



**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”***

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Answers to questionnaire: Lithuania



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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 Lithuania

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.

The main national law in the field of immigration is the Republic of Lithuania Law on the Legal Status of Aliens*. This law establishes the procedure of entry and departure, stay and residence, granting of asylum and temporary protection in the Republic of Lithuania, the procedure of integration and lodging of appeals against the decisions concerning the legal status of aliens and regulates other issues relating to the legal status of aliens in the Republic of Lithuania. Certain provisions of this law are implemented through a more detailed regulation, such as the Procedure for Issuance, Modification, Revocation of Temporary Residence Permits in the Republic of Lithuania to Aliens, as well as for Assessment if a Marriage, a Registered Partnership, an Adoption or a Company is Fictitious, approved by the Minister of the Interior of the Republic of Lithuania on October 12, 2005 by the order No 1V-329, and the Procedure for Assessment of the Data about the Threat of an Alien to Public Order or Community and Illegal Migration and for Preparation of the Conclusion about the Threat, approved by the Minister of the Interior on December 28, 2015 by the order No 4-460. It should also be noted that since the accession to the European Union in 2004 Lithuania's migration policy (except for emigration and return migration) has been and is affected by the obligations of the membership. Therefore relevant EU regulation on the migration is transposed into Lithuania's national law.

The migration policy in the Republic of Lithuania is implemented by these institutions:

1. The Migration Department under the Ministry of Interior of the Republic of Lithuania ensures the exercising of visa, immigration, asylum and citizenship procedures, the issuance of travel documents, permits of residence and other documents to aliens, also the implementation of the free movement of persons.
2. The Police Department under the Ministry of Interior of the Republic of Lithuania controls and coordinates the activities of migration units in the territorial police offices.
3. The State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania and its structural units exercise control of the migration processes in the territory of Lithuania. The State Border Guard Service carries out the primary procedure of granting

* Note: A link to an English translation of a law is given when such translation exists. The translations given are not of the most recent versions of the laws. Where the English translation of the law is too out of date, a link to Lithuanian version is given.

asylum, also returns and expels aliens from the Republic of Lithuania. The Foreigners' Registration Centre which is the unit of the State Border Guard Service, holds detained illegal aliens, also accommodates applicants for asylum while their applications are being assessed.

4. The threat to the national security is assessed by the State Security Department of the Republic of Lithuania, and the threat to public order or community – by the Police Department and the State Border Guard Service (in accordance with their competence).

5. The Refugees Reception Center under the Ministry of Social Security and Labour of the Republic of Lithuania carries out social integration of the refugees, also temporarily accommodates unaccompanied minors until a decision about their status in the Republic of Lithuania is made.

6. The Lithuanian Labour Exchange under the Ministry of Social Security and Labour of the Republic of Lithuania issues work permits for aliens.

The judicial system of Lithuania is comprised of courts of general competence, specialist courts (administrative courts) and The Constitutional Court of the Republic of Lithuania. The courts of general competence are of three tiers: the courts of first instance (district courts and regional courts), the courts of appeals (second) instance (regional courts, if the case was previously decided in a district court, and the Court of Appeals of Lithuania, if the case was previously decided in a regional court) and the court of cassation (final) instance (the Supreme Court of Lithuania). The administrative courts are of two tiers: the courts of first instance (regional administrative courts) and the court of appeals (final) instance (the Supreme Administrative Court of Lithuania). Disputes about the decisions of the Migration Department or other competent institutions concerning the legal status of aliens in the Republic of Lithuania are decided in the administrative courts, except for the decisions to detain an alien. Decisions of the State Border Guard Service to detain an alien up to 48 hours are disputed and requests to prolong the detention of an alien are granted by a district court. The decision of a district court concerning the detention of an alien may be appealed to the Supreme Administrative Court. There is no possibility or obligation to use out-of-court means to resolve a dispute concerning the legal status of an alien.

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.

The principles of citizenship of the Republic of Lithuania are defined in, and the grounds, conditions and procedure of the acquisition and loss of citizenship of the Republic of Lithuania are established in the Republic of Lithuania Law on Citizenship. When implementing this law, various regulations are employed, f. e. the Procedure for Preparing the Documents for the Citizenship of the Republic of Lithuania, approved by the Government of the Republic of Lithuania on April 3, 2013 by the resolution No 280, and the Procedure for Taking an Oath of Allegiance to the Republic of Lithuania, approved by the Government of the Republic of Lithuania on April 20, 2011 by the resolution No 488.

Documents relating to citizenship of the Republic of Lithuania are prepared and matters concerning citizenship are decided by these institutions:

1. The President of the Republic of Lithuania by a decree grants citizenship of the Republic of Lithuania through naturalisation, under the simplified procedure and by way of exception,

also restores citizenship of the Republic of Lithuania and takes decisions on the retention of citizenship of the Republic of Lithuania.

2. The Citizenship Commission is an advisory body to the President of the Republic that preliminarily considers applications for the granting of citizenship of the Republic of Lithuania through naturalisation, under the simplified procedure or by way of exception, and puts forward proposals to the President of the Republic on these issues. The proposals of the Citizenship Commission are not binding to the President of the Republic.

