja.ee/en/eli/507062016003/consolide.
[11] Available online in Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-1-14.

conviction. In the first case, it is a predictive decision and on the basis of evidence established, the court can only assess whether the violation of a protected legal right was probable (see judgment no. 3-3-1-80-11 (14.03.2012) of the Administrative Law Chamber[12] about the gravity, nature and probability of reoccurrence of a criminal offence). In the second case, the scope of discretion of the administrative authority is much narrower.

In judgment no. 3-3-1-2-16 (see above) of the Administrative Law Chamber of the Supreme Court, the court found that in order to annul a residence permit of a long-term resident, the danger to national security and public order has to be "real and sufficiently severe", if the annulment is accompanied by the person's obligation to leave Estonia. The danger was defined as follows: "the danger that the applicant poses to a person can actualise at any given time, and the potential consequence of the offence is significant harm, and danger to the public may occur if the applicant's way of life or the circumstances surrounding the applicant change." The annulment of a long-term resident's residence permit is not an automatic result of danger to public order, but a discretionary decision of the Police and Border Guard. First of all, the level of danger the person poses must be ascertained, and then the other relevant circumstances must be weighed.

Case law of the CJEU and the ECtHR referred to by the Supreme Court in immigration or citizenship cases is the following.

Case law of the CJEU:
- C-135/08 *Rottmann*;
- C-371/08 *Ziebell*;
- C-34/09 *Ruiz Zambrano*;
- C-256/11 *Dereci and Others*.

Case law of the ECtHR:
- 46410/99, *Üner v. the Netherlands*;
- 52178/10, *Samsonnikov v. Estonia*, and case law referred there;
- 1638/03, *Maslov vs. Austria*;
- 10664/05, *Mikolenko v. Estonia*;
- 10507/03, *Dorošenko v. Estonia*;
- 16944/03, application of Mikolenkos against Estonia (inadmissible);
- 39203/02, application of Nagula agains Estonia (inadmissible);
- 48321/99: *Slivenko v. Latvia*;
- 58822/00, *Shevanova v. Latvia*.

8. In all cases listed in the question, public order and national security have to be taken under consideration. All listed decisions are considered administrative acts in the Estonian administrative law system, and these acts are issued on the basis of the power of discretion, taking into account the relevant facts and considering legitimate interests (including family life).

a) to enter the territory of your state

[12] Available online in Estonian: http://www.nc.ee/?id=11&tekst=222543926.

According to Section 29(1) of the OLPEA, a prohibition on entry may be applied with regard to an alien if there is good reason to believe that his or her stay in Estonia may endanger the security and public order of the Republic of Estonia, other member state of the European Union, a member state of the Schengen Convention or a member state of the North Atlantic Treaty Organisation or the health of other persons.

Additionally, we would like to refer that the other grounds provided in Section 29 are:

2) there is information or good reason to believe that he or she belongs to a criminal organisation, that he or she is connected with the illegal handling or illicit trafficking of narcotics, psychotropic substances or the illegal conveyance of persons across the border or a temporary control line, that he or she is a member of a terrorist organisation or has committed an act of terrorism, or there is good reason to believe that that he or she may commit a terrorist crime or he or she is involved in financing or supporting a terrorist crime or money laundering;

3) he or she is employed or has been employed by the intelligence or security service of a foreign state or he or she is related to or has been related to the intelligence or security service of a foreign state, or there is good reason to believe that he or she is employed or has been employed by an intelligence or security service of a foreign state or he or she is related to or has been related to the intelligence or security service of a foreign state;

4) he or she has received or there is good reason to believe that he or she has received special training in landing operations or in diversion or sabotage activities, or other special training, and if the knowledge and skills acquired in the process of such training can be directly applied in the formation or training of illegal armed units;

5) he or she incites or there is good reason to believe that he or she may incite national, racial, religious or political hatred in Estonia or a foreign state;

6) he or she has been punished or there is good reason to believe that he or she has been punished for a serious crime against humanity or for a war crime, regardless of whether the criminal record has expired or been expunged, and regardless of the expungement of data concerning the penalty from the criminal records database;

6^{1}) there is information or a good reason to believe that the alien has participated or contributed to violation of human rights in a foreign state, which has resulted in the death or serious injury of a person, the unfounded conviction of a person in an offence inspired by political motives or other serious consequences;

7) he or she has been punished for an intentionally committed criminal offence or for another offence in Estonia or a foreign state, and if the criminal record has neither expired nor been expunged or if data concerning the penalty have not been expunged from the criminal records database;

8) the alien has violated legislation regulating the stay of aliens in Estonia or the crossing of the state border by aliens;

9) the alien has provided incorrect information or a falsified document upon application for a legal basis to stay in Estonia or extension thereof, for Estonian citizenship, international protection or an identity document;

10) the alien has unperformed obligations to the Estonian state, a governmental authority or local government.

According to Section 29(3), if it is impossible for the family of an alien to live together outside Estonia or if the resettlement of the family in a foreign state would involve difficulties on a disproportionate scale in comparison with the need to establish a prohibition on entry, a prohibition on entry with regard to the alien may be applied only in the cases provided for in clauses (1)(1)–(6^1) of this section.

b) to stay for 90 days in any 180-day period (short stay)

An alien shall have a legal basis for entry into Estonia and temporary stay in Estonia (a visa, etc.). In case there is no legal basis, the alien cannot enter the state.

