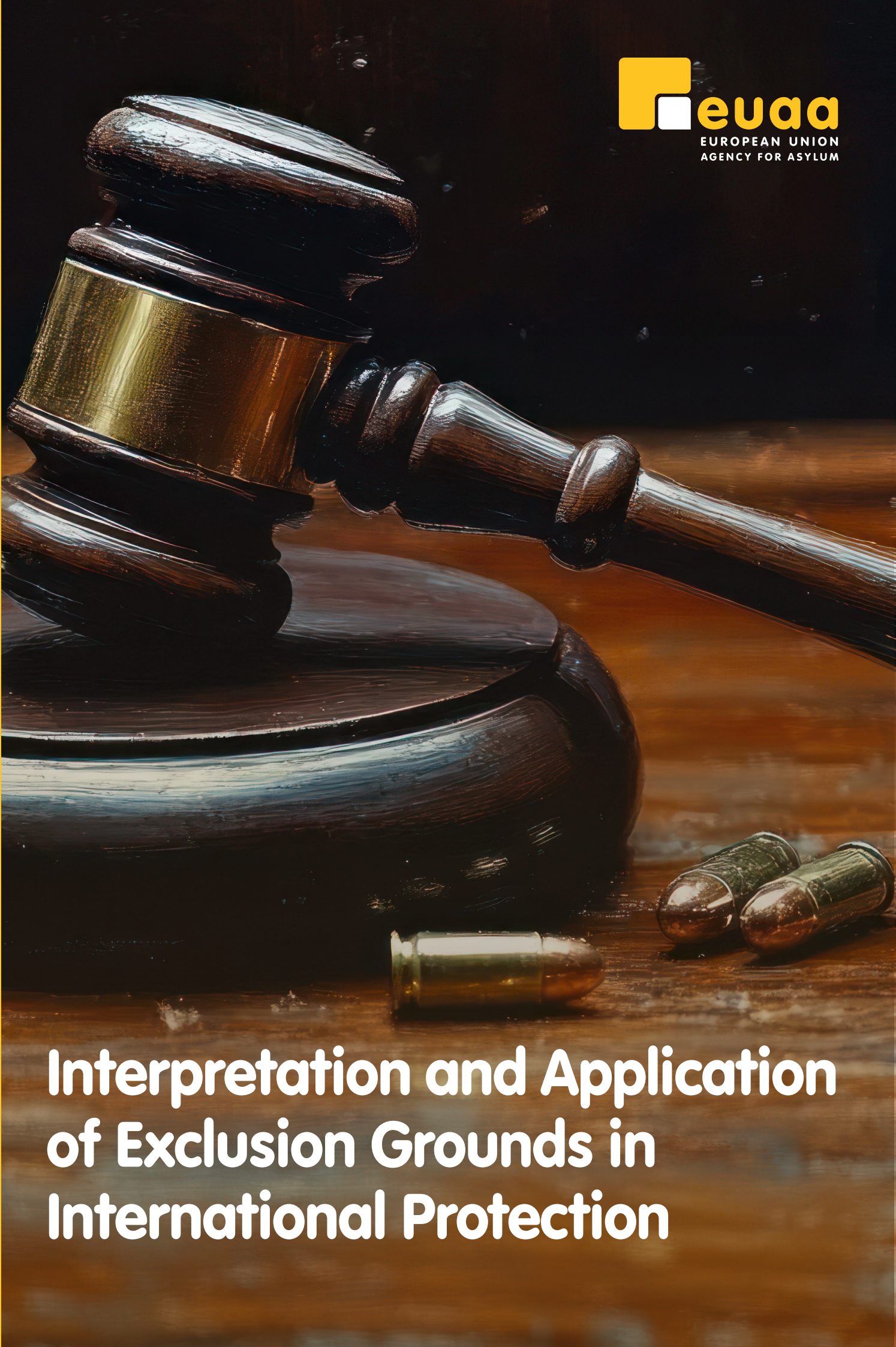




Interpretation and Application of Exclusion Grounds in International Protection

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Analysis of case law (2020-2026)

October 2026



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The database serves as a centralised platform on jurisprudential developments related to asylum, and cases are available in the [Latest updates](#) (last ten cases by date of registration), [Digest of cases](#) (all registered cases presented chronologically by the date of pronouncement) and the [Search page](#).

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Table of contents

Note.....	3
List of abbreviations.....	6
Highlights	8
Introduction.....	11
1. Crimes against peace, war crimes and crimes against humanity.....	12
1.1. War crimes.....	12
1.1.1. International legal framework	12
1.1.2. Assessing war crimes.....	13
1.2. Crimes against humanity	18
1.2.1. International legal framework	18
1.2.2. Assessing crimes against humanity	18
1.2.3. National case law examples	21
2. Serious (non-political) crime.....	25
2.1. Legal framework	25
2.2. CJEU jurisprudence	26
2.2.1. Defining the concept of a serious (non-political) crime	26
2.2.2. Distinguishing between serious (non-political) crimes and particularly serious crimes	27
2.2.3. Assessing the seriousness of a crime	28
2.3. National assessments of serious (non-political) crimes.....	29
2.3.1. Assessing the nature of the crime and harm caused	29
2.3.2. Assessing the crime by criminal classifications	33
2.3.3. Non-political character of crimes	37
2.3.4. Standard of proof.....	39
3. Acts contrary to the purposes and principles of the United Nations	44
3.1. International legal framework.....	44
3.2. CJEU jurisprudence	45
3.3. National case law on terrorism.....	47
3.3.1. Kurdistan Workers Party (PKK)	48
3.3.2. Jihadist groups.....	50
3.4. Extension of the ground beyond terrorism.....	51
3.4.1. Collection of diaspora tax.....	52
3.4.2. Witness tampering	52
3.4.3. Human trafficking.....	53
3.4.4. Human smuggling	53
4. Danger to the community or national security.....	56
4.1. Legal framework	56
4.2. CJEU jurisprudence	57
4.2.1. Defining public security and public order.....	57
4.2.2. Individualised and independent assessment	58





4.2.3. Genuine, present and sufficiently serious requirement.....	59
4.3. Assessment of threat indicators	61
4.3.1. Group membership or association.....	61
4.3.2. Ongoing criminal proceedings	62
4.3.3. Patterns of violence	63
5. Individual responsibility.....	65
5.1. International legal framework.....	65
5.2. CJEU jurisprudence	68
5.3. Assessment framework.....	69
5.4. Divergences and challenges in national practices.....	71
5.4.1. How direct must the link be between the substantial contribution and the excludable act?	72
5.4.2. Can a failure to act amount to individual responsibility for an excludable act?	74
5.4.3. To what extent can a substantial contribution be inferred from COI and other contextual factors?	75
5.4.4. Is purpose-based intent required for aiding and abetting, or does knowledge that one's conduct would facilitate the crime suffice?	76
5.4.5. When can knowledge be inferred from the general context rather than established through direct evidence?	78
6. Grounds negating individual responsibility.....	81
6.1. Capacity to act.....	81
6.1.1. Mental disease or defect and involuntary intoxication	81
6.1.2. Immaturity	82
6.2. Superior orders	83
6.3. Duress.....	84
6.4. Self-defence	86
7. Post-offence considerations.....	89
7.1. CJEU jurisprudence.....	89
7.2. Impact of the Galte ruling on national case law	90
Conclusions.....	93



List of abbreviations

Term	Definition
CALL	Belgian Council for Alien Law Litigation (Raad voor Vreemdelingenbetwistingen / Conseil du Contentieux des Étrangers)
CEAS	Common European Asylum System
CGRS	Commissioner General for Refugees and Stateless Persons (Belgium — <i>Commissaire général aux réfugiés et aux apatrides</i>)
CJEU	Court of Justice of the European Union
CNDA	French National Court of Asylum (<i>Cour nationale du droit d'asile</i>)
COI	Country of origin information
ECHR	European Convention on Human Rights
EUAA	European Union Agency for Asylum
EU	European Union
EU+ countries	Member States of the European Union and associated countries
GTD	Global Terrorism Database
ICC	International Criminal Court
ICTR	International Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IMT	International Military Tribunal
IPAT	International Protection Appeals Tribunal (Ireland)
OFPRA	French Office for the Protection of Refugees and Stateless Persons (<i>Office français de protection des réfugiés et apatrides</i>)
LTTE	Liberation Tigers of Tamil Eelam
Member States	Member States of the European Union
PKK	Kurdistan Workers' Party (<i>Partiya Karkerên Kurdistanê</i>)



Term	Definition
QD (recast)	Qualification Directive 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)
QR	Qualification Regulation (Regulation (EU) 2024/1347) of the European Parliament and of the Council of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council
Refugee Convention	The 1951 Convention relating to the status of refugees and its 1967 Protocol (referred to in EU asylum legislation and by the CJEU as ‘the Geneva Convention’)
SAC	Supreme Administrative Court (the same acronym is used for the SAC in Czechia and Finland)
UDI	Norwegian Directorate of Immigration (<i>Utlendingsdirektoratet</i>)
UN	United Nations
UNE	Norwegian Immigration Appeals Board (<i>Utlendingsnemnda</i>)
UNHCR	United Nations High Commissioner for Refugees



Highlights

- The CJEU has consistently identified two purposes that underpin the exclusion clauses: to exclude from international protection persons who are deemed undeserving of the protection and to prevent international protection from enabling those who have committed serious crimes to escape criminal liability.
- These purposes, combined with the serious consequences of exclusion, underline the CJEU's insistence on the exceptional nature of exclusion and the rejection of automatic exclusion based on group membership or association. Accordingly, national courts have consistently emphasised the need for a restrictive application of the exclusion provisions, with the standard of proof lower than that of criminal law.
- In its first ruling interpreting the grounds for exclusion from international protection in 2010, the CJEU established in [B and D](#) that exclusion under Articles 12(2)(b) and (c) of the Qualification Directive cannot be applied automatically based on mere membership or participation in an organisation listed as terrorist. An individualised assessment of the specific facts is required, and a share of responsibility for the acts must be attributable to the applicant based on objective and subjective criteria, including their role, position within the organisation, knowledge of its activities and any pressure to which they were exposed. The CJEU also confirmed that exclusion is not conditional on the applicant representing a present danger and a proportionality assessment is not required.
- The most commonly applied exclusion grounds are Article 12(2)(b) and 17(1)(b) which concern persons who have committed a serious (non-political) crime. Neither the EU asylum *acquis* nor the CJEU has defined 'serious crime', while the [Galte](#) ruling of 2025 held that the concept must be understood in line with its everyday meaning. This absence of a uniform definition, combined with the continuing influence of national criminal law classifications on how courts approach the assessment in practice, remains a key obstacle to the uniform application of this exclusion ground across EU+ jurisdictions.
- Nevertheless, the CJEU was instrumental in establishing a multi-factor seriousness assessment framework that is broadly accepted in principle. In [Ahmed](#), the CJEU ruled that 'serious crime' is an autonomous concept of EU law requiring uniform interpretation across Member States. The penalty provided under national criminal law, while of particular importance, cannot be the sole determinant of seriousness; a fully individualised assessment of the specific facts is required, taking into account the nature of the act, its consequences, the form of procedure used, the nature of the penalty and whether other jurisdictions also classify the act as serious.
- While in *B and D*, the CJEU confirmed that acts of international terrorism may be considered to be acts which are contrary to the purposes and principles of the UN within the scope of Article 12(2)(c), in [Lounani](#) the CJEU expanded the material scope of



this ground considerably. It confirmed that exclusion is not limited to the direct commission of terrorist acts but extends to conduct that supports, facilitates or enables terrorist activity, including recruitment, organisation of travel and logistical support. It clarified that exclusion is not contingent on a prior criminal conviction for a terrorist offence and may apply irrespective of whether the terrorist organisation ultimately perpetrated terrorist acts. An individualised assessment of personal responsibility is required, with a prominent position within the organisation or a prior conviction serving as important but non-essential indicators.

- In the context of cases linked to terrorism, the most consequential divergence in national case law concerns whether a given group qualifies as a terrorist organisation, as illustrated by contrasting approaches to the Kurdistan Workers Party (PKK) and jihadist groups. Courts have given different weight to the EU Council Common Position 2001/931/CFSP, drawn different inferences from shared open-source databases and applied different thresholds for how remote from the actual terrorist act individual conduct can be before falling outside of Article 12(2)(c). The result is that identical conduct, such as fundraising or promotional activities for a terrorist organisation, can produce opposite outcomes depending on the jurisdiction.
- Beyond terrorism, courts have increasingly applied this ground to conduct such as state-facilitated exploitation, interference with international criminal justice, and human trafficking and smuggling. A central divergence concerns which international legal instruments can support a finding under Article 12(2)(c). Courts which require an explicit Security Council Resolution apply a more constrained scope, while courts drawing on the broader corpus of international law extend the ground more widely. This divergence has emerged most clearly in human smuggling cases.
- Article 17(1)(d) (danger to the community and security of a Member State) is exclusive to subsidiary protection and focuses on the present and future danger posed by the applicant. In [GM](#), the CJEU confirmed that the determining authority bears the responsibility for the exclusion assessment and cannot rely solely on opinions or decisions of national security or other specialist bodies. It must form its own reasoned view on the basis of all relevant information, assessed independently, and state reasons in fact and in law.
- A foundational principle is that exclusion must rest on individual and not collective responsibility. This has recently been codified in the Qualification Regulation and national courts have drawn on Article 25 of the Rome Statute and guidance by the EUAA and UNHCR, which identify five modes of participation: direct commission, inducement, aiding and abetting, joint criminal enterprise, and command responsibility. Each carries its own requirements as regards the nature of the applicant's contribution and their knowledge and intent.
- Despite this framework, national courts diverge significantly in how they assess individual responsibility in practice. Most courts do not identify the relevant mode of participation before conducting the assessment, which leads to the inconsistent



application of different evidentiary criteria. Divergence is particularly pronounced on what constitutes a 'substantial contribution' to an excludable act. Courts have also diverged on whether aiding and abetting requires purpose-based intent or whether knowledge that one's conduct would facilitate the crime suffices, and on the extent to which knowledge and contribution can be inferred from country of origin information which documents the systemic context, rather than established through specific evidence of the applicant's conduct and awareness. These divergences produce different outcomes for applicants in comparable situations.

-  The assessment of mitigating factors which negate individual responsibility forms an essential next step in the exclusion analysis, as confirmed by the CJEU in *Lounani*. National courts have generally drawn on Articles 31-33 of the Rome Statute, covering grounds such as duress, superior orders, self-defence and capacity to act. Courts have adopted a consistently cautious approach, with mitigating grounds rarely succeeding in negating individual responsibility, particularly when the crimes are serious.
-  In the landmark ruling of [*Galte*](#) (C-63/24, 30 April 2025), the CJEU confirmed for the first time that post-offence considerations must form part of the exclusion assessment under Article 12(2)(b). While the factual element of the 'crime' is fixed at the moment it was committed, the qualifying element of 'seriousness' is an assessment that may evolve over time. Authorities must therefore consider the type of act, the sentence provided and imposed, the period elapsed since the conduct, the applicant's conduct during that period, and any remorse expressed. The CJEU gave particular weight to whether the applicant had served their sentence, while clarifying that this does not automatically preclude the application of the exclusion clauses. This ruling has already prompted shifts in national practices, most clearly in Belgium, where courts have begun annulling exclusion decisions for less grave offences in light of post-offence rehabilitation. The full impact of *Galte* across EU jurisdictions remains to be seen.
-  The Qualification Regulation, directly applicable as of 12 June 2026 under the EU Pact on Migration and Asylum, codifies and extends existing CJEU jurisprudence on several points, including: the confirmation that a proportionality assessment is not required for any exclusion ground, the clarification that exclusion from subsidiary protection may apply to convictions occurring after arrival, the requirement for an assessment of the individual responsibility of the applicant, and additional safeguards for minors. The Qualification Regulation is expected to reduce interpretive variation that previously arose from a non-uniform transposition of the recast Qualification Directive.



Introduction

The exclusion clauses under EU asylum law operate as a fundamental safeguard of the integrity of the international protection system, ensuring that its benefits are not extended to individuals who have committed serious crimes or acts that are incompatible with the values that underpin the system. Articles 12 and 17 of the recast Qualification Directive (QD) and the Qualification Regulation (QR), which are closely modelled on Article 1F of the 1951 Refugee Convention, provide the legal basis for excluding persons from refugee status and subsidiary protection, respectively. In particular, Articles 12(2) and 17(1) cover the grounds under which someone is rendered undeserving of international protection, including crimes against peace, war crimes and crimes against humanity; serious (non-political) crimes; acts contrary to the purposes and principles of the United Nations; and, in the context of subsidiary protection, a danger to the community or the security of the Member State. Article 12(1), which covers the grounds under which a person is not in need of protection, falls outside of the scope of this report.

This report analyses the jurisprudence of courts and tribunals across EU Member States and associated countries of Iceland, Norway and Switzerland (EU+ countries) in interpreting and applying these exclusion grounds to applicants for international protection. It sets out the standard-setting rulings issued by the Court of Justice of the European Union (CJEU) on exclusion since 2010, and draws on a wide range of national case law sourced from the [EUAA Case Law Database](#), covering the period 2020–2026. It supplements these with guidance issued by the EUAA and the United Nations High Commissioner for Refugees (UNHCR).

Due to the recent entry into application of the QR, the case law highlighted in this report interprets the equivalent provisions provided for in the recast QD. Its primary aim is to map how courts have interpreted the relevant provisions, present the extent to which their approaches have been harmonised in line with the standard-setting judgments of the CJEU, and identify areas of persistent divergence and challenges. In doing so, the report provides an overview of how national courts have operationalised the exclusion framework in concrete cases within the international protection system and presents the relevant international legal instruments that define the material elements of each ground.

The analysis is structured around the sequential steps of an exclusion assessment: first, the material assessment of whether the act in question falls within the scope of an exclusion ground (Sections 2-4); second, the assessment of individual responsibility, including the different modes of participation recognised under international criminal law and the consideration of mitigating factors and grounds that may negate or reduce individual responsibility (Sections 5-6); and third, the relevance of post-offence considerations in the exclusion assessment, such as the passage of time since the excludable act occurred, whether a sentence has been served or whether the applicant has demonstrated remorse (Section 7).

This report is intended to serve as a practical reference tool for decision-makers, legal practitioners and courts involved in the examination of asylum applications in which exclusion may be relevant. It does not aim to be exhaustive or prescriptive as to the outcome in any individual case, but rather to elucidate the analytical frameworks, evidentiary standards and interpretive approaches that have been applied across EU+ jurisdictions, with a view to supporting harmonised decision-making within the Common European Asylum System (CEAS).



1. Crimes against peace, war crimes and crimes against humanity

Articles 12(2)(a) and 17(1)(a) of the QR and the recast QD exclude applicants from refugee status and subsidiary protection for whom there are serious reasons to consider that they have committed a crime against peace, a war crime or a crime against humanity. This exclusion clause reflects the provisions of Article 1F(a) of the 1951 Refugee Convention.

Section 1.1 examines the exclusion ground relating to war crimes while Section 1.2 addresses crimes against humanity. Both sections first set out the applicable international legal framework used to define both crimes for the purposes of applying the exclusion clauses, drawing on instruments such as the Rome Statute, the Geneva Conventions, and the statutes and jurisprudence of international criminal tribunals. This is followed by an analysis of how national courts have assessed the contextual and material elements of such crimes in asylum proceedings. Both sections conclude with illustrative examples of national case law. This section does not delve into further detail regarding crime against peace, as this ground is rarely applied and relevant case law could not be identified for the purpose of this analysis.

1.1. War crimes

1.1.1. International legal framework

The concept of war crimes for the purposes of exclusion is not autonomously defined by EU asylum legislation but derives from international criminal and humanitarian law. Courts must therefore rely on a complex interaction between international treaties, customary international law and judicial interpretation to characterise conduct as war crimes.

International law defining war crimes

- Article 8 of the Rome Statute of the International Criminal Court
- The 'Grave Breaches' provisions of the 1949 Geneva Conventions and Additional Protocol I
- Common Article 3 and relevant provisions of Additional Protocol II
- Article 6 of the Charter of the International Military Tribunal (IMT)
- The Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY)
- The Statute of the International Criminal Tribunal for Rwanda (ICTR)



The Rome Statute of the International Criminal Court (ICC) provides the most comprehensive and contemporary definition of war crimes, including an exhaustive list of such crimes that fall under the jurisdiction of the ICC. Article 8 distinguishes between war crimes committed in international armed conflicts and those committed in non-international armed conflicts, covering grave breaches of the Geneva Conventions of 1949 and other serious violations of the laws and customs in armed conflict, which are directed at protected persons and objects.

The EUAA [Judicial Analysis on Exclusion: Articles 12 and 17 Qualification Directive](#) (February 2020) cautions that, although the Rome Statute provides an exhaustive list of war crimes, it is not complete and therefore cannot be regarded as wholly determinative for the purposes of assessing war crimes under Article 12(2)(a) of the recast QD. A notable omission includes attacks against civilian objects in non-international armed conflicts, which the ICTY has recognised as war crimes, even though the Rome Statute limits this offence to international armed conflicts. The Rome Statute also omits certain serious violations of Article 4(2) of the Additional Protocol II, such as collective punishment, acts of terrorism and threats to commit such acts, despite their recognition as war crimes in the statutes of the ICTR and the Special Court for Sierra Leone (SCSL). In addition, acts of terror against civilians in both international and non-international armed conflicts, as affirmed by the ICTY as war crimes, are not reflected in the Rome Statute's provisions.

The [Elements of Crimes](#) supplement the Rome Statute by clarifying the material and contextual elements required for a person's conduct to qualify as a war crime for each act enlisted under Article 8. According to the Elements of Crime, to establish a war crime it is necessary that the conduct took place in the context of and was associated with an armed conflict, and that the perpetrator was aware of the factual circumstances that established the existence of an armed conflict, and of the protected status of the person or object.

1.1.2. Assessing war crimes

The CJEU has not issued a ruling interpreting the application of Articles 12(2)(a) and 17(1)(a) of the recast QD. However, the EUAA [Practical Guide on Exclusion from International Protection](#) (September 2026) prescribes an assessment framework which takes into account several elements, including the act, the context, the actor, the object and the specific mental element. The assessment should establish the existence and nature of the armed conflict, a sufficient nexus between the act and the conflict, whether the specific requirements established for that crime were met (such as a finding that the crime was directed against protected persons or object, through the use of unlawful weapons or means of warfare, or harmed persons or objects in a manner which breached international humanitarian law), and whether the perpetrator possessed the required knowledge of the factual circumstances or the protected status of the person or object

As concerns the applicable standard of proof, although the definition of war crimes is grounded in international criminal law, courts apply a lower standard of proof. As highlighted by the French National Court of Asylum (CNDA) on 27 January 2021 in [M.M. v French Office for the Protection of Refugees and Stateless Persons \(OFPR\)](#), the standard of proof for applying this exclusion ground, which requires 'serious reasons to believe', does not necessitate proof or a belief beyond a reasonable doubt. Furthermore, the CNDA held that



while responsibility for the crime cannot be inferred solely from contextual elements, it is not necessary for specific facts to be established characterising the individual's involvement in those crimes.

Sections 1.1.2.1-1.1.2.5 examine how national courts apply this assessment framework in practice, including how they establish the nature of an armed conflict, the reliance on country of origin information to establish war crimes, the establishment of a nexus and the assessment of the legal status of combatants and the rejection of arguments justifying war crimes. It concludes with additional case law examples which can be found in the EUAA Case Law Database.

1.1.2.1. Establishing the nature of an armed conflict

The majority of case law in Europe concerns war crimes committed in the context of a non-international armed conflict. When determining whether the conflict is of a non-international character, courts often rely on the definitions provided by international jurisprudence. In particular, the decision of the ICTY in [Prosecutor v Tadić](#) is commonly cited as it provides a broad definition of non-international armed conflict, encompassing protracted armed violence between governmental authorities and organised armed groups or between such groups within a state.

For example, the CNDA in [MM v OFPRA](#) (17 January 2022) referred to this judgment to characterise the conflict in the Democratic Republic of the Congo (DRC) between 1992 and 1997 as a non-international armed conflict. In another case concerning the DRC, in [X v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#) (16 March 2021) the Belgian Council for Alien Law Litigation (CALL) referred to the same ICTY judgment, yet noted that the ICC had provided a more precise definition of a non-international armed conflict in [Prosecutor v Jean-Pierre Bemba Gombo](#).¹ Based on this definition, it held that the Congolese state was facing a non-international armed conflict in South Kivu, during the relevant period 2000-2003, which included clashes between different organised armed groups which reached a certain intensity to be awarded this classification.

1.1.2.2. Reliance on country of origin information

These French and Belgian cases also demonstrate how courts routinely rely on country of origin information (COI) and international reports, not only to establish the existence of an armed conflict during the relevant period but also to determine whether war crimes were committed. As applicants often downplay their role, in such cases courts have afforded more weight to what is reported by COI.

In the former case, the CNDA noted that “all public sources noted that serious abuses against civilian populations were committed both by the auxiliary forces of President Lissouba’s

¹ “Therefore, for the purposes of interpreting the concept of ‘armed conflict not of an international character’ as enshrined in the Statute, the Chamber concludes that such a conflict is characterised by the outbreak of armed hostilities reaching a certain intensity, which must be greater than that of situations of internal unrest and tension such as riots, isolated and sporadic acts of violence or acts of a similar nature, and taking place on the territory of a State. These hostilities may break out between i) the authorities of the government of that State and organised dissident armed groups or ii) organised armed groups among themselves.”



regime and by militias supporting Mr Sassou-Nguesso or Mr Kolélas, the main protagonists of the Congolese conflict, between 1993 and 1997”. It therefore excluded a senior army officer of the Congolese Armed Forces from international protection. Although the applicant downplayed his role, the court gave more weight to COI than the applicant’s statements, in order to establish that war crimes were committed.