3. The Minister of the Interior co-signs decrees of the President of the Republic on the granting, retention and restoration of citizenship of the Republic of Lithuania, administers an oath of allegiance to the Republic of Lithuania taken by persons who have been granted or restored citizenship of the Republic of Lithuania, also takes decisions on the reinstatement of citizenship of the Republic of Lithuania and decisions regarding the loss of citizenship of the Republic of Lithuania on renouncing it, acquiring citizenship of another state or having gone into the service of another state without authorisation of the Government of the Republic of Lithuania, as well as pursuant to other circumstances. The Minister of the Interior applies to Vilnius Regional Administrative Court regarding the loss of citizenship of the Republic of Lithuania when it transpires that the person concerned has acquired citizenship of the Republic of Lithuania by presenting forged documents or by any other fraudulent means, or when it transpires that a decision on citizenship of the Republic of Lithuania in respect of the person concerned has been taken in breach of the Law on Citizenship or other laws of the Republic of Lithuania, or when circumstances specified in Article 22 of the Law on Citizenship are discovered, by reason of which citizenship of the Republic of Lithuania could not have been granted, reinstated or restored. According to Article 22 of the Law on Citizenship, citizenship of the Republic of Lithuania is not granted through naturalisation, under the simplified procedure or by way of exception, or restored to persons who: 1) prepared, attempted to commit or committed international crimes such as aggression, genocide, crimes against humanity and war crimes; 2) prepared, attempted to commit or committed criminal acts against the Republic of Lithuania; 3) prior to coming to reside in the Republic of Lithuania, were sentenced to imprisonment in another state for a premeditated crime which is a grave crime under laws of the Republic of Lithuania, or were punished for a grave crime in the Republic of Lithuania, irrespective of whether or not the conviction for the crimes specified in this point has expired; 4) in accordance with the procedure laid down by law, are not entitled to obtain a document attesting to the right of permanent residence in the Republic of Lithuania (does not satisfy conditions set out in Article 53 of the Law on the Legal Status of Aliens).

4. Institutions authorized by the Government act in accordance with their competence, f. e. the Migration Department and territorial police offices submit documents regarding the granting of citizenship of the Republic of Lithuania through naturalisation or under the simplified procedure to the Citizenship Commission for consideration, the Migration Department puts forward proposals to the Minister of the Interior to apply to Vilnius Regional Administrative Court regarding issues mentioned in point 3.

5. Vilnius Regional Administrative Court, at the request of the Minister of the Interior, decides on the loss of citizenship of the Republic of Lithuania regarding issues mentioned in point 3.

Disputes on granting, restoration, retention or loss of citizenship of the Republic of Lithuania are decided in administrative courts. There is no possibility or obligation to use out-of-court means to resolve a dispute concerning citizenship matters.

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 there were 84 immigration cases brought before the regional administrative courts involving third-country nationals (excluding cases concerning EU nationals and refugees). Grounds related to national security and public order were decisive in 17 percent of these cases.

In 2016 there were 46 immigration cases brought before the Supreme Administrative Court involving third-country nationals (excluding cases concerning EU nationals and refugees). Grounds related to national security and public order were decisive in 9 percent of these cases.

In 2016 there were 14 citizenship cases brought before the regional administrative courts and 4 citizenship cases brought before the Supreme Administrative Court involving third-country nationals (excluding cases concerning EU nationals and refugees). Question of threat to national security or public order was not raised in any of them.

Cases concerning national security and public order are registered with the court in general order. They are not given priority. However, depending on the issues raised in the case, special time limits might be set (see answer to the question No 4).

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?
 - 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?
 - 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*?
 - 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).
 - 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)?

Judicial process in migration cases differs from judicial process in other cases in these aspects:

1. An alien has 14 days to challenge a decision made in accordance with the Law on the Legal Status of Aliens (Article 138 and Article 140¹ paragraph 1 of the Law on the Legal Status of Aliens) while the general rule is that a complaint (application) with the court may be lodged within 1 month from the publication of the challenged administrative act (Article 29 paragraph 1 of the Republic of Lithuania Law on Administrative Proceedings).
2. Having received a decision on the withdrawal of his residence permit or his right to reside in the Republic of Lithuania or on the withdrawal of his refugee status, subsidiary or temporary protection on the grounds of him representing a threat to national security, public policy or the community, an alien may challenge such decision to Vilnius Regional Administrative Court (Article 140¹ paragraph 1 of the Law on the Legal Status of Aliens) while complaints (applications) with the court regarding other decisions made in accordance with the Law on the Legal Status of Aliens or other administrative acts are lodged with the administrative court within the territory of whose jurisdiction the administrative authority whose legal acts or acts (or inaction) are contested is located (Article 31 of the Law on Administrative Proceedings).
3. The court must examine a complaint (application) regarding decisions made in accordance with the Law on the Legal Status of Aliens no later than within 2 months from the day the court has passed a ruling on the admissibility of the complaint (application) (Article 140 paragraph 2 and Article 140¹ paragraph 2 of the Law on the Legal Status of Aliens) while a general time period for examining other complaints (applications) is not set. However, referential time periods for performing procedural acts at the court are set in Article 64 of the Law on Administrative Proceedings).
4. A court's decision regarding decisions of an administrative authority made in accordance with the Law on the Legal Status of Aliens may be appealed to the Supreme Administrative Court within 14 days from the publication of the decision (Article 140 paragraph 4 and Article 140¹ paragraph 3 of the Law on the Legal Status of Aliens) while the general rule is that a decision of a regional administrative court can be appealed within 1 month from the publication of the decision (Article 132 paragraph 1 of the Law on Administrative Proceedings).
5. The examination of the Vilnius Regional Administrative Court regarding decisions of an administrative authority on the withdrawal of his residence permit or his right to reside in the Republic of Lithuania or on the withdrawal of his refugee status, subsidiary or temporary protection on the grounds of him representing a threat to national security, public policy or the community must be concluded and a decision (a ruling) must be taken (adopted) within 2 months from the acceptance of the appeal (Article 140¹ paragraph 4 of the Law on the Legal Status of Aliens) while a time period for examining other decisions, *inter alia*, decisions made in accordance with the Law on the Legal Status of Aliens is not set.

