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Striking a Balance: EU Law, National Security and Procedural Guarantees in Hungarian Immigration Procedures and the Lessons of the GM Case

Abstract

In the GM case, the Court of Justice of the European Union condemned the Hungarian legal practice of restricting the right to know the reasons for a decision when national security is at stake. The case emphasises individual rights in relation to state interests, highlighting the challenges in legal remedies involving classified data.
EU integration requires mutual respect between Member States and the EU, balancing law, public order and national security. While Member States possess procedural autonomy, their rules must align with EU law's principles of equivalence and effectiveness. The balance between national security and procedural safeguards in immigration decisions is a broader issue. The involvement of secret services and restricted access to case files raise fairness concerns in other Member States as well. The decision in the GM case is a landmark judgment that clarifies the obligations of EU Member States when handling asylum cases involving national security concerns. It underscores the necessity of maintaining the balance between national security and the protection of fundamental rights, thereby ensuring that asylum seekers have access to a fair and transparent legal process. The GM case illustrates a general problem with Hungary's immigration procedures. In any case, practices that compromise constitutional principles are considered unconstitutional, regardless of the implications associated with the EU.

Keywords: national security, procedural rights, access to documents, reasoning, migrants

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I Twenty Years On: Persistent Ambiguities in EU Legislative Competencies

Considering the accession of a Member State to the European Union (EU), the concept of change is of paramount importance. The fulfilment of accession prerequisites requires significant adjustments and the obligations associated with membership continually demand modifications in the legal system and legal practice, requiring proactive behaviour. Yet, even 20 years after accession, there remain areas where legislative competencies and the interpretation of certain obligations arising from the Treaties are still subjects of confusion.[1]

This study examines procedural autonomy, which Member States enjoy when implementing EU law: the EU legislator dictates the 'what' and the framework of 'how', but the Member States are responsible for the implementation of EU law. This leads to particularly interesting challenges, as mentioned in the loyalty clause provided for in Article 4 of the Treaty on the European Union (TEU), when national powers collide with the implementation of common policy. Migration policy is a prime example, being a leading topic in preliminary decision-making procedures,[2] where the Charter of Fundamental Rights of the European Union (EU Charter) is the point of reference.

The focus of this study is Case C159/21 of the Court of Justice of the European Union (CJEU) from 22 September 2022 (the '*GM* case').[3] The preliminary ruling was initiated by the Budapest-Capital Regional Court, and the case exemplifies the clash between common substantive law, national security issues recognised as the exclusive competence of Member States and procedural rules.

The legal framework leading to this decision and the related jurisprudence help to understand how procedural autonomy and national competence can be interpreted in such situations. They also clarify the boundary between the purely national scope and the impact of EU law.

II The *GM* Case and the Shortcomings of the Relevant Hungarian Legislation

From the study's perspective, the interesting aspect of the *GM* case concerns the restricted access to documents, including classified data, for reasons of national security, leading to a negative official decision without justification and the assessment of the legality of this situation.

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[1] András Bíró-Nagy, Gergely Laki, 'Europeanization of Public Policy in Hungary: An Empirical Research' (2022) 29 (2) Politologický časopis – Czech Journal of Political Science 101–124, DOI: https://doi.org/10.5817/PC2022-2-101

[2] Court of Justice of the European Union, 'A Bíróság igazságügyi statisztikái – 2023' 9, 17, <https://curia.europa.eu/jcms/jcms/Jo2_14640/hu/> accessed 1 April 2025.

[3] Case C-159/21 *GM v Országos Idegenrendészeti Főigazgatóság, az Alkotmányvédelmi Hivatal, a Terrorelhárítási Központ*, ECLI:EU:C:2022:708 (*GM* case).

The plaintiff GM received a decision withdrawing his refugee status and refusing to grant him subsidiary protection status on the grounds of his inherent threat to national security. While leaving and returning to the home country is generally acknowledged as a basic right by the international community, entering and residing in a country as a foreigner is not a fundamental right, especially if the state perceives the individual as a threat.[4] No one can stay in Hungary if their presence threatens national security or harms national security interests.[5] The decision was based on an unsubstantiated expert opinion issued by the Constitutional Protection Office and the Counter-Terrorism Centre that concluded that GM's presence threatened national security. He did not receive an explanation as to why and how he was deemed dangerous, preventing him from properly exercising his procedural rights. The authority decision was formulated according to the legal norms in force – ie, the omission of the reasons based on their qualified nature was rightful on the side of the authority. However, from the client's perspective, he had no opportunity to learn of nor refute the underlying facts.[6]

When the legal status of a third-country national is decided by immigration and asylum authorities, the potential danger posed by the individual is determined by designated authorities, such as the Constitutional Protection Office or the Counter-Terrorism Centre.[7]

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[4] József Hargitai, 'Az útlevél és a külföldre utazáshoz való jog nemzetközi jogi alapjai' (1995) 42 (12) Magyar Jog 710; John Torpey, *The Invention of the Passport. Citizenship and the State* (Cambridge University Press 2000, Cambridge) 4–18, DOI: https://doi.org/10.1017/CBO9780511520990; Eric Neumayer, 'On the detrimental impact of visa restrictions on bilateral trade and foreign direct investment' (2011) 31 (3) Applied Geography 901, DOI: https://doi.org/10.1016/j.apgeog.2011.01.009

