

4.2.1. Defining public security and public order

The legislative provisions do not define what is meant by “danger to the community or the security of the Member State”. While the CJEU has not provided a definition of these concepts specifically in the context of Article 17(1)(d) of the recast QD, its case law interpreting analogous provisions in other instruments offers useful guidance.

The CJEU has interpreted the concept of ‘public security’ and ‘public order’ when interpreting Directive 2004/38 which establishes the right of EU/EEA citizens and their family members to move and reside freely within the territory of Member States under defined conditions. In *HT* v *Land Baden-Württemberg* (C-373/13, 24 June 2015), the CJEU held that although the Citizenships Directive pursues different objectives to the recast QD and Member States remain free to determine the requirement of public policy and public security in accordance with their national needs, “the extent of the protection a society intends to afford to its fundamental interests cannot vary depending on the legal status of the person that undermines those interests”. This therefore indicates that the definitions developed in the Citizenship Directive context are of relevance to the recast QD (and implicitly to the QR) framework.

The concept of public security was defined by the CJEU in *Land Baden-Württemberg v Panagiotis Tsakouridis* (C-145/09, 23 November 2010) as covering both the internal and external security of a Member State. It identified a range of factors capable of affecting public security, including threats to the functioning of the institutions, essential public service and the survival of the population, and risks related to serious disturbance to foreign relations, peaceful coexistence of nations or to military interests. Furthermore, in *K.A.M.* v *Republic of Cyprus* (C-454/23, 27 February 2025), the CJEU established that a danger to public security covers not only a genuine and present danger, but also a potential danger.

As regards the concept of ‘public order’, analogous to danger to the community, *in* *Hristo Byankov v Glaven sekretar na Ministerstvo na vatreshnite raboti* (C-249/11, 24 November 2012) the CJEU interpreted the concept as requiring, beyond the perturbation of the social order, that any infringement of the law involves a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

In the context of the Citizenship Directive, the CJEU has further confirmed that these concepts cover cases where a third-country national supports or is a member of a terrorist organisation, thereby extending their reach to terrorism-related conduct which may be encountered in exclusion cases under Article 17(1)(d).

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