



**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: Finland**



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**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

**Replies of the Supreme Administrative Court of Finland**

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

1. and 2. Migration to Finland is regulated by Aliens Act (301/2004) and granting of Finnish nationality is regulated by Nationality Act (359/2003). The Finnish Immigration Service is in charge of making decisions concerning the migration of third-country nationals. Immigration Service follows the normal administrative procedure in dealing with cases concerning migration and nationality. Same agency also grants nationality. The decisions of Immigration Service can be appealed against in the administrative court of first instance. Second and last instance is The Supreme Administrative Court.

3. The information asked is unavailable. Cases are not registered on the ground, that they are dealing with national security or public order.

4. and 5.

a) The ordinary administrative judicial procedure is followed in immigration and nationality cases.

b) The elements of national security and public order don't affect the procedure in immigration and nationality cases.

c) and d) There is no limitations in the power of the court. Courts can also change decision on the merits. Review has the effect *ex tunc*.

e) Appeal in the Supreme Administrative Court requires a leave from the court.

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

6. and 7. In Finland the concepts of public order or national security are not defined in legislation or in case law. The concepts have however clear connection with criminal law. It is



criminal law that protects public order and national security. In case law the concepts of public order or national security are not developed further, because third-country nationals have in most cases committed serious crimes and the breach of public order and security is obvious.

8. and 9. Risk to public order and national security can be invoked against a third-country national in all mentioned cases if a third-country national has committed crimes. The risk to public order and national security justifies the withdrawal of residence permit and the removal of a third-country national from Finland without appropriate period for voluntary departure. The loss of acquired nationality is not possible accordingly to the Finnish law.

10. The practice consists cases concerning persons committed serious crimes (for instance dealing with drugs or making acts of violence) which they have got prison sentences. These persons are in most cases expelled from Finland. On the other hand according to our practice even minor crimes can be an obstacle to granting nationality.

11. Criteria a-c are used in immigration cases to make an assessment of the risk person represents to public order and security. In nationality cases the risk assessment is not so important, because sentences preclude the granting of nationality.

12 Drink driving is considered in the court practice as a violation of public order that has consequences described in the question. But on the other hand, if a person has committed repeatedly other minor offences mentioned in the question, he can be given a return decision. A sham marriage is not considered as a threat to public order but as a circumvention of immigration rules and as such it is an accepted ground of not granting residence permit.

13. The protection of family life is always taken notice of, but it's the weight on balance depends on the facts of the case. Proportionality test is the essential part of discretion. If you had strong family ties to Finland, you are not expelled due to minor offences. But it is evident, that only real family ties are protected and you can't get benefit of a sham marriage.

14. The residence of the children in Finland depends on their parents. The best interests of a child is guaranteed by making sure that he or she is in custody of his or her parent. If the



parent is only guardian of the child and parent is expelled, the child is expelled too. If child has two guardians and only one parent is expelled, the child is usually allowed to stay in Finland with other parent.

15. The offences mentioned regularly lead to the denial of a residence permit and issuance of a return decision. The loss of acquired nationality is precluded.

16. In Art 1F -cases person is not usually considered as a current threat to public order and security in Finland although he or she is not deserving international protection. There is no automatic removal in exclusion cases, but the possibility of return to the country of origin is always examined and residence permit can be granted on the grounds of non-refoulement.

17. Family life may have more weight in balance than crimes in a situation, when person has moved in Finland as a child and still has strong family ties to Finland (spouse and children). But the outcome depends on the crimes in question, very serious crimes usually lead to expulsion despite the family ties.

18. In our national practice has not been cases where the principle of non-refoulement leads to outcome which is against the interests of national security.

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

19. Administrative and judicial decisions contain always legal and factual reasons. If factual reasons contain classified information that cannot be disclosed to the party, these facts are not written down in decision in detail but they are referred on general level.

20.-26. Every judge reviewing a decision has always full access to the reasons and material evidence that forms the ground of the administrative decision. This material may contain files that are not disclosed to party or his/her lawyer on the grounds of national security. If the material is not disclosed to party, it is not allowed to disclosed to his lawyer either. There is no special arrangement to ensure the equality of arms in this respect. The court will proprio motu control the relevance of the classified evidence in case. The court have full competence



also to disclose the evidence to a party, if court considers that necessary in the name of fair trial.

27. Same standards concerning classified information apply to all foreigners.

28. There is no special case-management for national security cases and every judge is eligible to decide such cases.