We wish to point out that pursuant to the principle of the separation of powers enshrined in the Constitution of the Republic of Lithuania, neither the court of a first instance nor the court of the last resort (the Supreme Administrative Court) can change a decision made by an administrative authority. In cases where the court holds that an administrative act fails to comply with the requirements to its form and (or) content (meaning that it does not conform with the law) such act is quashed and the administrative authority is obliged to make a new decision. However, the new decision in its result may be similar to the quashed one. The decision of an administrative authority usually is declared unlawful *ex tunc*.

All aliens have a right to challenge a decision of an administrative authority and a right to appeal a court's decision. It should be stressed that challenging a decision of an administrative authority usually does not suspend the implementation of such act. The enforcement of a

challenged decision is automatically suspended where: 1) an alien's residence permit is withdrawn; 2) an alien who has come to the Republic of Lithuania from a safe third country lodged an asylum application and is not granted temporary territorial asylum in the Republic of Lithuania and he is returned or expelled from it to a safe third country; 3) an alien is refused asylum, except if an asylum application was examined as a matter of urgency, if the examination of an asylum application was discontinued or if a granted temporary asylum was revoked and the alien is expelled from the Republic of Lithuania or returned to a foreign state. In other cases the enforcement of a decision is suspended following the passing of a ruling by the administrative court (implementing the demand enforcement measures). However, the enforcement of a decision to expel an alien from the Republic of Lithuania cannot be suspended where the grounds for expulsion are related to a threat to national security or public policy posed by an alien's stay in the Republic of Lithuania, and in the case of a citizen of an EU Member State, his family member or another person who enjoys the right of free movement under legal acts of the European Union – related to an extreme threat to national security represented by him.

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?
- 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?
- 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*?
- 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).
- 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)?

Judicial process in citizenship cases regarding granting, restoration, retention or loss of citizenship of the Republic of Lithuania differs from judicial process in other administrative cases. Firstly, not every act concerning citizenship can be challenged at the court. A proposal of the Citizenship Commission to the President of the Republic to grant (not grant), retain (not retain) or restore (not restore) citizenship of the Republic of Lithuania and a decision of the President of the Republic not to grant, retain or restore citizenship of the Republic of Lithuania cannot be challenged. However, the decision not to grant, retain or restore citizenship of the Republic of Lithuania is documented by a note of the Office of the President of the Republic which can be challenged to the regional administrative court due to non conformity with the requirements to the form. Article 31 paragraph 3 (3) of the Law on Citizenship provides that an applicant must be informed in writing about the rejection of their application and given reasons for such rejection. The Supreme Administrative Court has stressed in its jurisprudence that the opposite would infringe on the right of an applicant to information concerning reasons of such rejection.

Secondly, a decree of the President of the Republic to grant, retain or restore citizenship of the Republic of Lithuania can be challenged at Vilnius regional administrative court only by the Minister of the Interior or its authorised body – the Migration Department. Such decree can be challenged if it transpires that the person concerned has acquired citizenship of the Republic of Lithuania by presenting forged documents or by any other fraudulent means, or when it transpires that a decision on citizenship of the Republic of Lithuania in respect of the person concerned has been taken in breach of the Law on Citizenship or other laws of the Republic of Lithuania, or when circumstances specified in Article 22 of the Law on Citizenship are discovered, by reason of which citizenship of the Republic of Lithuania could not have been granted, retained or restored. It is necessary to point out that, according to Article 18 paragraph 2 of the Law on Administrative Proceedings, investigation of the activities of the President of the Republic are outside the jurisdiction of administrative courts. However, a court having doubts about the conformity of aforementioned decree to the Constitution of the Republic of Lithuania and other laws may refer it to the Constitutional Court, in accordance with Article 4 paragraph 2 of the Law on Administrative Proceedings.

Disputes regarding the refusal of the Minister of the Interior to reinstate citizenship as well as the decisions of the Minister of the Interior and the Migration Department on the loss of the citizenship can be challenged in accordance with the general procedures set out in the Law on Administrative 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.