According to Section 48(1)(5) of the AA, the extension of the period of stay is refused if there is doubt that the alleged purpose of extension of the period of stay of an alien does not correspond to the actual purpose of the continued stay of an alien in Estonia, and according to point 7 of the Section, there is reason to doubt the trustworthiness of an alien. Public order is not in the list of legal grounds for refusing to extend the period of stay.

c) to be granted residence permits (temporary or permanent)

According to Section 124(1) of the AA, the issue of a temporary residence permit may be refused if there is reason to believe that the entry into or the stay in Estonia of an alien may constitute a threat to public order.

The other grounds provided in this section (the heading of which is "Refusal to issue temporary residence permit for considerations of ensuring public order and national security and protection of public health") are:
2) a circumstance which is the basis for applying the prohibition on entry exists in respect of an alien;
3) there is reason to believe that the stay of an alien in Estonia may endanger the morality or the rights or interests of other persons;
4) there is reason to believe that the stay of an alien in Estonia may constitute a risk to public health;
5) an alien has been punished for an offence;
6) an alien has violated the conditions regarding the entry into Estonia, temporary stay in Estonia, residence in Estonia, departure from Estonia, employment in Estonia of aliens or crossing the state border or the temporary control line of aliens;
6^1) an alien has violated the obligation established in subsection 11 (1) or § 741 of the Act on Granting International Protection to Aliens;
7) there is reason to believe that the actual purpose of the application for temporary residence permit of an alien does not correspond to the alleged purpose;
8) there is reason to believe that an alien shall not depart from Estonia upon the expiry of the basis of stay or;

9) an alien has failed to pay for the costs of his or her stay in Estonia or the departure from Estonia.

According to Section 124(2) of the AA, a temporary residence permit shall not be issued if:
1) an alien has submitted falsified documents or false information regarding the relevant matters in the proceeding, including information concerning his or her earlier activity upon application for a visa or a residence permit or work permit or upon application for extension of the residence permit or work permit or upon application for the citizenship of Estonia or for a personal identification document of the Estonian citizen;
2) an alien has violated the obligation established in Section 11[13] of this Act;
3) the activity of an alien has been directed or is being directed or there is good reason to believe that such activity has been or is being directed against the Estonian state and the security thereof;
4) an alien has incited or is inciting or there is good reason to believe that an alien has incited or is inciting or may incite national, racial, religious or political hatred or violence;
5) an alien has served in a career position in the armed forces of a foreign state, has been assigned to the reserve forces thereof or has retired therefrom;
6) an alien is in the active service or in the contractual service of the armed forces of a foreign state;
7) an alien has committed a criminal offence for which he or she has been sentenced to imprisonment for a term for more than one year and his or her criminal record has not expired;
8) an alien has been repeatedly punished in Estonian for intentionally committed crime against the state and his punishment has not expired;
9) an alien has been repeatedly punished pursuant to criminal procedure for intentionally committed criminal offences;
10) there is information about an alien or a good reason to believe that he or she belongs to a criminal organisation, or is connected with the illegal conveyance of narcotics, psychotropic substances or persons across the border or the temporary control line, or he or she is a member of a terrorist organisation, or he or she has committed or there is a good reason to believe that he or she may commit an act of terrorism, or he or she is involved in financing or supporting terrorism or money laundering;
11) an alien is employed or there is a good reason to believe that he or she is employed by an intelligence or security service of a foreign state, or he or she has been or there is good reason to believe that he or she has been employed by an intelligence or security service of a foreign state, and his or her age, rank or other facts do not preclude his or her conscription into service in the security forces or armed forces or other armed units of a foreign state;
12) an alien has received or there is good reason to believe that he or she has received special training or special preparation in landing operations, or in diversion or sabotage activities, or other special training, and the knowledge and skills acquired in the process of such training can be directly applied in the formation or training of illegal armed units;
13) an alien has participated or there is good reason to believe that he or she has participated in punitive operations against civil population or;

[13] Section 11 of the AA. Obligations of alien: an alien who is staying temporarily in Estonia or is residing in Estonia is required to observe the constitutional order of Estonia and comply with the legislation of Estonia, respect the constitutional values and principles, the state based on liberty, justice and the rule of law and the organisation of the Estonian society, the Estonian language and culture.

14) with regard to an alien there is good reason to believe that he or she has committed crimes against humanity or a war crimes.

The facts listed in clauses (2)(1)–(4), (6) and (9)–(14) of this section shall be considered as a threat to the national security. This shall not preclude considering other facts as a threat to the national security (Section 124(3) of the AA). The provisions of subsections (1) and (2) of this section shall not preclude considering other facts as a threat to a public order (Section 124(4) of the AA). Clauses (2)(5), (6) and (11) of this section do not apply to the citizens of the member states of the NATO (Section 124(5) of the AA).

According to Section 237(1)(1) of the Aliens Act, the issue of a residence permit for a long-term resident may be refused if an alien may constitute a threat to public order or national security. According to Section 237(2) of the Aliens Act, in case of the refusal to issue a residence permit for a long-term resident for the reason that the person my constitute a threat to public order or national security or has submitted false information or used deceit or an alien has been punished in Estonia for an intentional criminal offence against the state and his or her criminal record has not expired, the gravity or type of the offence committed by an alien or the threats related to the relevant person are considered, taking into account the length of the period of stay in Estonia of an alien and connections with Estonia and the county of origin.