In the latter case, CALL held that one of the armed groups of which the applicant was a founding leader, the Mudundu 40, perpetrated war crimes within the meaning of Article 8 of the Rome Statute, including murder and acts of torture, as well as humiliating and degrading treatment, based on COI reports. The court linked these crimes to the armed conflict ongoing at that time and held that the applicant, as a founding member of the group and local chief of his village, could not have been unaware of the existence of the armed conflict, nor of the link between the crimes and the conflict.

Similarly, in [N. v OFPRA](#) (23 September 2021) the CNDA excluded a former senior member of the Rwandan Armed Forces from international protection as he was involved in the genocide perpetrated in Rwanda in 1994. Despite the fact that the applicant denied his involvement, the CNDA noted that public sources confirmed numerous war crimes committed by Democratic Liberation Forces of Rwanda (FDLR) in Eastern DRC, including killings of civilians, child abductions and recruitment of child soldiers, sexual violence including gang rapes, and forced pregnancies in order to increase the proportion of Rwandophones in the region.

1.1.2.3. Establishing a nexus

As noted above, one of the requirements stated in the Elements of Crimes is that to establish a war crime it is necessary that the conduct took place in the context of and was associated with an armed conflict. Additional guidance on the establishment of such a nexus has been provided by the ICC in several case law. In [Prosecutor v Ali Muhammad Ali Abd Al-Rahman](#), pronounced on 6 October 2025, the ICC ruled that:

“684. Acts of war crimes are required to have been committed ‘in the context of’ and be ‘associated with’ a non-international armed conflict.

685. What is required is that the perpetrator’s conduct must have a sufficiently close link to the hostilities taking place in any part of the territories controlled by the parties to the conflict. The armed conflict alone need not be the root of the conduct of the perpetrator and the conduct need not have taken place in the midst of the battle. Nonetheless, the armed conflict must play a major part in the perpetrator’s decision, in his/her ability to commit the crime or the manner in which the crime was ultimately committed.

686. In determining whether the nexus is established, the Chamber may consider, amongst other factors: i) the status of the perpetrator and the victim; ii) whether the act may be said to serve the ultimate goal of a military campaign; and iii) whether the crime is committed as part of, or in the context of, the perpetrator’s official duties.”



1.1.2.4. Legal status of combatants

A combatant who unlawfully takes part in an armed conflict or a civilian can also be responsible for war crimes, as long as their act took place in the context of and was associated with an armed conflict. This reasoning was upheld in [Applicant v Directorate of Immigration](#) (6 February 2026) by the Norwegian Immigration Appeals Board (UNE), which ruled that anyone who participates in an armed conflict may be guilty of war crimes, whether they are a lawful combatant in one of the armed forces of the parties or participating in the war as a civilian. The decisive element is the act itself, which must be committed with a nexus to the armed conflict at the time. However, the UNE underlined that, within the context of an international armed conflict, it must be assessed if the applicant was a ‘privileged combatant’, which is a concept set out in Article 4 of the 1949 Geneva Convention and the Additional Protocol to the 1977 Geneva Convention that entitles people with this status to immunity from national criminal laws for lawful acts of war.² Indeed, the EUAA [Practical Guide on Exclusion from International Protection](#) (September 2026) notes that not all acts of war are war crimes as long as combatants follow the rules provided by international humanitarian law.

As the Norwegian case demonstrates, it may not be so straightforward to determine whether the applicant had the status of a privileged combatant in an international armed conflict. The case concerned the Russian war of aggression on Ukraine, which broke out in 2022. The UNE assessed whether the members of the Wagner Group could be considered a part of the ordinary Russian armed forces, which would provide them privileged combatant status to fire on lawful Ukrainian military targets.

Based on jurisprudence from the International Court of Justice in the Hague, the Grand Board of the UNE found that responsibility may be attributed to the state only when there is total dependence between the group and the state. While there were close ties between the Wagner Group and the Russian armed forces, the Wagner Group still held a degree of autonomy on how they implemented their assigned missions. Hence, the UNE concluded that the Wagner Group was not part of the Russian armed forces before 4 November 2022, after which Russia confirmed their inclusion in their armed forces. This led to the finding that the applicant was to be regarded as a civilian and, therefore, engaged in the armed conflict unlawfully, even if firing at lawful military targets. The UNE also noted that according to COI war crimes were committed by Russian forces in Ukraine (including the Wagner Group). This included the murder, torture, sexual abuse and imprisonment under inhumane detention conditions of Ukrainian prisoners of war, without allowing them to contact their families.

The applicant was therefore excluded from international protection for committing a war crime and a serious, non-political crime, as the UNE noted that war crimes are automatically considered to fulfil the conditions of the latter ground for exclusion. It therefore emerged from this case that special attention must be paid to the legal status of combatants within the

² In such a case, the relevant exclusion clause may be Article 12(2)(b) concerning a serious, non-political crime rather than 12(2)(a). The question of the privilege of the combatant is relevant for exclusion when a state or non-state combatant commits an act that is in conformity with International Humanitarian Law (IHL). If the act is contrary to IHL and constitutes a war crime, the privilege of the combatant is irrelevant since Article 12(2)(a) would apply in any case.



context of an international conflict, and participation in private military groups can provide grounds for exclusion.

1.1.2.5. Rejection of arguments justifying war crimes

Military necessity and proportionality must be taken into account when determining if an act qualifies as a war crime. However, as national case law reinforces, once a war crime is established, unless there are mitigating circumstances that negate the applicant's individual responsibility for the crime (as demonstrated in Section 7), war crimes are not justifiable.

In particular, courts have held that the perpetrator's purpose for committing war crimes cannot justify the acts and is irrelevant to the assessment. This reasoning was upheld in [OFPRA v Applicants](#) (14 May 2024), in which the French Council of State considered that the lower court had improperly assessed this exclusion ground by taking into account the alleged legitimacy or purpose of the violence carried out by a Russian national who was involved in the Chechen wars.

This was illustrated further by CALL in Belgium in [X v CGRS](#) (6 May 2020). The council excluded the applicant from international protection mainly because there were serious reasons to believe that he was guilty of war crimes in the exercise of his duties in the Algerian army in the 1990s and, in particular, at the *Centre Territorial de Recherche et d'Investigation* (CTRI) in Blida, where torture and murder were systematic, according to available information. The council ruled that, while the acts of which the applicant was accused are part of the fight against terrorism, they do not justify murder and the torture of people, whether proven terrorists or not.

Additional case law examples	
Applicant v Finnish Immigration Service (7 April 2025)	The Finnish Supreme Administrative Court found that the applicant, who was a member of the Taliban forces in Afghanistan, had committed war crimes given that he participated in the execution of seven people , linking the acts to the armed conflict in Afghanistan. This case, which concerns crimes committed when the applicant was still a minor and addresses the question of duress, is explored in more detail in Section 6.3.
M.N. v OFPRA (15 November 2022)	The CNDA held that attacks on the life and physical integrity of civilians, as well as the forced displacement of civilians carried out by the Burundi Armed forces , constituted serious violations of international humanitarian law, linking them to the Burundi civil war which it established on the basis of COI. It characterised the acts as war crimes under Article 8 of the Rome Statute and Article 6 of the IMT and excluded a former member of the Burundi armed forces who held a high military ranking.
Applicant v CGRS (20 May 2022)	CALL remitted a case to the Belgium determining authority to assess whether the applicant, who was a member of the PKK and assisted in the groups financing, had committed war crimes. CALL placed emphasis on the fact that in the context of the actions carried out by the PKK, there were civilian victims and acts committed against civilians , noting also



	that the allegations against the applicant took place in a specific and well-known context.
M.M. v OFPRA (27 January 2021)	The CNDA noted that the military conscription of children under the age of 15 in armed conflict is a war crime, both under Article 8 of the Rome Statute and under Article 4(3)(c) of the Additional Protocol II to the Geneva Conventions of 12 August 1949. On this basis, it excluded an applicant from international protection for being involved in the recruitment of minors into the LTTE in Sri Lanka.

1.2. Crimes against humanity

1.2.1. International legal framework

Crimes against humanity are defined with reference to international criminal and humanitarian legal instruments. Article 6(c) of the IMT Charter defines crimes against humanity as ‘[...] inhumane acts, committed against any civilian population, before or during the war, [...]’. Therefore, in contrast to war crimes, crimes against humanity do not require that an armed conflict is ongoing at the time the crime was committed.

When interpreting this ground, national courts primarily rely on the definition provided by Article 7(1) of the Rome Statute, which stipulates that an act constitutes a crime against humanity when committed as “part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”, and which includes a list of the specific acts. Article 7(2) defines an attack directed against any civilian population as “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such an attack”. It also elaborates on the definitions of the rest of the terms included in Article 7(1).

The [Elements of Crimes](#), which supplements the Rome Statute, sets out the material and mental elements that need to be satisfied for each individual crime against humanity.

1.2.2. Assessing crimes against humanity

Rulings by the ICC have expanded the assessment framework for classifying acts as crimes against humanity. As in the case of war crimes and all other exclusion grounds, the standard of proof for excluding an applicant from international protection is lower than the standard of proof required under criminal law. Nevertheless, the frequent citing of ICC rulings in asylum case law which assessed crimes against humanity demonstrates how the standards of criminal law provide guidance, even in the context of asylum.

Two key rulings by the ICC, often referred to by national courts, include [The Prosecutor v Germain Katanga](#) (7 March 2014) and [The Prosecutor v Jean-Pierre Bemba Gombo](#) (21 March 2016).



In Katanga, the ICC Trial Chamber ruled that the contextual elements of a crime against humanity require three stages of reasoning.

- The first stage concerns an analysis of the existence of an ‘attack directed against any civilian population’, which denotes “a course of conduct or an operation involving the multiple commission of acts”, that falls within the ambit of Article 7 of the Rome Statute and which must be executed pursuant to or in furtherance of a State or organisational policy.
- The second stage is characterisation, i.e. ascertaining whether the attack was widespread or systematic. In this regard, it notes that “the adjective ‘widespread’ adverts to the large-scale nature of the attack, whereas the adjective ‘systematic’ reflects the organised nature of the acts of violence”.
- The final stage includes a determination of the existence of a nexus between the widespread or systematic attack and the act within the ambit of Article 7, and the knowledge of that nexus by the perpetrator of the act.

When the contextual elements of Article 7 of the Rome Statute are satisfied, individual responsibility for a crime against humanity may be incurred by a single underlying act. For example, as stated by the ICC Pre-Trial Chamber in Bemba, a single act of murder by a perpetrator may constitute a crime against humanity if the legal requirements for the contextual element of crimes against humanity, including the nexus element, are met.

The following sub-sections examine how courts have interpreted this assessment framework in the context of asylum, including how attacks against civilians are characterised, the determination of the attack as widespread and systematic, the establishment of the nexus criteria, as well as additional national case law which illustrate crimes against humanity in different contexts, including genocide, political or religious persecution, and the implementation of state policies.

An attack directed against any civilian population

It is clear from the relevant international legal provisions, and the subsequent assessment framework developed by the ICC in its jurisprudence, that crimes against humanity must be directed against a civilian population. In the context of an armed conflict, the term ‘civilians’ refers to persons not taking part in hostilities. However, as crimes against humanity may take place even in times of peace, even members of armed forces may be considered to be civilians if there are no ongoing hostilities. This has been established by national case law within the context of national military service in Eritrea.

Several courts have regarded the enforcement of mandatory military service by the Eritrean authorities as a crime against humanity. This is illustrated by jurisprudence from the Dutch District Court of the Hague in [Applicant v The Minister for Asylum and Migration](#) (21 December 2020) and the Belgian CALL in [X v CGRS](#) (12 July 2024). Both courts excluded Eritrean nationals from international protection for their crimes committed while serving in the military in their home country. In the former case, the actions of the applicant included tying up people



using the ‘otto’ torture method and the long-term arbitrary imprisonment of conscripts in zinc plate cells under extreme temperatures. In the latter case, the applicant had worked in the National Service in Eritrea for 30 years and held a position of power, as he was responsible for a unit of 50 soldiers.

In both cases, the courts considered that their activities were linked to the widespread and systematic abuse committed by the Eritrean authorities, in relation to the forced recruitment of individuals into the army, and the conditions within the army and the training, which include inhumane disciplinary punishment equated with torture. Both courts highlighted that punishments for violations are severe, including torture, re-education in designated camps, forced labour and years of imprisonment under life-threatening detention conditions, as attested by various international organisations. The Dutch court noted that the oppression of the population was large scale, with permanent staff of such camps, including trainers, guards and managers, having contributed significantly to the current situation in Eritrea. CALL similarly observed that Eritrean officials have been involved in widespread and systematic attacks against the civilian population since 1991, committing acts of slavery, imprisonment, enforced disappearance, torture, other inhumane acts, persecution, rape and murder, which the court linked to the objective of suppressing independent and critical thinking, and spreading fear among the population.

CALL held that military conscripts could be considered members of the civilian population within the meaning of crimes against humanity, since there was no armed conflict as defined under international law, with the exception of the periods from May 1998 to June 2000 and from 10 to 12 June 2008. Therefore, the distinction between combatants, non-combatants and civilians used in that context does not apply.

CALL also established suspected terrorists may be considered as civilians for the purpose of applying this exclusion ground. In [Applicant v CGRS](#) (10 July 2024), CALL excluded an Iraqi national from international protection as he was formerly a police officer in the Kurdish Autonomous region. CALL established that the Iraqi Kurdish police systematically engaged in arbitrary arrests, forced confessions, ill treatment and acts of torture against civilians, including political opponents and journalists, findings that aligned with the applicant’s statements. Hence, CALL found that it could be reasonably established that the Iraqi police authorities, including in the autonomous Kurdish region, committed crimes against humanity.

CALL recognised that while information on torture and ill treatment practices did not specifically refer to the SWAT unit the applicant belonged to, it remained relevant as it concerned the general situation within the entire police force in the Iraqi Kurdistan region, including in Dohuk. Although the applicant argued that the torture mentioned was mainly directed against Daesh members, who he claimed were not considered to be ‘citizens’ in principle, CALL considered that, even when torture is directed against people suspected of terrorism, they remained ‘civilians’ within the meaning of Article 7 of the Rome Statute, since at that stage they are only suspected of terrorism or of links to terrorism. In view of the administrative and procedural files submitted by the CGRS, CALL believed that such acts of torture were systematically carried out by the Iraqi Kurdish police forces at the time the applicant was a member.



Widespread and systematic attacks

Courts ascertain whether an attack against a civilian population is widespread and systematic based on case specific country of origin information. For example, when it has been established that a state authority has carried out crimes against humanity, attention must be paid to the specific authority with whom the applicant worked or even with which specific unit. Crimes against humanity therefore cannot be generalised to all related authorities.

The Dutch District Court of the Hague reinforced this in [Applicants v The Minister for Asylum and Migration](#) (26 March 2021) within the context of crimes against humanity carried out by the Syrian Security Forces under the former Assad regime, including the military and police. It noted however, based on COI, that the same conclusion could not be drawn for the Syrian civilian police.

Nexus

To establish a nexus between the act committed and the widespread/systematic attack, as well as the applicant's knowledge of that nexus, a number of factors are taken into account (see *Section 1.2.3*). This may include the applicant's personal statements, including whether they had heard about the crimes taking place or had personally witnessed them.

Additionally, the applicant's knowledge may be assumed in certain cases on the basis of the applicant's position within an organisation and his role, as well as the frequency with which he committed the crimes. Some crimes, such as genocide, would require an additional specific intent. The concept of 'knowledge and intent' is explored further in *Section 6*.

1.2.3. National case law examples

The EUAA's [Practical Guide on Exclusion from International Protection](#) (September 2026) emphasises the high threshold of which type of acts can be constituted as crimes against humanity, denoting them as 'fundamentally inhumane' acts. It provides the following examples of acts which may amount to crimes against humanity if they form part of a widespread or systematic attack directed against civilians: murder, extermination, torture, rape, and political or religious persecution. An overview of jurisprudence on this topic similarly finds that national courts have only regarded the most serious of crimes as crimes against humanity.

Genocide

Genocide can indisputably be considered as a crime against humanity and, therefore, as a ground for exclusion from international protection. For example, the indiscriminate massacre of Tutsis in the 1994 Rwandan Genocide is regarded by the ICC as a crime against humanity. This has led to national courts excluding applicants from international protection who were involved in perpetrating this genocide. Crimes against humanity committed within this context were noted for example by the CNDA in [N. v OFPRA](#) (23 September 2021) and the Belgian CALL in [X v CGRS](#) (12 March 2020).

In the French case, the applicant held prominent positions within the Royal Armed Forces (FAR), including the head of military intelligence which was one of the highest positions



in the Rwandan Army from June 1993-July 2014, and also served as the acting commander of the Kigali operational sector from May 1994. The court dismissed the attempts of the applicant to distance himself and deny involvement with the crimes, based on country information which described the key role of high-ranking officials and the army during the genocide.

Similarly, CALL ruled on the exclusion from international protection of a Rwandan applicant on grounds that there were serious reasons to believe that he committed war crimes and crimes against humanity as a member of the Rwandan Patriotic Front (RPF) during the 1994 genocide. In this case, the applicant declared having, as an RPF sergeant, carried out numerous round-ups of civilians who were later killed. CALL linked the applicant's actions to the indiscriminate massacres of unarmed groups and individuals carried out by the RPF, particularly by luring people at the pretence of a 'peaceful' meeting and subsequently killing them. The council noted that based on COI, the killings were of a widespread and systematic nature. It concluded that the applicant could not have been unaware of the existence of the widespread attacks on the basis of his own descriptions of their systematic nature, his position as a sergeant and the frequency with which he committed the crimes

Political or religious persecution

As stated in the EUAA [Practical Guide on Exclusion from International Protection](#) (September 2026), political or religious persecution may reach the threshold of a crime against humanity if committed systematically and on a large scale. This may be the case for example if directed against a specific religious or ethnic group. This is exemplified by CALL in [X. v CGRS](#) (9 July 2024). A Congolese national who formerly worked as a police officer in the Rapid Intervention Police (PIR) and the National Intervention Legion (LNI) was excluded from international protection for his participation in the systematic killing of people from the Bundu Dia Kongo group, as he had committed crimes against humanity voluntarily and knowingly. Based on COI and case law of the ICC, the attacks were widespread and systematic, and linked with the aim of eradicating the political and religious movement of the Bundu Dia Kongo group.

Crimes against humanity may also be directed more generally against all types of political dissidents. This has been the case for example for crimes against humanity committed by the Syrian security forces under the former Assad regime. This has led courts to exclude applicants who worked in different capacities with the former Syrian authorities and contributed to these crimes.

For example in [X v CGRS](#) (16 April 2024), excluded a former soldier in the Syrian military. His part in arresting people while serving at an army checkpoint were linked by the court to the widespread violent repression of demonstrators opposed to the former regime in Syria, which constituted crimes against humanity. Similarly, a former police officer who conducted background checks into wanted persons, who were subsequently arrested and tortured, was excluded from international protection, as the Dutch District Court of the Hague seated in Arnhem, in [Applicant v The Minister for Asylum and Migration](#) (14 November 2024), linked these acts to the widespread and systematic torture carried out by the Syrian security authorities.



Implementation of state policies

In certain cases, a national policy implemented by a government, even though it was lawful at the time in the country of origin, may nevertheless constitute crimes against humanity. An example of this is China's former birth policy, which was regarded by CALL in [X v CGRS](#) (20 April 2021) as a crime against humanity. This led to the exclusion of a Chinese applicant who was involved in forced abortions in his position as village secretary. CALL noted that forced abortions were practiced on a large scale and systematically. It established the applicant's awareness of the crimes considering that he stated he personally witnessed forced abortions, having visited the homes of pregnant women with the police, pressured them and personally attended the hospital.

The jurisprudence reviewed in this section demonstrates that the assessment of war crimes and crimes against humanity under Articles 12(2)(a) and 17(1)(a) is heavily dependent on international criminal law. While the CJEU has not issued a ruling specifically interpreting this exclusion ground, courts have developed a broadly consistent analytical framework by drawing on the Rome Statute, the 1949 Geneva Conventions and the jurisprudence of international criminal tribunals. In particular, the ICC's decisions in *Katanga* and *Bemba* have become standard reference points in national case law for the contextual elements of crimes against humanity.

Several key findings emerge from the analysis. First, COI plays a crucial role in the assessment of both war crimes and crimes against humanity. Courts have consistently used COI to establish the existence of an armed conflict, the occurrence of serious violations, and the link between those violations and the applicant's conduct, particularly when applicants downplay their involvement. However, the case law also reinforces the limits of this reliance. Courts have cautioned against generalising findings of systematic abuse across an entire state apparatus without paying attention to the specific authority, unit or period in which the applicant operated, as illustrated by the Dutch court's distinction between the Syrian security forces and the Syrian civilian police.

Second, the case law confirms that once a war crime or crime against humanity is established, the purpose or motivation of the perpetrator is irrelevant to the material assessment. Courts have consistently rejected arguments based on the alleged legitimacy of the cause for which the applicant was fighting, the context of counter-terrorism operations or the lawfulness of the relevant conduct under the national law of the country of origin. Justifications of this kind are relevant, if at all, only to the subsequent assessment of factors mitigating individual responsibility addressed in Section 7.

Third, in the context of war crimes, the legal status of combatants has emerged as a significant and practically complex question, particularly in the context of international armed conflicts and the involvement of private military groups. The Norwegian UNE's assessment of the Wagner Group illustrates that participation in private military organisations that fall outside the formal armed forces of a state may give rise to exclusion from international protection, as





combatants in such groups do not benefit from privileged combatant status and may therefore be regarded as civilians unlawfully participating in hostilities.

Fourth, the definition of civilian populations for the purpose of crimes against humanity has been interpreted broadly in national jurisprudence. Courts have extended the concept to encompass military conscripts in the absence of an active armed conflict, as demonstrated in the Eritrean national service cases, and have held that suspected terrorists remain civilians within the meaning of Article 7 of the Rome Statute when no armed conflict is ongoing. This expansive reading is consistent with the purpose of the provision, but its limits have not been authoritatively defined.





2. Serious (non-political) crime

This section examines the exclusion ground of serious (non-political) crime under Articles 12(2)(b) and 17(1)(b) of the recast QD and the QR, which reflect Article 1F(b) of the 1951 Geneva Convention. This is the most commonly-applied exclusion ground across EU+ countries and the one that generates the greatest volume of national jurisprudence. It is also the ground most directly shaped by CJEU case law.

Section 2.1 sets out the legal framework, including the key differences between exclusion from refugee status, which is subject to temporal and geographical limitations and requires the crime to be non-political, and exclusion from subsidiary protection, which is broader in scope and subject to neither of those conditions. Section 2.2 examines the CJEU's contributions to the interpretation of this ground, covering the autonomous concept of serious crime, its distinction from the particularly serious crime standard applicable in revocation proceedings, and the multi-factor seriousness assessment framework established in *Ahmed*. Section 2.3 then analyses how national courts have applied these principles in practice, addressing in turn the assessment of the nature of the crime and the harm caused, the role of criminal classifications and the penalty criterion, the non-political character requirement specific to exclusion from refugee status, and the applicable standard of proof and evidentiary requirements.

2.1. Legal framework

Article 12(2)(b) of the QR and the recast QD, which reflect Article 1F(b) of the 1951 Geneva Convention, stipulate that an applicant is excluded from refugee status where there are serious reasons for considering that the third-country national or stateless person:

“has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes”.

Under Article 17(1)(b) of the QR, exclusion from subsidiary protection must also be applied when there are serious reasons for considering that a third-country national or stateless person:

“has committed a serious crime prior to arriving on the territory of the Member State or has been convicted for a serious crime after arrival”.

The key difference between exclusion from refugee status and subsidiary protection for this ground is that exclusion from refugee status has a temporal and geographical limitation, and a specific requirement that the crime be non-political. Even before Article 17(1)(b) of the QR codified that exclusion from subsidiary protection is not subjected to the same limitations and can be applied even when the crime was committed inside the country of refuge after the



applicant applied for asylum³, the CJEU had already held this position in [Shajin Ahmed v Immigration and Asylum Office \[Ahmed\]](#) (C-369/17, 13 September 2018) and [GM v Országos Idegenrendészeti Főigazgatóság, Alkotmányvédelmi Hivatal, Terrorelhárítási Központ \[GM\]](#) (C-159/21, 22 September 2022). In *GM*, the CJEU also confirmed that Article 17(1)(b) does not require the serious crime to be committed recently. It ruled that the fact that the competent authorities were aware of an applicant's criminal conviction but did not apply the exclusion ground in earlier asylum proceedings, does not prevent them from relying on that conviction to exclude the applicant from subsidiary protection in subsequent applications.

At the national level, the transposition and interpretation of these articles under the recast QD have not been uniform. Case law from the CJEU has been instrumental in harmonising practices; however, variations in interpretation often stem from differences in national asylum and criminal legislation. The direct application of the QR under the EU Pact on Migration and Asylum should therefore help to bridge this gap in interpretations, thereby fostering further harmonisation.

2.2. CJEU jurisprudence

The CJEU has played a standard-setting role in the interpretation of the exclusion ground relating to serious (non-political) crimes under the recast QD. Through a series of judgments, the CJEU has contributed to defining the concept of a serious crime as an autonomous concept under EU law requiring a uniform interpretation across Member States (see [Section 2.2.1](#)). It has also examined the relationship between this exclusion ground and the separate concept of a 'particularly serious crime' which is applicable in the context of revocation or refusal of refugee status, highlighting that these concepts are distinct and governed by different legal requirements (see [Section 2.2.2](#)). Finally, CJEU jurisprudence has provided guidance on assessing the seriousness of a crime, shedding light on the scope of the investigation and the criteria which must be taken into account (see [Section 2.2.3](#)).