[5] *GM* case (n 3) para 19. In the case of a refugee, § 8(4) of Act LXXX of 2007 on the Right of Asylum (2007. évi LXXX. törvény a menedékjogról, hereinafter: Met.) stipulates that not posing a threat to national security or being harmful to national security interests is a general precondition for being allowed to remain in Hungary. For other types of international protection, the same requirement is set out in §§ 15(b) and 21(b) of the Met. Regarding the entry and stay of third-country nationals, § 6(3) § 33(2) point *b)*; § 35(7); § 38(9); § 42(6) *d)*; § 43(1) *c)* and (2) *d)* of Act II of 2007 on the Entry and Stay of Third-Country Nationals (2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról, hereinafter: Harmtv.), which was in force until 31 December 2023, prescribes the same requirement. The provisions of the new Act XC of 2023 on the General Rules for the Admission and Right of Residence of Third-Country Nationals (2023. évi XC. törvény a harmadik országbeli állampolgárok beutazására és tartózkodására vonatkozó általános szabályokról, hereinafter: Btátv.) are consistent with the approach of the previous legislation; see §§ 12(2)–(3), 17(h), 80(1)(b), 86(1)(f), 98(1)(d)–(e), 106(2)(b), 107(b), 108(1), 111(5)(d), 121(3), 122(1)(c), 123(2), and 245(1)(c). *The (non-official) translations of legal acts related to migration are available in English in the legal database of Wolters Kluwer (subscription required), and serve as the basis for the terminology used in this article. All other legal sources have been translated by the author, and the translations reflect the author's interpretation.* See also, Laufer Balázs, 'A nemzetbiztonság veszélyeztetésének előfordulása a magyar migrációs jogszabályokban' (2020) 8 (4) Nemzetbiztonsági Szemle 3–20, DOI: https://doi.org/10.32561/nsz.2020.4.1

[6] Case C-159/21 *GM v Országos Idegenrendészeti Főigazgatóság, Alkotmányvédelmi Hivatal, Terrorelhárítási Központ*, Opinion of AG de la Tour, ECLI:EU:C:2022:326, para 21–22; see the case history and the brief legal background of the case in para 13–26.

[7] Gov. Decree 301/2007 (XI. 9.) on the execution of LXXX of 2007 on the right of asylum [301/2007. (XI. 9.) Korm. rendelet a menedékjogról szóló 2007. évi LXXX. törvény végrehajtásáról, hereinafter: Met. vhr.] § 2/A *a)*;

The process of a decision-making authority premising its decision on the opinion of a far more competent body in a relevant issue related to the case – a so-called specialised authority – has been a longstanding construct in Hungarian state administration.[8] This decision-making structure is not inherently incompatible with EU law, as expressed by the CJEU in the *GM* case.[9] However, it becomes problematic if the acting authority cannot know the facts on which its decision is based and cannot evaluate these facts and circumstances independently.[10] The acting authority must rely on the professional authority's position as a mandatory, indisputable basis for its decision, which must be explained in the justification.[11] In the Hungarian co-decision system, which applies to all sorts of migration procedures,[12] the acting authority's decision includes the specialised authority's position,[13] but without any reference to the protected data (classified information). In immigration and asylum cases, this leads to unjustified decisions based on reference to national security threats that lack factual grounds or proof that supports the qualification. However, the decision of the specialised authority can be challenged within the context of a legal remedy against the substantive decision of the acting authority. The acting authority provides information on this possibility in its substantive decision.[14]

Gov. Decree 295/2010 (XII. 22.) on the designation of the anti-terrorism body and the detailed rules for the performance of its duties [295/2010. (XII. 22.) Korm. rendelet a terrorizmust elhárító szerv kijelöléséről és feladatai ellátásának részletes szabályairól] (1a); The Counter Terrorism Centre collects secret information for the purpose specified in points *a)* and *e)* and *f)–i)* of § 64 of the Act XXXIV of 1994 on the Police (1994. évi XXXIV. törvény a Rendőrségről), as well as on the basis of the Act CXXV of 1995 on National Security Services (1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról, hereinafter: Nbtv.); Gov. Decree 35/2024 (II. 29.) on the implementation of Act XC of 2023 on the general rules for the entry and residence of third-country nationals [35/2024. (II. 29.) Korm. rendelet a harmadik országbeli állampolgárok beutazására és tartózkodására vonatkozó általános szabályokról szóló 2023. évi XC. törvény végrehajtásáról] § 242(1).

[8] János Kálmán, 'A szakkérdés vizsgálata a magyar közigazgatási hatósági eljárásjogban' (2018) 78 (2) Jogtudományi Közlöny 108.

[9] *GM* case (n 3) para 68.

[10] The *GM* case also drew attention to the fact that the acting authority must also have all relevant information and, taking this information into account, must evaluate the facts and circumstances on its own; that is, this authority must have discretion. In this regard, Hungarian legal practice violates EU law. See, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L 337/9 (Qualification Directive) art 14 (4) *a)*, *GM* case para 80–81.

[11] Directive 2011/95/EU (n 10) art 14 (4) *a)*; *GM* case (n 3) para 80–81; cf. Case C-300/11 *ZZ v Secretary of State for the Home Department*, ECLI:EU:C:2013:363 (*ZZ* case), para 61; Erzsébet Csatlós, 'Az Európai Unió Bíróságának GM-ügyben hozott döntése: Nemzetbiztonsági okok és eljárási garanciák összecsapása a menekültügyi hatóság határozatában' (2023) 14 (4) Jogesetek Magyarázata 57–65.

[12] Met. (n 5) § 32/Q (2) *d)–g)*; Harmtv. (n 5) § 87/M(1).

[13] Act CL of 2016 on the general code of administrative proceedings (2016. évi CL. törvény az általános közigazgatási rendtartásról, hereinafter: Ákr.) § 81(1).

[14] Met. (n 5) § 32/Q(2) *h)* and § 57(4).

The *GM* case highlights a common practice in Hungary, not only in international protection cases but also in immigration removal proceedings. Due to the existence of data classified for national security reasons, the right to effective legal remedy is formally guaranteed but practically void.[15] Having access to documents containing classified data and the system of legal redress against decisions involves a set of complicated, completely independent and unrelated procedures. This results in the inability to dispute the facts underlying the procedure during the legal redress process.

In the *GM* case, the CJEU made several fundamental observations regarding negative official decisions on international protection. The legal interpretation allowing a State (its authority) to deprive a client (in this case, a citizen of a third country) of basic procedural rights on national security grounds is not in conformity with EU law. Access to the documents associated with the procedure must be ensured, even if encrypted due to classified national security data, as knowing the reasons and the factual basis of the decision(s) is key to the implementation of the right to an effective legal remedy.[16]

III Clash of the Titans: EU vs Member State

All disputes regarding the conformity of national legal practices with EU law revolve around competencies and the interpretation of the scope of national law in light of EU law. The debate becomes particularly intense when it concerns issues that remain the exclusive competence of Member States. Hereby, the aim is not to analyse the case but the competencies related to the main legal areas that the case represents: national security and access to documents as procedural guarantees. Therefore, the following subchapters aim to clarify the limitations.