Threat to national security, public order and community are often used terms in the Law on the Legal Status of Aliens but their content is not specified. These terms are not determinate in other legal acts as well. The position of the Supreme Administrative Court is that usually the case for every alien is unique therefore alien’s threat to national security, public order and community is assessed individually, taking into account the overall findings. When determining the status of an alien, it is necessary to evaluate the realness and obviousness (in terms of time and sufficiency of evidence) of the threat and other factors. It should be taken into account that when assessing the threat to national security, public order and community higher standards and more restrictive conditions may apply to an alien seeking permanent residence in the Republic of Lithuania than temporary residence, or a visa, or other.

As previously mentioned, the primary assessment of the threat to national security is performed by the State Security Department, and assessment of the threat to public order or community – by the Police Department or State Border Guard Service (in accordance with their competence). Although these institutions essentially evaluate the potential threat to the national security, public order or community when submitting information to the Migration Department about an alien, it is the Migration Department that makes the final decision on the threat of an alien. This is due to the fact that the Migration Department makes the decision to issue, modify or revoke a residence permit and such decision must be made in conformity with the law, namely to be based on objective data (facts) and the norms of legal acts.

Paragraph 12 of the Procedure of Verifying the Data in Order to Determine whether an Alien Represents Threat to Public Order or Community and of Preparing a Conclusion on Threat to Public Order or Community, approved by the Police Commissioner General of Lithuania on August 31, 2015 by the order No 5-V-758, provides that an alien is considered as a threat to public order or community if it is determined that:

1. he was convicted for a less serious, serious or grave crime;
2. he was convicted for a crime and punished with a custodial sentence no shorter than 1 year;
3. in the past 5 years he was given an official warning in accordance with the Republic of Lithuania Law on Prevention of Organised Crime
4. he is suspected of having committed a serious or grave crime;
5. he is subjected to compulsory medical treatment measures set out in Article 98 of the Republic of Lithuania Criminal Code;
6. a search is issued in the Schengen Information System and (or) in the Interpol database of a foreign state for him as a suspect, accused or convict for a crime, or an alert in the Interpol database that he has committed or may commit criminal activities, or an alert in the Schengen Information System for a detailed check;
7. based on the criminal intelligence, there are grounds to believe that he may represent a threat to public order or community.

Paragraph 13 of the Procedure of Verifying the Data in Order to Determine whether an Alien Represents Threat to Public Order or Community and of Preparing a Conclusion on Threat to Public Order or Community provides that alien may be considered as representing threat to public order or community if it is determined that:

1. he was convicted for a misdemeanor or a minor crime;
2. he is suspected of having committed a minor or less serious crime;
3. foreign law enforcement authorities have submitted information about his criminal activities;
4. he systematically commits the same administrative offences or in the past 1 year he committed no less than two administrative offences of which at least one was a severe offence. According to paragraph 3.2 of this Procedure, a severe administrative offence is an administrative offence that posed a real threat to public order, human health or life or (and) caused harmful consequences;
5. he intentionally, orally or in writing demonstrated disrespect to universally accepted norms, degraded the Republic of Lithuania or civil servants for their performance;
6. he actively participated in unauthorised events or during mass events (sporting competitions or other) instigated a conflict or took part in committing acts of violence.

The Procedure of Verifying the Data in Order to Determine whether an Alien Represents Threat to Public Order or Community and of Preparing a Conclusion on Threat to Public Order or Community is an internal document of the Police Department adopted for the purpose of effective implementation of the principle of sound administration. Grounds for refusing to issue or modify or revoking a permit of residence in the Republic of Lithuania are set out in the Law on the Legal Status of Aliens, namely threat to national security, public order or human health (Article 35 paragraph 1 (1)), therefore when deciding on the legal status of an alien the Migration Department must not be confined to the criterion set out above or to assess it in purely formal terms. For example, it is essential to ascertain what illegal activities (inaction) were the reason for suspicion, conviction or a fine, did these activities represent threat to national security or public order, were infringements of the law systematic, how long ago did they occur and did this behavior continue after the issuance or modification

of permit of residence, visa or other document, granting alien a right to transit or reside in the Republic of Lithuania.

It should be noted that some of the circumstances that are evaluated when determining alien's threat to national security, public order or community may be sufficient grounds of itself to refuse to issue or modify, or to revoke residence permit (Article 35 paragraph 1 of the Law on the Legal Status of Aliens), namely:

1. an alert has been issued for him in the Central Schengen Information System by another Schengen State for the purposes of refusing entry and there are no grounds for issuing a residence permit on humanitarian grounds or because of international obligations or he has been entered on the national no-entry list;
2. there are serious grounds for believing that he has committed a crime against peace, a crime against humanity or a war crime within the meaning defined in the laws of the Republic of Lithuania, international treaties or other sources of international law, or that he has instigated or otherwise participated in committing such crimes;
3. there are serious grounds for considering that a residence permit is requested in order to avoid imposition of criminal liability in a foreign state if it is provided for by laws of the Republic of Lithuania for committing such crime and/or the alien will commit criminal offences in the Republic of Lithuania.