The provisions of Section 124 of the Aliens Act are applied upon refusal to issue a residence permit for long-term residents on the grounds that the person constitutes a threat to public order or national security.

d) to acquire nationality

According to Section 21(1)(2)–(6) of the Citizenship Act, the Estonian citizenship is not granted or restored to an applicant who:
2) does not observe the constitutional order and laws of Estonia;
3) has engaged in actions against the Estonian state and Estonian national security;
4) has committed a criminal offence for which he or she was sentenced to imprisonment for more than one year and whose conviction has not been spent or who has been repeatedly convicted of intentionally committed criminal offences;
5) has been employed or is currently employed by foreign intelligence or security services;
6) has served as a commissioned member of the armed forces of a foreign state or who has been assigned to the reserve forces of such state or has retired from such forces, as well as to his or her spouse who entered Estonia due to the member of the armed forces being seconded in relation to service, assignment to the reserve or retirement.

9. Risk to public order and national security constitute grounds for all of the listed decisions.

a) the removal of a third-country national from the territory of the country (a return decision)

According to Section 7(1) and (2) of the OLPEA, a precept to leave Estonia shall be issued to an alien who is staying in Estonia without a basis for stay. By the precept to leave it is established that the alien is staying in Estonia illegally and an obligation to leave Estonia is

imposed on the alien, the term for voluntary compliance with the obligation to leave is determined, a warning is made with regard to the alien about application of the enforcement penalty in case of a failure to comply with the precept to leave, a warning is made about the enforcement execution of the obligation to leave and in case of necessity the prohibition on entry is applied with regard to the alien. According to Section 7^1(1) of the OLPEA, a precept to leave and the prohibition on entry applied therein shall be justified to the extent that does not conflict with the national security interests.

b) the issuing of a return decision without providing an appropriate period for voluntary departure

According to Section 7^2(1) of the OLPEA, the term for voluntary compliance with the obligation to leave is the term assigned by the precept to leave by expiry of which an alien is required to leave Estonia. According to Section 7^2(2)(4) of the OLPEA, the term for voluntary compliance with the obligation to leave may not be assigned and the enforcement of the precept to leave may be carried out immediately if an alien constitutes a threat to public order or national security. Upon the issue of a precept to leave all the relevant circumstances shall be taken account of in every single case and the reasoned interests shall be considered (Section 7^2(3) of the OLPEA). According to Section 7^2(6)(4) of the OLPEA, if a term for voluntary leave has been assigned by the precept to leave, the term for voluntary leave may be shortened and the obligation to leave enforced before the expiry of the term for voluntary leave if an alien poses a danger for public order or national security. According to Section 7^3(1) of the OLPEA, upon the expiry of the term for obligation to leave as assigned in the precept to leave the obligation to leave may be enforced with regard to an alien at any time.

c) the withdrawal of residence permits (temporary and permanent)

According to Section 135(2)(3) of the AA, a temporary residence permit shall be cancelled if the activity of an alien constitutes a threat to public order or national security. In addition, the permit shall be cancelled if a basis for refusal to issue the temporary residence permit exists (Section 135(2)(2) of the AA) – see answer to question 8(c).

According to Section 241(1)(2) of the AA, a residence permit for a long-term resident may be revoked if an alien constitutes a threat to public order or national security. Upon revocation of a residence permit for a long-term resident on the grounds that an alien constitutes a threat to public order or national security, the gravity and type of the threats related to the person concerned shall be considered, taking into account the length of his or her stay in Estonia, the age of the alien, the consequences of the revocation of the residence permit and his or her family and connections with Estonia and the country of origin (Section 241(3) of the AA).

d) the loss of nationality that had been acquired

In the list of legal grounds for deprivation of Estonian citizenship, public order or national security are not directly mentioned. According to Section 28(1) of the CA, a person is deprived of Estonian citizenship by an order of the Government of the Republic if he or she:
1) while an Estonian citizen, enters the public service or military service of a foreign state without the permission of the Government of the Republic;

2) joins the intelligence or security service of a foreign state or an armed organisation of such a state, which is set up in accordance with military principles or which engages in military exercises;
3) has attempted to change the constitutional order of Estonia by force;
4) when acquiring Estonian citizenship or in relation to the restoration to him or her of Estonian citizenship, submits false information to conceal facts which would have precluded the grant or restoration of Estonian citizenship to him or her;
5) is a citizen of another state but has not been released from Estonian citizenship.

See also answer to question 8 concerning Section 21 of the CA (refusal to restore Estonian citizenship).

10. a) immigration cases

In case law, it has often been noted that the threat to public order is an open concept that the court has to substantiate every time. Decisions concerning a threat to public order are considered predictive decisions. The view that a person's previous offences may infer a threat to public order is widespread. Due to previous offences, the court loses faith in the person's future law-abiding conduct. Posing a threat to public order does not necessarily require the person having committed a new offence (ongoing criminal proceedings). The Supreme Court has found that the possibility of continuing to commit offences is especially high in the case of so-called offences concerning addiction to substances.[14]

Therefore, the examples differ widely, and there is a wide scope of discretion. For example, it has been found that the theft of a firearm, ammunition or explosive substance, robbery committed by using a weapon or wearing a mask, and the manufacture of an explosive device or acquisition and storage of the materials thereof definitely falls under the notion of posing a threat to public order.[15] It has also been found that if an alien who entered the state illegally is not law-abiding and has a risk of escape, a threat to public security or order may also occur.[16]

As indicated in the table of statistics given in answer to question 3, the immigration cases predominantly concern the placing of an alien in the detention centre (including prolonging their stay there). In a typical case of placing an alien in the detention centre, the alien has entered the state illegally and is then issued a precept to leave, the obligation to leave is enforced, and if there is a risk of escape, the alien is placed in the detention centre to be expelled. When prolonging the term of detention, the threat posed by the person to public order can be taken into account when evaluating the proportionality of the detention. It is also relevant whether expulsion is possible due to family matters and the existence of a receiving state.