1 The Loyalty Clause and National Security: Balancing EU Integration and Member State Sovereignty

Many principles influence the operation of the EU, but perhaps the root of its cooperation with the Member States lies in the *loyalty clause* included in Article 4 of the TEU. This clause has existed since the beginning of the integration process[17] and is now a general

[15] See details, Erzsébet Csatlós, 'National Security-Related Expulsion Cases during the Pandemic in Hungary: Secret Revealed?' (2023) 43 (2) Acta Iuris Stetinensis 27–42, DOI: https://doi.org/10.18276/ais.2023.43-02

[16] Tobias Lock 'Article 41 CFR Right to good administration' in Manuel Kellerbauer, Marcus Klamert and Jonathan Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights. A Commentary* (Oxford University Press 2019, Oxford) 2206, DOI: https://doi.org/10.1093/oso/9780198759393.003.564

[17] Geert de Baere, Timothy Roes, 'EU Loyalty As Good Faith' (2015) 64 (4) International and Comparative Law Quarterly 830–831, DOI: https://doi.org/10.1017/S0020589315000421

legal principle.[18] It states that all powers not conferred on the EU by the Treaties remain with the Member States and that the EU and the Member States shall mutually respect and assist each other in carrying out the tasks arising from the Treaties. Member States must do their best to fulfil obligations and refrain from any action that could jeopardise the EU's objectives. The EU also respects the competencies established for it, including the fact that the protection of national security, an important bastion of identity,[19] remains the sole responsibility of the Member States.

National security, as an absolute value to be protected, is an exception in many areas and is often covered by derogation clauses.[20] Entering and staying in the territory of a foreign state cannot be considered a universal fundamental right. Freedom of movement and the right to freely choose a place of residence belong only to those who reside legally in the given state. A fundamental condition for legal entry and stay is that the person does not pose a threat to the national security, public safety, or public health of the State.[21]

EU legislation on free movement and migration varies according to personal scope: different rules apply to the free movement of EU citizens and the residence of third-country nationals based on duration and title. What is common, however, is that no Member State is obliged to admit or tolerate persons who threaten national security.[22] The extent to which a specific cause related to the past behaviour of the person or an actual or potential threat based on a person's behaviour constitutes a sufficient level of national security risk varies.[23] EU citizens and their family members enjoy wider protection against state discretion, while third-country nationals are less favourably placed if such concerns arise.[24]

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[18] Marcus Klamert, *The Principle of Loyalty in EU Law* (Oxford University Press 2014, Oxford) 243–245, DOI: https://doi.org/10.1093/acprof:oso/9780199683123.001.0001

[19] Consolidated version of the Treaty on European Union [2012] OJ C326/13. art 4 (3); Stelio Mangiameli, 'The Union's Homogeneity and Its Common Values in the Treaty on European Union' in Hermann-Josef Blanke, Stelio Mangiameli (eds), *The European Union after Lisbon: Constitutional Basis, Economic Order and External Action* (Springer 2012, Heidelberg, Dordrecht, London, New York) 21–46, 33; Norbert Tribl, *Az alkotmányos identitás funkciója és alkalmazhatósága a szupranacionális térben* (Iurisperitus 2021, Szeged) 81.

[20] Vitaliy Slepak, 'National security clause: law and practice of European Union and Eurasia Economic Union' (2019) 1406 (1) Journal of Physics: Conference Series 2, DOI: https://doi.org/10.1088/1742-6596/1406/1/012002; Eric K. Yamamoto, Rachel Oyama, 'Masquerading behind a Facade of National Security' (2019) 128 Yale Law Journal Forum 271–273.

[21] Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (adopted 16 September 1963, entered into force 2 May 1968) ETS No 46, art 2(1), art 3.

[22] See Kay Hailbronner, *Immigration and Asylum Law and Policy of the European Union* (Kluwer Law International 2024, The Hague).

[23] See the comparison of the statuses and relevant legal acts, Pieter Boeles et al., *Public Policy Restrictions in EU: Free Movement and Migration Law General Principles and Guidelines* (Meijers Committee 2021, Amsterdam) 39.

[24] See details, Erzsébet Csatlós, 'Aki a nemzetbiztonságot, a közbiztonságot vagy a közrendet sérti vagy veszélyezteti… – Gondolatok egyes 2020–21 során született kiutasítási ügyek kapcsán' (2022) 4 (1) Külügyi Műhely 9–10, DOI: https://doi.org/10.36817/km.2022.1.1; Case C-165/14 *Alfredo Rendón Marín v Administración Del Estado*, EU:C:2016:675, paras 84–86; cf. Case C-544/15 *Sahar Fahimian v Bundesrepublik*

Generally speaking, it is practically impossible to universally define what kind of actions a state may consider threatening to national security, public safety, or public order. As a result, the system of defence against such threats allows a high degree of State discretion.[25] However, the common denominator of such challenges is that, regardless of the people involved, it is a democratic criterion of the rule of law and a human rights issue that procedural rights can be limited but not completely revoked. As Jeney stated, the system of rules on international refugee law, the international protection of human rights and EU law limit the State's main power in this area.[26]

2 Balancing Procedural Autonomy and National Security

EU law is implemented by Member States through their law enforcement bodies, operating within their internal organisational structures and under the framework of procedural autonomy.[27] Since the *Rewe* decision in 1976,[28] this principle has governed the implementation of EU law. Advocate General Trstenjak emphasised that procedural autonomy does not grant Member States unrestricted discretion in establishing procedural rules. Rather, it allows national authorities and courts to apply EU law based on national substantive and procedural laws when EU rules are absent or incomplete.[29] Procedural autonomy extends not only to procedural issues but also to the choice of the most effective means of enforcing EU law with a view to ensuring it achieves its intended purposes. Member State authorities must apply EU law according to national procedural standards, ensuring equivalent legal protection as provided under domestic law (principle of equivalence). They must also refrain from making it excessively difficult to exercise rights under EU law (principle of effectiveness).[30] These principles collectively safeguard procedural autonomy in EU law matters.[31]

Deutschland, ECLI:EU:C:2017:255, para 50; Václav Stehlík, 'Discretion of Member States vis-à-vis Public Security: Unveiling the Labyrinth of EU Migration Rules' (2017) 17 (2) International and Comparative Law Review 137–138, DOI: https://doi.org/10.2478/iclr-2018-0019

[25] Csatlós (n 24) 8–9, see the case law cited.