When deciding to issue or renew residence permit, it is also assessed if there are serious grounds for believing that a threat of illegal immigration of the alien may emerge (Article 35 paragraph 1 (12) of the Law on the Legal Status of Aliens). The term "threat of illegal immigration" is not defined in any legal acts. Paragraph 84.2 of the Procedure for Issuance, Modification, Revocation of Temporary Residence Permits in the Republic of Lithuania to Aliens, as well as for Assessment if a Marriage, a Registered Partnership, an Adoption or a Company is Fictitious provides that alien's refusal to be questioned in person is serious grounds to believe that there is a threat of illegal immigration. However, in its jurisprudence the Supreme Administrative Court has stressed that refusal to be questioned in person (usually failing to come to the Migration Department during the set time period) is not in itself sufficient to conclude that alien represents a threat of illegal immigration.

The provisions of paragraph 1 of Article 35 of the Law on the Legal Status of Aliens do not apply in the case of renewal of a permanent residence permit (Article 35 paragraph 4 of the Law on the Legal Status of Aliens).

Threat to national security, public order or community is not *expressis verbis* mentioned in the Law on Citizenship but Article 18 paragraph 6 of this law provides that persons who satisfy conditions set out in this law may be granted citizenship of the Republic of Lithuania taking into account interests of the Republic of Lithuania. The duty of the President to take into account interests of the Nation and the State when deciding on granting citizenship of the Republic of Lithuania is stressed in the jurisprudence of the Constitutional Court (f. e. the Ruling on December 30, 2003). When deciding on granting citizenship of the Republic of Lithuania the President has a wide discretion but, with decisions of this nature, the principal of equality set in Article 29 paragraph 1 of the Constitution must be followed, as well as the provision in Article 82 paragraph 1 providing that the President must be equally just to all. In the case law of the Supreme Administrative Court, interests of the Republic of Lithuania include *inter alia* an aim to guarantee national and public security, public order, human rights and freedoms.

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 threat to public order and national security in the past? Is this evolution a result of the jurisprudence of the ECtHR or the CJEU?

The case law in the migrant and citizenship cases, concerning public order and national security, has been fairly stable in recent years. National courts take into account the jurisprudence of the ECtHR and CJEU. However, there are no significant changes in the national jurisprudence since it is considered to be in accordance with EU law and international commitments.

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)?

In legal acts of the Republic of Lithuania, threat to public order and national security constitute grounds for refusing to allow a third-country national to enter the territory of the Republic of Lithuania, a short stay, to be granted resident permits and to acquire nationality. There are no exceptions. However, in some categories of cases (f. e., if a third-country national is seeking a family reunion) the threat level must be significantly higher to justify aforementioned measures, so that the balance between the interests of the State and, as in the given example, the right to a family life would not be breached and that the measures taken would be in accordance with relevant regulation, *inter alia*, Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

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).

In Lithuania's national law, threat to public order and national security constitute grounds for decisions resulting in a return decision, the issuing of a return decision without providing an appropriate period for voluntary departure and the withdrawal of residence permits.

According to Article 128 of the Law on the Legal Status of Aliens, when imposing an obligation to leave the Republic of Lithuania, a decision to return an alien to a foreign state or to expel the alien from the Republic of Lithuania, account shall be taken of:

1. the length of his stay in the Republic of Lithuania;
2. the family relationship with persons residing in the Republic of Lithuania;
3. existing social, economic and other ties with the Republic of Lithuania, also whether he has minor children studying under a formal education programme / programmes in the Republic of Lithuania;
4. the nature and extent of dangerousness of the committed offence.

The Supreme Administrative Court of Lithuania has noted in its case law that these circumstances must be examined not only when deciding to impose an obligation to leave the Republic of Lithuania, but also when deciding to grant a period for voluntary departure since failing to comply with the obligation to leave the Republic of Lithuania within the specified time limit is grounds for expulsion (Article 126 paragraph 1 of the Law on the Legal Status of Aliens).

It is prohibited to expel or return an alien to a country where his life or freedom is in danger or where he may be subjected to persecution on grounds of race, religion, nationality, membership of a certain social group or political opinion or to a country from where he may later be expelled to such country. These provisions do not apply to an alien who, for serious reasons, represents a threat to the security of the Republic of Lithuania or who has been convicted by an effective court judgment of a grave crime and constitutes a threat to the community (Article 130 paragraphs 1 and 3 of the Law on the Legal Status of Aliens). However, an alien is not to be expelled from the Republic of Lithuania or returned to a country where there are serious grounds for believing that in that country he will be tortured, subjected to cruel, inhuman or degrading treatment or punishment (Article 130 paragraph 2 of the Law on the Legal Status of Aliens). An alien is also not to be expelled from the Republic of Lithuania or returned to a foreign state if he has been granted the cooling-off period in accordance with the procedure established by the Government of the Republic of Lithuania, during which he, as a present or former victim of crimes related to trafficking in human beings, must take a decision on cooperation with a pre-trial investigation body or the court (Article 130 paragraph 4 of the Law on the Legal Status of Aliens). An alien who is not expelled from the Republic of Lithuania or is not returned to a foreign country in the above mentioned cases is issued a temporary residence permit valid for a period not exceeding one year (Article 130 paragraph 5 of the Law on the Legal Status of Aliens).