The courts of first and second instance have often referred to the position of the Supreme Court that the threat to public order in the sense of Section 241(1)(2) can be seen as a situation where, according to an objective assessment of the circumstances, it can be deemed

[14] Judgment no. 3-3-1-103-06 of the Criminal Chamber of the Supreme Court (11.12.2006), available online in Estonian: http://www.riigikohus.ee/?id=11&tekst=RK/3-1-1-103-06.
[15] Tartu Circuit Court, case no. 3-10-2780, 23.04.2012.
[16] Tallinn County Court, case no. 3-16-373, 21.02.2016.

probable that the person may commit a similar offence in the near future. In order to give the assessment, the gravity, type and probability of reoccurrence of the committed offence have to be considered. As it is a predictive decision, the court can only assess, based on the evidence, whether damage to a protected legal right is probable.[17]

It has been found in case law that the Police and Border Guard Board's revocation of the residence permit of a long-term resident is an administrative measure and cannot be considered a punishment. The state's wish to prevent future possible offences should be seen as the main objective of the revocation. From this, the state's possible distrust towards the person who previously received a residence permit but abused the state's trust, thus bringing along the consequences, is visible. For example, the court found that having previously committed offences against the state is not a prerequisite for posing a threat to national security or public order. The threat to national security and public order must be understood in a broader sense, as a danger to the persons living in the state.[18]

b) citizenship cases

Very few citizenship cases have reached the courts. As indicated above, the grounds for refusing to grant or restore the Estonian citizenship in Section 21(1) of the Citizenship Act are defined in a stricter way than "threat to public order" or other open concepts. Thus, the scope of discretion is lower than in the cases concerning the placing of an alien in the detention centre. Still, courts have had to give reasons for the refusal of Estonian citizenship. For example, the court has not deemed arbitrary the legislator's suspicion concerning a foreign state's (especially the Soviet Union's) military officials' loyalty to the Estonian state even after their retirement. Loyalty is a subjective notion that cannot always be verified in administrative proceedings. Thus, it is acceptable to follow the principle of caution in citizenship policies and not grant a person citizenship in case of doubt.[19]

11. While the criteria listed in points a and b have not been elaborated on in case law, considering that the determination of a threat to national security or public order is a predictive decision, all criteria that could influence the level of threat must be taken into account – those must also include personal conduct and the fundamental interest of the society (see answer to question 10(a)). The Supreme Court has analysed the notion of a genuine, present and sufficiently serious threat in judgment no. 3-3-1-2-16 (see above).

12. Punishable offences in Estonia are divided into criminal offences and misdemeanours. All actions listed in points a–h may under some circumstances be punishable as misdemeanours in Estonia. The only exception is contracting a marriage of convenience which is not a punishable offence in Estonia. Section 124(1)(5) of the AA gives a basis for refusing to issue a temporary residence permit if the alien has been punished for an offence. According to Section 237(1) and (4) of the AA, the issue of a residence permit for a long-term resident may be refused on the same basis. The existence of a basis for refusal to issue the temporary residence permit is also a basis for cancelling the temporary residence permit

[17] Judgments no. 3-3-1-80-11 and 3-3-1-1-14 of the Administrative Law Chamber of the Supreme Court (see above).
[18] Tartu Circuit Court, case no. 3-13-1889, 24.09.2015.
[19] Tallinn Circuit Court, case no. 3-14-53193, 21.04.2016.

(Section 135(2)(2) of the AA). If the issue of a residence permit is refused or the permit is cancelled and the person has no other legal basis for staying in Estonia, they are issued a precept to leave (Section 7(1) of the OLPEA).

Refusal to issue a residence permit or cancelling it on the basis that the alien has been punished for an offence is discretionary, and clearly separated in the Aliens Act from bases which give automatic grounds for refusal. Even if the alien cannot rely on the protection of family or private life, the decision must take into account all relevant circumstances, the person's interests and general principles of law. Therefore, in all cases listed in points a–h, it is possible to either issue a residence permit or refuse the issue, depending on the applicant's person and the circumstances of the case. On the other hand, if the alien does not have a basis for stay in Estonia, the issue of a precept to leave is generally automatic.

Hence, a one-time and insignificant offence listed in points a–h would probably not lead to the refusal to issue a residence permit or the cancelling of the permit, whereas a recurring offence under aggravating circumstances would make it likely. There is an additional point to consider, though. Offences listed in points a, b, c, f and h may under aggravating circumstances (for example if the offences are systematic or if major damage is caused) be punishable as criminal offences (not misdemeanours) by more than one year's imprisonment. If an alien has committed a criminal offence for which he or she has been sentenced to imprisonment for a term of more than one year and his or her criminal record has not expired, a temporary residence permit shall not be issued (Section 124(2)(7) of the AA) and an existing permit shall be cancelled. In this case, a temporary residence permit may only be issued as an exception, on the basis of Section 125(1)(2) of the AA. It is also important to note that according to Section 124(2)(4) of the AA, inciting national, racial, religious or political hatred or violence is among the absolute grounds for refusing to issue a temporary residence permit, and this basis does not depend on the alien having been punished for the offence.[20] In this case, issuing a permit is not even allowed as an exception.

