

Comparative Study on Access to Classified Data in National Security-Related Immigration Cases



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In a [study, released in April 2024](#), national experts explored and compared the extent to which European standards are applied in 25 EU Member States with regard to the access to State classified information in immigration-related proceedings. The study relates to administrative decisions against foreign nationals who pose a threat to national security and are not granted the right to enter or reside in EU Member States. These decisions are mainly based on - generally classified - security information to which the foreign national has access only in exceptional cases and to a certain extent. The CJEU and ECtHR, however, established procedural standards of access, including, as a key element, the need to provide the applicant with a specific and concrete decision, at least by disclosing the "essence of the grounds" of reasons.

The study underscores the significance of the utilisation of the "essence of the grounds concept" in defining national frameworks concerning applicants' defence. It revealed that 12 of 25 researched EU countries (Denmark and Italy were not researched) do not adhere to the required standards of administrative decisions based on classified data, six countries apply the essence of the grounds concept to some extent but inconsistently, and only seven countries fully comply with European law in this regard.

The study also found that national frameworks generally do not allow applicants' access to classified information supporting decisions of state security allegations. Two main judicial avenues for challenging access restrictions were identified across EU Member States: first, through the review of the primary administrative decision containing the security findings, and second, via a separate access procedure specifically for challenging non-disclosure. In some countries access is contingent to a - sometimes complex - declassification procedure.

The study concludes that it is insufficient to solely grant courts with access to classified data; it is essential for individuals facing national security allegations to have access to the essence of the grounds, which empowers them to effectively exercise their defence rights. Considering the situation in some countries, the authors also advocate legislative reforms in compliance with the CJEU's and ECtHR's case law.

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