A threat to public order and national security is not *expressis verbis* set out in the Law on citizenship as grounds for decisions resulting in the loss of nationality that had been acquired. On the other hand, according to Article 24 paragraph 6 of the Law on Citizenship, citizenship of the Republic of Lithuania shall be lost when circumstances specified in Article 22 of this Law are discovered, by reason of which citizenship of the Republic of Lithuania could not have been granted, reinstated, restored or retained. Circumstances set out in Article 22 of the Law on Citizenship by their nature are strongly intertwined with the threat to public order and

national security because citizenship of the Republic of Lithuania shall not be granted or restored to persons who:

1. prepared, attempted to commit or committed international crimes such as aggression, genocide, crimes against humanity and war crime;
2. prepared, attempted to commit or committed criminal acts against the Republic of Lithuania;
3. prior to coming to reside in the Republic of Lithuania, were sentenced to imprisonment in another state for a premeditated crime which is a grave crime under laws of the Republic of Lithuania, or were punished for a grave crime in the Republic of Lithuania, irrespective of whether or not the conviction for the crimes specified in this point has expired;
4. in accordance with the procedure laid down by law, are not entitled to obtain a document attesting to the right of permanent residence in the Republic of Lithuania.

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.

In immigration cases, systematic road-traffic rules violations are often considered as grounds for conclusion that an alien represents threat to public order. Not all violations are considered a sufficient reason to hold that an alien constitutes a threat to public order. Such violations as failing to pay parking tickets or driving without obligatory car insurance are not regarded as threat to public order since it does not pose a direct threat to human life, health or material possessions, while speeding or driving a vehicle without a license are.

An alien is usually assessed as representing threat to national security in cases where it is known or there is a reasonable suspicion that he is involved in or has connections to organised crime, also if he is organising or aiding other aliens to get illegally to or transit through the Republic of Lithuania, especially aliens from countries where terrorist activity is high.

There are very few cases regarding granting citizenship where threat to national security or public order has constituted grounds to refuse citizenship of the Republic of Lithuania. The most famous one was when a third-county national blackmailed the then President of the Republic of Lithuania into granting him citizenship of the Republic of Lithuania.

- 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.

Personal conduct is an important criterion when determining a threat to national security and public order. When assessing alien's personal conduct, attention may be drawn to such acts that by themselves do not constitute threat to national security or public order but show alien's disrespect to community norms and tendency towards committing law violations. This is especially significant in cases where an alien was warned that such conduct, if continued, would constitute grounds for refusing to modify (renew) or revoking a residence permit or a

visa. It should be pointed out that according to the case law of the Supreme Administrative Court alien's personal conduct prior to issuing or modifying (renewing) a residence permit or a visa (the circumstances that were known to the Migration Department at the time of issuance or modification (renewal) of a residence permit or a visa) is not considered sufficient grounds for refusing to modify (renew) or revoking a residence permit or a visa.

National security and public order are usually understood as part of the fundamental interests of society. The main criteria when determining if an alien represents threat to national security or (and) public order is genuine, present and sufficiently serious threat.

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).

A marriage of convenience in the case law of national courts is usually not considered a threat to public order. A reasonable suspicion that a marriage of convenience has been contracted in order to obtain a residence permit constitutes a ground for refusing to issue or modify (renew), or revoking the residence permit if grounds for issuance or modification (renewal) of such residence permit were family reunification with the person the alien was married to.

Other violations (points a-h) may lead to an alien being denied a residence permit or given return decision depending on their gravity and systematicity. Some of these violations, f. e. parking offences, due to their lack of direct threat to human life, health or material possessions, by themselves can hardly result in such serious consequences as refusing to issue or modify (renew), or revoking residence permit, though they are taken into account when assessing alien's personal conduct in general. A special attention is paid to such offences like tax avoidance, fare avoidance and smuggling when a residence permit was issued on the grounds that an alien engages and intends to engage in lawful activities in the Republic of Lithuania (Article 40 paragraph 1 (5) of the Law on the Legal Status of Aliens).

There are no circumstances that absolutely protect an alien from negative consequences caused by being determined a threat to national security and (or) public order, except for Article 3 of ECHR. Other factors, such as protection of family life or private life, are relevant when evaluating the proportionality of measures taken in regards to the threat an alien represents.

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.

As mentioned above, a third-country national cannot rely on the protection of family or private life in all cases. However, the measures taken, *inter alia* the restrictions to the family or private life of an alien or his family members, must be proportional to the threat to national security or public order the alien poses.

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?

There is no case law that would give a clear answer to this question since usually at least one of the parents of a minor national is a citizen of the Republic of Lithuania. Hence, usually a minor national has at least one parent or other relatives who are citizens of the Republic of Lithuania and can take over his care after the other parent (third-country national) is obliged to leave or expelled from the Republic of Lithuania.

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?

According to Article 24 of the Law on Citizenship, citizenship of the Republic of Lithuania may be lost:

1. on renouncing citizenship of the Republic of Lithuania;
2. on acquiring citizenship of another state, except in cases provided for in this law;
3. on the grounds established by international treaties to which the Republic of Lithuania is a party;
4. where a citizen of the Republic of Lithuania is in the service of another state without authorisation of the Government of the Republic of Lithuania;
5. on acquiring citizenship of the Republic of Lithuania by presenting forged documents or by any other fraudulent means;
6. when circumstances specified in Article 22 of this law are discovered, by reason of which citizenship of the Republic of Lithuania could not have been granted, reinstated, restored or retained;
7. when it transpires that a decision on citizenship of the Republic of Lithuania in respect of the person concerned has been taken in breach of this or other laws of the Republic of Lithuania;
8. where a citizen of the Republic of Lithuania who is a citizen of another state at the same time pursuant to points 6 and 7 of Article 7 of this law has not, upon reaching 21 years of age, renounced citizenship of another state (states).