Even though contracting a marriage of convenience is not a punishable offence in Estonia, the issue of a temporary residence permit may also be refused or the permit cancelled if there is reason to believe that the entry into or the stay in Estonia of an alien may constitute a threat to public order or endanger the morality or the rights or interests of other persons (Section 124(1) and (3) of the AA). Again, this is a discretionary basis and the same principles as described above apply. Since these bases include vague legal concepts (morality, interest) and require no concrete facts to be established, a decision on this basis is difficult to predict. However, it may be presumed that if Estonian authorities know of contracting a marriage of convenience, it will usually result in the refusal to issue a temporary residence permit or the cancelling of an existing permit.

There have been no court cases concerning offences listed in points c–i. Shoplifting has been among the grounds for a negative decision for an alien, but only in cases where the offence is repeated or forms a part of a cluster of offences. As another example of a rather minor offence, in one case a person entered Estonia with a significant amount of alcohol not

[20] The reason for this is presumably that incitement of hatred is only punishable as an offence in Estonia if this results in danger to the life, health or property of a person. Section 124(2)(4) of the AA does not require this result.

intended for personal use, and it was found that there was doubt that the alleged purpose of entry into the territory of the member state of the Schengen Convention of the alien did not correspond to the actual purpose, and that the alien may constitute a threat to public order. This case concerned the premature termination of the period of stay (Section 52(1)(3) and Section 52(7) of the AA). Being drunk in a public place has also been considered a violation of public order that would lead to the return decision of a third-country national, combined with other circumstances.[21] In addition, using a falsified document for entering the state has been considered a violation sufficient for issuing a precept to leave, in combination with other circumstances. In this case, the person was staying in Estonia without a legal basis.[22]

As on opposite example, the Tallinn Circuit Court has found that in some exceptional circumstances, it can be justified to consider a person who has been committing misdemeanours (including traffic violations) systematically for a long time a threat to security that undermines the basic values of the social and constitutional order. These violations have to occur continuously, be severe and especially systematic, and the person can display no signs of remorse or redress, thus clearly communicating the belief that the Estonian laws do not apply to the person. A person who has been punished by a fine of 100 euros once does not fulfil these criteria.[23] While this judgment concerns citizenship, it may also be relevant for cases concerning residence permits.

13. The ability of a third-country national to rely on the protection of private or family life does not change the applicability of the legal bases described in the answer to question 12. However, it is clear that when relying on the discretionary basis for refusal to issue a residence permit, the alien's right to the protection of private or family life must be taken into account. This makes a refusal to issue a residence permit or the cancelling an existing permit for offences listed in question 12, points a–i unlikely. In case of offences listed in points a, b, c, f and h committed under aggravating circumstances (see answer to question 12 for details) and punished by imprisonment of more than one year, the refusal to issue a residence permit or the cancelling of an existing permit is probable despite the protection of private or family life, although the law allows for exceptions.

14. One of the bases for issuing a temporary residence permit to an alien is to settle with a close relative (Section 118(2) of the AA). On the other hand, according to Section 124(1)(1), the issue of a temporary residence permit may be refused if there is reason to believe that the entry into or the stay in Estonia of an alien may constitute a threat to public order. This is a discretionary basis for refusal, so all relevant circumstances must be taken into account. Those must include the interests of the alien's children. Some specific public order grounds have been listed as absolute bases for refusal of issuing a temporary residence permit (Section 124(2) of the AA), although even many of these do not completely exclude issuing a temporary residence permit as an exception (Section 125 of the AA). Although it is not explicitly written in Section 125 of the AA, it is likely that one of the grounds for the exception would be the protection of the best interests of a child.

[21] Tallinn Administrative Court, case no. 3-14-50403, 23.05.2014.
[22] Tartu Administrative Court, case no. 3-15-2093, 26.01.2016.
[23] Tallinn Circuit Court, case no 3-15-47, 20.01.2016.

If the third-country national is issued a precept to leave Estonia, upon the issue all the relevant circumstances shall be taken into account of in every single case and the reasoned interests shall be considered (Section 7^2(3) of the OLPEA). Impact on a child attending school, as well as family and social relationships of the alien in Estonia are among the circumstances to take account of for extending the term for voluntary compliance with the obligation to leave, if the compliance with the obligation to leave turns out to be disproportionately burdensome (Section 7^2(5) of the OLPEA). On the other hand, the precept to leave may be enforced immediately if the alien constitutes a threat to public order or national security (Section 7^2(2)(4) of the OLPEA).

So, while it is not forbidden to remove a third-country national from the country if he/she is the only 'home maker' guardian to a national, this is one of the circumstances that must be taken into account when making a decision.

In administrative court practice, there have been no cases where the interests of a child would have been prioritised in relation to a threat to national security or public order.