[26] Petra Jeney, 'A nemzetközi védelemhez való jog vizsgálata a nemzetközi jog, az uniós jog és a nemzeti (tagállami) jogrendszerek szempontjából' in Nóra Chronowski (ed), *Szuverenitás és államiság az Európai Unióban. Kortárs kérdések és kihívások* (ELTE Eötvös Kiadó 2017, Budapest) 173.

[27] Katalin Gombos, 'Tagállami eljárási autonómia – az elv korlátokkal és kérdőjelekkel' (2019) 22 (3) Európai Tükör 37, DOI: https://doi.org/10.32559/et.2019.3.3

[28] Case C-33-76 *Rewe-Zentralfinanz eG and Rewe-Zentral AG v Landwirtschaftskammer für das Saarland*, ECLI:EU:C:1976:188, para 5.

[29] Case C-591/10 *Littlewoods Retail Ltd and Others v Her Majesty's Commissioners of Revenue and Customs*, Opinion of AG Trstenjak, ECLI:EU:C:2012:9, paras 23–24; see also Case C-212/04 *Konstantinos Adeneler et al. v Ellinikos Organismos Galaktos (ELOG)* ECLI:EU:C:2006:443, paras 93–94.

[30] Case C-33-76 *Rewe-Zentralfinanz eG* (n 28), para 5, Case C-268/06, *Impact v Minister for Agriculture and Food and Others* [2008] ECLI:EU:C:2008:223, para 41 (von Colson principle) and para 43–48.

[31] Case C-161/15, *Abdelhafid Bensada Benallal v État belge*, EU:C:2016:175, para 25; Case C-3/16, *Lucio Cesare Aquino v État belge*, ECLI:EU:C:2017:209, para 48–49; cf. *Associação Sindical do Juízes Portugueses v Tribunal de Contas*, C-64/16, EU:C:2018:117, para 34; *Commission v Poland* (Independence of Supreme Court), C-619/18,

The challenge lies in balancing State interests served by procedural rules with the procedural guarantees of EU law designed to protect individuals from state arbitrariness, particularly concerning national security issues, notably in immigration and asylum cases in Hungary.[32] The procedures for accessing documents containing classified data and the available legal remedies are complex and often disjointed. Decisions such as removal or refusal and the withdrawal of international protection involve challenges where courts cannot disclose or review classified information that directly affects decisions either.[33] The court is entitled to have access to the disclosed files and assess whether the procedure before the authority was lawfully conducted but has no right to reveal any elements of the classified document – neither the facts nor any reference to the reason for being a threat or danger to national security. Therefore, the judgment of the court does not explore or reveal the real reasons either.

Regarding the administrative procedure, the Hungarian Law on Asylum explicitly prescribes the content of the decision, including the obligation of omitting the classified information,[34] while the Law on Third-Country Nationals refers back to the rules of general administrative procedure and mandates their application.[35] Accordingly, any document or part thereof from which conclusions can be drawn about protected data or personal data the conditions for the disclosure of which are not defined by law cannot be disclosed unless the lack of disclosure would hinder the exercise of rights guaranteed by this law.[36] This administrative authority phase is closely connected to the judicial review as the court examines and verifies the authority's decision and establishes its judgment on the legality of the process and the decision it resulted in in terms of formal and substantial matters.

In legal remedy proceedings against substantive decisions – such as expulsion by immigration authorities or the rejection of international protection – the court, due to the classified nature of the documents, is not authorised to disclose classified data to anyone, including the affected foreigner, nor to verify the adequacy of its content or overturn it

EU:C:2019:531, para 52; Daniel Halberstam, 'Understanding National Remedies and the Principle of National Procedural Autonomy: A Constitutional Approach' (2021) 23 Cambridge Yearbook of European Legal Studies 157; Case C-654/21, *LM* (Counterclaim for a declaration of invalidity), ECLI:EU:C:2023:462, para 56.

[32] See Katalin Juhász, *The Right to Know in the European Union: Comparative Study on Access to Classified Data in National Security Related Immigration Cases* (Hungarian Helsinki Committee 2024, Budapest) 40–44 <https://helsinki.hu/en/wp-content/uploads/sites/2/2024/04/The-Right-to-Know-in-the-European-Union-2024.pdf> accessed 1 April 2025.

[33] Act CLV of 2009 on the protection of classified data (2009. évi CLV. törvény a minősített adat védelméről, hereinafter: Mavtv.) § 4–6.

[34] Met. (n 5) § 32/Q(3) and (2) *d)*.

[35] Harmtv. (n 5) § 87/M., § 92/C point 6.

[36] Ákr. (n 13) § 34(2).

substantively. Its activity is confined to verifying the factual basis of the risk assessment;[37] hence, the court cannot disclose classified data in its decision either.[38]

Access to the actual reasons and essential grounds for decisions is allowed under a viewing permit issued by the certifier. However, this permit can be denied because the knowledge of classified personal data could hinder the effective performance of the specialist authority's national security, law enforcement and crime prevention activities, including their direction, methodology and procedural integrity, thus indirectly harming Hungary's national security interests.[39] In practice, such requests are rarely granted, and circumstances often prevent right holders from exercising this right.[40] Furthermore, even if granted, this only allows viewing; the information thereby obtained cannot be cited in administrative litigation against the substantive decision nor be used for national security reasons.[41] Moreover, this is a completely independent procedure; it has no connection to the judicial review of the authority decision itself.[42]

Additionally, a separate and autonomous procedure exists for so-called secrecy supervision proceedings aimed at challenging classification decisions. Complaints regarding the legality of classification can be submitted to the National Authority for Data Protection and Freedom of Information, which, upon receipt of a complaint, may initiate proceedings as necessary and potentially modify the classification.[43]

The standpoint of the Curia of Hungary is that this regulatory situation, including that of the viewing permits, arises from the nature of the data stemming from national security interests which enjoy primacy in state sovereignty. However, the institution of viewing permits and the administrative litigation against authority decisions collectively guarantee the rights of the client.[44] Even in the rare case when a third-country national may view the

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[37] Curia of Hungary KFV.37.468/2021/7/II paras 32–33, see also in 2024: Curia of Hungary III.Kfv.37.798/2023/10-II. paras 73–74.