From this provision follows that a person who committed terrorism, smuggling of people, child abuse, trading in weapons, crimes committed by repeat offenders or drug dealing may lose citizenship of the Republic of Lithuania if it is set out in international treaties to which the Republic of Lithuania is a party (paragraph 3) or if he committed these crimes prior to gaining citizenship of the Republic of Lithuania (paragraph 6).

Terrorism, smuggling of people, child abuse, trading in weapons, crimes committed by repeat offenders or drug dealing may be and often are considered grounds for the denial of a residence permit or issuance of a return decision.

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?

It should be pointed out that, although in addressing the issues of asylum applicants and aliens who have been granted asylum state institutions and agencies of the Republic of Lithuania act in accordance with the 1951 Refugee Convention, it is the Law on the Legal Status of Aliens that establishes the procedure and grounds for granting or refusing to grant asylum (refugee status or subsidiary protection) and temporary protection in the Republic of Lithuania.

Article 88 paragraph 1 of the Law on the Legal Status of Aliens states that an asylum applicant shall be excluded from being a refugee if it is established that he would have no well-founded fear of being persecuted or would not be at real risk of the acts indicated in Article 87 paragraph 1 of this law or that he would have access to protection of the State or a party or organization, including international organizations, controlling the State or a substantial part of the territory of the State, including international organisation, or that the State or the said group or organisation is willing and may offer significant and non-temporary protection as defined in Article 86 paragraph 2 of this law while the asylum applicant shall have access to such protection, or that he can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.

Article 88 paragraph 2 of the Law on the Legal Status of Aliens sets out grounds for refusing to grant refugee status. An asylum applicant who meets the criteria set in Article 86 paragraph 1 of this law is excluded from being a refugee if:

- 1) he receives assistance and protection from organs or agencies of the United Nations other than the Office of the United Nations High Commissioner for Refugees;
- 2) the applicant's rights and obligations are recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the citizenship of that country, or rights and obligations equivalent to those;
- 3) there are serious grounds for considering that he has committed a serious non-political crime before entering the Republic of Lithuania (particularly cruel acts, even if committed with an allegedly political objective, may be classified as serious non-political crimes) or has been found guilty of acts contrary to the purposes and principles of the United Nations, or has incited or otherwise participated in the commission of such crimes or such acts;
- 4) there are serious grounds for considering that he has committed a crime against peace, a crime against humanity or a war crime, as defined in laws of the Republic of Lithuania, international treaties or other sources of international law, or that he has instigated or otherwise participated in committing such crimes;

5) there are serious grounds for considering that his stay in the Republic of Lithuania represents a threat to national security or he has been convicted by a final judgment of a particularly serious (grave) crime and represents a threat to the community.

According to Article 88 paragraph 3 of the Law on the Legal Status of Alien, an asylum applicant who meets the criteria set out in Article 87 paragraph 1 of this law is excluded from being eligible for subsidiary protection where:

- 1) there are serious grounds for considering that he has committed a crime against peace, a crime against humanity or a war crime, as defined in laws of the Republic of Lithuania, international treaties or other sources of international law, or that he has instigated or otherwise participated in committing such crimes;
- 2) there are serious grounds for considering that he has committed a serious or a particularly serious (grave) crime or has instigated or otherwise participated in committing such crime;
- 3) he has been found guilty of acts contrary to the purposes and principles of the United Nations or he has instigated or otherwise participated in committing such acts;
- 4) there are serious grounds for considering that his stay in the Republic of Lithuania represents a threat to national security or to the community;
- 5) he left his country of origin solely in order to avoid sanctions resulting from the committed crime and imprisonment is provided for by laws of the Republic of Lithuania for committing such crime.

If an alien was refused an asylum or subsidiary protection, such an alien is considered to be in the Republic of Lithuania illegally and therefore is obliged to leave the country voluntarily within the given time limit or, *if it is determined* that he represents threat to national security or public order, he would be expelled.

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.

When deciding on measures to impose on an alien who is deemed as representing threat to national security or public order, a balance must be struck between family and (or) private life and fundamental interests of the society. Restrictions imposed to family and (or) private life cannot be disproportionate to the level of threat an alien poses so that the rights enshrined in Article 8 of ECHR would not be violated. If a decision not to issue or modify (renew) a residence permit or to expel an alien from the Republic of Lithuania would restrict family or private life, the level of threat to national security and public order must be higher than in the cases with no restrictions of family or private life. A particular attention to family life is paid when rights of a minor are involved.

For example, in one case, the Migration Department refused to reissue temporary residence permits to third-country nationals (parents), regarding them both as threat to public order due to a suspicion of having committed a serious crime (swindling of high value property or property rights (Article 182 paragraph 2 of the Criminal Code)), also to several administrative offences that they committed (speeding, unpaid parking tickets, driving an uninsured vehicle). The Supreme Administrative Court quashed the decisions of the Migration Department and of the court of first instance after recognizing that the information in the conclusion about the said threat was not sufficiently assessed and it was not taken into account that the aliens' child – a minor third-country national – was already well integrated into the society (he has lived in Lithuania for more than a couple of years, studied according to a general education programme and was fully adapted at school).