There has been only one case where the court granted the Police and Border Guard Board's application to place a minor in a detention centre together with the persons the minor entered the country with. Even though a minor was concerned, the court did not find it disproportional to place them in a detention centre, reasoning it, among other things, with the fact that in the detention centre the minor had an opportunity to be in the company of other persons of the same nationality, or in other words, in an environment where the minor was accompanied by persons sharing the minor's cultural background and mother tongue.[24]

In a case involving an alien who was imprisoned, the court took considerations of family life into account, but concluded that the person could not have had a family life anyway while in prison. The person had been convicted of drug-related crimes and public security was considered more important than family life.[25] In another case involving an alien who was imprisoned, the court found it relevant that by the time the person is released from prison, his child will be older than 18.[26] It has been concluded several times that the relationship between adult children and their parents cannot be considered "family life" in the sense Art. 8 of the Convention, unless circumstances of extraordinary dependence occur.[27]

15. a) The deprivation of Estonian citizenship is not related to committing any criminal offence. One of the bases for depriving a person of Estonian citizenship is the person joining an armed organisation of a foreign state (Section 28(1)(2) of the CA), but this does not include typical terrorist organisations. Section 28(1)(3) of the CA gives a basis for depriving a person of Estonian citizenship if they have attempted to change the constitutional order of Estonia by force, but Estonian penal law does not consider this an act of terrorism – offences against the Republic of Estonia are regulated separately. However, Section 21(1)(4) of the CA precludes granting Estonian citizenship to a person who has committed a criminal offence for which he or she was sentenced to imprisonment for more than one year and whose conviction

[24] Tartu Administrative Court, case no. 3-16-101, 14.01.2016.
[25] Tallinn Circuit Court, case no. 3-12-1251, 04.06.2014.
[26] Tartu Circuit Court, case no. 3-10-2860, 17.02.2012.
[27] Tartu Circuit Court, cases no. 3-14-51359, 3-11-1499, no 3-11-523, 3-10-2860.

has not been spent or who has been repeatedly convicted of intentionally committed criminal offences. If the person has concealed this information when acquiring Estonian citizenship, Section 28(1)(4) of the CA provides a basis for depriving them of Estonian citizenship. For all offences listed in the question, an imprisonment for more than one year is likely.

b) While Estonian penal law distinguishes between offences against the Republic of Estonia and terrorist acts, terrorist acts are still considered offences against the state. Intentionally committing a crime against the state usually precludes the issue of a temporary residence permit and is a basis for cancelling an existing permit, if the punishment has not expired (Section 124(2)(8) of the AA). Repeatedly committing intentional criminal offences has the same consequence (Section 124(2)(9) of the AA). In both of these cases issue of a temporary residence permit is possible as an exception (Section 125(1)(3) and (4) of the AA). In addition, Section 124(2)(10) provides a relatively wide basis for refusing to issue a temporary residence permit if there is information about an alien or a good reason to believe that he or she belongs to a criminal organisation, or is connected with the illegal conveyance of narcotics, psychotropic substances or persons across the border or the temporary control line, or he or she is a member of a terrorist organisation, or he or she has committed or there is a good reason to believe that he or she may commit an act of terrorism, or he or she is involved in financing or supporting terrorism or money laundering. This basis does not require the conviction of the person for the offences in question and no exceptions are possible in these cases.

If the aforementioned conditions are not met with regard to the offences listed in the question, the general discretionary bases for refusing to issue a temporary residence permit apply (see answer to question 12).

16. The basis in Estonian law for excluding a person from protection on the grounds of Art. 1F of the 1951 Refugee Convention is found in Section 22 of the Act on Granting International Protection to Aliens[28] (henceforth AGIPA). In the case of rejection of an application for international protection, upon contestation of the decision, the applicant has the right to stay in the territory of Estonia within the time limit for an appeal and during the judicial proceedings (Section 25^1(2) of the AGIPA). Accordingly, a precept to leave Estonia cannot be issued before the end of that time limit.

Precepts to leave Estonia are issued on the basis of a separate law: the OLPEA. According to Section 7(1) of the OLPEA, a precept to leave Estonia shall be issued to an alien who is staying in Estonia without a basis for stay. Upon the issue of a precept to leave, all the relevant circumstances shall be taken account of in every single case and the reasoned interests shall be considered (Section 7^2(3) of the OLPEA). It follows that there is no automatic connection between Section 22 of the AGIPA and a precept to leave. However, it is highly likely that the precept to leave would follow, except for some special circumstances.

17. No such cases can be found in the practice of Estonian administrative courts.

[28] Available online in English: https://www.riigiteataja.ee/en/eli/516012017005/consolide.

18. In the practice of Estonian administrative courts, there have not been any cases where tensions between the protection given by Art. 4 of the Charter and national security would have arisen. So, we have not experienced these tensions in our case law yet.

C. Procedural issues. Fairness of the procedure.

19. Both the Aliens Act and the OLPEA provide that the provisions of the Administrative Procedure Act apply to the administrative proceedings provided for in these acts, taking account of the specifications of the acts (Section 12(1) of the AA, Section 1(2) of the OLPEA). According to Section 56(1) of the Administrative Procedure Act[29] (henceforth APA), written reasoning shall be provided for the issue of a written administrative act and refusal to issue an alleviating administrative act. The reasoning shall be included in the administrative act or in a document accessible by participants in proceedings and the administrative act shall contain a reference to the document. On the other hand, an administrative authority is required to maintain state and business secrets and the confidentiality of classified information of foreign states and information intended for internal use of an agency (Section 7(3) of the APA).