2.2.1. Defining the concept of a serious (non-political) crime

The interpretation of this ground has evolved significantly following a series of CJEU rulings which have led to increased harmonisation, although varying national practices and uncertainties still exist. In particular, the lack of a definition of a 'serious crime' by the EU asylum *acquis* and by the CJEU has led to national courts applying their own definitions. Such definitions have been derived directly from national legislation or established national court practices, and they take different forms, such as lists of crimes, penalty thresholds or have been formulated in relation to the consequences of the crime. However, it is generally accepted that the concept of a serious crime is autonomous and needs to be distinguished from the understanding of crime under national criminal law.

³ Article 17(1)(b) of the recast QR referred merely to the application of exclusion where a third-country national or stateless person "has committed a serious crime".



The CJEU has addressed the lack of a definition provided by the (recast) QD in several rulings. In [Ahmed](#) (C-369/17, 13 September 2018), the CJEU ruled that where EU provisions do not indicate that the meaning and scope of a term must be defined by national law, such terms must normally be given an autonomous and uniform interpretation throughout the EU, taking into account the context of that provision and the objectives pursued. It therefore follows that a uniform interpretation of a serious crime is required. In a more recent judgment, in [K. L. v Migration Department at the Ministry of the Interior of the Republic of Lithuania \[Galte\]](#) (C-63/24, 30 April 2025), the CJEU held that in the absence of a definition of serious crime, the concept under the exclusion grounds must also be interpreted within its usual meaning in everyday language.

2.2.2. Distinguishing between serious (non-political) crimes and particularly serious crimes

The CJEU has interpreted the relationship between serious crimes under the exclusion grounds and the concept of a ‘particularly serious crime’ enshrined in the revocation clauses for refugee status in Article 14(4)(b) of the recast QD, highlighting their common objective, yet drawing a clear distinction between the concepts.

In this regard, in [Staatssecretaris van Justitie en Veiligheid v M.A.](#) (C-402/22, 6 July 2023), the CJEU defined crime, within the context of a particularly serious crime, as an “an act or omission which constitutes a serious breach of the legal order of the community concerned and which is, therefore, criminally punishable as such within that community”. Their common objective was highlighted as the CJEU observed that both clauses intend to deprive a third-country national of international protection when they have committed a crime of a certain degree of seriousness, necessitating CJEU case law interpreting Article 12(2)(b) and 17(1)(b) to be taken into account for the purposes of interpreting Article 14(4)(b) of the recast QD. However, the CJEU drew a clear distinction between the concepts, noting the requirement for a different assessment framework depending on the clause being applied. The CJEU ruled that the EU legislature imposed different requirements on the degree of seriousness of the crimes which may be relied on to justify the application of exclusion, revocation or grounds for *refoulement*. It noted that the expression ‘particularly serious crime’ makes the application of that provision subject to the particularly strict condition of “a final conviction for a crime of exceptional seriousness, more serious than the crimes which may justify the application of Article 12(2)(b) or Article 17(1)(b) and (3) of that directive” (para 35).

Building on this reasoning, in a judgment pronounced on 27 February 2025 in [K.A.M. v Republic of Cyprus](#) (C-454/23), the CJEU firmly distinguished between exclusion grounds and revocation/refusal grounds (see paras 27, 36 and 58). In particular, the CJEU held that Article 2(d) of the recast QD “expressly makes being a ‘refugee’ conditional upon the fact that the person concerned does not fall within the scope of Article 12 thereof”. In contrast, as concerns revocation/refusal grounds, the CJEU has stated that “the revocation of refugee status or the refusal to grant it, on the basis of Article 14(4) or (5) thereof, does not have the effect that the third-country national ceases to be a refugee within the meaning of Article 2(d) of Directive 2011/95 and Article 1(A) of the Geneva Convention”. It clarified further that Article 14(4) and (5) of the recast QD cannot be interpreted as adding additional exclusion grounds. This section will therefore not provide an analysis of cases relating to a particularly serious crime, which fall outside of the report’s scope.



2.2.3. Assessing the seriousness of a crime

Although the CJEU has not provided a definition of what constitutes a serious, non-political crime, its case law has nonetheless been instrumental in developing a framework for assessing the seriousness of a crime.

The CJEU first addressed this ground in [Germany v B and D](#) [*B and D*] (C-57/09 and C-101/09, 9 November 2010), in which it held that terrorist acts, which are characterised by their violence towards civilian populations, may be regarded as a serious, non-political crime even if committed with a purportedly political objective. Furthermore, the CJEU held that the terrorist acts may also be regarded as acts contrary to the purposes and principles of the United Nations within the meaning of Article 12(2)(c), when the acts have an international dimension. In practice, national courts have tended to classify terrorist acts by asylum applicants under Article 12(2)(c), rather than Article 12(2)(b). For that reason, terrorism will be examined in more detail in Section 4.

The CJEU also clarified that exclusion under Article 12(2)(b) or (c) is not conditional on the applicant representing a present danger to the country of refuge. It thereby follows that Member States are not required to assess the threat posed by the applicant when applying these exclusion clauses. Finally, the CJEU confirmed that no proportionality assessment is required under Article 12(2)(b) and (c) of the recast QD. This position has since been formalised in Article 12(4) and 17(4) of the QR and its scope was extended to cover all exclusion grounds for both refugee status and subsidiary protection status. Some national courts were still performing proportionality assessments despite the CJEU's ruling, therefore the Pact is expected to bring about a uniform approach in this regard.

The judgment has also been pivotal in establishing the requirement of an assessment of individual responsibility, which is elaborated further in Section 6.

While *B and D* confirmed that exclusion from refugee status requires a full investigation into the circumstances of the applicant's individual case, in [Ahmed](#) (C-369/17, 13 September 2018) the CJEU held that this requirement is applicable also to decisions to exclude a person from subsidiary protection. In this case, the CJEU interpreted Article 17(1)(b) of the recast QD following a request for a preliminary ruling from Hungary. The CJEU noted that according to Hungarian law, a serious crime refers to any offence which may be punished by a custodial sentence of 5 years or more. However, the CJEU rejected this automatic classification, noting that while the criterion of the penalty provided for the crime under national criminal law is of particular importance when assessing the seriousness of the crime, this criterion alone cannot be decisive to apply the exclusion ground, as a fully individualised assessment of the specific facts is required.

The CJEU relied on the EUAA's [Judicial Analysis on Exclusion](#) (January 2016) to support this interpretation, which recommends to assess the following non-exhaustive criteria: the nature of the act, the consequences of that act, the form of procedure used to prosecute the crime,



the nature of the penalty provided and whether most jurisdictions also classify the act as a serious crime.⁴ The CJEU also referred to similar UNHCR recommendations.

Taken together, *B and D* and *Ahmed* provide the core framework for assessing seriousness under Articles 12(2)(b) and 17(1)(b). Both judgments underscore that exclusion requires a careful evaluation of the individual facts and circumstances of the applicant's case, and *Ahmed* in particular has become a key reference point in national jurisprudence when determining whether an offence constitutes a serious crime.

2.3. National assessments of serious (non-political) crimes

The following subsections address how national courts in EU+ countries have interpreted this exclusion ground in light of the criteria set out in the CJEU's *Ahmed* judgment. Section 2.3.1. assesses how courts determine the nature of the crime and the harm caused, taking into account various indicators to draw their conclusions. Following this, Section 2.3.2. examines how courts have interpreted the remaining *Ahmed* criteria which concern the assessment of the crime in light of criminal classifications to determine the seriousness of the crime. Section 2.3.3 delves into the assessment of the 'non-political' nature of the crime, specific to exclusion from refugee status, while Section 2.3.4. discusses how courts have interpreted the applicable standard of proof.

2.3.1. Assessing the nature of the crime and harm caused

The first two criteria referred to in the *Ahmed* judgment to assess the seriousness of a crime include the assessment of the nature of the crime and the harm caused. These often overlap and are assessed together.

For certain categories of offences, the nature of the act is such that its seriousness is self-evident as the harm caused is inherent in the act itself. In such a case, it appears that courts do not perform an elaborate analysis to establish that the threshold is met. According to the EUAA [Practical Guide on Exclusion for Serious \(Non-political\) Crimes](#) (October 2026), certain crimes which are manifestly serious given their nature, include the acts listed in Article 7(1) of the Rome Statute, such as murder, rape and torture. Similarly, UNHCR's [Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees](#) states that examples of serious crimes include murder, rape, arson and armed robbery.

Therefore, when assessing such cases, courts generally refer to the inherently serious nature of the crime. For example, in [Immigration Appeals Board v A](#) (6 June 2024), the Norwegian Borgarting Court of Appeal held that "there is no doubt that complicity in murder and attempted murder are, in principle, serious crimes within the meaning of the Convention, cf. UNHCR's background note, paragraph 40". Despite the fact that some crimes can be considered as manifestly serious, it is still necessary to ensure that the acts are classified correctly by investigating and assessing the specific act carried out by the applicant and the

⁴ For a detailed explanation of what each elements entails, see the EUAA's [Practical Guide on Exclusion for Serious \(Non-political\) Crimes](#) (October 2026)



harm caused, as evidenced by case law on alleged torture. Other crimes which are not inherently serious require a more indepth assessment of the nature and harm caused for the crime to be regarded as serious. The following subsections illustrate how courts have engaged with these grounds through three concrete examples of crimes: torture, assault and narcotic offences.

Torture

Even though some crimes may be inherently serious, caution must be exercised to ensure that the acts are correctly classified and not merely inferred from the use of specific terminology during interviews or on the basis of COI.

This principle has been reinforced by courts in relation to the crime of torture. In particular, the Norwegian Borgarting Court of Appeal upheld this reasoning in [A v Immigration Appeals Board](#) (15 June 2022). The court overturned the exclusion decision for an Eritrean applicant, finding that his participation in military punishments in his capacity as a guard in a military camp in his home country did not amount to serious crimes. The applicant was initially excluded, as during his asylum interview, he stated that he carried out the ‘otto’ method to punish soldiers who attempted to escape the camp. The determining authority and the lower court automatically assumed that the applicant had participated in torture, as according to COI, ‘otto’ is a torture method which involves tying a person’s hands tightly behind their back and forcing them to remain in various positions to inflict punishments.

While the court held that torture would have justified exclusion, in this case a careful assessment of the nature of the applicant’s actions was not conducted. It held that although the applicant referred to ‘otto’ during his asylum interview, he was not asked a follow-up question to clarify what he meant by that. Based on his statements, the applicant had tied the hands of three soldiers behind their back and left them for 2 hours with their hands tied and repeated this for 3 days in a row. The court held that this does not amount to the serious crime of torture as it did not emerge from his account that he tied their hands tightly or combined this action with other elements of the otto method, such as lying on the stomach or being hung. The court concluded that the UNE’s generalisation based on the term ‘otto’ was “unfortunate” and inconsistent with UNHCR guidelines, which require a full assessment of the individual circumstances before excluding someone from refugee status.

Thus, it follows that when assessing the seriousness of a crime, although COI can be helpful, it cannot be relied on solely to establish that the applicant’s actions were also serious in nature. Rather, exclusion must be based on the applicant’s specific acts, not on assumptions that he participated in known abusive systems. The decision also highlights the importance of clear, precise evidence about the applicant’s actions, which may be collected through adequate follow-up questions during the interview, including which acts, how they were carried out, their consequences, and what the applicant personally did as opposed to what others did.

The same line of reasoning was upheld by the District Court of the Hague in [NL25.10923](#) (8 July 2025). The case concerned an applicant who served in the Comoros army and handed demonstrators over to the police, where they were subsequently beaten and mistreated. The court noted that the asylum authority relied primarily on the applicant’s own statements to



conclude that the mistreatment amounted to torture or aggravated ill treatment. The court noted, however, that the United Nation's Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as the intentional infliction of severe physical or mental pain or suffering for specific purposes by, or with the consent or acquiescence of, a public official. In the court's view, the asylum authority did not adequately substantiate that the applicant's statements show that the individuals he handed over to the police were subjected to torture within this definition.

Similarly, although the applicant's statements suggested that those individuals experienced ill treatment, the court found that the asylum authority did not sufficiently establish that this ill treatment reached the level of a serious, non-political crime under Article 1F(b), since not every assault automatically qualifies as such. The court's reasoning reinforced the point made in the Norwegian case that neither the applicant's own description of their conduct nor general evidence of abusive practices in the relevant institution can substitute a specific, factual finding about what the applicant's acts caused and whether those consequences meet the applicable legal threshold.

Assault

In the case of physical violence and assault, it is clear from the case law that not every abusive or disciplinary act constitutes a serious crime for exclusion purposes, and the threshold requires precise evidence of what the applicant specifically did, how they did it and what harm resulted.

When assessing cases of assault, the presence of aggravating circumstances is what generally leads to the characterisation of the crime as serious, such as the use of a weapon or the cause of bodily harm to the victim. For example, in [The Minister for Asylum and Migration v Applicant](#) (7 July 2025), the applicant was a member of a violent cult group in Nigeria called Eiye and participated in various violent activities over a 6-year period, including abusing new members during initiation rituals and seriously abusing many other individuals, as well as seriously injuring a member of a rival cult group with an axe. The Dutch Council of State acknowledged that, although not every assault reaches the threshold of seriousness to justify the application of the exclusion grounds, the applicant's conduct in this case met these international standards in light of its nature, seriousness and repetitiveness.

The age and vulnerability of a victim have also been considered in assessing the seriousness of a crime. This was illustrated by the Irish High Court in [R v The International Protection Appeals Tribunal \(IPAT\), Ministry for Justice](#) (7 February 2025). The court upheld the exclusion of the applicant by the lower court on the basis that that he was convicted for 5 years in Egypt for assault as when he was 21 years old, he hit a 16-year-old boy in the face and caused him to fall on the ground and suffer a gash to his head which required 12 stitches. When determining the crime to be serious, it upheld the reasoning of IPAT, which emphasised that the victim was a child.

While a single assault of this nature may not automatically reach the threshold of seriousness in other contexts, the victim's age a factor, in addition to the resulting harm, that justified exclusion from international protection. The case reflects a broader principle that the



vulnerability of the victim is a relevant consideration in the assessment of harm, and acts directed against children may be treated as inherently more serious than equivalent acts against adults.

Narcotic offences

Judicial practice demonstrates that drug-related offences may fall within the notion of a serious (non-political) crime, emphasising their harmful societal impact and the obligation under international law to fight drug crimes. However, the examined case law makes clear that not every drug offence is automatically characterised as serious and that a case-by-case assessment is required through a cumulative assessment of the elements of the individual case. The key variables that emerge from the jurisprudence are the nature of the substance involved, the scale and duration of the criminal activity, whether it was carried out for profit, the degree of organisation, and the directness of the harm caused to individuals rather than more broadly to society.

When assessing narcotic offences, it emerges from national case law that a first decisive element concerns the nature of the narcotic substances. Courts have shown greater readiness to characterise offences involving hard drugs, such as methamphetamine, as serious crimes, reflecting their particularly harmful effects on public health. The scale, duration and purpose of the criminal activity were also found to be central to the assessment. Drug offences committed for profit, over a prolonged period or on a large scale or within a criminal organisation were more likely to justify exclusion. For example, in [V.M.B. v Ministry of the Interior](#) (28 May 2025) the long-term, profit-driven production and handling of methamphetamines by a Vietnamese applicant within an organised group led to the exclusion of the applicant by the Czech Supreme Administrative Court.

Similarly, the Belgian CALL ruled in case ([No 308 627](#) 20 June 2024), concerning an applicant who was sentenced to a 78-month imprisonment for his role as the leader of a criminal organisation which was carrying out pimping and drug trafficking. CALL attached weight to the sustained nature of the applicant's activities, which extended from July 2014 to December 2015, and involved the sale of multiple types of drugs, as well as his leadership position within a criminal organisation and the sentence he received.

By contrast, courts have been reluctant to treat small-scale offences as meeting the threshold. The Finnish Administrative Court in [Applicant v Finnish Immigration Service](#) (25 October 2023) annulled the decision to exclude an applicant who was caught in possession of 300 ecstasy tablets with the intention of distribution. The court highlighted the small quantity of narcotics possessed and the fact that they had not been distributed, despite the intention to do so, which diminished the seriousness of the offence. The court concluded that the acts were not directly targeted at the safety, health or personal integrity of another person, but rather more generally against the safety of society.

Similarly in [B.A. v OFPRA](#) (15 November 2022), the French Council of State annulled the exclusion of an applicant who cultivated poppies in his home country of Afghanistan. It found the lower court's reliance on general information to be insufficient to exclude the applicant from international protection, such as Afghanistan had become the main source of heroin in



the world again and that drug trafficking posed a threat to public health and the fundamental interests of any society. This case demonstrates that general COI about the harmful societal impact of drug trafficking cannot substitute for a specific assessment of what the individual applicant did, how they did it and what harm their specific conduct caused or risked causing.

The case law on narcotic offences leaves open how far harm to society in general, without identifiable victims, can meet the seriousness threshold. The Finnish and French courts have been unwilling to treat general harm to public health or to society as enough on its own, requiring evidence of harm linked to what the applicant actually did. At the same time, societal harm has been accepted as relevant when trafficking is large-scale, organised or profit-driven, and its cumulative effects make the harm concrete enough to be attributed to the applicant. What remains unclear is at what point societal harm becomes serious enough to justify exclusion on its own, and how such harm should be proved.

2.3.2. Assessing the crime by criminal classifications

The remaining criteria in *Ahmed* relate to elements pertaining to the criminal classification of the crime, including an assessment of the form of procedure used to prosecute the crime, the nature of the penalty provided for the crime, and whether most jurisdictions also classify the act as a serious crime. Thus, although the concept of a serious crime is an autonomous one, criminal law must be taken into account when assessing the seriousness of the crime.

This relationship between the concept of serious crime under asylum law and criminal law was articulated by the Supreme Administrative Court in Czechia, and continues to be cited in Czech case law. For example in [N.E. v Ministry of the Interior](#) (12 January 2024), the Regional Court of Brno referred to the position of the Supreme Administrative court, which regarded the concept of a serious crime as an autonomous concept of refugee law, which must be distinguished from the concept of a ‘particularly serious crime’ under Czech criminal law, which considered the latter to be intentional crimes which carry a maximum penalty of at least 10 years. While criminal law terminology may be taken into account to classify an act as a serious crime, it held that other criteria must be considered, such as the nature and seriousness of the act committed, the amount of the penalty associated to the crime, the applicant’s degree of participating, whether the crime has not been committed (and if so, why) or the fact that the applicant has already served a prison sentence. In general, all mitigating and aggravating circumstances, and other subjective or objective circumstances, whether they occurred prior to or following the act, must be assessed when determining the seriousness of the crime.

The substance of the case also provides a concrete example of how this plays out in practice. The applicant was convicted three times in Czechia, including for domestic violence against his wife (sentenced to 42 months), attempting to commit grievous bodily harm (sentenced for 52 months) and for extortion (sentenced to 30 months), and was therefore excluded from subsidiary protection. The Regional Court in Brno agreed with the reasoning of the Ministry of the Interior that while the criminal code only considers grievous bodily harm to be a particularly serious crime as it holds a maximum sentence of 10 years, all three offences can nevertheless be described as serious crimes for the purposes of exclusion, describing the acts as violent crime that suppresses the fundamental rights and freedoms of the victims.



Therefore, this case demonstrates that even when a crime is not considered to be particularly serious in light of criminal law, it may nevertheless be considered serious for the purposes of applying the exclusion clause.

2.3.2.1. Assessing the penalty of the crime

The criteria in the *Ahmed* judgment placed emphasis on the nature of the penalty imposed for the crime, which includes both the type and the duration of the punishment, calling on national authorities to observe not only their own national criminal law but also that of other European jurisdictions. There is no consensus on the imposed penalty leading to confirm that an applicant has committed a serious crime. As highlighted previously, the CJEU has explicitly noted that this criterion cannot be the sole criteria to determine whether an act can be considered a serious crime. However, it still remains a key consideration, although it is not assessed systematically in every case. Rather, it appears that courts rely on this factor primarily when cases are not by their very nature serious and require a more in-depth assessment. This is the case, for example, for economic offences where aggravating circumstances increase their seriousness and, subsequently, the penalty which may be imposed.

This is illustrated with crimes of embezzlement. When conducting an assessment of the seriousness of the crime, the Latvian District Administrative Court focused its weight on the penalty provided for the crime in its national law and the penalty provided by the same crime in other European jurisdictions. In [Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia](#) (20 November 2024), it concluded that large-scale embezzlement was a serious crime on account of the fact that it carried a sentence of up to 10 years in Latvia, and a similar sentence is served in Germany, while France and Estonia sentence imprisonment for up to 7 and 5 years respectively. In this case, the court classified embezzlement as an economic offense, noting that it may be assessed differently in different countries; however, it gave particular importance to the fact that the embezzlement was committed as part of a group and on a large scale, which can be considered as aggravating circumstances, not only in Latvia but in other countries.

Another example is extortion, as illustrated by two cases pronounced in France. In [E.A.D. v OFPRA](#) (26 April 2022), the Council of State held that the applicant, while serving in the army in Chad, personally and repeatedly participated in extortion and violence against civilians over a 2-year period by demanding their valuable property and using violence against recalcitrant people. Given the nature of the acts which were comparable to extortion by an organised gang, which is punishable by severe prison sentences in France from 20 years and increased to life imprisonment if a weapon was used or threatened to be used, and their prolonged and violent character, the court ruled that the offences were sufficiently serious to meet the threshold for exclusion from asylum as a serious, non-political crime.

In [G. and V. v OFPRA](#) (18 January 2023), the French National Court of Asylum (CDNA) excluded a Mongolian applicant from international protection for committing acts of threats, intimidation, corruption and violence repeatedly for more than 2.5 years between 2016-2019 while in his home country. The court considered that his actions constituted extortion, and while simple extortion is punishable by 7 years imprisonment under French criminal law, this



sentence is increased based on aggravating circumstances. It noted that the applicant on one occasion during the 2016 legislative elections in Mongolia assaulted the head of the assembly of representatives of the Bayanzürkh district of Ulaanbaatar using an electric baton to force him to sign a contract for the supply of heating solutions with the applicant's company. It thereby held that the applicant would have received a penalty of 20 years for extortion with the use of a weapon and he also committed other acts which could fall under criminal classification, including committing offences by an organised group, thereby concluding that there were serious reasons to believe he committed a serious crime.

When an applicant has already been sentenced for a crime, the EUAA [Practical Guide on Exclusion for Serious \(Non-political\) Crimes](#) (October 2026) notes that the actual penalty decided by the court should serve as a reference, unless there are reasonable grounds to question the fairness of the criminal trial. Nevertheless, in some cases, courts have paid more regard to the maximum penalty which can be imposed by law for the crime, rather than the actual sentence received by the applicant, particularly when courts have imposed a lenient sentence.

This is demonstrated in the aforementioned Czech case in [N.E. v Ministry of the Interior](#) (12 January 2024) where the applicant was convicted for domestic violence against his wife and received a sentence of 42 months. The court noted that the maximum penalty for such a crime is 8 years, which the court considered indicative of the seriousness of the crime. The court considered a key aspect to be the harm caused to the applicant's wife and her personal integrity, including humiliation, restricted personal freedom, and psychological abuse and physical violence, for an extended duration. It also noted the violent nature, which continuously escalated, providing further evidence of the seriousness of the crime.

The court also affirmed the ministry's conclusions on the intent of the applicant, holding that the crimes were committed intentionally, repeatedly and with violence, aimed at the total control and subjugation of his wife and continuing this behaviour even after his conviction. It noted that the appellate court assessed the sentence imposed as disproportionately lenient, and it did not have the opportunity to correct this since the public prosecutor did not file an appeal. Therefore, even though the actual penalty imposed by the criminal courts may have been on the lower end, this was not decisive as to whether the crime can be considered serious, as it may still be necessary to take into account the maximum penalty that could be imposed for such crimes and the aggravating circumstances of the case and other relevant criteria.

2.3.2.2. Assessing whether most jurisdictions would consider it serious

Courts commonly refer to the notion of 'international consensus' when assessing the seriousness of a crime, which relates to the *Ahmed* criterion of whether most jurisdictions also classify the act as a serious crime. This implies that the international position on the unlawfulness of a crime takes precedence over the national legal stance. In this regard, the Belgian CALL in Case [No 326 863](#) (16 May 2025) ruled that "international norms determine the scope of this ground for exclusion". For the sources from which international consensus can be derived, the Dutch District Court of the Hague in [Applicant v The Minister for Asylum and Migration](#) (19 December 2024) noted the following examples: UNHCR guidelines, international treaties, European Union law, resolutions of the UN Security Council, resolutions,



conclusions and other statements of European Institutions, European and international case law, and legislation, implementation and legal practices in other countries.

The concept of international consensus has been raised particularly in cases concerning child marriages. Appeals are commonly lodged on the grounds that the child marriage and/or marital rape is not unlawful in the country of origin, while applicants have also argued on the basis of the alleged consent of the child and their guardian, and the ongoing family life in the host country. In this regard, national courts have generally taken the position, in line with the EUAA [Practical Guide on Exclusion from International Protection](#) (September 2026) and EUAA [Practical Guide on Exclusion for Serious \(Non-political\) Crimes](#) (October 2026), that the fact that a crime is not punishable in the country of origin is not decisive about whether the exclusion ground can be applied. Thus, in this context, even though forced child marriages and sex with a minor within the marriage may not be punishable in the applicant's home country or where the acts took place, the fact that there is an international consensus on the seriousness of these crimes may lead to the exclusion of the applicant.

This was the ruling of the Dutch District Court of the Hague and CALL in the aforementioned cases, and the Austrian Administrative Court in [Ro 2023/18/0005](#) (7 November 2024). The Dutch position was also confirmed by the Council of State on 1 July 2026 in [Applicant v The Minister for Asylum and Migration](#). In all four cases, which concerned the marriage of an adult Syrian male with a minor female below the age of 15, the courts found that there is an international consensus that forced child marriage and the sexual abuse of children are regarded as serious crimes based on international instruments, such as Article 19 of the Convention on the Rights of the Child, and as reflected in both national and international legal practice.