[38] Curia of Hungary KGD2016. 27.

[39] Mavtv. (n 33) § 11–12.

[40] Budapest-Capital Regional Court 49.K.703.152/2021/8 para 7. See similar: Curia of Hungary Kfv.I.37.127/2021/10. and Kfv.I. 37.468/2021/7. According to the information provided at the request of the Hungarian Helsinki Committee, the Office for the Protection of the Constitution and the Counter-Terrorism Center did not grant access in any case in the first half of 2019, 2020 and 2021. *National Security Grounds for Exclusion from International Protection as a Carte Blanche: Hungarian Asylum Provisions Not Compliant with EU Law Information Update* by the Hungarian Helsinki Committee, 20 December 2021, 1, fn 5 <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/01/Info-Note_national-security_exclusion_FINAL.docx.pdf> accessed 1 April 2025.

[41] Curia of Hungary Kfv.II.37.075/2021/9. para 16.

[42] Mavtv. (n 33) § 11(2); Eg Curia of Hungary Kfv.II.37.983/2020/10. para 16; Curia of Hungary II.Kfv.37.075/2021/9/2. para 26; In case of the Curia of Hungary Kfv.I.37.931/2021/8. although with restrictions, but the Curia obliged the defendant to issue a permission to access the classified document. See also: Curia of Hungary Kfv. 37.664/2022/12. para 29, Curia of Hungary I.Kfv.37.127/2021/10. para 26.

[43] Act CXII of 2011 on the right to self-determination of information and freedom of information (2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról) § 62–63.

[44] Curia of Hungary Kfv. 37.983/2020/10. para 26.

content of an expert opinion containing the reasons for a negative decision, those contents cannot be used in judicial proceedings. Therefore, the facts cannot be contested, and there is no opportunity for counter-evidence to be presented against the information content.

3 Balancing National Security and Procedural Rights: Justification and Transparency in Decision-Making

Based on the Hungarian Fundamental Law, authorities are obliged to justify their decisions under the law.[45] The obligation to provide reasons is a fundamental procedural guarantee tied to the requirements of the rule of law and the right to a fair procedure. Its purpose is to ensure that the decision-making process can be reviewed later, both to assess the legal functioning of the authority and to inform the client about the reasons for the obligations imposed on them. This knowledge is essential for exercising the right to legal remedy.[46]

Law enforcement bodies serving the state's national security interests, including the specialised authorities issuing expert opinions in immigration and asylum procedures, are often referred to as secret services. The essence of their activities would be compromised if everything they did in support of state interests were public. These specialised authorities serve the state by providing professional opinions on third-country nationals, particularly in assessing whether they pose an actual or potential threat to Hungarian national security. Hungarian jurisprudence prioritises national security, public safety and public order over information and other procedural guarantees.[47] Given the nature of their activities, relevant documents contain data classified for national security reasons, justifying their non-disclosure.[48] While the assessment applies to a specific person, the techniques, methods and direction of the investigation are the true objects of protection. Disclosing information about these activities would harm state interests and hinder future operations.[49]

Access to evidence is not an absolute right. Strasbourg case law acknowledges that competing interests in criminal proceedings, such as national security, witness protection and the confidentiality of certain police investigative methods, must be balanced with the rights of procedural actors.[50] In this broader context, bodies implementing EU law are bound by the right to good administration, which includes the obligation to justify decisions. This

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45 Fundamental Law of Hungary (25 April 2011) art XXIV(1).

46 Erzsébet Csatlós, 'Gondolatok a hatóság indokolási kötelezettségéről Martonyi János, Az államigazgatási aktusok indokolása c. művének nyomán' (2023) 13 (3) Forum: Acta Juridica et Politica 71.

47 Csatlós (n 24) 17–18.

48 Nbtv. (n 7) § 48(3).

49 See Decision 29/2014. (IX. 30.) AB of the Constitutional Court of Hungary, ABH 2014, 852–853; Curia of Hungary I.KFV.37.468/2021/7/II. para 31 and I.KFV.37.086/2021/9 para 25.

50 Research Division, Council of Europe, European Court of Human Rights, National Security and European Case-Law: Case Law Analysis (Council of Europe 2013) 32 <https://rm.coe.int/168067d214> accessed 1 April 2025.; see esp. *Case of Bobek v Poland*, no. 68761/01, ECHR § 69–70; *Case of Bucur and Toma v Romania*, no. 40238/02, ECHR § 72–73.

ensures everyone's right to inspect documents related to their person while respecting the legitimate interests concerning confidential data management.[51] The right to reasoned decision and legal remedy is also reflected in the procedural guarantees provided by EU secondary legislation on migration.[52] These guarantees guide or set a framework for national legislation and the implementation of EU law by national authorities. In international protection applications, rejection decisions must include factual and legal justification and explain how they can be challenged.[53] Member States are also obliged to ensure that the applicant's assistant or representative has access to the information in the applicant's file that serves as the basis for the decision. Exceptions are allowed if disclosing the information or its source would endanger national security, the security of the organisations or persons providing the information, the applicant, the investigative interests of the competent authorities or international relationships. In such cases, courts assessing the decision's legality must still have access to the information, and national laws must guarantee the right to defence of the person concerned and these are subjunctive conditions.[54]

When examining the scope of Member States' manoeuvres and Hungarian legislation, a balance must be found that ensures the protection of national security interests while respecting individuals' procedural rights and the basic principles defined by EU law. Legal restrictions must be proportionate and should not disproportionately infringe on the rights of those concerned. Judgments from the CJEU and the European Court of Human Rights guide the balancing of national security and individual rights. The question is where this equilibrium lies.

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[51] Charter of Fundamental Rights of the European Union [2016] OJ C202/389, art 41(2)(b) and (c); art 51.