The State Secrets and Classified Information of Foreign States Act[30] (henceforth SSA) includes as state secrets, for example, items of information concerning the persons and undercover agents recruited for secret co-operation by surveillance agencies (Section 8(2) of the SSA), items of information concerning the international co-operation of the security authorities, except information the disclosure of which would not damage the security of the Republic of Estonia (Section 9(1) of the SSA), items of information collected and synthesised by a security authority when discharging its functions, except information the disclosure of which would not damage the security of the Republic of Estonia (Section 9(5) of the SSA), etc. Participants in pre-trial proceedings or judicial proceedings, an individual involved in the proceedings and the representatives of both parties in criminal, civil or administrative matters, or matters of misdemeanour shall have the right to access, after passing the security vetting, state secrets on the basis of a reasoned order of an investigative body, the Prosecutor's office or a court ruling if access is unavoidably necessary for the adjudication of the criminal, civil or administrative matter, or the matter of misdemeanour (Section 29(1) of the SSA). In addition, access shall not be granted to a person who refuses to sign a document on agreeing to safeguard the secret (Section 29(7) of the SSA).

Thus, there are several kinds of information concerning national security and public order grounds that may be classified as state secret and are therefore normally not disclosed (it is highly doubtful whether a person who is considered a threat to national security or public order would pass the security vetting).

As for the precept to leave and the prohibition on entry, Section 7^1(1) and Section 30^1(3) of the OLPEA provide explicitly that a precept to leave or a prohibition on entry shall be justified only to the extent that does not conflict with the national security interests.

[29] Available online in English: https://www.riigiteataja.ee/en/eli/531102016002/consolide.
[30] Available online in English: https://www.riigiteataja.ee/en/eli/527122016008/consolide.

In these cases, even if the administrative act does not contain factual grounds, the administrative authority must present them to the court in case of a dispute (see following answers).

In addition to the aforementioned cases, there are certain types of acts which do not need to contain any reasoning except for the legal basis: the refusal to extend the period of stay or the premature termination of the period of stay of an alien; the refusal to issue or extend a visa or the annulment and revocation of a visa (Sections 49, 53, 66, 71 and 79 of the AA). These acts also cannot be contested in court (Section 100[18] of the AA).

20. The party, his/her lawyer and the judge reviewing the decision do not always have the same access to the legal and factual reasons of a decision based on national security or public order grounds. According to Section 77(1) of the Code of Administrative Court Procedure[31] (henceforth CACP) and Section 38(1)(1) of the Code of Civil Procedure[32] (henceforth CCP), the court declares a proceeding or a part thereof closed at the initiative of the court or based on a petition of a participant in the proceeding, if this is clearly necessary for the protection of national security or public order and above all, for the protection of state secret or classified information of a foreign state or information intended for internal use. In the case of proceedings which have been declared closed, a participant of the proceedings may be removed from any procedural act, including a court session or a part of such session in order to ensure national security or public policy, in particular to maintain a state secret or foreign intelligence classified as secret or to protect information which has been declared for internal use only (Section 79(1)(1) of the CACP). Removal of a participant of the proceedings is possible only in the case that the interest to maintain the secret clearly overrides the right of a participant of the proceedings to be present when the procedural act is performed (Section 79(2) of the CACP), and the participant is removed from the procedural act to the smallest extent possible. The court discloses the content of the procedural act to the participant to the maximum extent which is possible without prejudicing the purpose of the removal (Section 79(4) of the CACP). The removal is decided in a court ruling and an appeal may be lodged against the ruling, as well as an appeal in cassation to the Supreme Court (Section 79(5) of the CACP). Under the same conditions, a representative or adviser of a participant in proceedings may be removed if necessary (Section 79(6)).

21. a) Since all judges are given by virtue of office the right of access to any level of state secret (Section 27(1)(4) of the SSA), the evidence that substantiates the establishing of facts that constitute a risk to national security or public order is always open to the judge.

b) and c) The evidence is not always open to the party to the procedure nor their representative or adviser. According to Section 87(3) of the CACP, documents which contain state secrets or foreign intelligence classified as secret are to be kept in the file of the case in a separate envelope or binding. In the case of a valid reason, in particular if this is inevitably necessary in order to meet the requirements applicable to the processing of state secrets or of foreign intelligence classified as secret or of the classified information carrier, documents which contain a state secret or foreign intelligence classified as secret may be kept separately from the file. Upon a corresponding application by a participant of the proceedings or of his

[31] Available online in English: https://www.riigiteataja.ee/en/eli/506042016001/consolide.
[32] Available online in English: https://www.riigiteataja.ee/en/eli/510012017004/consolide.

or her representative, that participant or representative is allowed to peruse the information carrier used as evidence in the matter, but only in accordance with the procedure provided in the SSA (see answer to question 19). On the same grounds as when the participant in the proceedings or their representative may be removed, their right to peruse the case file may also be limited – only if the interest for maintaining secrecy of the file overrides the right of the participant to peruse the file and only to the minimum extent possible (Section 88(2)–(3) of the CACP).

22. Every judge is allowed to have access to classified evidence. Before being appointed as judge, a candidate for judicial office must pass a security check, unless they already hold a valid access permit to access state secrets classified as top secret (Section 54(2) of the Courts Act[33]).