A shift in CALL's court practice was observed when ruling on child marriages and exclusion. In previous rulings, such as [X v CGRS](#) (30 April 2021), CALL overturned decisions excluding applicants who married children on the basis that traditional, religious and cultural norms, as well as the lack of punishment for the act in the applicant's home country, presupposed a lack of awareness and intent on the applicant's part of the unlawfulness of their actions and lacked the intention to commit rape. In more recent rulings, however, the council has aligned its reasoning more closely with EUAA guidance. In Case [No 326 863](#) (16 May 2025), it ruled that the fact that an applicant was not criminally liable in his country of origin as a result of the marriage and that Syrian criminal law does not criminalise marital rape in no way detracts from the characterisation of the crime and its consequences at the time the crime was committed, nor from his individual responsibility in this matter. To characterise the acts as serious crimes, the courts emphasised the nature of the act and the actual harm caused, noting the adverse long-term physical and mental consequences for the victim.

Similarly, in Case [No 348 452](#) (11 June 2026), CALL confirmed the exclusion from refugee status of an Afghan national pursuant to Article 1(F)(b) of the Refugee Convention, finding that there were serious reasons to consider that he bore individual responsibility for the serious, non-political crime of forced child marriage involving a 13-year-old girl and the repeated rape of the minor within the marriage. CALL clarified that the widespread and religiously-legitimised nature of child marriage in 2014 did not relieve the applicant of his individual responsibility or



imply that he was unaware, or should not have been aware, of the harmful consequences of both the child marriage and the sexual relations.

On the issue of consent, the Dutch Court of the Hague and Council of State held that the consent of the minor or their guardian does not lead to a different characterisation of the crime, especially considering that a minor's consent cannot be considered full and informed consent, and the minor may not be capable of guarding their sexual integrity and refusing an adult. As regards ongoing family life, the Dutch Court of the Hague considered the passage of time since the marriage to be of only marginal significance and rejected as insufficient arguments about ongoing monogamy between the applicant and his wife and the alleged happiness of their marriage and having children, on the basis that a forced child marriage lead to high dependency between the wife and her husband. The Council of State similarly rejected arguments concerning mitigating factors such as the passage of time, his continuing marriage and family life, the absence of any risk of reoffending, and his alleged self-reflection, in light of the nature and consequences of the crime.

2.3.3. Non-political character of crimes

While both exclusion from refugee status and exclusion from subsidiary protection require that the relevant offence be serious, exclusion from refugee status under Article 12(2)(b) of the recast QD includes an additional condition, as the crime must also be *non-political*. This requirement reflects the principle that not all serious violence automatically constitutes ordinary criminality for the purposes of exclusion, particularly when acts occur within the context of armed conflict or resistance against state authority.

The EUAA [Practical Guide on Exclusion for Serious \(Non-political\) Crimes](#) (October 2026) recognises that certain offences may be considered *purely political* and therefore fall outside the scope of Article 12(2)(b), such as direct attacks on the integrity of the state, treason, espionage, subversive propaganda and membership of a prohibited political party.

A 'predominance test' is often relied on by courts to ascertain the political nature of the crime, by assessing whether the crime has a predominantly nonpolitical motivation or is disproportionate to a claimed political objective. This test is set out in the EUAA practical guide and involves the consideration of whether:

- i) The offence is connected to a struggle for political power;
- ii) The offence is motivated by political ideology;
- iii) There is a close and causal link between the act and its claimed objective; and
- iv) The means used and the harm caused are proportionate to the claimed political objective.

A similar analytical approach is evident in the jurisprudence of the French Council of State, which emphasises both the *direct link* between the act and the political objective, and the *adequacy and proportionality* of the means used. Its reasoning in [D.B.A. v OFPRA](#) (21 June 2022) demonstrates the importance of contextualising violent conduct within the factual setting of armed struggle. The applicant, affiliated with the Front for the Liberation of the Enclave of Cabinda - Cabindan Armed Forces, participated in operations against Angolan



armed forces resulting in the deaths of soldiers and one ambush caused the death of two expatriate civilian workers. Nevertheless, the council upheld the CNDA's finding that these acts were not properly characterised as serious crimes under ordinary law within the meaning of Article 1F(b). Central to this conclusion was the fact that the ambush occurred in the context of an armed confrontation directed against state forces and the civilian deaths were incidental rather than the object of the attack. The case therefore illustrates that the presence of civilian casualties does not automatically strip an act of its political character. What matters is whether civilians were deliberately targeted and whether the violence was indiscriminate.

When attacks are deliberately targeted against civilians, even with a purportedly political objective, they may be regarded as serious, non-political crimes. This was exemplified by the Swiss Federal Administrative Court in [Applicant v State Secretariat for Migration](#) (31 August 2021) when the court excluded a former member in Sri Lanka of the Liberation Tigers of Tamil Eelam (LTTE), who held a prominent position with the organisation between 1996-2009. It found that the applicant had participated in offences including assault, homicide and the deprivation of liberty, which are classified as serious crimes. The court determined that the crimes were not of a political nature as, although they had a political component, their nature was disproportionate to the pursued political interests, especially considering that they targeted people who were not directly participating in the fighting, including traitors, which is not permissible under international humanitarian law. It held that attacks against traitors had a terrorist character.

In contrast, the Norwegian Court of Appeal found that the actions of an applicant did not constitute a serious, non-political crime in [Immigration Appeals Board v Applicant](#) (6 June 2024). The court ruled that a Syrian applicant's participation in an armed rebel force against the Assad regime, including taking part in fighting and firing his weapon, were acts of a political nature and therefore did not satisfy the application of the exclusion ground. Although the court did not dispute the serious nature of the crimes of murder and attempted murder, it nevertheless found that there was a clear connection between the applicant's combat actions and a political motivation to topple the regime. It was not found that the applicant or the group had committed torture, executions or other activities that could be considered war crimes or violations of humanitarian law. It was further not determined that the applicant or the group subjected civilians to acts of terrorism or treatment that violated humanitarian law. It was noted that although civilians may have been exposed to violations, particularly when conflict occurred in cities, this was mostly due to government attacks.

The Norwegian District Court's reasoning in [Applicant v Immigration Appeals Board](#) (12 June 2024) further illustrates how violence may be stripped of political character when it resembles self-policing or terror tactics rather than politically-oriented combat. The applicant, affiliated with the Kurdistan Workers' Party (PKK) between 2013 and 2015, participated in armed clashes with Turkish police using firearms and explosives, but also carried out attacks against civilians, including shooting a teacher as a form of punishment and targeting drug dealers and drug addicts. While the court accepted that attempted murder and aggravated violence constitute serious crimes, it placed particular emphasis on context, finding that during the applicant's membership a ceasefire existed, meaning the situation was not characterised by an active armed conflict but rather "scattered unrest". This weakened the claim that the applicant's conduct constituted combat-related political action. The court further rejected the argument



that the violence against civilians advanced the PKK's political aims, instead interpreting these acts as self-appointed law enforcement and extrajudicial punishment. Even attacks against police were viewed as resembling terrorism or ambush tactics rather than proportionate political resistance.

Courts thus appear willing to treat violence against state armed forces within an armed struggle as political when the targeting of civilians is absent and the conduct remains linked to a political objective. However, when violence becomes indiscriminate, punitive or directed against civilians or other protected persons, the political justification is treated as insufficient. The decisive analytical distinction is therefore not simply whether the applicant acted in a politically-charged setting but whether the act retained a close and proportionate nexus to a legitimate political aim.

2.3.4. Standard of proof

For the applicable standard of proof when applying this ground, the QR and the recast QD prescribe that there must be "serious reasons for considering" that an applicant has committed a serious (non-political) crime. Courts have interpreted this standard restrictively. It is generally agreed that a high standard of proof is required, although this is set at a lower threshold than the standard of proof required under criminal law.

The Supreme Administrative Court in Czechia, in [A.Z. v Czech Ministry of the Interior](#) (30 August 2021), referred to a threshold of 50% probability to establish "serious reasons to believe" in exclusion cases. Nevertheless when interpreting the standard of proof, divergence has been observed related to the principle of the benefit of the doubt. For example in [Applicant v Minister of Immigration and Asylum](#) (13 June 2025), the Administrative Court in Greece ruled that a high standard of proof is required, with the presumption of doubt operating in favour of the applicant. In contrast, the Latvian District Administrative Court in [Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia](#) (19 December 2024) held that serious reasons for believing that a person has committed a crime does not imply that all possible doubts about it should be assessed in favour of the applicant.

In light of the strict evidentiary requirements and the far-reaching consequences of the application of the exclusion clauses, the burden of proof generally rests on state authorities. However, the burden of proof may be reversed once the authorities have established serious reasons to believe that the applicant has committed a serious (non-political) crime. Referring to Dutch national law on asylum,⁵ the Dutch District Court of the Hague noted in [Applicant v The Minister for Asylum and Migration](#) (21 December 2020) that the applicant must refute the conclusions of the authority with reasons in order to avoid the application of the exclusion clause.

As regards evidence and credibility assessments, it is generally established that a final conviction is not necessary to find that the applicant has committed a serious, non-political crime. In general, the applicant's own voluntary reporting of their participation or contribution to the crime has been considered sufficient by courts to establish credibility. In this regard, the Finnish Supreme Administrative Court in [Applicant v Finnish Immigration Service](#) (7 April

⁵ Para C2/7.10.2.4 of the Aliens Circular 2000 (Vc).



2025) held that “suspicion of a crime must be considered justified when the person has voluntarily reported the acts on which the exclusion is based and there has been no reason to question the reliability of his or her account in that respect”.

The Supreme Administrative Court in Czechia emphasised in [A.Z. v Czech Ministry of the Interior](#) (30 April 2021) that for the standard of proof to be met, strong evidence must be relied upon, in the form of clear, convincing and credible evidence, and not mere conjecture. It noted that evidence may include a confession by the applicant but may also include a third-party testimony when the credibility of the applicant was not established. The court also noted that a conviction or a criminal charge is not required to meet the standard of proof, while a mere request for extradition or ongoing criminal prosecution in the applicant’s country of origin also are not decisive elements. In this respect, when a case concerns ongoing proceedings in the applicant’s country of origin, the Latvian administrative court in [Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia](#) (19 December 2024) stressed that courts must ascertain whether the charges against the person could be substantiated.

Convictions outside the country of refuge

Although a conviction is not necessary to establish the seriousness of a crime, when there is a conviction, it must be taken into account. When a conviction has been reached outside of the country of refuge, it is also necessary to determine the reliability of the conviction in light of the right to a fair trial. For example in [Applicant v State Secretary for Justice and Security](#) (13 December 2023), the Council of State in the Netherlands ruled on a case of a Turkish applicant who was convicted in Türkiye for murder and assault, to which he claimed he confessed because he was tortured and sexually abused. The council held that if torture or sexual violence are used during criminal proceedings to elicit a confessional statement, the entire criminal procedure is in principle unreliable. The court referred to the ECtHR ruling of 17 January 2012, [Othman \(Abu Qatada\) v the United Kingdom](#), in which the ECtHR held that a confession obtained under torture is contrary to the right to a fair trial under Article 6 of the ECHR. Additionally, the council clarified that if a conviction is in any case partly based on confessional statements obtained under torture, the asylum authority may not rely on that conviction as a basis to apply Article 1(F) of the 1951 Geneva Convention. The council thus made it clear that an asylum authority cannot invoke the argument that a criminal judgment relies not only on the confession but on other items of evidence to reach the conviction. It held that an additional investigation would need to be carried out to determine if there are serious reasons to believe that the applicant has committed a serious crime.

It also noted that when assessing evidence, the criminal judgment alone must be considered within the context of the rest of the proceedings and other related documentary evidence. While the asylum authority in this case held that it cannot be deduced from the criminal judgment that the confessional statement of the applicant played a role in the conviction, the Council of State disagreed with the finding, noting that other documents in the case files, such as the opinion of the Public Prosecutor’s Office of the Chief Public Prosecutor which listed a confessional statement as evidence, the minutes of the hearing, as well as the indictment of the case of the Prosecutor General, made it clear that the confessional statements of the applicant played a role in the proceedings. The court thus remitted the case for further



assessment, ordering the asylum authority to assess the credibility that the applicant was tortured by taking into account medical evidence and assess the plausibility of the late disclosure of the alleged torture due to shame, followed by an assessment of the consequences if the credibility of the torture was established.

Similarly, the Finnish Supreme Administrative Court halted the application of exclusion clauses and ordered the asylum authority to reassess a case where there were indications that the applicant's right to a fair trial was not upheld. In [Applicant v Finnish Immigration Service](#) (20 January 2022), the court considered the appeal of an applicant who was sentenced to death in his home country but was excluded from international protection for committing a serious, non-political crime. The applicant argued that he was innocent and the trial had lacked fairness. The court noted that the asylum authority failed to adequately assess whether his right to a fair trial was upheld. It found that the decision lacked information on relevant domestic criminal procedural legislation, including on the possibility to appeal, as well as information on the handling of the case by the higher courts. It clarified that allegations related to an unfair trial must be clarified on a case-by-case basis, taking into account the applicant's statements, the available legal documents, the legislation of the relevant country, international agreements and sources, and CJEU jurisprudence.

Evidentiary value of extradition court rulings

In exclusion cases, it may be the case that a court in the country of asylum has ruled on the extradition of the applicant to another country.

As concerns extraditions between Member States, the European Arrest Warrant (EAW) has simplified extradition procedures by ensuring that an EAW issued by a judicial authority of a Member State is valid in the entire territory of the EU and is based on the principle of mutual recognition. The Court of Cassation in France has ruled that the criminal court ruling on the extradition of an applicant takes clear precedence on matters of criminal fact and the legal classification of crimes, and it is not up to an asylum judge to re-examine the facts or reclassify the offence under national law. In this particular case, the court ruled in [OFPRA v M.C.B](#) (8 February 2023) that the CDNA wrongly restored the applicant's refugee status because it failed to give proper effect to the judgment of the Investigation Chamber of the Versailles Court of Appeal, which had authorised the execution of a European arrest warrant and classified his acts as trafficking in human beings following his final conviction in Hungary for organising migrant smuggling for payment. The CDNA had considered that the classification adopted by the Versailles Court of Appeal could not be upheld since the elements constituting this offence under national criminal law were not met, amongst other considerations including the small scale and modesty of the sums collected, and the fact that the applicant had not engaged in other similar acts before or after the crime. The Court of Cassation held that the asylum judge could not call into question the legal classification made by the Versailles Court of Appeal in the context of judicial cooperation within the European Union, nor reassess the seriousness of the offences by relying on factors such as the age of the crime. In light of the binding criminal findings recognised by the Versailles Court, it found that there were serious reasons to consider that the applicant had committed a serious, non-political crime before being granted asylum, justifying the withdrawal of his refugee status and the annulment of the CNDA's decision.



On the other hand, when an applicant was subject to extradition proceedings in relation to a conviction from Russia, which falls outside of the European Union, the Supreme Administrative Court (SAC) in [A.Z. v Czech Ministry of the Interior](#) (30 April 2021) confirmed that the decision of the criminal court concerning the admissibility of extradition to Russia could not be relied upon solely when deciding on the substance of the applicant's asylum application. SAC noted that the ministry was obliged to make its own independent and sufficiently-reasoned assessment if the conditions for the exclusion clause were fulfilled within the meaning of asylum law. It held that it could not rely 'blindly' on the assessment made by the criminal courts. It considered that if the outcome of the extradition proceeding was determinative for the outcome of asylum proceedings, the constitutional requirement to halt the extradition until the final asylum decision is reached would lose its sense. SAC concluded that in order to assess the serious reasons for considering that the applicant committed a serious, non-political crime, due regard must be given to the applicant's asylum story and its credibility, which could point to the superficial and persecutory nature of the criminal charges against the applicant.

Despite the clear framework established by the CJEU in *B and D* and *Ahmed*, the exclusion ground based on a serious (non-political) crime continues to raise significant challenges in national courts. The requirement for a fully individualised assessment is broadly accepted in principle, yet in practice courts diverge considerably in how they weigh the relevant criteria against one another, in particular the relative importance attached to the nature of the act, the harm caused and the penalty imposed.

The risk of over-reliance on COI as a substitute for precise, factual findings is a recurring concern, as illustrated by cases related to applicants involved in torture, where general country information about abusive practices has in some instances been treated as sufficient to establish the seriousness of an individual applicant's conduct without adequate scrutiny of what that applicant specifically did and what consequences directly followed from their acts.

The penalty criterion presents its own difficulties. While courts widely accept that it cannot be the sole determinant of seriousness, there is no consensus on the length of a sentence that leads to the finding of a serious crime, a consistent approach on weighting the penalty alongside other factors, or how much regard should be paid to the maximum penalty available as opposed to the sentence actually imposed.

Under exclusion from refugee status, the non-political character requirement adds a further layer of complexity, particularly in cases arising from armed conflict or resistance movements when the boundary between politically-motivated conduct and indiscriminate or punitive violence is not always clearly drawn. The predominance test provides a useful analytical structure, and the reviewed case law suggests a degree of consistency in its application. Courts have generally treated violence against state armed forces as retaining its political character when civilians are not targeted, while treating violence directed deliberately against civilians or conduct that resembles punitive self-policing rather than politically-motivated combat as sufficient to strip an act of its political character.



The standard of proof in exclusion cases is broadly agreed to require clear and convincing evidence which falls below the criminal law threshold, with the burden of proof resting primarily on state authorities. A final conviction is not required, and voluntary disclosure by the applicant has generally been treated as a strong basis for credibility. Beyond these points of agreement, two challenges stand out. First, the benefit of the doubt has not been applied consistently, with courts divided on whether uncertainty should operate in the applicant's favour. This represents a significant gap given the serious consequences of exclusion. Second, where a foreign conviction exists, its role in the exclusion assessment raises a series of difficult and unresolved questions concerning the weight to be accorded to it, the degree of independence required of the asylum authority in reassessing the underlying facts, and the consequences of credible fair trial concerns for the reliability of the conviction as a whole.

While the concept of a serious crime must be interpreted autonomously under EU asylum law, national criminal law classifications and standards continue to exert a significant influence on how courts approach the assessment in practice, thus presenting a challenge in the uniform application of this ground.



3. Acts contrary to the purposes and principles of the United Nations

This section examines the exclusion ground of acts contrary to the purposes and principles of the United Nations under Articles 12(2)(c) and 17(1)(c) of the recast QD and the QR, which reflect Article 1F(c) of the 1951 Geneva Convention.

Section 3.1 sets out the applicable legal framework, including the assessment criteria drawn from the EUAA and UNHCR guidance. Section 3.2 examines the two key CJEU judgments which interpret Article 12(2)(c); together they establish the normative foundation for the application of this ground in national jurisprudence related to terrorism. Section 3.3 then analyses how national courts have interpreted and applied this ground in practice in the terrorism context, using the PKK and jihadist groups as concrete illustrations of how the framework is operationalised in practice. Section 3.4 examines how courts assess this ground for conduct extending beyond terrorism, including the coercive collection of diaspora taxes, interference with international criminal justice, human trafficking and human smuggling.

3.1. International legal framework

Articles 12(2)(c) and 17(1)(c) of the QR and the recast QD provide for exclusion from refugee status and subsidiary protection for persons guilty of acts contrary to the purposes and principles of the United Nations, as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations. These provisions reflect Article 1F(c) of the Geneva Convention.

Additionally, Recital 31 of the recast QD links this ground to terrorism. It stipulates that:

“Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations resolutions relating to measures combating terrorism, which declare that ‘acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations’ and that ‘knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations’”.

The assessment framework to categorise an act as contrary to the purposes and principles of the UN are outlined in both the EUAA [Practical Guide on Exclusion from International Protection](#) (September 2026) and the UNHCR [Information Note on the Application of Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees](#), which both prescribe a restrictive interpretation. The guidance sets a high threshold for the types of acts that fall into this category, limiting it to crimes either with an international dimension that affect international peace, security and peaceful relations between States or serious and sustained violations of human rights. When assessing the applicability of this ground, the guidance indicates the following relevant elements which may be considered: i) the gravity of



the act; ii) the manner in which the act is organised; iii) the international impact and implications for international peace and security (international dimension); and iv) the long-term objectives of the act. Additionally, guidance from both the EUAA and UNHCR notes that while any actor may be a perpetrator of such an act, certain acts, given their nature, may only be committed by high-ranking officials within a state or state-like entity.

Furthermore, the legislative provisions do not set out any temporal or territorial limitation to the ground, meaning that the acts characterised as contrary to the purposes and principles of the UN may have been committed before or after the applicant entered the host country and inside or outside of the host country.

It is evident from the wording of the legislative provisions that this ground must also be interpreted in light of the broader international legal framework. Nevertheless, the legal instruments relied upon by national courts to characterise acts as contrary to the purposes and principles of the United Nations reveal a divergence in interpretive approach that has consequences for the scope of the exclusion ground. The starting point derived from the legislation, CJEU jurisprudence and EUAA guidance is the UN Charter itself, specifically the Preamble and Articles 1 and 2, supplemented by the UN Security Council resolutions, which provide the most direct and explicit articulation of what the international community has determined to be contrary to those purposes and principles. However, as national case law demonstrates, courts that require an explicit security council determination apply a more constrained scope, while courts that draw on the broader corpus of international law in interpreting the purposes and principles of the UN are prepared to extend the ground to a wider scope of acts.

3.2. CJEU jurisprudence

The CJEU has issued two key judgments which interpret Article 12(2)(c) of the recast QD, both arising in the context of terrorism-related conduct. These rulings are standard-setting because they ground the interpretation of Article 12(2)(c) in international counter-terrorism instruments, broaden the scope of relevant terrorism-related conduct that may be covered by this ground, while simultaneously establishing that exclusion cannot be applied automatically but requires an individualised assessment of the applicant's personal responsibility.

The CJEU's judgment in *B and D* (referred to in Section 2.2) constitutes the court's first engagement with the exclusion clauses under EU asylum law and therefore laid the foundations for subsequent jurisprudence. A central contribution of the ruling is that it links Article 12(2)(c) to the international legal framework on terrorism referenced in Recital 31 of the recast QD. In particular, it identifies the relevant UN Security Council resolutions related to terrorism, namely Resolutions 1373 (2001) and 1377 (2001).

On that basis, the CJEU held that Article 12(2)(c) may apply to individuals involved in terrorist acts with an international dimension during their membership of an organisation listed in the



Annex to Common Position 2001/931.⁶ However, the CJEU simultaneously rejected an approach based on automatic exclusion. Notably, it established that exclusion requires an individual assessment and cannot be inferred solely from membership or association with a listed organisation. This requirement reflects the broader principle that exclusion is exceptional in nature and must be grounded in individual responsibility rather than collective attribution.

In developing this reasoning, the CJEU drew an important distinction between the aims of Common Position 2001/931 and those of the recast QD, and held that while the listing mechanism can support the identification of the terrorist character of an organisation, it does not itself satisfy the requirements of Article 12(2)(c). The list may therefore function as an evidentiary indicator, but it cannot replace the asylum authority's assessment of the applicant's personal conduct. The CJEU reinforced this point by referring to the Council Framework Decision 2002/475 on combatting terrorism,⁷ holding that participation in the activities of a terrorist group, within the meaning of Article 2(2)(b) of the Framework Decision, does not automatically fall within the scope of exclusion grounds. Instead, the decision-maker must establish individual responsibility on the basis of the specific facts.

Nevertheless, *B and D* left unresolved the precise threshold of conduct required for terrorism-related behaviour to qualify as acts contrary to the purposes and principles of the UN. In particular, the judgment did not comprehensively clarify whether indirect contributions to terrorism (such as logistical assistance or facilitation) fall within the scope of Article 12(2)(c).

The CJEU addressed these ambiguities in [CGRS v Mostafa Lounani \[Lounani\]](#) (C-573/14, 31 January 2017). This case marked a significant expansion of the material scope of Article 12(2)(c). The judgment is particularly important because it confirmed that exclusion is not limited to the direct commission of terrorist acts but may also extend to conduct that supports, facilitates or enables terrorist activity.

The CJEU reinforced the international law basis of Article 12(2)(c) by referring not only to the resolutions cited in *B and D* but also to additional Security Council resolutions, notably Resolution 1624 (2005) and Resolution 2178 (2014). These instruments explicitly call on states to combat not only terrorist attacks themselves but also preparatory and facilitative conduct, including recruitment, organisation of travel and logistical support. By relying on these resolutions, the CJEU interpreted the concept of acts contrary to the purposes and principles of the UN as encompassing a broader range of terrorist-related conduct rather than a narrow category of the direct commission of an attack.

A second major clarification in *Lounani* concerns the relationship between exclusion and criminal law. The CJEU rejected the argument that Article 12(2)(c) is contingent upon a prior criminal conviction for a terrorist offence, as defined in Article 1(1) of Framework Decision 2002/475. This is significant because it confirms the autonomy of EU asylum law

⁶ Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism applies to persons, groups and entities involved in acts of terrorism, provides a definition of what is meant by "persons, groups and entities involved in acts of terrorism" (Article 2) and "acts of terrorism" (Article 3). The position also includes an annex with a list of persons, groups and entities to which the position applies.

⁷ This has since been replaced by [Directive \(EU\) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism](#)



from EU criminal law definitions. The CJEU emphasised that neither the wording nor the purpose of the recast QD supports making exclusion dependent on a conviction, and it noted that EU legislature deliberately refrained from cross-referencing the Framework Decision in the drafting of Article 12(2)(c).

The CJEU applied this reasoning to the facts of the case, which concerned a Moroccan national, Mr Lounani, who was convicted in Belgium for his participation in the activities of a terrorist group, namely the Belgian cell of the Moroccan Islamic Combatant Group (MICG). The CJEU held that participation in the activities of a terrorist group, as criminalised under Article 2 of Framework Decision 2002/475 and transposed into Belgian law, may fall within the scope of Article 12(2)(c) even when a terrorist act has not been committed, instigated or threatened by the applicant personally. The CJEU gave particular weight to the international dimension of the applicant's conduct, including his role as a member of the leadership of a UN-listed terrorist organisation, his involvement in the forgery and transfer of passports, and his active participation in organising a network which facilitated the travel of volunteers to Iraq. The CJEU held that such conduct may justify exclusion from refugee status.