[52] See, eg Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, art 32(2)–(3), Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents [2004] OJ L16/44, art 20(1), Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [2008] OJ L348/98, arts 12–13; Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on conditions of entry and residence of third-country nationals for the purpose of highly skilled employment and repealing Council Directive 2009/50/EC [2021] OJ L382/1, art 11(3); Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers [2014] OJ L94/375, arts 18(4)–(5); Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State [2011] OJ L343/1, arts 8(1)–(2); Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange programs or educational projects and au pairing (recast) [2016] OJ L132/21, arts 34(4)–(5).

[53] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) [2013] OJ L180/60, art 4(2)(b); art 11(2).

[54] Directive 2013/32/EU (n 53) art 23(1).

4 The *Ratio Decidendi* of the *GM* Case and the Implicit Reference Points for Interpretation

In the *GM* case, the right of applicants for international protection to learn at least the essence of the information related to their cases and the right to use this information in the legal remedy phase of the procedure, even if it affects national security interests, was confirmed.[55] National security-related problems involving access to files and reasons for decisions were not a new issue before the court. Previously, the CJEU had addressed how the obligation to provide reasons relates to communication contrary to national security interests and the fundamental right to effective judicial protection. In the 2013 *ZZ* case involving a dual citizen (Algerian-French), the CJEU interpreted the right to the free movement and residence of EU citizens and their family members,[56] notably, the right to defence in cases involving state security. It concluded that if the parties are unable to examine the facts and documents on which the decisions against them are based and, therefore, cannot effectively represent their position, their right to an effective remedy is violated.[57]

The *Kadi II* case, also from 2013, clarified that the guiding principle for determining the essence of the reasons underlying decisions is whether the decision has a unique effect on the person concerned. This evaluation is not limited to the abstract probability of the reasons but focuses on whether the reasons, or at least one of them that alone constitutes a sufficient basis for the decision, are founded.[58] Regarding restrictions based on national security considerations, the summary communication of the content of the information or evidence must be sufficiently specific.[59] To fulfil the obligation to provide reasons, at least one well-supported reason is necessary, but this requires identifiable persons, the manner, place and time of the related actions, as well as any allegations regarding the applicant's behaviour that threaten national security.[60]

The preliminary ruling in the *GM* case related to a non-EU citizen and his procedural guarantees. However, the *GM* case also highlights that, in the case of immigration law decisions, the right to legal remedy is formally guaranteed but lacks effectiveness due to the classified nature of national security data. The European Court of Human Rights had already drawn Hungary's attention to the roots of this problem in the 2016 *Szabó*

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[55] *GM* case (n 3) para 60.

[56] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L 158/77.

[57] *ZZ* case (n 11) para 53.

[58] Case C-584/10 P., C-593/10 P. and C-595/10 P. *European Commission v Yassin Abdullah Kadi Joined Cases*, ECLI:EU:C:2013:518 (*Kadi II* case), para 119.

[59] According to the decision of the European Court of Human Rights – in a similar case from the perspective of a legal problem – a material listing legal provisions does not meet this purpose, even at a minimal level, and neither does a press release. Case *Muhammad and Muhammad v Romania*, no. 80982/12, ECtHR para 168, 174.

[60] *Kadi II* case (n 58) para 129; 141–149; Csatlós (n 11) 62–63.

and Vissy judgment.[61] Since then, nothing has changed: Hungarian jurisprudence does not reflect the principle of actual enforcement concerning the directive-based procedural guarantees arising from fundamental rights and international protection. Accessing documents containing classified data and navigating the legal redress system involves a set of complicated, independent and unrelated procedures, resulting in the inability to dispute the facts underlying the procedure during the legal redress process.[62]

IV The Impact and (Lack of) Implementation of the *GM* Case in Hungarian Jurisprudence

In the *GM* case in September 2022, the CJEU specifically held that the primary and secondary legislation in question must be interpreted as precluding national legislation such as that of Hungary. Hungarian jurisprudence was incompatible with EU law, necessitating changes. Despite this, the rules regarding asylum procedures have not changed: the decision of the asylum authority must include, among other things, the justification of the authority's decision, the facts, the evidence, the circumstances considered, and the position of the specialist authority. If the specialist authority's opinion contains classified data, this cannot be displayed in the decision. The decision may only contain protected data that can be seen by the person to whom the decision is communicated according to the applicable national provisions of document inspection. It must be formulated to reference the content of the considered protected data without describing it.[63]

However, a new law regarding the entry and residence of third-country nationals was enacted at the end of 2023. The former Law on Third-country Nationals was replaced by Act XC of 2023, effective from March, following a two-month suspension of proceedings during which no applications within its scope could be submitted.[64] The new norm essentially retained the previous version of the text for decisions, along with the rule referring to the general code of administrative proceedings.[65]

In judicial practice, the *GM* case has not remained untraceable and forms a basis for reference in several contexts. In 2023, the Curia of Hungary reaffirmed that courts shall

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[61] Case of *Szabó and Vissy v Hungary,* no. 37138/14, ECHR para 79.; István Solti, 'Fából vaskarika? A Szabó–Vissy-ügy hatása a nemzetbiztonsági célú titkos információgyűjtésre' (2019) 67 (1) Belügyi Szemle 162–165, DOI: http://doi.org/10.38146/BSZ.2019.1.13

[62] In June 2024, Hungary's attention was drawn to the failure to comply with the provisions of the judgment. Committee of Ministers, Supervision of the Execution of Judgments of the ECHR – Cases Examined at 1501st Meeting (HR) – 11–13 June 2024, 2 <https://rm.coe.int/table-1501-eng/1680b06019> accessed 1 April 2025.; H46-17 *Szabó and Vissy group v Hungary* (Application No 37138/14), 1501st meeting, 11–13 June 2024 (DH); CM/Del/Dec/1501/H46-17.

[63] Met. (n 5) § 32/Q.

[64] Btátv. (n 5) § 286(1).