23. As described in answers to questions 19–21, the participant of the proceedings and their representative may be treated differently when deciding on disclosing classified information. It is possible that the party does not get access to the classified information, but their representative passes the security vetting process according to Section 29 of the SSA or is given permission to peruse the case file and participate in procedural acts in proceedings that have been declared closed. However, the security vetting of an advocate is considered problematic. The person applying for the right of access to a state secret must give a consent to the agency conducting the security vetting for obtaining information concerning the person from any natural and legal persons, institutions and bodies, for the adoption of the decision concerning the granting of the right of access as well as during the validity of the right of access (Section 27(10) of the SSA). According to some advocates, this may endanger the confidentiality of their relationships with their clients.[34]

In addition, if a participant of the proceedings has been removed from a procedural act, the court must disclose the content of the procedural act to the participant to the maximum extent which is possible without prejudicing the purpose of the removal. In case of oral proceedings, this may already be done at the hearing to some extent, but mainly, the information is given in the judgment where the court needs to give reasons for its assessment of the evidence. Even if the court cannot disclose most of the information, it must objectively assess the evidentiary items of the matter in their fullness and in relation to all of their aspects, and the court may not regard any evidentiary item as possessing pre-determined strength in the matter (Section 61(1)–(2) of the CACP).

The current rules on the removal of a participant of proceedings and the limiting of a participant's access to the case file entered into force on the 1st of January 2012, with the new Code of Administrative Court Procedure. The previous Code of Administrative Court Procedure (in force from the 1st of January 2000 until the 31st of December 2011) did not contain rules on this subject matter, but referred to the Code of Civil Procedure (Section 5(1) of the old Code of Administrative Court Procedure). The Code of Civil Procedure does not allow for the restriction of the right of the parties to an action to examine the file (Section

[33] Available online in English: https://www.riigiteataja.ee/en/eli/505012017005/consolide.

[34] Reiljan, P. Riigisaladuse loaga advokaat on haruldus – Äripäev, 02.08.2016 (in Estonian: http://www.aripaev.ee/uudised/2016/08/02/riigisaladuse-loaga-advokaat-on-haruldus); Glikman, L. Miks ma ei taotle riigisaladuse luba – Äripäev, 11.08.2016 (in Estonian: http://www.aripaev.ee/arvamused/2016/08/12/leon-glikman-miks-ma-ei-taotle-riigisaladuse-luba).

59(1[1]) of the CCP). The only exception is in Section 59(5[2]) of the CCP which limits the parties' perusal of evidence containing state secrets or classified information of foreign states, which is not annexed to the file, by requiring the procedure provided by the SSA to be followed. These provisions entered into force on the 1st of January 2009. The current State Secrets and Classified Information of Foreign States Act entered into force on the 1st of January 2008.

24. Only the court has the competence to decide on whether a participant of the proceedings should have access to the classified evidence. The removal of a participant of the proceedings from a procedural act, as well as the refusal of permission to peruse the case file are decided in a court ruling which may be appealed and the ruling entered by the circuit court in respect of the appeal may be further appealed to the Supreme Court (Section 79(5) and Section 88(5) of the CACP). In case of a state secret, even though the security vetting is conducted by a separate agency, the agency presents the information obtained as a result to the court who then decides on the permission (Section 29(5) of the SSA). The right of the participant of the proceedings to peruse the case file may only be restricted if the interest for maintaining secrecy of the file overrides the right of the participant of the proceedings to peruse the file and to obtain copies of procedural documents which are in the file or which belong to the file (Section 88(2) of the CACP). The participant of the proceedings is allowed to peruse the case file to the maximum extent possible and is refused permission to peruse to the minimum extent possible without prejudicing the aim of restricting the right. When the ground on which permission to peruse was refused becomes inoperative, permission to peruse is granted (Section 88(3) of the CACP).

25. The law does not differentiate between evidence already collected in administrative procedure and new evidence admitted by the judge during court procedure in this respect. The same rules as described above apply.

26. The Code of Administrative Court Procedure does not give a basis for restricting a party's or their representative's access to parts of the judgment. If this is clearly necessary for the protection of national security or public order and above all, for the protection of a state secret or classified information of a foreign state or information intended for internal use, the court may limit the public announcement of the judgment to its operative part (Section 173(5) of the CACP and Section 38(1)(1) of the CCP), but not the delivery of the judgment to a participant of the proceedings. In this situation, the court must follow the principle set forth in Section 79(4) of the CACP and disclose the content of the procedural act the participant of the proceedings was removed from to the maximum extent which is possible without prejudicing the purpose of the removal.

27. The Code of Administrative Court Procedure does not differentiate between participants of the proceedings based on their nationality. As for access to state secret, it is usually restricted for all citizens of foreign states and persons with no citizenship (Section 25(3) of the SSA), but an exception is made in cases specified in Section 29 of the SSA – this includes participants in pre-trial proceedings or judicial proceedings in administrative matters.

28. Since all judges have the necessary security clearance *ex officio* (see answer to question 21(a)), every judge is eligible to decide national security cases. No priority is given by law to immigration or citizenship cases concerning national security. The only exception are decisions on granting permission for the placement of an alien in the detention centre

which the court must make “without delay”, and as an exception, outside the working hours of the court (Section 264(4) of the CACP, Section 23 of the OLPEA). Obviously, if the judge sees a matter is urgent for some reason, they may prioritise the case.