Furthermore, the CJEU clarified that exclusion may apply irrespective of whether the terrorist organisation ultimately perpetrated terrorist acts or whether the individuals who were assisted went on to commit such acts. This confirms that Article 12(2)(c) is capable of capturing preparatory conduct, aligning the directive's exclusion mechanism with the preventive obligations emphasised in the Security Council resolutions.

At the same time, the CJEU reiterated the requirement of an individual assessment. While the existence of a criminal conviction and a finding of a leadership position were described as particularly important factors in evaluating personal responsibility, the judgment does not suggest that either constitute necessary conditions. This interpretation is consistent with the EUAA [Practical Guide on Exclusion from International Protection](#) (September 2026), which notes that although Article 12(2)(c) uses the term 'guilty', the applicable standard of proof remains "serious reasons for considering" rather than proof beyond reasonable doubt. The CJEU's approach therefore confirms that decisions on exclusion from international protection may rely on a lower evidentiary threshold than criminal proceedings, provided that the decision-maker establishes individual responsibility through a fact-specific assessment.

3.3. National case law on terrorism

Since its pronouncement, the *Lounani* judgment has been referred to extensively to apply exclusion grounds to applicants who have engaged in a varying range of conduct linked to terrorism. It emerges from national jurisprudence that a key element which has led to divergence in outcomes of decisions in this regard relates to the classification of a group as terrorist or not. When courts have differed in their characterisation of the terrorist nature of a group, the same type of conduct by the same group has led to different outcomes at the country level.

As evidenced below, courts have given varying importance to the list of organisations included in the Council Common Position 2001/931/CFSP and have diverged when



interpreting evidence of terrorist attacks from the same source, such as the Global Terrorism Database. Certain groups have emerged as particularly divisive, for example the PKK. While others, notably jihadist groups, have more consistently been regarded as terrorist organisations. This section examines how courts have interpreted this exclusion ground, using the PKK (*Section 3.3.1*) and Jihadist groups (*Section 3.3.2*) as two practical examples to illustrate the varying interpretive frameworks at the national level.

3.3.1. Kurdistan Workers Party (PKK)

Courts have reached different conclusions on whether the PKK can be considered a terrorist organisation, despite its inclusion in the Council Common Position 2001/931/CFSP. For example, the Finnish Supreme Administrative Court in [A v Finnish Immigration Service](#) (12 January 2021) and the French Council of State in [A. v OFPRA](#) (2 December 2025) referred to the inclusion of the PKK in the EU list without disputing its nature. However, a more sceptical approach was adopted by the Belgian CALL in [Applicant v CGRS](#) (20 May 2022), which refuted the terrorist characterisation of this group.

CALL justified its conclusion by emphasising that the General Court of the EU had annulled several decisions of the Council of the EU, adopted between 2013 and 2017, which included the PKK in the list, as it ruled that the council failed to give sufficient reasons for its inclusion and had not made an up-to-date assessment. Although it acknowledged that the CJEU set aside the judgment of the General Court on 22 April 2021, it referred to the opinion of the Advocate General in [HT v Land Baden-Württemberg](#) [HT] (C-373/13, 24 June 2015), who considered that the evolving case law of the General Court and the CJEU regarding appeals against listing decisions should discourage conclusions that an organisation is necessarily a terrorist group simply for being included on the list. Considering these elements, CALL considered that the fact that the PKK is included on the list was not sufficient to establish that the PKK is a group of a terrorist nature.

Additionally, CALL gave precedence to national criminal court rulings over the Common Position list, while also conducting its own assessment of the activities of the PKK. It referred to a judgment of 8 March 2019 by the Indictment Division of the Brussels Court of Appeal, which held that the offences carried out by the PKK were committed in a conflict zone during a non-international armed conflict and the PKK could be considered a highly organised fighting force. On this basis, the court considered that the acts in question committed by the PKK cannot be considered as terrorist offences under Belgian criminal law and therefore the PKK cannot be criminally prosecuted as a terrorist group for these acts. CALL also gave importance to the fact that the ruling of the Brussels Court of Appeal was upheld by the Court of Cassation. Additionally, considering the political, economic and social context in which the PKK operates and considering its structure, organisation, activities and methods, CALL held that the PKK cannot be considered to be a terrorist organisation.

When characterising the nature of the PKK, both the Finnish court and the Belgian court referred to the Global Terrorism Database (GTD), an open-source database which provides information related to global terrorist events between 1970-2020. However, the courts reached vastly different conclusions. The Finnish court stated that based on information from the database “the PKK has committed 82 attacks between 1999 and 2005, the terrorist nature



of which is beyond doubt". It remarked that the incidents included targeting civilians and civilian infrastructure, although it noted that some of the events in the database were not confirmed to have been committed by the PKK nor do they all reach the severity to justify the application of the exclusion ground.

In contrast, CALL noted that it cannot be inferred from the GTD database that the PKK committed terrorist acts against civilians. It observed that the database is largely based on information supplied by the Turkish authorities, the incidents recorded include attacks on both military targets and civilians, and the PKK had not claimed responsibility for all of the incidents attributed to it. It therefore concluded that there was no evidence demonstrating that the acts attributed to the PKK were in fact carried out by the organisation in its capacity as a terrorist group.

Based on this varying characterisation of the terrorist nature of the group, the courts reached different outcomes on the application of the exclusion clause. This is particularly evident when comparing the ruling of the French Council of State with the ruling of CALL, which both concerned the applicant's fundraising activities for the PKK. These cases must be viewed in light of the CJEU's ruling in *Lounani*, which unequivocally ruled that the financing of a terrorist organisation could be considered an act contrary to the purposes and principles of the UN.

While the French court, which considered the PKK to be a terrorist organisation, applied the *Lounani* judgment to exclude the applicant from international protection, CALL took a different approach, relying instead on the *HT* judgment of the CJEU. In *HT*, the CJEU did not interpret the exclusion grounds but issued a preliminary ruling related to the revocation of a residence permit for a Turkish national who supported the PKK by attending legal meetings and manifestations, such as the celebration of the Kurdish New Year and the collection of funds for the PKK. The CJEU ruled that these specific acts did not constitute terrorist acts.

Applying this judgment to the substance of the case, CALL ruled that the applicant should not be excluded for committing an act contrary to the purposes and principles on the UN on the basis of his participation in meetings and demonstrations of Kurdish associations and fundraising activities for the PKK in Belgium. Instead, CALL ordered the asylum authority to assess whether the applicant could be excluded from international protection based on serious reasons to believe that he committed a war crime. This case demonstrates that when a court has not classified an organisation as terrorist, the *Lounani* judgment has limited applicability.

In this regard, CALL, which did not consider PKK to be a terrorist organisation, relied on *HT*'s ruling that the fundraising activity was not a terrorist act in itself, without applying the broader *Lounani* framework which considers that fundraising activities related to terrorist groups could still fall under the scope of acts contrary to the purposes and principles of the UN by facilitating terrorism. Thus, the inconsistency between the different characterisation of particular groups across EU+ jurisdictions may lead to different outcomes for applicants, even when they performed the same activities.

While *Lounani* confirms that facilitation and logistical assistance may suffice, it remains unclear how remote or minor the conduct can be before it falls outside the scope of Article 12(2)(c). For



example, different interpretations have been used when applying the exclusion ground on the basis of promotional activities of a group characterised as a terrorist organisation. Finnish case law has drawn a distinction between the level of prominence that the applicant held in the organisation and requires a close causal link between the role of the applicant and any resulting acts of terrorism. For example, in the aforementioned case, [A v Finnish Immigration Service](#) (12 January 2021), the court did not apply this exclusion ground to an applicant who worked for a long time in the publications unit of the PKK in Iraq, writing articles, working as a translator and conveying information about the organisation and joining the organisation. She was then sent to Iran to share information about the organisation and was supposed to become a leader of the Iranian branch of the PKK (PJAK).

The court considered that although the provision of information and translation work can be considered to promote the organisation's activities and goals, they did not lead to the finding that the applicant is personally responsible for committing acts which are contrary to the purposes and principles of the UN, especially in light of her low position in the organisation. The court gave weight to the fact that it could not be ascertained that, as a result of the applicant's activities, people joined the organisation and subsequently committed excludable acts. The court thus applied a stricter threshold than the one set out in *Lounani*, whereby the CJEU adopted a more preventative rationale, emphasising that exclusion may apply even when the activities of the applicant do not ultimately lead to the perpetration of terrorist acts by the organisation.

However, in contrast to *Lounani* where the applicant had directly arranged the logistics for people to join a terrorist organisation, in this case, the activities of the applicant were of a more remote nature, thus raising the question to which extent can a person's activities related to terrorism be constituted as acts contrary to the purposes and principles of the UN.

When the court considered that the applicant held a prominent position in the organisation, such as in [A. v Finnish Immigration Service](#) (12 January 2021), the Finnish court more readily excluded the applicant from international protection. The court linked the applicant's role as a major ideological trainer to leaders and fighters of the PKK militants as promoting the organisation's activities and goals and having personal liability for committing serious, non-political crimes and acts contrary to the purposes and principles of the UN.

3.3.2. Jihadist groups

In general, jihadist groups operating in the Middle East have been more readily recognised as terrorist groups by EU+ countries, which has led to the exclusion of applicants for their conduct linked to these groups. Several cases emerge from Belgium, including from the Council of State in [X. v CGRS](#) (28 March 2025) which upheld a CALL judgment of 24 January 2022 in which an applicant was excluded as he was convicted and given a 3-year suspended sentence in Belgium for voluntarily and knowingly encouraging and assisting three young people to go to Syria to practice armed jihad and participate in the activities of the Islamic State. The council highlighted the concrete nature of the acts, including by sending young recruits to Syria and organising their travel, and using Islamic State propaganda to attract these people and incite them to fight.



Likewise, CALL excluded an applicant for the dissemination and editing of propaganda videos from various terrorist groups which are active in Syria, including ISIS and Jabhat al-Nusra in [X v CGRS](#) (1 August 2024). CALL considered these activities as incitement, even if indirect, to commit acts of terrorism and referred to the applicable Security Council Resolutions 1373 (2001) and 1377 (2001) to justify the characterisation of the acts as contrary to the purposes and principles of the UN.

Additionally, in [Applicant v Federal Office for Immigration and Asylum](#) (23 April 2024), the Austrian Supreme Administrative Court excluded an applicant who was convicted of participating in a terrorist organisation, participating in a criminal organisation and training for terrorist purposes. The conviction was based on his involvement with the group Al-Nusrah Front, later known as Hay'at Tahrir al-Sham (HTS), which is linked to Al-Qaeda and listed as a terrorist organisation. His activities included the promotion of the group on social media, his online appearance in military clothing with terrorist symbols and weapons, his participation in a training camp which included weapons training, and his performance of armed guard duties.

As these cases demonstrate, courts in Belgium and Austria have applied a lower threshold to assess cases related to Jihadi groups than the Finnish court in cases related to the promotion of activities of the PKK. While the Finnish court required more certainty of the consequences of the individual's promotional activities in the recruitment of people or required the applicant to hold a more high-ranking position, the Belgian and Austrian courts more readily excluded applicants with a low position in jihadist terrorist organisations and for more broad promotional activities, such as editing and disseminating propaganda videos, and the promotion of such groups on social media.

3.4. Extension of the ground beyond terrorism

Beyond terrorism, which was confirmed to fall under this provision by the CJEU, national jurisprudence also demonstrates an expanding reliance on this ground in other contexts. As highlighted in Section 3.1, when classifying acts as contrary to the purposes and principles of the UN, courts primarily rely directly on the UN Charter and Security Council resolutions. In the terrorism context, this reliance on Security Council resolutions is well-established. *B and D* identified Resolutions 1373 (2001) and 1377 (2001) as the relevant reference points, and *Lounani* extended this to Resolutions 1624 (2005) and 2178 (2014), reflecting the expanding scope of international counter-terrorism obligations.

However, some national courts, including in France and Croatia, have moved beyond exclusive reliance on Security Council resolutions and have drawn on a broader range of international instruments to establish particular conduct that falls within this exclusion ground. The following sections examine more closely how courts have classified acts as contrary to the purposes and principles of the UN through the following practical examples: the coercive collection of diaspora taxes, interference with international criminal justice through witness tampering, and forms of human trafficking and smuggling.



3.4.1. Collection of diaspora tax

The Swedish Migration Court's reliance on the Security Council resolution concerning Eritrea's diaspora tax collection follows the same logic as the CJEU, grounding the exclusion assessment in an explicit UN determination that the conduct in question contravenes the purposes and principles of the organisation. This is illustrated in [Applicant v Swedish Migration Agency](#) (14 June 2024), wherein the Swedish Migration Court ruled that Eritrea's collection of diaspora tax from Eritreans living abroad using extortion, threats of violence, fraud and other illegal means fall within the ambit of Article 12(2)(c). The court observed that the UN Security Council's resolution concerning the diaspora tax, which was in force from 5 December 2011 to 14 November 2018, clearly supported the view that the Eritrean state used illegal means in the collection of the diaspora tax and obliged Member States to act against those guilty of such acts.

An international dimension was established, as the applicant worked for an Eritrean consular mission, which was directly subordinate to the Eritrean regime and whose activities were attributable to international cooperation. It considered it to be irrelevant that the resolution had been appealed, as the resolution was in force for 7 years when the applicant served at the Eritrean mission. Relying on COI, it also noted that it was not clear whether the resolution was repealed because the information about illegal collection was incorrect or the violations at Eritrean missions had ceased, and therefore the repealing of the resolution did not lead to a different assessment of the applicant's actions.

3.4.2. Witness tampering

Interfering with international criminal law may also be regarded as an act contrary to the purposes and principles of the UN. In [A. v OFPRA](#) (17 January 2020), the CNDA ruled that acts undermining international criminal justice, particularly witness tampering, are contrary to the purposes and principles of the UN. It recognised that final judgments from international criminal tribunals are binding regarding established facts. Relying on the ICC's judgment of 19 October 2016, the CNDA found that the applicant deliberately recruited and coached defence witnesses in the *Prosecutor v Jean-Pierre Bemba Gombo* case. The applicant offered financial incentives and resettlement in Europe to the witnesses in exchange for false testimony, instructed witnesses to falsely claim military backgrounds, assigned them fabricated ranks and actively helped prepare their statements. The court emphasised that although the applicant was not the principal instigator of the acts of bribery, he nevertheless committed the offenses of his own initiative and took every opportunity to prepare the witnesses for their testimony.

The court linked the work of the ICC with the maintenance of international peace and security, and referred to legal frameworks such as the UN Resolution A/RES/73/7, establishing the 'unbreakable link' between the objectives of the ICC and the purposes and principles of the UN. Based on these findings, the CNDA concluded that the applicant directly undermined international criminal justice and therefore committed acts contrary to UN principles, excluding him from international protection.



3.4.3. Human trafficking

Jurisprudence from France shows that human trafficking may constitute a cause for exclusion under Article 12(2)(c), especially when carried out by the state or within a systematic framework. In [M. v OFPRA](#) (2 January 2020), the French CDNA ruled that “given the nature and gravity of the practices associated with human trafficking, human trafficking in all its forms must be considered as potentially constituting an act contrary to the purposes and principles of the UN, especially when it occurs within a state or systemic framework”.

In this particular case, the court considered that the Amazonian Guard under Gaddafi’s regime in Libya constituted an organised system of human trafficking involving young women, including minors who were coerced and exploited into sexual servitude, and thus carried out serious and continuous violations of human rights to qualify as acts contrary to the purposes and principles of the UN. As highlighted in Section 3.1, the EUAA guidance sets out the concept of “serious and sustained violations of human rights” as a distinct basis for exclusion under Article 12(2)(c), separate from the concept of peace and security.

However, national courts have rarely identified this category when assessing case law on this ground. The CNDA’s reasoning thus offers a practical illustration of how the concept should be understood. The seriousness requirement was satisfied by the nature of the rights violated, as the court grounded its conclusion in the non-derogable prohibition against slavery, forced labour and servitude, treating violations of rights of this character as inherently reaching the gravity threshold without requiring a direct connection to international peace and security. The sustained character of the violations was established by the systematic and institutionalised nature of the exploitation carried out within a state structure and maintained over several decades, rather than by the accumulation of individual acts.

Additionally, the state or state-like power element, noted in the EUAA and UNHCR guidance as characteristic of acts falling within this provision, was clearly present. In this regard, the Amazonian Guard operated as a component of Gaddafi’s regime, and the exploitation was attributable to and enabled by the state authority.

Notably, the French CNDA’s reasoning in the human trafficking case grounds its conclusion not only in a specific Security Council resolution but in a combination of UN General Assembly resolutions, international conventions on trafficking, the Council of Europe’s Warsaw Convention and EU Directive 2011/36/EU on human trafficking. This approach treats the purposes and principles of the UN as a broader normative concept capable of being elaborated through the full range of international legal instruments, rather than as a category whose content is determined exclusively by Security Council resolutions.

3.4.4. Human smuggling

The UNHCR’s [Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees](#) states that the application of this ground to the smuggling/trafficking of migrants would be misguided (see para 48). However, different approaches have been observed by national courts. The position of UNHCR was reflected in Germany as the Higher Administrative Court in [Federal Office for Migration and Refugees v Applicant](#) (23 October 2025) ruled that human smuggling cannot be considered to be contrary to



the purposes and principles of the UN. In contrast to international terrorism, the court considered that in the area of human smuggling the UN has not made identical and unambiguous references to the goals of world peace and international security. It considered that although there is a convention adopted by the UN against Transnational Organized Crime with an Additional Protocol against the Smuggling of Migrants by Land, Sea and Air, these instruments do not indicate that smuggling activities violate the objectives and principles of the UN. Likewise, relevant Security Council resolutions do not explicitly indicate this either.

The court held that smuggling may run counter to the purposes and principles of the UN only when it is committed by individuals exercising state or state-like power and directly contributing to violations attributable to the state. The fact that smuggling is regarded in the EU and Germany as a serious phenomenon which threatens individual rights and state security was not sufficient according to the court to bring all smuggling offences within this category, and extending this exclusion to all individuals would require a clear and explicit determination by the UN, comparable to that made in relation to international terrorism.

In contrast, the High Administrative Court in Croatia, in [A.M.H.A. v Ministry of the Interior of the Republic of Croatia, Directorate for Immigration, Citizenship and Administrative Affairs](#) (6 July 2022), considered that activities relating to the smuggling of people, which it described as the illegal transfer of people across the state border, may constitute an act contrary to the purposes and principles of the UN. The court did not require an explicit mention of human smuggling in the Security Council resolution. In contrast to the approach of the German court, it found the broader international issues caused by human smuggling to be sufficient, referring to it as “an international problem of economic social and humanitarian nature, the solution of which falls within the scope of the objectives of the UN in accordance with Article 1(3) of the said Charter”.

These cases provide a practical illustration of how the boundaries drawn by jurisdictions when relying on international legal instruments to characterise the applicant’s conduct as contrary to the purposes and principles of the UN have consequences on the outcome of the assessment. The approach of the German Higher Administrative Court to human smuggling is the clearest expression of this principle applied restrictively. In the absence of an explicit and unambiguous Security Council determination comparable to that made in relation to terrorism, it declined to extend the ground to cover smuggling activities without a state nexus, reasoning that such an extension requires a clear Security Council resolution, rather than a general assessment of international harmfulness. Meanwhile, the Croatian High Administrative Court's treatment of human smuggling takes a comparatively expansive approach, finding the humanitarian objectives of the UN Charter sufficient to bring smuggling activities within the scope of Article 12(2)(c) without requiring an explicit Security Council resolution.

The jurisprudence in this section reflects an exclusion ground that is both expanding in its application and uneven in its interpretation. The CJEU's judgments in *B and D* and *Lounani* have provided an important normative foundation, confirming that Article 12(2)(c) extends beyond the direct commission of terrorist acts to encompass facilitative and preparatory conduct, that exclusion is not contingent on a prior criminal conviction, and that an



individualised assessment of personal responsibility is always required. These principles have been widely cited in national jurisprudence and have broadly shaped the framework within which courts approach this ground. At the same time, significant gaps and divergences remain that the existing CJEU framework has not yet resolved.

The most consequential source of divergence in the terrorism context is the characterisation of whether a group qualifies as a terrorist organisation. As the contrasting jurisprudence related to the PKK and jihadists demonstrates, when courts reach different conclusions on this threshold question, the same individual conduct – such as fundraising, promotional activities and logistical support – produces entirely different outcomes. Courts have given different weight to the EU terrorist listing mechanism, drawn different inferences from shared open-source databases such as the Global Terrorism Database and applied different thresholds for the remoteness of individual conduct before it falls outside the scope of Article 12(2)(c).

Beyond terrorism, the jurisprudence reveals an expanding but legally uncertain use of this ground. The Swedish, French and Croatian cases illustrate that courts are increasingly willing to apply Article 12(2)(c) to conduct which falls outside of terrorism, including state-facilitated exploitation, interference with international criminal justice and human smuggling. However, the legal reasoning underpinning these extensions is not always grounded in the same interpretive approach.

A central point of divergence concerns the range of international legal instruments capable of supporting a finding under this provision. Courts that require an explicit Security Council determination, as the German court did in the case of human smuggling, apply a more constrained scope. Courts that draw on the broader corpus of international law, including UN General Assembly resolutions, international conventions and European instruments, as the French CNDA did in the human trafficking case, are prepared to extend the ground to a wider range of conduct. This divergence has direct consequences for the scope of the exclusion ground across EU+ jurisdictions and reflects a fundamental question that the CJEU has addressed only in the terrorism context and has not yet resolved more broadly, i.e. what legal instruments can be relied upon to characterise acts as contrary to the purposes and principles of the UN.

Finally, the concept of ‘serious and sustained violations of human rights’ as a distinct basis for exclusion under this ground has received limited attention in national case law. The French CNDA's human trafficking decision provides a judicial interpretation of this category, establishing that violations of non-derogable rights carried out in an organised and systematic manner within a state structure can satisfy the threshold without a direct connection to international peace and security. However, the scarcity of jurisprudence based on this concept as a discrete legal concept means that its precise boundaries remain undefined, and national courts approaching novel scenarios have limited guidance on how to apply it. The result is that the scope of Article 12(2)(c) beyond its terrorism core continues to be shaped by individual national decisions rather than by a coherent and shared analytical framework. This divergence has not been addressed by the CJEU, and the absence of authoritative guidance on which international instruments are capable of grounding a finding under Article 12(2)(c) and 17(c) in non-terrorism contexts is a notable gap in the existing framework.



4. Danger to the community or national security

This section examines the exclusion ground of danger to the community or the security of a Member State under Article 17(1)(d) of the recast QD and the QR. Unlike the other exclusion grounds addressed in this report, this provision is exclusive to subsidiary protection and does not apply to the assessment of refugee status. It is also distinctive in that it focuses on the present dangerousness of the applicant rather than on past conduct alone, making the assessment of the posed threat central to its application.

Section 4.1 sets out the applicable legal framework. Section 4.2 examines the CJEU's contributions to the interpretation of this ground, covering the definitions of public security and public order, the requirement of an individualised and independent assessment, and the genuine and present danger requirement. Section 4.3 then analyses how national courts across EU+ countries have applied these principles in practice, focusing on three categories of threat indicators: group membership or association, ongoing criminal proceedings, and patterns of violent and antisocial behaviour.

4.1. Legal framework

Article 17(1)(d) of the QR and the recast QD provides that a third-country national or a stateless person is excluded from subsidiary protection when there are serious reasons to consider that he/she constitutes a danger to the community or national security/the security of the Member State in which he/she is present. This exclusion ground is exclusive to subsidiary protection status. As highlighted in Section 2.2, the CJEU ruled in [B and D](#) that when assessing exclusion grounds for refugee status, authorities are not required to assess whether the applicant represents a current danger. In this regard, Article 14(5) of the recast QD allows Member States to refuse refugee status when the grounds under Article 14(4) apply, including if the applicant represents a danger to the security of the Member State or constitutes a danger to the community after being convicted of a final judgment of a particularly serious crime. However, the CJEU clarified in [K.A.M. v Republic of Cyprus](#) (C-454/23, 27 February 2025) that Article 14(4) and (5) cannot be considered as an additional exclusion ground as grounds for revocation do not have the effect that the third-country national ceases to be a refugee.

National legislation transposing Article 17(1)(d) shows a non-uniform approach to the terminology used. While the recast QD refers to a “danger to the community or the security of a Member State”, various jurisdictions have used related terminology, such as ‘public order’, ‘danger to society’, ‘state security’, ‘public security’ and ‘national security’. However, it does not appear that these differences in terms have resulted in different assessment frameworks and outcomes. Moving forward, as the QR is directly applicable since 12 June 2026, this difference in terminology will no longer apply.



4.2. CJEU jurisprudence

The CJEU has only referenced Article 17(1)(d) in one judgment but has not comprehensively defined its scope. Nonetheless, albeit in a limited number of judgments, it has addressed similar concepts. Its contributions have been important in three respects: clarifying the concepts of danger to the community and danger to national security within this provision; establishing that the assessment must be individualised and conducted independently by the determining authority; and confirming that the danger must be genuine and present rather than potential or abstract. The Sections 4.2.1-4.2.3 examine each of these points in turn.

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 Citizenship 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 vatrešnite 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).



4.2.2. Individualised and independent assessment

The only CJEU judgment directly providing guidance for the interpretation of Article 17(1)(d) of the recast QD is [*GM v Országos Idegenrendészeti Főigazgatóság, Alkotmányvédelmi Hivatal, Terrorelhárítási Központ* \[GM\]](#) (C-159/21, 22 September 2022). While the case also concerned access to classified information (a question that falls outside the scope of this report), it provides important clarification on the evidentiary requirements and procedural obligations applicable to exclusion decisions under this provision, and in particular on the weight that may be given to opinions from national security bodies.