In another case the Migration Department refused to issue permanent residence permit to a third-country national who has lost citizenship of the Republic of Lithuania due to acquiring it illegally and was found guilty for using mental coercion against the President of the Republic (Article 287 paragraph 1 of the Criminal Code). The Supreme Administrative Court quashed the decision of the court of first instance and obliged it to render a new decision on the grounds that the court failed to accurately evaluate threat to national security and public order that the alien represented, did not assess challenges the wife of the alien would face if she wanted to live with her husband and possibilities of their daughter to maintain relationship with both parents.

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?

The absolute nature of prohibition to subject anyone to torture or to inhuman or degrading treatment or punishment is reflected in the case law of the national courts. The Supreme Administrative Court has stressed on several occasions that a decision to return an alien must be made taking into account alien's rights enshrined in Article 3 of the ECHR (Article 4 of the Charter). However, cases regarding national security statistically are quite infrequent and rarely concern countries of origin where threat of treatment contrary to Article 3 of the ECHR is very likely.

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?

Article 8 paragraph 1 of the Republic of Lithuania Law on Public Administration provides that an individual administrative act must be based on objective data (facts) and the norms of legal acts, and the sanctions applied (withdrawal of a license or authorisation, temporary prohibition to engage in particular activities or to provide services, fine, etc.) must be reasoned. The Supreme Administrative Court has noted in its jurisprudence that this norm means that in an administrative act there has to be main facts, arguments and evidence, legal basis for the decision, adequate, clear and sufficient motifs. According to Article 140 paragraph 5 of the Law on the Legal Status of Aliens, administrative cases based on appeals regarding the decisions taken on the grounds of alien's representing a threat to national security, public policy or the community may be examined using actual data constituting a state or official secret and with the participation of the State Security Department, the Police Department and/or the State Border Guard Service; the provisions regarding declassification as laid down in the Law on Administrative Proceedings do not apply to the said data.

Paragraph 5 was added to Article 140 of the Law on the Legal Status of Aliens only in June 2015, hence there is no extensive case law on application of this provision. However, the Supreme Administrative Court has noted that this provision does not allow to base an individual administrative act solely on data which constitutes a state or official secret and which is not accessible to the alien to whom these measures are being applied. Individual administrative acts, as well as court decisions, based only on classified information are considered to be without motifs and therefore invalid.

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 alien and his lawyer do not have access to all the legal and factual reasons of the decision provided by the administrative authority, if this decision includes data constituting state or official secret. A judge reviewing a decision has access to all data relevant to the case without any additional requirements such as a security clearance (Article 15 paragraph 5 of the Republic of Lithuania Law on State Secrets and Official Secrets).

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?

As previously mentioned, a judge has access to all information he considers to be relevant to a case. A party to the procedure and his counsellor (lawyer) do not have access to a state or official secret. A judge can ask the administrative authority to declassify such information, but this request does not oblige the administrative authority to do so.

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?

Every judge is allowed to have access to classified evidence. Only a person meeting the requirements established by law required for security clearance procedure or work permit or right of access to or exchange in classified information can fill the post of a judge (Article 51 paragraph 1 of the Republic of Lithuania Law on Courts).

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.

A court has a right to oblige a party to the procedure to submit evidence the other party cannot obtain or give the later party a license to obtain such evidence (Article 56 paragraph 4 and Article 67 paragraph 1 subparagraph 4 of the Republic of Lithuania Law on Administrative Proceedings). There is no mechanism in Lithuania's law that makes classified information that was not disclosed to the party and his lawyer available, if the administrative authority refuses to declassify such information. However, an individual administrative act is considered to be without motifs, if it is based only on classified information. An act must include non classified information, sufficient to deem an alien a threat to national security or public order. On the other hand, taking into account the fundamental interest of the society,

the non classified information may not be very accurate and detailed, more like a summary of the classified evidence.

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).

A party of the process has a right to challenge a refusal of an administrative authority to grant access to evidence. A judge does not have the competence to disclose evidence to the party if the evidence constitutes state or official secret and was not declassified in the manner laid down in national legislation.

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 judge decides which of the submitted documents or information is to be admitted as evidence in an individual case. Information constituting state or official secret usually cannot be admitted as evidence if it was not declassified (Article 56 paragraph 3 of the Law on Administrative Proceedings). However, Article 140 paragraph 5 of the Law on the Legal Status of Aliens establishes an exception from this rule. Nevertheless, as mentioned previously in the answer to question No 19, a court decision cannot be based only on classified information, so that the alien would not be denied 'equality of arms'.

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?

Full judgements and their legal and factual reasons in immigration and citizenship cases are always open to the parties and their counsellors. However, as is the case with individual administrative acts, some circumstances of the case, especially involving state or official secret, may not be set out in detail.

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 are applied 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)?

As mentioned previously, shorter time periods are set for examining complaints (applications) in immigration cases than ordinary cases.

There are no special requirements for a judge to decide immigration or citizenship cases, including cases concerning national security.