[65] Btátv. (n 5) §190(1); § 221 point 7.

fulfil their objective and subjective duty of legal protection in administrative proceedings, thereby ensuring 'equality of arms' by inspecting and checking documents containing classified data. The purpose of such an investigation is to determine whether the facts and data underpinning the specialist authority's decision are sufficient to justify the measure contained in the immigration police decision, ie, whether the former prove the existence of a national security risk. The court may not overrule a reasonable and logical official conclusion based on data suitable for justifying the national security risk.[66]

The Curia emphasised that the procedure for issuing a permit to access nationally classified personal data and the related immigration police or other basic procedures are separate. The related legal remedy procedure and substantive legal regulations are also distinct. The legality of the administrative decision regarding the refusal to issue the access permit must be examined based on the provisions of the Act on classified data. The procedural guarantees governing immigration enforcement procedures, as developed in the case law of the European Court of Human Rights and the CJEU, including in the *GM* case, are not guidelines for this.[67] The Curia also stressed that access to the documents is granted on an individual basis. However, access to nationally classified personal data can only be ensured if it does not compromise national security or other public interests protected by the classification. If the classified data has such a scope, then the issuance of permission to access it cannot be legally refused. This does not concern learning the essence of the classified data or extracting it but is about ensuring that if knowing certain data does not harm the protected public interest, then the reason for limiting the plaintiff's rights does not exist for that part of the data.[68] Regarding the 'right to know the substance', the Curia stated that extracting nationally classified personal data is incompatible with the nature of the legal institution. If the public interest to be protected does not allow the knowledge of specific information, extracting it would not lead to knowing the specific information but would instead result in a certain level of generalisation. Generalisation in this field would cause the information to lose its character as personal data. Therefore, there is no such thing as 'substantial reasons' for producing a document or the 'extraction' of a document. It is not possible to sort or compress the content of a classified document to satisfy both parties (the classifier and the plaintiff). The information can either be known without risk or it cannot; there is no grey zone in Hungarian jurisprudence in this regard.[69]

[66] Curia of Hungary VII.Kfv.37.517/2023/12-I para 3. Referring to its practice: Curia of Hungary Kfv. II.37.533/2020/9. paras 31–32; Curia of Hungary Kfv.II.37.671/2020/17. paras 44–45; Curia of Hungary Kfv. II.37.863/2020/15. paras 38–39; Curia of Hungary Kfv.II.37.761/2021/9. paras 45.

[67] Curia of Hungary I.Kfv.37.664/2022/12/II. paras 40, 39 and 36. In 2022, see the same: Curia of Hungary I.Kfv.37.055/2022/9/II. para 35, in 2024: Curia of Hungary III.Kfv.37.798/2023/10-II. para 69–75.

[68] Curia of Hungary I.Kfv.37.664/2022/12/II para 27.

[69] Curia of Hungary I.Kfv.37.455/2022/11/II para 45, referring to Curia of Hungary Kfv.I.37.259/2022/8. paras 51–52 as a principle.

V Evaluation of the (Desirable) Impact of EU Law

At the moment, no change in the relevant legislation has been made yet. However, it is worth noting that the justification of an official decision should be interpreted in a broader context. This not only applies to the specific addressee in the given case but also has a deeper meaning.

This does not imply a violation of procedural autonomy, nor does it mean the Europeanisation of procedural guarantees. The Fundamental Law of Hungary recognises that the rule of law encompasses respect for legal certainty and the prohibition of arbitrariness. This includes access to justice, judicial review of administrative acts and respect for human rights.[70] The formal and substantive elements governing decisions ensure that public administration, particularly decision-making activities, adhere to the principles of the rule of law and fair procedure.[71] Among these elements, the justification stands out. Like Ariadne's Thread, it guides the reader through the entire process: from the circumstances behind the decision, through the formation of the legal relationship in the given situation, to the actual and possible consequences. It explains why the authority took action, the reasons underlying the decision, and how the law regulates the subject matter of the case. Additionally, the justification provides insight into the circumstances under which the authority decided on the merits of the case, applying legal principles.

The principles of the rule of law fundamentally require the protection of individuals against state arbitrariness.[72] In public administration, this is reflected in the strict rules binding the authority's decision-making activities in individual cases.[73] Procedural guarantees ensure that the procedure is carried out fairly, allowing all parties involved – both the individual and the administrative bodies – to understand, reflect on, and dispute the decision based on the information provided in the justification.[74] This is why the obligation to provide reasons is constitutional; the Fundamental Law of Hungary expressly

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[70] Fundamental Law of Hungary, (n 45) art B) para (1), see also Zoltán Magyary, *Magyar közigazgatás. A közigazgatás szerepe a XX. sz. államában. A magyar közigazgatás szervezete működése és jogi rendje* (Királyi Magyar Egyetemi Nyomda 1942, Budapest) 40.

[71] Rule of Law checklist, adopted by the Venice Commission at its 106th Plenary Session, Venice, 11–12 March 2016, CDL-AD(2016)007, 11.

[72] Louis B. Sohn, 'The New International Law: Protection of the Rights of Individuals Rather Than States' (1982) 32 (1) American University Law Review 22, 28–31; Steven Greer, 'Constitutionalizing Adjudication under the European Convention on Human Rights' (2003) 23 (3) Oxford Journal of Legal Studies 490, DOI: https://doi.org/10.1093/ojls/23.3.405; Andreas Follesdal, 'International human rights courts and the (international) rule of law: Part of the solution, part of the problem, or both?' (2021) 10 (1) Global Constitutionalism 119, DOI: https://doi.org/10.1017/S2045381719000364

[73] Decision 56/1991. (XI. 8.) AB of the of the Constitutional Court of the Republic of Hungary, ABH 1991. 456.; Decision 38/2012. (XI.14.) AB of the Constitutional Court of Hungary, ABH 2012. 209.; cf. Resolution (77) 31 on the protection of the individual in relation to the acts of administrative authorities, adopted by the Committee of Ministers on 28 September 1977 at the 275th meeting of the Ministers' Deputies, art IV.

[74] Curia of Hungary Kfv. 37.111/2023/11. para 15.

states this.[75] If the client cannot learn the real reasons for a decision, they cannot defend themselves against it, and the court cannot verify the legality of the decision. Consequently, the operation of the public administration cannot be properly controlled as the court cannot assume an executive role and must remain within its judicial function.