National case law demonstrates that generally asylum authorities afford substantial weight to assessments made by national security bodies. A case which demonstrated this is [*A v Ministry of the Interior*](#) (26 November 2020), in which the Portuguese Central Administrative Court upheld the exclusion of an applicant who had allegedly been identified by the Portuguese Security Intelligence Service (SIS) as having links to the Islamic State (ISIL/Daesh), including alleged membership of the organisation, possible involvement in activities linked to terrorism and possible links to a planned terrorist attack in Germany. SIS assessed that, if the information was confirmed, the applicant could constitute a risk to European and Portuguese internal security. Criminal investigations concerning possible terrorist-related activities had also been opened. The court acknowledged that the information available did not establish the applicant's involvement in terrorist activities with certainty and referred repeatedly to the existence of suspicions, probabilities and risk assessments rather than proven facts. Nevertheless, the court attached significant weight to the assessment carried out by SIS, whose statutory mission includes the prevention of terrorism and the protection of national security. The court also relied on the existence of a judicial decision ordering the applicant's placement in a temporary detention facility on national security grounds.

In *GM*, the CJEU provided important clarifications on how national authorities should take opinions by national security bodies into account. The CJEU noted that in accordance with the recast Asylum Procedures Directive (recast APD), the determining authority bears the sole responsibility for examining applications for international protection and for deciding on the withdrawal of such protection. Referring to Recital 16 of the directive, it emphasised that decisions on applications for international protection must be based on facts and taken by authorities whose staff have the appropriate knowledge and training in the field. While Article 4(2) of the recast APD permits certain tasks to be delegated to other authorities, this does not extend to examining an application for international protection or withdrawing a decision, which must be undertaken solely by the determining authority.

On this basis, the CJEU held that the application of Article 17(1)(d) requires an individualised assessment of the specific facts of each case, which is carried out by the determining authority. It ruled that the determining authority cannot confine itself to relying solely on a decision or opinion adopted by another body, including a national security authority, when deciding to exclude an applicant or withdraw international protection. The determining authority must form its own reasoned opinion on the basis of all relevant information available to it, which may include information provided by specialist security bodies, provided that it assesses that information independently and states reasons in fact and in law for its decision.



The practical implications of this ruling for judicial reviews have been interpreted differently at the national level. The Latvian Administrative District Court in [Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia](#) (26 June 2023), referencing *GM*, acknowledged that authorities have the right to collect and assess information about individuals who may pose security risks, but it held that the role of the court is not to reassess the threats established by national security authorities on their merits but rather to verify that those authorities have not acted arbitrarily.

A wider approach was adopted by the Court of Appeal in Cyprus in [Republic of Cyprus through the Asylum Service v B.A.M.](#) (25 September 2025), where the court found that the first instance court had failed to conduct a detailed analysis of the classified police and intelligence material relied upon by the Asylum Service and failed to adequately reason its decision. The Court of Appeal held that the lower court was obliged to assess and weigh each element relied upon by the asylum authority, including alleged links to terrorist organisations and contacts found on the applicant's telephone, and to explain why, taken individually or cumulatively, they did not justify exclusion from international protection.

The divergence between the Latvian and Cypriot approaches illustrates a broader uncertainty about the depth of the judicial scrutiny which is required following *GM*, including whether courts are limited to a review of arbitrariness or are required to conduct a full merits assessment of the security findings on which the exclusion decision rests.

4.2.3. Genuine, present and sufficiently serious requirement

An important clarification emerging from CJEU jurisprudence concerns the temporal character of the danger required for the exclusion ground under Article 17(1)(d). Although the CJEU has not addressed this question directly in the context of that provision, its ruling in [XXX v CGRS](#) (C-8/22, 6 July 2023), which interprets Article 14(4)(b) of the recast QD, provides relevant guidance, given that both provisions use the same term ‘constitutes’ in describing the required danger. The CJEU noted that the use of this term in the context of establishing a danger to the community implies that the danger must be genuine and present, thus a potential danger would not be sufficient to satisfy the provision. On the other hand, in *K.A.M.*, when interpreting the concept of a danger to national security, the CJEU held that such danger covers not only a genuine and present danger, but also a potential danger.

It follows that an assessment under Article 17(1)(d) must be focused on the danger the applicant represents at the time of the decision, rather than on past misconduct alone. Although the assessment of whether Article 17(1)(d) applies is informed by the past and present conduct of the applicant, it is ultimately an assessment of the present threat. In general, the finding of a genuine, present and sufficiently serious threat implies a propensity in the individual to repeat the conduct, constituting such a threat in the future. National jurisprudence across EU+ countries has consistently adopted this approach.

Past conduct may be a useful indicator to assess future risk, as follows from the ruling of the CJEU in *K.A.M.* In this judgment, the CJEU held that the competent authority cannot be required to exclude considering past conduct, as past acts or conduct may constitute relevant circumstances to ascertain whether the applicant has a tendency to maintain such conduct in the future or to repeat such acts. It ruled that such authorities must take into account the



seriousness of the conduct or acts, the time elapsed since the conduct or acts occurred, and any subsequent developments.

National courts have broadly adopted this interpretation, though divergence has been observed concerning the threshold at which a genuine and present danger is considered to be sufficiently serious. In recent jurisprudence, a shift toward a wider interpretation of the concept has been observed. This is particularly evident in German case law. Previously, as evidenced by a ruling from the German Regional Administrative Court in [Applicant v Federal Office for Migration and Refugees](#) (21 January 2022), a demanding standard was applied by the court which held that a danger to the community or state security must involve a concrete threat of serious criminal conduct of significant weight, comparable to offences such as terrorism, homicide or major trafficking crimes. The court rejected any suggestion that an abstract or generalised danger could suffice and held that the required individualised assessment resembles a risk prognosis of the kind used in expulsion proceedings, which is not rendered unnecessary by a prior conviction or the completion of a sentence.

However, in a landmark ruling pronounced on 8 June 2026 ([Federal Office for Migration and Refugees v Applicant](#)), the Federal Administrative Court in Germany adopted a different stance. It held that the establishment of a danger does not necessarily require the commission of certain criminal offences of particular gravity but may also be justified in the case of an accumulation of significant violations of the law, which as a whole lead to serious concerns about an impairment of fundamental social interests or a significant disturbance of the peace of law.

A similar line of reasoning was adopted by the Supreme Administrative Court (SAC) in Poland, which held that, while Article 17(1)(d) concerns conduct displaying a significant degree of seriousness, an accumulation of acts which individually do not reach the threshold of a serious offence may be relevant when the number and nature of violations affect the assessment of the person's future conduct. The court stated that as a rule this ground should apply to applicants who are highly socially maladjusted, radicalised or systematically engaged in activities the nature of which disrupt the proper functioning of the state and undermine fundamental social order. It elaborated that this includes, for example, objectively and reliably established involvement in serious criminal activity, repeated offending or socially disruptive conduct demonstrating an intentional disregard for the legal order.

In two recent cases, the court examined the application of the exclusion provision to applicants who committed the offence of driving a vehicle while intoxicated. However, the circumstances of the offences differed, ultimately leading the court to reach opposite conclusions. In [A.S. v Head of the Office for Foreigners](#) (29 October 2025), SAC considered that the applicant's conduct went beyond an isolated offence as he had intentionally breached road safety rules while intoxicated, causing an accident in which another person was injured and had a further traffic-related history. A sentence of 1-year imprisonment suspended for 3 years was imposed, together with a 7-year prohibition on driving, a monetary payment and costs. SAC regarded this conduct as demonstrating disregard for legal order and considered that the circumstances supported a finding that future violations could not be excluded. It highlighted that persistent and deliberate violations of legal provisions, particularly criminal law provisions, threaten public order and security. It therefore found that the required



genuine, present and sufficiently serious threat to society was established, despite the applicant's subsequent period without further offending and the expungement of an earlier offence.

In contrast, in [RS v Head of the Office for Foreigners](#) (16 April 2026) the applicant had no previous criminal record and had committed a single offence of driving while intoxicated, for which he received a fine and the minimum statutory driving prohibition. SAC held that the general social harmfulness of the offence and the applicant's alleged disregard for the legal order did not establish the nature of a present threat required by Article 17(1)(d). In particular, there was insufficient evidence to support the finding that he posed a future risk of non-compliance with the law. SAC therefore concluded that the single offence did not constitute the type of conduct capable of establishing a danger to the community or a threat to state security under Article 17(1)(d), and it annulled the exclusion decision. The two cases therefore show that the same type of offence may lead to different outcomes under Article 17(1)(d), depending on the seriousness and pattern of the conduct and the evidence that it indicates a present and future threat to the community or state security.

The Latvian Administrative District Court has also taken a broad approach, as illustrated in [Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia](#) (26 June 2023). Drawing on Latvian constitutional law, citizenship law and national security legislation, as well as judgments of the Latvian Constitutional Court, the court defined public security as encompassing not only threats to national security and territorial integrity but also conduct that society regards as incompatible with the harmonious functioning of a democratic state. Based on this analysis, the concept extends considerably beyond the threat of a specific and serious violent offence.

As the case law examined in the following section demonstrates, the Latvian court and courts in several other EU+ countries have applied Article 17(1)(d) to patterns of antisocial behaviour and general concerns about public order and security, rather than limiting its application to the concrete risk of an exceptionally serious crime.

4.3. Assessment of threat indicators

The case law assessed in this section demonstrates that Article 17(1)(d) requires the determining authority to assess the applicant's dangerousness in a holistic manner, rather than relying on any single indicator. The following sections examine how courts have approached three categories of threat indicator. In particular, it examines how courts have assessed membership of a terrorist or criminal organisation (*Section 4.3.1*), the existence of ongoing criminal proceedings (*Section 4.3.2*) and patterns of violent and antisocial behaviour (*Section 4.3.3*).

4.3.1. Group membership or association

Membership in a group, even one that may be classified as a terrorist organisation, or the commission of past serious human rights violations, does not automatically justify exclusion based on this ground.



This requirement was underlined by the CJEU in XXX, where it ruled that a Member State must duly justify its decision on this ground. National courts have overturned decisions when the asylum authority has failed to justify its decision with sufficient reasoning and relied solely on an applicant's membership of a group or a past episode when the applicant committed an excludable act. This is illustrated by the Administrative Court in Bratislava in Slovakia in [A.B. v Ministry of the Interior, Migration Department, Slovakia](#) (7 May 2025). The court referred to the aforementioned ruling of the CJEU and found that the determining authority had incorrectly based the application of Article 17(1)(d) on the sole fact of the applicant's membership of a banned political party in Russia, without assessing the nature of the party or specifying how the applicant poses an actual, and not potential, danger to society. It concluded that the danger the applicant represents for society must be present and sufficiently serious for his exclusion from international protection to be proportionate.

Similarly, case law from the French Council of State demonstrates that an applicant's sympathy on the Internet towards armed groups or terrorist groups is not sufficient in itself to conclude that the applicant constitutes a danger to the community or the security of a Member State. In [Applicant v OFPRA](#) (2 March 2020) concerning an applicants who expressed sympathy to jihadists and other armed groups opposing the Syrian regime, the council held that personal opinions may be taken into account, but this factor is not decisive. More importance is attributed to whether the applicant had any alerts or surveillance measures against him. As these elements were absent in the applicant's case, he could not be considered to constitute a serious threat to public order, public security or state security, within the meaning of Article L. 712-2 of the Code on the Entry and Residence of Foreigners and the Right of Asylum (CESEDA). The case thus illustrates that online expression and association, without further evidence of active participation or a concrete link to dangerous conduct, falls short of the threshold required under Article 17(1)(d).

4.3.2. Ongoing criminal proceedings

The existence of ongoing criminal proceedings is similarly insufficient on its own to establish that an applicant constitutes a danger to the community or the security of a Member State. The Polish SAC adopted this reasoning in [D.K. v Head of the Office for Foreigners](#) (5 February 2025) leading to an annulment of an exclusion decision against an applicant who had a criminal investigation ongoing, but which had been temporarily suspended for procedural reasons and no final conclusions had been reached on the guilt of the applicant. SAC found that the lower authorities and the Regional Administrative Court in Warsaw erroneously assumed that the facts of the case had been properly explained, resulting in an inadequate determination of the facts. SAC also held that the evidence was incorrectly assessed and it was wrongly concluded that the applicant had left Poland with his whereabouts unknown. It held that the existence of an investigation alone does not constitute a sufficient basis to conclude that the applicant poses a real and ongoing threat to state or societal security, underlining the need for a present and future-oriented assessment of danger.

In relation to past misconduct by an applicant, SAC held that the decisive factor is not what the applicant has done in the past and what acts he has committed, but how they translate into the current assessment of the threat to the security of the state or society in connection with his stay in Poland. This approach aligns with the broader preventive rationale of Article 17(1)(d),



as the focus is not retrospective punishment but a threat assessment that considers how past behaviour may manifest as a present danger.

4.3.3. Patterns of violence

While isolated factors may be insufficient, courts recognise that a holistic evaluation of an applicant's behaviour may substantiate a finding of dangerousness. In this regard, an applicant does not need to be linked to the commission of a specific crime, but rather account must be taken of all the acts attributable to him/her. This reasoning was reflected by the French Council of State in [N.I. v OFPRA](#) (22 April 2022), where the council applied this exclusion ground due to an applicant's behaviour in the reception centre, including aggressive and threatening remarks against staff and against the country, including the threat to burn down the buildings and death threats. He was briefly involuntarily hospitalised due to these threats, though released on procedural grounds despite medical advice. Although it was acknowledged that his mental state at the time may have impaired his ability to comprehend what he was saying, the court concluded that this did not reduce his dangerousness, noting his continued disruptive behaviour and threats, including against his own lawyer who feared for her own safety.

The CNDA further illustrated the importance of evaluating patterns of violent behaviour in [A. v OFPRA](#) (26 February 2021). The CNDA noted that the applicant had been convicted three times for relatively short sentences, but it emerged from further investigations that he had been the subject of 18 proceedings. This led the CNDA to establish a pattern of violence, based on the high number of offences committed by the applicant, their frequency and repetition, their accelerating rate in both pace and severity, and their violent nature, which caused psychological distress for his victims and those who tried to help him. Because the applicant systematically challenged the authorities, justified his actions, his antisocial, impulsive, intolerant and violent personality, and systematically refused any psychological support, the court found that the applicant represented a present and future threat for French society and public order, without a possibility for any economic or social reintegration measures to relieve him from this cycle of violence.

A comparable approach was adopted by the Latvian Administrative District Court in [Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia](#) (26 June 2023). The court applied this exclusion ground to an applicant who displayed a consistent pattern of disruptive, aggressive and non-compliant behaviour while in detention. This included repeated rule violations, provocative and abusive conduct toward staff and authorities, unfounded complaints, inappropriate sexual behaviour, attempts to manipulate surveillance systems and an attempted escape. The information further showed that the applicant disregarded legal norms and institutional authority, including conduct undermining the judiciary and misuse of police resources. Based on this evidence, the court concluded that the applicant's behaviour was unacceptable in a democratic state and exhibited a tendency toward unlawful conduct and violation of socially-accepted norms. The court thus found that the applicant's actions posed a danger to society.



In conclusion, the assessment of whether an applicant constitutes a danger under Article 17(1)(d) of the recast QD/QR is inherently fact-specific and requires careful evidentiary analysis. Based on national case law to date, a holistic assessment involves considering the applicant's past conduct, including criminal convictions, acts of violence and breaches of public order, while recognising that such acts alone cannot automatically establish a present threat.

Courts have ruled that authorities must also examine the pattern and escalation of behaviour, evaluating the repetition, frequency, and severity of actions over time, as well as the applicant's response to institutional authority and compliance with social norms. Contextual factors, such as behaviour in detention, interaction with officials and mitigating circumstances like mental health, must be integrated into the assessment to determine whether past actions translate into a present danger. The assessment also looks at the likelihood of recurrence and the potential for rehabilitation or reintegration.

A central principle emerging from both CJEU and national case law is that exclusion cannot be based on automatic or presumptive reasoning. Rather, courts have ruled that the determining authority must establish that the individual poses a genuine, present and sufficiently serious threat by taking into account all relevant circumstances and not relying solely on isolated indicators, such as the applicant's membership or association with a terrorist or criminal organisation, or an ongoing criminal investigation.

The CJEU has set important limits on how this assessment must be conducted. In *GM*, it confirmed that the determining authority must form its own independent and reasoned view of the facts and cannot simply adopt the conclusions of national security bodies. In *XXX*, it confirmed that the danger must be genuine and present, as a potential or abstract risk is not enough, and the decision must be properly reasoned. These requirements provide a clear procedural framework, but they leave open the question of how serious the conduct must be.

As national case law illustrates, courts have shifted from requiring a concrete threat of a serious crime to establishing a danger based on patterns of antisocial behaviour and the accumulation of less serious offences.



5. Individual responsibility

Exclusion clauses cannot be applied automatically to someone who has been associated with a criminal organisation, armed group or repressive regime. Before an applicant can be excluded from international protection, it must be established that they bear individual responsibility for the excludable acts in question. The requirement that responsibility must be individual rather than collective is one of the most fundamental principles governing the application of the exclusion grounds, and one that has been consistently affirmed by the CJEU and endorsed by the EUAA and UNHCR guidance.

The preceding sections address the material element of the exclusion assessment which considers if the act itself confirms exclusion from international protection. This section addresses the equally important question of whether the individual applicant can be held responsible for that act, which is not straightforward. Individual responsibility may arise in a variety of ways: through the direct commission of the excludable act, inducing or ordering others to commit it, aiding and abetting its commission, participating in a joint criminal enterprise or having command responsibility in a superior-subordinate relationship. Each of these modes of participation carries its own requirements, and the applicable criteria differ depending on which mode is engaged. Establishing the relevant mode of participation is only the first step. It must also be shown that the applicant acted with the requisite knowledge and intent in relation to the excludable acts. National courts have diverged most significantly at this stage of the assessment, producing different outcomes in comparable cases.

Section 5.1 sets out the applicable international legal framework for establishing individual responsibility. Section 5.2 examines the relevant CJEU jurisprudence. Section 5.3 outlines the assessment framework drawn from the EUAA and UNHCR guidance. Finally, Section 5.4 analyses the divergences and challenges that have emerged in national practices, addressing in turn the assessment of what constitutes a ‘substantial contribution’ and the knowledge and intent requirement to establish individual responsibility.

5.1. International legal framework

The requirement of assessing the individual responsibility of the applicant has recently been codified in the QR, both for exclusion from refugee status (Article 12(4)) and from subsidiary protection status (Article 17(4)).

The recast QD does not refer specifically to the ‘individual responsibility’ of the applicant. While Articles 12(2) and 17(1) of the recast QD refer to the direct commission of a crime, noting serious reasons to believe that the applicant “committed” or was “guilty of” the excludable acts, Articles 12(3) and 17(2) specify that exclusion must also be applied to persons who “incite or otherwise participate” in the commission of the aforementioned excludable acts.

As EU asylum law does not elaborate on the assessment of individual responsibility for exclusion, courts generally rely on the provisions of the Rome Statute. In this regard,



Article 25(3) is particularly relevant as a starting point as it sets out the different modes of participation in a crime for individual criminal responsibility to be established:

Article 25 (3) of the Rome Statute:

“In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

- (a) **Commits such a crime**, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
- (b) **Orders, solicits or induces** the commission of such a crime which in fact occurs or is attempted;
- (c) For the purpose of facilitating the commission of such a crime, **aids, abets or otherwise assists in its commission or its attempted commission**, including providing the means for its commission;
- (d) In any other way **contributes to the commission or attempted commission** of such a crime by a **group of persons acting with a common purpose**. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or (ii) Be made in the knowledge of the intention of the group to commit the crime;
- (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
- (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose. “



While Article 25 sets out the different modes of participation in a crime, Article 28 is also important as it regulates the particular conditions under which individual responsibility may be attributed to commanders and other superiors for acts committed by their subordinates. This article thereby recognises the increased level of responsibility held by such persons to actively prevent and punish crimes.

Article 28 of the Rome Statute:

“In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

1. A **military commander or person effectively acting as a military commander shall be criminally responsible** for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(a) That military commander or person either **knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes**; and

(b) That military commander or person **failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution**.

2. With respect to superior and subordinate relationships not described in paragraph (a), a **superior** shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(a) The superior either **knew, or consciously disregarded information** which clearly indicated, that the subordinates were committing or about to commit such crimes;

(b) The **crimes concerned activities that were within the effective responsibility and control of the superior**; and

(c) The superior **failed to take all necessary and reasonable measures** within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution”



Of additional relevance to the assessment of individual criminal responsibility is Article 30, which sets out the requirements of intent and knowledge:

Article 30 of the Rome Statute:

“1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with **intent and knowledge**.

2. For the purposes of this article, a person has intent where:

(a) In relation to conduct, that person **means to engage in the conduct**;

(b) In relation to a consequence, that person **means to cause that consequence or is aware that it will occur in the ordinary course of events**.

3. For the purposes of this article, “**knowledge**” means **awareness that a circumstance exists or a consequence will occur in the ordinary course of events**.

“Know” and “knowingly” shall be construed accordingly.”

Finally, Articles 31-33 examine the grounds which may mitigate individual criminal responsibility. This is addressed in Section 6.

While national courts rely extensively on the Rome Statute, it is critical to note that criminal law and asylum law are two distinct areas of law, and the standard of proof is lower in asylum law. Therefore, the assessment of individual responsibility under exclusion provisions must primarily be carried out in light of the EU asylum *acquis* and guidance from the EUAA and UNHCR. When a discrepancy between the two fields of law arises, precedence must be given to the authoritative sources on asylum law when assessing exclusion grounds. Nevertheless, as Section 5.4 demonstrates, as courts navigate through the complex interactions between the Rome Statute and ICC jurisprudence, national criminal law, national asylum law and the EUAA and UNHCR guidance, a wide divergence in practices has emerged.

5.2. CJEU jurisprudence

The CJEU first addressed the need to establish individual responsibility in the case of *B and D* in the context of a terrorism-related case assessed within the scope of Article 12(2)(b) and (c) of Directive 2004/83/EC (QD). Nevertheless, in *Ahmed* the CJEU held that this requirement extends to decisions excluding a person from subsidiary protection (*see paras 48-50*). This practice is confirmed in the EUAA and UNHCR guidance, and national court practices.

In *B and D*, the CJEU held that the mere fact that an applicant belongs to an organisation listed as a possible terrorist organisation in the annex to the Common Position 2001/931 or they participate in the activities of a terrorist group within the meaning of Article 2(2)(b) of Framework Decision 2002/475 does not automatically lead to their exclusion from



international protection. The CJEU held that an individual assessment of the specific facts of each case is necessary to assess whether the exclusion clauses apply. The court referred not only to the findings that an applicant has committed a serious, non-political crime or is guilty of acts contrary to the purposes and principles of the UN, but also noted other modes of participation, including instigating such a crime or act or participating in them in some other way. This reflects the different modes of participation laid in the recast QD.

The CJEU elaborated that a share of the responsibility for the acts must be attributed to the applicant, which must be assessed in the light of both objective and subjective criteria. The CJEU held that:

“To that end, the competent authority must, inter alia, assess the true role played by the person concerned in the perpetration of the acts in question; his position within the organisation; the extent of the knowledge he had, or was deemed to have, of its activities; any pressure to which he was exposed; or other factors likely to have influenced his conduct.” (para 97).

In *Lounani*, the CJEU also noted how a prominent position within an organisation which uses terrorist methods or a prior conviction are important indicators which can lead to the finding of the individual responsibility of the applicant for acts committed by the organisation during the relevant period. However, it stressed that it remains necessary to examine all the relevant circumstances before issuing an exclusion decision.

5.3. Assessment framework

The EUAA’s guidance expands on the different modes of participation, noting that when conducting an assessment of the individual responsibility of the applicant for the excludable act, the assessment must be based on both the nature and extent of the applicant’s involvement, as well as their state of mind. The applicant’s state of mind refers to their knowledge and intent in relation to the excludable acts. It highlights that conduct may include both actions and omissions, for example the failure to act, and emphasises that individual responsibility may extend even when an applicant only attempts the excludable acts. As seen above, in certain cases, the attempt itself may constitute a crime, fulfilling the material element of the assessment, such as in the case of attempted murder.

The modes of participation set out in the guidance are closely aligned with Article 25 of the Rome Statute and include:

- **Direct commission;**
- **Inducing commission** of an excludable act by others, including through planning, instigating or ordering;
- **Aiding and abetting**, i.e. a substantial contribution to the commission of an excludable act by others (for example by providing physical, logistical or financial support, encouraging the commission of the excludable acts by others, or the provision of moral support);



- **Joint criminal enterprise** involving a substantial contribution to a common criminal purpose of a group to carry out a commonly intended crime;
- **Command responsibility** in the context of a superior-subordinate relationship between persons, in which the individual with a superior role was aware or should have been aware of crimes committed by their subordinates.

Similarly, the [EUAA Judicial Analysis on Exclusion: Articles 12 and 17 Qualification Directive](#) (February 2020) identified the following modes of individual responsibility: direct commission of excludable crimes/acts, incitement, aiding and abetting, joint criminal enterprise/common purpose liability, command/superior responsibility and membership of an organisation responsible for excludable crimes or acts, including organisations or groups designated as ‘terrorist’.

While in the case of a direct commission of an excludable act and the incitement of an act it may be more straightforward to establish individual responsibility due to the closer causal link between the applicant’s action and the crime, aiding and abetting and joint criminal enterprise may be more complex as the applicant’s activities may be more remote from the crime. In order to assess cases of aiding and abetting and joint criminal enterprise, a substantial contribution to the crime is required. The EUAA’s guidance defines ‘substantial contribution’ in terms of a ‘substantial effect’ to the perpetration of the act. UNHCR’s [Information Note on the Application of Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees](#) defines the same varied modes of participation in order to establish individual responsibility, also highlighting that responsibility is not only attributed to the applicant when they have directly committed a crime, but can also be attributed when they have made a ‘substantial contribution’ to its commission.

Additionally, to establish individual responsibility, it must be examined whether the applicant acted with knowledge and intent to participate in the excludable acts. As highlighted above, in international criminal law, this requirement is enshrined in Article 30 of the Rome Statute. In asylum law, the CJEU has provided limited clarification by referring in *Lounani* to the relevance of the applicant’s knowledge of the activities of the group to which the excludable acts were linked, indicating that this subjective element forms a part of the assessment.

The EUAA’s guidance broadly aligns with this approach, defining knowledge as “awareness that a circumstance exists or a consequence will occur in the ordinary course of events”. As regards intent, it notes that two aspects need to be taken into account, including whether the applicant intended to engage in the conduct and whether the applicant intended to cause the consequences (or was aware they will occur in the normal course of events). However, it notes that the requirement of knowledge and intent varies depending on the mode of participation.

In cases of incitement, the EUAA’s guidance requires that the applicant either intended to provoke the commission of the act or was aware of the substantial likelihood that the crime would occur as a consequence of their actions. On the other hand, in cases of aiding and abetting, a lower threshold is applied. The guidance notes that the applicant must have been aware that their conduct would assist or facilitate the commission of the crime, although precise knowledge of the specific act is not required. Unlike incitement or joint criminal



enterprise, the guidance notes that aiding and abetting does not require the applicant to share the intent of the principal perpetrator. It is sufficient that the applicant intentionally engaged in the assisting conduct, while knowing that such assistance would facilitate the commission of an excludable act. Finally, with regard to command responsibility, the knowledge requirement is interpreted more broadly as depending on the applicant's position; it may be considered that the applicant knew or should have known about the acts committed by their subordinates, without the need to establish the applicant's intent for the specific crimes.

The EUAA's guidance emphasises that an applicant's link to a group or regime involved in excludable acts does not automatically establish individual responsibility. Case officers must still determine the applicant's personal responsibility by identifying the relevant mode of liability and assessing both conduct and state of mind. While factors like voluntary association, rank and influence may allow intent and contribution to be inferred depending on the circumstances, mere association is insufficient.

5.4. Divergences and challenges in national practices

The above framework sets out the general principles to establish individual responsibility. In practice, national courts have diverged in their application of these principles. As a preliminary observation, the EUAA [Practical Guide on Exclusion from International Protection](#) (September 2026) recommends that case officers identify the relevant mode of individual responsibility and examine the facts in light of the respective criteria, this approach has not generally been adopted by courts. The majority of case law that was analysed did not use this system of classification to identify the mode of participation undertaken by the applicant, which presents a challenge when analysing trends across case law. Even when the court does classify the mode of participation, the boundary between the different modes of participation is not always clearly drawn in national jurisprudence, and the choice of which mode to apply to a given set of facts appears to be frequently a decision made by the court rather than one that follows necessarily from the circumstances of the case. That choice may have consequences as different assessment criteria apply depending on the mode of participation.

Aside from the direct commission of a crime, the most commonly identified mode of participation by national courts was aiding and abetting. In contrast, case law identifying a joint criminal enterprise was sparse. When considering such cases, countries generally follow the assessment framework set out above by assessing whether the applicant made a substantial contribution to the crime with the requisite knowledge and intent. However, despite this broad assessment framework being followed, wide divergence in outcomes was observed. In this regard, the divergence across case law when establishing individual responsibility generally does not stem from the type of activity itself. Thus, no commonly identified activities emerge from the jurisprudence which can be considered as substantial contributions.

The principle point of divergence hinges on the varying interpretations and evidentiary thresholds applied to examine whether the 'substantial contribution' and the 'knowledge and intent' requirements are satisfied. This has led to different outcomes, even for the same type



of activity carried out within the same group or regime. Thus, no commonly identified activities emerge from the jurisprudence which can be considered as substantial contributions.

Sections 5.4.1-5.4.5 examine the principle unresolved questions which emerge from national case law and which contribute to the non-uniform application of the exclusion clauses. In particular, the assessment of whether an applicant made a substantial contribution to an excludable act raises three related but distinct questions: i) how direct the causal connection between the applicant's conduct and the crime must be; ii) whether and in what circumstances a failure to act can amount to individual responsibility or constitute a substantial contribution; and iii) to what extent causal impact can be inferred from COI and other contextual factors rather than established through specific evidence.

The assessment of knowledge and intent in exclusion cases also raises questions. The following sections address two points in particular. The first is whether aiding and abetting requires purpose-based intent (acting with the aim of bringing about the crime) or whether knowledge that one's conduct would facilitate the crime is sufficient. The second is whether knowledge can be inferred objectively from the systemic context established by COI, and how specific must COI be in relation to the applicant's role and circumstances for inference to be possible.

5.4.1. How direct must the link be between the substantial contribution and the excludable act?

A central question in the assessment of substantial contribution is how direct the connection between the applicant's conduct and the excludable act must be. Must the applicant's specific contribution have made a concrete difference to how the crime unfolded or is participation in a system that produces criminal outcomes sufficient? Belgian, Dutch, Norwegian and Swiss case law represent distinct positions on this question, and the divergence between them has direct consequences for applicants performing routine operational or supportive roles within criminal organisations and regimes.

The Norwegian Supreme Court addressed this directly in [Applicant v Immigration Appeals Board](#) (12 December 2023) concerning a Syrian conscript who participated in house searches in which opposition figures were arrested and subsequently subjected to torture and homicide. The court held that there is no requirement for active conduct to have resulted in a difference to the main act, rejecting as irrelevant both the applicant's lack of influence over which persons were arrested and the fact that he acted as part of a large group. That requirement, the court held, applies only to cases of pure omission when the question is whether the perpetrator had a duty and capacity to intervene. For active conduct, contributing to the arrest and surrender of persons at risk of torture and murder objectively constitutes complicity, regardless of whether the applicant's specific participation made any difference to the outcome. The court thus established a substantial contribution by reference to the nature and function of the applicant's role within the apparatus that produced the criminal outcome, rather than by reference to the direct causal impact of the applicant's individual acts.

This approach is reinforced and elaborated in the Belgian CALL's reasoning in [X v CGRS](#) (16 April 2024) concerning a Syrian army soldier based in Daraa who manned a checkpoint



and participated in the transfer of prisoners. The applicant argued that his role was limited to ensuring the security of his superiors, he did not hold a rank and he did not personally participate in arrests. CALL rejected this argument directly, finding that it was precisely by providing protection to the persons conducting checks and arrests, and by participating in the transfer of prisoners to Damascus, that the applicant made a significant contribution to the murders and ill treatment that followed.

The case made it explicit that it is not necessary for the applicant to have been present at or involved in the moment of the criminal act itself. A purely supportive or protective function within a criminal apparatus, including by ensuring the security of those conducting arrests and transporting prisoners, is sufficient, provided it forms part of the operational structure through which the crimes are carried out. CALL also rejected the argument that the applicant's contribution must have a "very significant consequence for the commission of the crime against humanity", confirming that the threshold is one of significant contribution, not decisive or irreplaceable contribution.

The Dutch approach introduces a degree of causal requirement that the Norwegian and Belgian approaches do not but frames it at the level of the role rather than the individual. Dutch national asylum law (para C2/7.10.2.4 of the VC 2000) requires that the contribution had an effect on the commission of the crime, and the crime would most likely not have taken place in the same way if no one had fulfilled the applicant's role, or if the applicant had made use of available opportunities to prevent the crime. This standard does not require proof of individual irreplaceability but introduces a generalised causal requirement absent from the Norwegian and Belgian approaches.

This was illustrated in practice in [Applicant v The Minister for Asylum and Migration](#) (18 May 2021) concerning a corporal in Gaddafi's army who guarded the Abu Salim prison and transported prisoners to interrogations. The court found that his role made him an indispensable link in the system that exposed detainees to torture and ill treatment, and the crimes would likely not have taken place in the same way without someone performing his role. The court rejected the applicant's defence of having a low rank, the dictatorial context and the risk of punishment for disobedience as incapable of negating his personal contribution.

The Swiss Federal Administrative Court has applied the most demanding standard, requiring a concrete and demonstrable link between the applicant's specific activities and specific reprehensible acts. In [Applicant v State Secretariat for Migration](#) (5 February 2020) concerning a Syrian army soldier who served for 3.5 years as a checkpoint guard and driver, the court held that it could only be speculated what effect his support activities would have had on specific criminal acts, and the mere possibility of contribution to the Syrian army's goals was insufficient. The court explicitly rejected the duration of service as a basis for inferring substantial contribution and declined to infer knowledge and intent from the general context of widespread violence established by COI. Through this approach, the court assessed substantial contribution by reference to the specific effect of the applicant's particular acts on particular criminal outcomes, not by reference to the systemic function of their role.



The Swiss Federal Administrative Court case law on applicant's associated with the LTTE illustrates where this threshold leads in practice. Administrative and documentary roles, including archiving, training and forwarding intelligence, did not suffice even when membership was voluntary and sustained over years, as ruled by the court in [D-2085/2018](#) (6 May 2021) and in [D-6231/2019](#) (29 November 2022). Only when a senior intelligence officer in [D-3711/2020](#) (31 August 2021) had actively collected information on identified targets with knowledge that it was used to authorise assassinations did the court find that the applicant encouraged a joint criminal enterprise. The decisive factor was not the nature of the organisation or the duration of membership, but whether a direct link existed between the applicant's activities and specific crimes.

The contrast between the different approaches to assess what constitutes a substantial contribution is particularly evident when comparing the Belgian and Swiss cases on Syrian army checkpoint roles. Both applicants performed supportive and logistical functions, including providing security, guarding and transporting of prisoners, within structures that were systematically committing crimes against civilians during the same period. The Belgian CALL found a significant contribution on the basis that the applicant's protective and logistical role was integral to the operations through which the crimes were carried out. The Swiss court found no significant contribution on the basis that the effect of comparable activities on specific criminal acts could only be speculated. This contrast is not adequately explained by differences in the underlying facts and reflects instead the fundamental divergence between the conceptions of substantial contribution.

5.4.2. Can a failure to act amount to individual responsibility for an excludable act?

Both EUAA guidance and national case law recognise that a failure to act can lead to a finding of individual responsibility when an applicant had the opportunity to prevent an excludable act. However, the conditions under which the obligation to act arises and the consequences of failing to meet it differ across jurisdictions and across modes of participation.

For applicants in positions of command or authority, the clearest framework is provided by Article 28 of the Rome Statute on command responsibility, which establishes individual responsibility for crimes committed by subordinates on the basis of a failure to prevent or punish, provided that the requisite conditions of effective control and knowledge are met. The French CNDA applied this framework in both [M.N. v OFPRA](#) (15 November 2022) and [N. v OFPRA](#) (23 September 2021), finding that the failure of senior military commanders to investigate, prevent or take any action to stop crimes committed by forces under their command was sufficient to establish individual responsibility without any direct participation in the criminal acts themselves. In *N.*, the CNDA went further, finding that active denial and cover-up of the crimes of subordinates, a form of deliberate omission in the sense of a failure to report or refer the matter to the competent authorities, itself constituted participation in their commission.

The Danish Refugee Appeals Board's decision in [Syri/2020/9/DH](#) (2 June 2020) illustrates the converse; a Syrian army major who repeatedly refused orders to shoot at civilians, actively intervened to prevent attacks and was imprisoned as a direct consequence was found not to have contributed to the systematic crimes of the forces around him. The case confirms that



when an applicant in a position of authority has taken active and personally costly measures to prevent crimes, the omission framework cannot be invoked against them and the inference of individual responsibility that seniority would otherwise support can be rebutted, thus representing a reversal of the burden of proof in such cases.

For applicants in subordinate positions, the picture is more complex. The Norwegian Supreme Court in [Applicant v Immigration Appeals Board](#) (12 December 2023) limited the obligation to act to persons who had both a duty to intervene and the capacity to make a difference, effectively confining it to those in positions of authority or with specific responsibility for preventing the relevant conduct. Based on this approach, a low-ranking applicant without influence over the criminal acts of those around them would not be expected to satisfy the omission standard, though they may still be found individually responsible on the basis of their active contribution.

The Dutch legislative standard under paragraph C2/7.10.2.4 of the VC 2000 is broader, under which any applicant who had an opportunity to prevent a crime and did not use it may be found to have made a substantial contribution by omission, without the need to establish a specific duty to act. Based on the Dutch approach, continued participation in a role that contributed to criminal outcomes without making use of available opportunities to refuse or prevent can suffice for a substantial contribution, even for low-ranking applicants in subordinate operational roles.

5.4.3. To what extent can a substantial contribution be inferred from COI and other contextual factors?

Even when a court does not formally require a direct link between the applicant's contribution and a specific criminal act, it must still decide to which extent the applicant's conduct can be inferred to have had a substantial contribution based on COI and other contextual factors, such as the applicant's position, duration of service and form of association. This question has practical consequences, as a court that is willing to infer causal impact from COI and other contextual factors is in practice applying a different threshold than one that insists on specific evidence of causal effect.

The Dutch District Court of the Hague's assessment in [Applicant v The Minister for Asylum and Migration](#) (14 November 2024), concerning a Syrian police sergeant and assistant officer who conducted background checks on wanted persons, demonstrates a permissive approach to inferring causal impact from COI. The applicant worked in a department that examined the personal data of citizens applying for certificates or stopped by police, cross-checking names against lists of wanted persons supplied by various security services. When a person appeared on the list, the information was passed on and the person was arrested by other authorities. The applicant claimed never to have personally caused an arrest. The court found this implausible.

Drawing on COI documenting the widespread and arbitrary nature of arrests carried out by the Syrian security authorities, it inferred that the applicant would inevitably have encountered wanted individuals in the course of his work and concluded on that basis that his actions formed an important link in the system, which lead to arrests that exposed individuals to a



significant risk of torture and ill treatment. The court did not require specific evidence of what happened to particular people whom the applicant identified as the systemic character of the abuse documented in COI was treated as sufficient to establish that his role had the required causal effect.

A similar approach was adopted by the Supreme Administrative Court in [*Applicant v Finnish Immigration Service*](#) (7 April 2025). The court assessed the individual responsibility of an Afghan applicant who worked with the Afghan National Security Service and arrested members of the Taliban. The Finnish court excluded the applicant on the basis that between 2011-2014 he participated in at least 300 operations aimed at detaining persons suspected of being Taliban or their supporters. The applicant noted that the investigation unit tortured the detainees, which the court characterised as an aggravated, non-political crime. It found that the applicant's participation in the arrests constituted a substantial contribution to the excludable acts. The court assessed his contribution as substantial on account of his long duration of service and the large number of operations in which he was involved, thus concluding that the people he apprehended were also subsequently tortured, especially considering the systematic nature of the torture according to COI.

In contrast, the Swiss Federal Administrative Court declined to draw this inference in comparable circumstances. In the Syrian checkpoint guard case discussed in Section 5.4.1, the court acknowledged the COI establishing the large scale of violence carried out by the Syrian army against civilians. It nonetheless held that from this general context it could only be speculated what effect the applicant's specific activities, including transporting people and food and guarding checkpoints, would have had on the commission of particular criminal acts. The possibility that his activities could have contributed to the Syrian army's goals was not disputed, but the court treated that possibility as insufficient to establish the required causal effect without specific evidence of what his individual conduct actually produced. The court thus refused to allow COI to bridge the gap between the general context and the specific causal impact that its standard requires.

5.4.4. Is purpose-based intent required for aiding and abetting, or does knowledge that one's conduct would facilitate the crime suffice?

When assessing aiding and abetting cases, one of the main points of divergence is whether this mode of participation requires 'purpose-based intent' (intent for the consequences of the crime) or whether knowledge that one's conduct would facilitate the crime is sufficient. Article 25(3)(c) of the Rome Statute sets the threshold at purpose-based intent, requiring that the person acts "for the purpose of facilitating the commission of such a crime". The EUAA and UNHCR guidance explicitly departs from this, holding that it is sufficient that the applicant intentionally engaged in the assisting conduct while knowing that such assistance would facilitate the commission of an excludable act. National courts have not resolved this question consistently, and the divergence has produced opposite outcomes in cases involving comparable conduct.

The Norwegian Court of Appeal has taken the position that exclusion standards are not necessarily governed by ICC criminal liability rules, and when there is a deviation between UNHCR guidance and the Rome Statute, UNHCR guidance must take precedence in deciding



asylum cases. The court applied this reasoning in [Applicant v Immigration Appeals Board](#) (16 April 2024), where it rejected the argument that aiding and abetting requires purpose-based intent derived from Article 25(3)(c) of the Rome Statute (“for the purpose of facilitating”). The case, previously mentioned in Section 5.4.1, concerned a former Syrian conscript ordered to participate in house searches leading to arrests, where those detained were later tortured and killed. It found that there was no doubt that the applicant had knowledge of the consequences of his actions. However, it found no basis that the applicant acted with the intention for the consequences to occur or that his activities were carried out with the ‘purpose of’ the consequences. The court nevertheless concluded that, although it could not be established that the applicant acted with intent to bring about the crimes, the relevant subjective requirement is knowledge that one’s conduct would facilitate the crime, and it found this clearly established in the applicant’s case.

The Norwegian court also addressed a related but distinct question about the minimum level of awareness that satisfies the knowledge and intent requirement for exclusion in [A v Immigration Appeals Board](#) (5 September 2022). Drawing on Section 22 of the Norwegian Penal Code, it identified three levels of intent: direct intent, where the applicant deliberately brought about the criminal consequence; probable intent, where the applicant was aware that the consequence would most likely follow from their actions; and possible intent, where the applicant considered the criminal consequence possible but chose to act anyway. The court left open whether this lowest level, where the applicant was aware only that the crime may occur, rather than that it would, is sufficient to ground exclusion, noting that it may not be compatible with Article 30 of the Rome Statute which requires that material elements be committed with both intent and knowledge. This is a significant gap in the jurisprudence, as even when courts agree that purpose-based intent is not required, it does not follow that any degree of awareness will suffice. There remains an unresolved question about how certain an applicant must have been that their conduct would facilitate a crime before the knowledge threshold for exclusion can be considered to be met.

On the other hand, a stricter approach was adopted by the Belgian Council of State in [XXX v CGRS](#) (29 January 2025). The lower court (CALL) considered that an applicant had aided and abetted war crimes by providing logistical support to soldiers of Mudundu 40 in the Democratic Republic of the Congo, including through the collection of food and money. The alleged war crimes included murder, torture, inhuman and degrading treatment, and the enlistment of child soldiers. While the lower court established that aiding and abetting was based on it being unlikely that the applicant was unaware of the crimes, the Council of State held that Article 25 of the Rome Statute requires proof that the assistance was provided with the intention of facilitating the commission of the crime. It found that mere awareness of the group’s crimes did not, without further reasoning, establish the required intent. The Council of State obliged CALL to explain why it considered that the conditions for the application of a legal provision were met.⁸ Thus, in contrast to the Norwegian court, the requirement of ‘knowledge’ was not the decisive element to establish individual responsibility. As the Council

⁸ Following a rehearing of the case, CALL issued another judgment on 5 August 2025, once again confirming the exclusion of the applicant for aiding and abetting war crimes. The judgment is available on the EUAA Case Law Database: <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=6195&returnurl=%2fpages%2fmanagecaselaw.aspx>



of State is a higher court than CALL, this ruling is particularly impactful in setting the standards to be applied in Belgian case law.

5.4.5. When can knowledge be inferred from the general context rather than established through direct evidence?

Even when purpose-based intent is not required, intent remains inextricably linked to knowledge; there cannot be intent without knowledge. The question addressed in this section is therefore distinct from, but closely connected to, the intent threshold discussed in the previous section. It concerns how far courts are willing to infer the applicant's knowledge from circumstantial evidence rather than requiring direct proof of what the applicant actually knew, and what level of specificity is required before general contextual evidence can be treated as establishing individual awareness.

EUAA guidance provides that knowledge of the specific crime is not required for aiding and abetting insofar as the applicant knew that one of a number of such acts will probably be committed and one of them was in fact committed. It is sufficient that the applicant was aware, based on the circumstances, that their activities would assist or facilitate an excludable act. When the applicant's conduct is more remote from the principal crime, knowledge may need to be inferred from the general circumstances rather than established through direct evidence. Such inference may be made from circumstantial evidence, including information about the general context in which the conduct occurred, the scale of atrocities committed and their general nature in a given region or country, but it should be borne in mind that the applicant may not have possessed this information at the time of the acts. Inferences from COI must therefore be drawn carefully, and the availability of COI does not automatically establish that the applicant had access to it or acted on its basis.

When the abuse is more widespread and systematically documented, such as cases involving crimes against humanity, courts have been more willing to infer knowledge objectively from the general context. This is illustrated by the Syrian security force cases, in which both the Belgian CALL in [X v CGRS](#) (16 April 2024) concerning a former soldier who manned a checkpoint and the Dutch District Court of the Hague in [Applicant v The Minister for Asylum and Migration](#) (14 November 2024) concerning a sergeant who conducted background checks inferred knowledge not only from the applicants' own statements but from the widespread and systematic nature of the abuses documented in COI. Both courts considered that anyone serving within those structures during the relevant period should have been aware of the crimes being committed.

Nevertheless, even when systematic abuse is documented by COI, an individualised assessment remains necessary to determine whether the specific applicant possessed the requisite knowledge. This is illustrated by two cases involving Afghan applicants who performed comparable roles within the same authority, yet the courts reached opposite conclusions. On 7 April 2025, in [Applicant v Finnish Immigration Service](#) (mentioned in Section 5.4.3), the Finnish Supreme Administrative Court excluded an applicant who worked with the Afghan National Directorate of Security (NDS) between 2011-2014, arresting persons who were subsequently handed over to the intelligence unit. Although the applicant claimed he was not certain whether torture was being carried out by the other unit, the court did not



accept this. It gave decisive weight to his own statements that he had suspected torture was occurring, based on overhearing conversations about it and observing detained persons who were unable to walk properly. Combined with COI establishing the widespread and systematic nature of torture across the NDS during that period, the court concluded that the applicant must have been aware of what was happening to those he helped to arrest.

A different conclusion was reached by the Danish Refugee Appeals Board in [afgh20252](#) (23 January 2021) concerning a comparable case of an applicant who worked with the NDS from 2017-2021. The applicant claimed he was unaware of torture by other units and had only a general perception that it could occur. The board treated this as insufficient to fulfil the knowledge requirement, accepting his explanation that torture was prohibited by law and that he had been informed of this during training, findings which it corroborated with COI. Critically, rather than relying on evidence of torture across the NDS as a whole, the board examined the COI with considerable specificity, looking at the province where the applicant worked, the time period of his service and the unit to which he belonged. On that more precise reading, the picture was considerably less clear-cut than in the Finnish case. Country reports showed that rates of torture had decreased since 2011 and varied significantly across provinces, with only 7 out of 42 detainees in the applicant's specific province reporting torture between 2017-2018. Taking into account the applicant's subordinate position, his non-participation in interrogations and his lack of knowledge about the working methods of other units, the board concluded that individual awareness of torture could not be inferred from the general context alone.

A more recent decision by the Danish Refugee Appeals Board ([Afgh/2025/41/lafal](#)), pronounced in September 2025, also concerned an Afghan applicant who was employed with the NDS but for a longer period of time (1982-1990 and 2010-2013). This case concerned a different time period from the previous cases, as it assessed the applicant's participation in approximately 350 security operations which involved the capture and handing over of prisoners to other departments from 1985-1990. Based on COI, the board established that during the Afghan-Soviet war, torture was carried out systematically by the NDS, which had interrogation offices across all provinces in Afghanistan. Although the applicant denied having knowledge of the torture being carried out, the board found this unconvincing in light of his rank and long duration of employment and upheld his exclusion from international protection.

The different outcomes reflect not only the different time periods and provincial contexts in which the applicants served, but also a difference in the weight given to the applicants' own statements and the level of specificity at which COI was examined. In the Finnish case, the applicant's own account provided a basis for inferring knowledge that the court treated as decisive. In the first Danish case, the absence of such indicators, combined with a more detailed reading of the COI, pointed in the opposite direction. On the other hand, the second Danish case demonstrates that inference of knowledge cannot be based only on COI and must also be assessed based on the individual circumstances of the applicant, including their rank and length of employment. The cases illustrate both the importance of examining COI at an appropriate level of specificity and the significance of the applicant's own statements and role to the knowledge assessment.



These cases point to a practical challenge for decision-makers and courts. The main difficulty is knowing when the general context is of such a nature to justify concluding that a particular applicant must have been aware of the crimes taking place. The framework permits knowledge to be inferred from the general context but does not give precise guidance on where that threshold lies; is it enough to establish that abuse was widespread across an organisation as a whole, or must the analysis go further and look specifically at the unit, province, time period and role of the individual applicant? The Danish case suggests the latter, but not all courts have applied that level of detail. This uncertainty, combined with the fact that sufficiently detailed COI may not always be available, creates a real risk of divergent outcomes for applicants in broadly comparable situations.

The CJEU has been instrumental in embedding the principle that exclusion cannot be applied automatically, holding in *B and D* and *Lounani* that an individualised assessment of the applicant's specific role, knowledge, contribution and personal circumstances is always required to establish individual responsibility. This principle has been upheld consistently by national courts and has since been codified in the QR.

Yet as the case law demonstrates, despite this clear direction, national courts continue to diverge in how they apply the assessment framework in practice. Disagreements persist over what constitutes a substantial contribution to an excludable act, what level of intent is required and how far knowledge can be inferred from the broader systemic context. These divergences may produce materially different outcomes for applicants in comparable situations, undermining the consistency that the CJEU's case law was designed to deliver. Greater harmonisation remains essential if the exclusion clauses are to be applied in a manner that is both principled and uniform across the EU.