In Hungarian jurisprudence, the court can fulfil its objective and subjective legal protection duties in public administrative proceedings by reviewing documents, including those containing classified data, to ensure 'equality of arms', as referred to by the Curia. However, this is only one side of the story.[76] The other party remains disenfranchised, as highlighted by the *GM* case, which underscores the individual's rights in relation to the state's national security interests. The Curia acknowledges that the client must obtain a complete picture of the authority's decision, including the facts uncovered, those considered or ignored, and the legal provisions applied. This transparency guarantees that the decision can be reviewed later and its correctness and legality judged on its merits.[77]

Thus, there are always at least two recipients of the justification: the client, whose legal situation is evaluated by the authority and whose fundamental interest is to know all aspects of the decision-making to challenge it, and the body overseeing the legal operation of the public administration, tasked with evaluating it within their remit.[78] Based on this, the obligation to justify authorities' decisions is expressly declared in paragraph (1) of Article XXIV of the Fundamental Law of Hungary. The specifics of the justification are recorded in legal acts, but due to the simple nature of the hierarchy of norms, no law can be interpreted to allow the authority to completely deprive the justification of its intended effects.[79] This holds even if legislation permits the protection of certain information for state security reasons. In cases of conflicting fundamental rights, a necessary proportionality test must be applied, recognising the right to effective remedy.

Despite the international recognition that states can exercise their sovereignty to protect national security, this authority remains within the sovereign territory of Member States according to the loyalty clause. However, this sovereignty cannot override fundamental rights. Any legal interpretation or practice that effectively nullifies these rights is unconstitutional, as are laws that allow for unrestricted considerations of national security without regard for EU law.[80] The influence of EU law – and related Strasbourg law –

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[75] Fundamental Law of Hungary, (n 45) art XXIV(1); Nóra Chronowski, 'Mikor megfelelő az ügyintézés? Uniós és magyar alapjogvédelmi megfontolások' (2014) 61 (3) Magyar Jog 144.

[76] Curia of Hungary VII.Kfv.37.517/2023/12-I paras 37–38; Nóra Chronowski, József Petrétei, 'Alkotmányi eljárásjog, alkotmányjogi eljárások, eljárási alkotmányosság' (2016) 12 (3) Iustum Aequum Salutare 69.

[77] Curia of Hungary Kf.39177/2022/14. para 50.

[78] Monica Delsignore, Margherita Ramajoli, 'The 'Weakening' of the Duty to Give Reasons in Italy: An Isolated Case or a European Trend?' (2021) 27 (1) European Public Law 28, DOI: https://doi.org/10.54648/euro2021002

[79] Decision 5/2019. (III. 11.) AB of the Constitutional Court of Hungary, ABH 2019, 156–157.

[80] Cf. Fundamental Law of Hungary, (n 45) art I(3) and International Covenant on Civil and Political Rights. General Comment on Article 4 (adopted at the 1950th meeting, on 24 July 2001). CCPR/C/21/Rev.1/Add.11. item 16.

on this matter is significant but subject to varying interpretations. These interpretations must align with strict democratic standards and the rule of law, ensuring that all norms, whether explicitly stated or implied by constitutional principles, are upheld. Meanwhile, the importance of EU law – and the often-intertwined Strasbourg law – is debatable in effect, as a range of interpretations consistent with strict democratic standards of the rule of law exists for interpreting all norms originating from and implied by constitutional norms.

The EU is based on, inter alia, the rule of law and respect for human rights that function as a cohesive force based on common constitutional standards and guarantees cannot be made dependent on the actual exercise of legislative power. 'In a European Union founded on fundamental rights and the rule of law, protection should not depend on the legislative initiative of the institutions and the political process. Such contingent protection of rights is the antithesis of the way in which contemporary democracies legitimise the authority of the State.'[81]

This is where the real impact of EU law on the jurisprudence of Member States lies: as a vigilant overseer, ensuring operations align with fundamental values.

VI Concluding Remarks

Significant anniversaries require reflection. The European Union has undoubtedly led to changes to the legal systems and jurisprudence of all Member States. However, the impact extends beyond legal modifications, reflecting the impulse and consequences of European unity. This impulse, based on the principles of a democratic rule of law, serves as a guiding framework that shapes, reminds and sometimes condemns.

This study focuses on the findings of the *GM* case. According to the CJEU, it is contrary to EU law to deprive a client (in this case, a citizen of a third country) of basic procedural rights for national security reasons. Access to procedural documents must be ensured even if they are classified for national security reasons; otherwise, the right to an effective legal remedy cannot be exercised.

Member States enjoy procedural autonomy when implementing EU law. The EU legislator determines what must be implemented and what its framework is, but the Member States are ultimately responsible for implementation. This leads to particularly interesting and pertinent challenges when national powers, as mentioned in the loyalty clause, collide with the implementation of common policy. An example of this is migration policy, a leading topic in preliminary decision-making procedures, where the key point of reference is compliance with the EU Charter. Hungarian jurisprudence is frequently criticised in this context.

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[81] Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi.* Opinion of AG Sharpston, ECLI:EU:C:2010:560, para 165; see also: Nóra Chronowski, 'Az Európai Unió Alapjogi Chartája hatályának kiterjesztéséről – alkotmánypolitikai megfontolások' in *Ünnepi kötet Dr. Bodnár László egyetemi tanár 70. születésnapjára* (Acta Universitatis Szegediensis, Acta Juridica et Politica 2014, Szeged) 9.

Examining the legal framework that gave rise to the decision and the jurisprudence creates a closer understanding of how procedural autonomy and national competence can be interpreted in such situations. It also clarifies where the boundary lies between purely national scope and EU legal influence. The principles of the rule of law fundamentally require the protection of individuals against state arbitrariness. In public administration, this is manifested in strict rules governing the authority's decision-making in individual cases. Procedural guarantees ensure the fair course of proceedings, allowing recipients to learn about, reflect on, and dispute the reasons underlying decisions. This is ensured by the obligation of justification, which in all cases binds the authority at a constitutional level and cannot be undermined, even when data classified for national security reasons are involved. The CJEU recently reminded Hungary of such an interpretation, strengthening the individual's right against the state's national security interests.