6. Grounds negating individual responsibility

The assessment of factors capable of negating individual responsibility forms an essential next step in the exclusion analysis. In *Lounani*, the CJEU confirmed the relevance of such factors, noting that when assessing an applicant's share of responsibility for an excludable act, regard must be paid to “any pressure to which he was exposed or other factors likely to have influenced his conduct”. Under Articles 12(2)(5) and 17(5), the QR adds additional safeguards for minors in this regard, as it references the need for the determining authority to assess a minor’s capacity to be considered responsible under criminal law had the minor committed the crime on the territory of the Member State, in light of the national law on the age of criminal responsibility. It therefore codifies minority as one ground which may negate individual responsibility.

In practice, courts generally conduct this assessment by reference to Articles 31-33 of the Rome Statute, which recognise the following grounds for excluding criminal responsibility: mental disease or defect, intoxication, self-defence, duress, mistake of fact or law, superior orders and prescription of law.

The EUAA [Practical Guide on Exclusion from International Protection](#) (September 2026) aligns closely with this international legal framework. It groups mental disease or defect, involuntary intoxication and immaturity under justifications relating to capacity to act, and treats duress, self-defence and superior orders as defence-based justifications.

The following subsections analyse how national courts have interpreted and applied each of these grounds in practice. The jurisprudence reviewed reveals a consistently cautious judicial approach to negating individual responsibility on these grounds, particularly when the crimes in question are serious. Only a small number of courts routinely assess for negating factors even if none are invoked by the applicants.

6.1. Capacity to act

A lack of mental capacity to comprehend and control one's conduct may negate individual responsibility in the exclusion assessment. The EUAA [Practical Guide on Exclusion from International Protection](#) (September 2026) identifies three grounds under this heading: mental disease or defect, involuntary intoxication and immaturity. Each is examined in turn below.

6.1.1. Mental disease or defect and involuntary intoxication

Article 31(1)(a) of the Rome Statute refers to a mental disease or defect that destroys a person's ability to understand the unlawfulness or nature of their conduct, or that impairs their capacity to act in conformity with the law. In the context of asylum, this ground was considered by the Dutch Council of State in [Applicant v State Secretary for Justice and Security](#) (20 April 2021). The council found that the Dutch asylum authority failed to consider evidence that the applicant suffered from bipolar personality disorder (BPD) which was directly relevant to his individual responsibility for committing rape in his country of origin. The court gave weight to a



statement from the Iranian military commission exempting the applicant from military service following the BPD diagnosis by a panel of medical professionals and noted that the authority had also failed to address the applicant's claim that he had attempted suicide shortly after committing the crime.

This case also shed light on the interplay between mental disease and involuntary intoxication, which is another negating factor identified by the EUAA's practical guide that can impede an applicant's capacity to act. This aligns with Article 31(1)(b) of the Rome Statute. In this regard, the court held that the fact the applicant stated he was under the influence of narcotics at the time of the crime did not preclude the asylum authority from conducting further investigation, as the applicant had undisputably stated that the use of these substances followed from his psychological condition. This reasoning, which treats a mental disease as the cause of the intoxication rather than assessing the two separately, shows a different type of involuntary intoxication beyond its more obvious application to forced drug administration by third parties.

6.1.2. Immaturity

Although not referred to as a ground exempting criminal responsibility under the Rome Statute, in the context of asylum, immaturity constitutes a further ground relevant to capacity to act. The EUAA's guidance states that exclusion is not justified when an applicant has not reached the minimum age of criminal responsibility at the time of the excludable conduct. Since no internationally agreed minimum age applies specifically to the exclusion context, courts generally rely on national criminal law of the host country to establish the applicable threshold. Even when an applicant has reached the age of criminal responsibility, the guidance cautions that additional circumstances must be considered, including the applicant's emotional, mental and intellectual maturity.

This ground arises most frequently in cases involving former child soldiers, when the combination of young age, coercive recruitment and exposure to violence raises particular challenges for the assessment of individual responsibility. This is illustrated in [M.C. v OFPRA](#) (4 October 2021). The CNDA found that a former Liberian child soldier who joined the Liberians United for Reconciliation and Democracy (LURD) at the age of 12 could not be held individually responsible for the atrocities he committed during the civil war in his home country. The CNDA noted the following as negating factors: "his very young age at the time of the events, his extreme vulnerability resulting in particular from the disappearance of his family members in sordid conditions and the physical and psychological control exercised by the other members of the group".

The CNDA considered that the recruitment of the applicant between the age of 12-14, the violence he experienced within the group and the abuses he had to take part in under threats of violence and under the forced consumption of drugs constituted war crimes. It grounded this conclusion in international law, including Article 77 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 38 of the United Nations Convention on the Rights of the Child, Article 8 of the Rome Statute and Article 461-7 of the Criminal Code. The applicant was granted refugee status for his past experience of



persecution of exceptional gravity and inability to claim protection from the Liberian authority, in light of the intense and permanent physical and psychological aftereffects that he retained. The case established an important principle that when the combination of age, coercion and vulnerability is sufficiently compelling, former child soldiers who have committed serious crimes may not be held individually responsible for those acts.

When assessing the applicant's capacity to act, as the Finnish Supreme Administrative Court has demonstrated in [Applicant v Finnish Immigration Service](#) (26 May 2023), the applicant's profile must be assessed within the context of the applicant's environment and not merely their age and mental state in isolation. The court found that the applicant, who was 16 years old when he joined the Afghan police force and therefore at the minimum age of criminal responsibility under Finnish law, could not be excluded from international protection. While acknowledging his age, mental maturity and state of health as relevant factors, the court gave decisive weight to the context in which the applicant operated, characterised by a protracted conflict involving multiple state and non-state actors, the use of violent disciplinary methods by police without accountability, and reports and rumours heard by the applicant that officers who disobeyed orders risked being shot by their own people in combat situations. Assessed against these circumstances, as well as in light of the applicant's young age and relatively low level of education and position, the court concluded that the applicant had no realistic opportunity to act differently given his knowledge and resources, thus he could not be considered to have understood that transporting apprehended persons would constitute a material contribution to aggravated crimes.

The French and Finnish cases illustrate that the assessment of immaturity is not reducible to a simple question of age. It requires a contextualised evaluation of the applicant's capacity to understand and resist participation in the excludable acts, taking into account the full range of personal, environmental and situational factors that shaped their conduct at the relevant time. When those factors combine to deprive the applicant of any realistic opportunity to act differently, the immaturity ground may negate individual responsibility even when the formal age threshold has been reached.

6.2. Superior orders

Article 33 of the Rome Statute provides that criminal responsibility is generally not negated by the fact that a crime was committed pursuant to an order of a government or superior, unless three cumulative conditions are met: the person was under a legal obligation to obey the order; the person did not know that the order was unlawful; and the order was not manifestly unlawful. Article 33(2) adds that orders to commit genocide or crimes against humanity are always manifestly unlawful, placing those crimes categorically beyond the reach of this defence.

The Belgian CALL applied this framework in [X v CGRS](#) (20 April 2021). The case concerned a Chinese village secretary who had participated in the forced implementation of China's birth control policy, including through forced abortions characterised as crimes against humanity. CALL acknowledged that the applicant had acted under institutional pressure and on the instructions of his direct superior, but it found that individual responsibility was nonetheless



established. Applying Article 33(2), it held that crimes against humanity are manifestly unlawful and cannot be justified by reference to superior orders.

Even when the manifestly unlawful threshold under Article 33(2) is not satisfied, courts have shown considerable reluctance to accept superior orders as a negating factor. The French Council of State's decision in [E.A.D. v OFPRA](#) (26 April 2022) is illustrative in this regard. The council considered that a former soldier in the Chadian Army was individually responsible for participating in violence against civilians, constituting serious, non-political crimes, as he was personally and regularly involved in committing such excludable acts. The fact that he acted under the orders of his superior in the performance of his duties was not found to be sufficient to negate his responsibility. Although the council recognised that his disobedience could give rise to severe penalties, the gravely illegal nature of the acts, of which he could not have been unaware, took precedence over this fact. While the applicant stated he was aware of the harm caused to civilians and regretted his actions, the council assessed this in light of his actions, which on the contrary demonstrated that he departed the army after 2 years of service for reasons related to remuneration and the lack of prospects for advancements within the ranks of the military hierarchy. It thereby concluded that the applicant was not coerced, nor did he disassociate himself from the crimes.

6.3. Duress

The threshold for establishing a situation of duress is high, as according to Article 31(1)(d) of the Rome Statute it must result "from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be: i) Made by other persons; or ii) Constituted by other circumstances beyond that person's control".

Courts have consistently applied this threshold strictly, and cases in which duress has successfully negated individual responsibility are comparatively rare. One such case is [Erit/2019/5KAA](#) (15 December 2020), in which the Danish Refugee Appeals Board established duress in the context of mandatory military service in Eritrea. The applicant had served as a guard with the rank of a private and had on three occasions guarded the transport of prisoners between a military base and a prison where he believed detainees had been and would be subjected to abuse. He also claimed that during his time in the army, he had witnessed physical punishment. He claimed never to have used violence personally against prisoners and reported that his annual leave and salary had been withdrawn when he failed to carry out an order to punish a detainee.

The board found that the applicant had been forced to perform military service and to act as a guard without any realistic possibility of refusing orders, and escape was rendered particularly difficult by the intensive surveillance and movement controls that characterise the Eritrean context. On the basis of those findings, the board concluded that the applicant's conduct had been performed under duress and that he could not be excluded on the ground of having committed a serious, non-political crime.



When country of origin information shows that a situation of duress may exist, including when forced membership may occur or that a person may face reprisals for refusing orders or leaving a group, courts have afforded primary weight to the applicant's personal motivations, including their reasons for joining the group, their length of membership, attempts to leave, whether they were promoted throughout their membership and their reasons for leaving or wanting to leave. For example, in [The Minister for Asylum and Migration v Applicant](#) (7 July 2025) the Dutch Council of State considered that, even though COI showed forced recruitment into the Eiye cult in Nigeria occurred and cult members may face reprisals for leaving, in the applicant's case it was established that he had joined the group with the intention to become more popular, gain respect and no longer have to fear anyone. It therefore could not be established that he was forced to join, remained a member under duress or tried to escape, especially considering that over the years he was entrusted with more powers and responsibilities within the group.

The same approach was applied by the Norwegian Court of Appeal in [Applicant v Immigration Appeals Board](#) (16 April 2024), wherein the court determined that the applicant should not be exempted from individual responsibility as his primary motivation to flee the Syrian army was not related to reasons of duress. The case concerned a former soldier in Syria who in the spring of 2011 had been ordered to participate in house searches in which opposition figures were arrested and handed over to security forces. He argued that he acted under coercion and therefore lacked guilt under Section 31(1)(b) of the Immigration Act. However, the court dismissed the argument of superior orders, as it found that the applicant knew detainees faced torture and murder and was not legally obliged to carry out manifestly unlawful acts.

On the other hand, the court accepted that, while on active service as a private in the Syrian army during the suppression of a rebellion, a refusal to obey orders would likely have exposed him to an immediate and serious risk of death or severe injury. Evidence indicated that soldiers who disobeyed orders were shot, and the court found this credible. Given his low rank and awareness of the regime's practices, a refusal appeared to carry extreme personal danger. The key issue became whether he had a realistic opportunity to desert and thereby avoid participation without facing imminent death. Although many soldiers deserted during that period, the court found that this was not a realistic option for him. As a Kurd serving in a non-Kurdish area and without a local support network, desertion would have been especially difficult and dangerous. Even during leave, checkpoints and controls made escape risky.

Despite acknowledging that desertion would have entailed a significant danger, the court ultimately concluded, though acknowledging with considerable doubt, that his decision not to desert was not primarily motivated by the need to avoid an imminent threat of death or serious harm. Instead, his explanations suggested that he followed his father's advice to complete the short remainder of his service. As he did not clearly frame his decision as one driven by an immediate fear for his life, the court found that the strict legal requirement for duress was not met and he was excluded from asylum. This case also demonstrates that when there is uncertainty, courts do not always apply the benefit of the doubt when assessing mitigating factors in favour of the applicant.

In the context of war crimes, courts have assessed duress against the concept of a 'state of emergency' drawn from international criminal law. The Finnish Supreme Administrative Court's



decision in [Applicant v Finnish Immigration Service](#) (7 April 2025) concerning a former Taliban member is the most detailed application of this framework in the jurisprudence reviewed. The applicant had been forcibly recruited into the Taliban as a 15-year-old minor, subjected to serious rights violations and participated in the execution of seven people. He claimed that he had acted under the influence of drugs and out of fear of being killed if he refused, pointing to a separate incident in which another recruit was allegedly killed for refusing to shoot. The court did not resolve the case on the basis of age and capacity alone, but instead proceeded to assess duress by reference to Article 31(1)(d) of the Rome Statute and international criminal case law, including the ICC's decisions in *Prosecutor v Dominic Ongwen* and *Prosecutor v Al Hassan Ag Abdoul Aziz Ag Mohamed Ag*. Drawing on these sources, the court affirmed that an abstract or persistent risk of danger is insufficient to establish a state of emergency; there must be a justified and explicit threat of immediate death or serious bodily harm that is ongoing or imminent at the time the offence is committed.

The court found that, despite being a minor, he was criminally responsible due to his age, mental maturity and health. The court held that, although his circumstances were aggravating and potentially threatening to his life and health, he was nevertheless individually responsible because he did not consistently resist orders or attempt to escape during his year with the organisation. His claims of drug use and the killing of a fellow recruit who had refused were raised for the first time at a late stage of proceedings and were assessed as lacking credibility. The court gave significant weight to the gravity of the crimes and the harm caused, which included repeated participation in executions resulting in seven deaths, and concluded that the circumstances did not establish an immediate and unavoidable threat sufficient to satisfy the legal threshold for duress. The applicant was accordingly excluded.

The case reinforced a principle which is visible across the jurisprudence on duress that the more serious the crime, the more demanding the evidentiary threshold that courts apply before accepting that a ground negates individual responsibility.

6.4. Self-defence

Article 31(1)(c) of the Rome Statute sets out the ground of self-defence, stipulating that a person shall be excluded from criminal responsibility when:

“The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph.”

When a situation of duress or state of emergency does not exist, courts may still need to assess whether there are justifications for individual responsibility on the grounds of self-defence. This was highlighted by the Austrian Supreme Administrative Court in [Applicant v Federal Office for Immigration and Asylum](#) (26 November 2024). In this case, the



lower court had considered that the Afghan applicant should be excluded from protection as when he was 16 years old, two days before he left his home country and he shot and killed his paternal uncle and cousin after they became violent against his mother for her refusal to enter into a forced marriage with the uncle after her husband passed away. It found that the applicant never claimed that the situation would have been life-threatening, nor did this emerge following an assessment of the facts. The court considered that there was no excusable state of emergency within the meaning of Austrian law, as the uncle and cousin were unarmed. The court considered that shooting at two people could be considered a much more serious consequence than the acts of violence perpetrated by the uncle and cousin, especially considering the fatal consequences.

However, the Supreme Administrative Court found the lower court's assessment to be insufficient as it failed to recognise the requirement to justify the application of the exclusion ground. The court noted that the federal court did not take into account all the circumstances of the event to clarify whether the conduct could be characterised as a serious, non-political crime. It described the federal court's examination of an 'exculpatory state of emergency' as brief and considered that a comprehensive examination of whether the applicant acted in self-defence to prevent an unlawful attack on his mother was omitted. This case clearly sets out self-defence as a separate ground which merits its own independent analysis in the context of asylum.

The jurisprudence reviewed in these sections reveals a consistently cautious judicial approach to negating individual responsibility, particularly when the crimes in question are serious. Generally, the applicants report and substantiates negating factors to preclude their exclusion from international protection. However, the Austrian court in this case also illustrates that when potential negating grounds are apparent from the facts, the obligation to assess them does not depend on the applicant having explicitly invoked them, and a failure to conduct that assessment may itself constitute an error.

When there are indicators of negating grounds, applicants must be given sufficient opportunity to substantiate this. This reasoning was upheld by the Supreme Administrative Court in Finland in [Applicant v Immigration Office](#) (18 December 2023). The determining authority considered that he had committed a serious, non-political crime by shooting his cousin in Iraq after he entered the applicant's family house and shot at him. On appeal before the lower court, the applicant's request for an oral hearing to elaborate on the shooting incident and clarify whether he acted out of self-defence or force majeure was refused. The higher court noted that the burden of proof belonged to the state and found that the lower court should have allowed the oral hearing to follow up sufficiently on the negating factors raised by the applicant, especially considering that the lower court's interpretation and assessment of the events differed from the applicant's own understanding and progress of the events, in addition to there being negating elements.



Negating factors must always be considered as part of the exclusion assessment, as the CJEU confirmed in *Lounani*. In practice, however, courts approach this stage cautiously, and it is rare for such a ground to succeed in negating individual responsibility. Superior orders provide little protection when the acts are manifestly unlawful. Duress requires proof of an immediate and unavoidable threat at the time the offence was committed, and courts have been reluctant to accept this defence even when the applicant faced real danger. Arguments based on the applicant's capacity have had more success, but only when there is clear evidence directly linking the applicant's condition to the acts in question.

Two practical points also emerge from the case law. As a general rule, courts tend to place the burden of proof on the applicant to raise and demonstrate any negating factors. However, as the Austrian Supreme Administrative Court's ruling demonstrates, when the facts of the case clearly suggest that a negating ground may exist, decision-makers are obliged to consider it even if the applicant has not raised it themselves, and failing to do so can amount to a legal error. Ensuring that this obligation is met consistently across Member States remains an important part of the wider effort to apply the exclusion clauses fairly and uniformly across the EU.



7. Post-offence considerations

Provisions related to exclusion from international protection concern acts that an applicant has committed. However, none of the legal instruments address the question of what weight, if any, should be given to developments occurring after the excludable conduct. Whether an applicant has served a custodial sentence, whether a significant period has elapsed since the offence or whether genuine remorse has been expressed are matters on which the legislative framework is silent. Until recently, that silence was broadly interpreted by national courts as rendering such considerations irrelevant to the exclusion assessment.

EUAA and UNHCR guidance have long held that such factors may be relevant to the assessment of whether the exclusion clauses apply. According to their guidance, relevant post-offence considerations may include whether the applicant has served the sentence, their conduct since the crime, the expression of remorse, whether they have made reparation or assumed responsibility for the act, the passage of time since the criminal conduct, and whether the applicant has benefited from an amnesty or pardon. Both the EUAA [Practical Guide on Exclusion from International Protection](#) (September 2026) and the UNHCR [Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees](#) caution, however, that the weight to be given to these factors diminishes as the seriousness of the excludable act increases, and some crimes are so grave that post-offence considerations cannot justify the non-application of the exclusion clauses.

That position has been confirmed by the CJEU's ruling in [K. L. v Migration Department at the Ministry of the Interior of the Republic of Lithuania \[Galte\]](#) (C-63/24, 30 April 2025), when it held for the first time that post-offence considerations must be taken into account in the exclusion assessment. The ruling represents a meaningful evolution in the applicable legal framework, establishing that the exclusion assessment is not a purely retrospective exercise fixed at the moment the crime was committed, but one that must consider the applicant's circumstances at the time the asylum decision is taken.

Sections 7.1 and 7.2 examine the CJEU's reasoning in *Galte* and the manner in which national courts have begun to respond to the ruling.

7.1. CJEU jurisprudence

In the *Galte* ruling, the CJEU confirmed for the first time that post-offence considerations are relevant to the assessment of the exclusion clauses based on Article 12(2)(b) of the recast QD and must be taken into account by determining authorities. This ruling may have implications for the other exclusion provisions and for the application of the corresponding provisions of the QR.

The court interpreted the temporal distinction within the concept of a serious, non-political crime. It noted that the word 'crime' refers to factual circumstances fixed at the point in time



when the act was committed. The qualifying adjective ‘serious’, by contrast, is an element of assessment that is not fixed at that moment. It therefore ruled that the seriousness of a crime may be assessed differently at the time it was committed and at the time the asylum application is examined. It follows that post-offence developments are not irrelevant to the exclusion assessment but must be considered as part of the evaluation of seriousness.

On the basis of this reasoning, the court specified that the following factors must be taken into account in assessing the seriousness of a crime: the type of act; the possible sentence and the one imposed; the period which has elapsed since the criminal conduct; the conduct of the applicant during that period; and any remorse expressed.

The court gave particular weight to whether the applicant had served their sentence, noting that the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status expressly identifies this as a relevant consideration, and emphasising the importance of the UNHCR's role as conferred by the Geneva Convention. The court was nonetheless careful to clarify that serving a sentence does not automatically preclude the application of the exclusion clauses.

Additionally, in justifying its position, the CJEU noted that by taking into account the sentence served by the applicant, the objectives of the exclusion clauses would not be undermined. In this regard, it held that the exclusion of an applicant who has served their sentence would not be justified by the objective of preventing that person from escaping criminal liability for the crime, while on the other hand, the crime cannot permanently render the person underserving of international protection without taking into consideration their possible rehabilitation. The court also emphasised that the application of Article 12(2)(b) does not depend on the person representing a present danger to the host country or on a proportionality assessment, and therefore, the assessment of the level of seriousness of a crime does not preclude the authorities from taking into account whether a sentence was served.

7.2. Impact of the *Galte* ruling on national case law

The *Galte* judgment substantially impacted the application of the relevant legal provisions.

Prior to the CJEU's ruling, post-offence considerations were generally entirely disregarded from the exclusion assessment, or when invoked by the applicant, their relevancy was explicitly ruled out by the court. For example, French courts have consistently rejected arguments based on the sentence served as a basis for precluding the application of the exclusion clauses. This is illustrated by the French Council of State in [A v OFPRA](#) (13 March 2020), which concerned the exclusion from refugee status of an applicant who had financed a terrorist organisation. The council ruled that neither Article 1F(c) of the Geneva Convention nor the corresponding national provisions make the application of the exclusion clauses conditional on the existence of a present danger to the host state and the applicant could not therefore rely on the fact that he had served his prison sentence.

An exception to this emerges from German case law. The German Regional Administrative Court's decision in [Applicant v Federal Office for Migration and Refugees](#) (3 June 2024) was



particularly significant because the court independently reached a position close to what the CJEU later confirmed in *Galte*, without the benefit of that ruling. The case concerned an applicant who had been sentenced to 2 years 6 months in juvenile detention for rape, which had led to his exclusion from subsidiary protection on the ground of having committed a serious, non-political crime. The court held that because the offence had occurred 2.5 years earlier, additional criminal offences had not been committed and the applicant had completed all probation measures, these aspects "must undoubtedly be included in the assessment of the seriousness of the criminal offence". This reasoning reflects what the CJEU later ruled in *Galte*; that the seriousness of a crime is an element of assessment that may change over time. It also demonstrates that at least some national courts had already moved in this direction prior to the CJEU's judgment.

The case also illustrates the limits of post-offence factors where a pattern of violence and absence of remorse is established. Notwithstanding its acknowledgement that the passage of time and completion of probation were relevant, the court ultimately upheld the exclusion on the basis that the applicant had multiple prior convictions for violent offences, attempted to influence a witness to give false testimony, had not assumed genuine responsibility for the crime and the victim continued to suffer considerable harm. This illustrates how these factors may be assessed in practice, showcasing that when harmful tendencies persist and remorse is absent, the passage of time becomes less relevant.

Given the recent pronouncement of the CJEU's ruling, only limited national jurisprudence was identified which has applied the *Galte* reasoning. The Belgian case law provides a clear illustration of the direct impact of the *Galte* ruling on national practice.

Prior to *Galte*, CALL had consistently rejected post-offence considerations as irrelevant to the exclusion assessment. For example, in [X v CGRS](#) (12 May 2022) it ruled that the fact that an applicant who was convicted of migrant smuggling with aggravating circumstances had served his sentence and had subsequently focused on for social reintegration were not exonerating circumstances capable of precluding the application of the exclusion clauses.

Following *Galte*, CALL's approach shifted materially. In [X v CGRS](#) (22 May 2025), the court annulled a decision excluding an applicant from international protection for having committed a serious, non-political crime outside of Belgium, where a sentence of 1 year 3 months was served by the applicant in Germany for assault and battery. Applying the CJEU's reasoning directly, the court assessed the seriousness of the crime in light of the post-offence factors identified in *Galte*, including the sentence served, the passage of time and the applicant's conduct during that period. It concluded that the concept of 'serious' can evolve over time, and the fact that a person commits serious offences at a certain point in their life must not necessarily lead to that person being permanently considered unworthy of international protection. The decision therefore suggests that the *Galte* ruling has the potential to produce concrete changes in exclusion outcomes, particularly in cases involving less grave offences where post-offence factors weigh significantly in the applicant's favour.

Additionally, the Austrian Supreme Administrative Court's decision in [Federal Office for Immigration and Asylum \(Bundesamt für Fremdenwesen und Asyl, BFA\) v Applicant](#) (30 June 2025) is significant because it extends *Galte* to subsidiary protection and identifies a specific



risk of misapplication. The case concerned an Afghan national convicted of multiple offences in Austria over several years, including drug trafficking, resulting in a three-year custodial sentence. The Federal Administrative Court found that his return would violate Article 3 of the ECHR and granted him subsidiary protection under section 8(1) of the Asylum Act 2005. It held that his convictions could not form a sound basis for exclusion under section 9(2)(3) of the Act, which implements Article 17(1)(b) of the recast QD, because they were more than six years old and closely linked to an addiction disorder. It reached this conclusion without making findings on the underlying criminal conduct.

The Supreme Administrative Court set aside the decision in so far as it concerned subsidiary protection, finding it unlawful in content. First, it confirmed that the post-offence circumstances identified in *Galte* must also be taken into account when assessing exclusion from subsidiary protection. Although *Galte* concerned exclusion from refugee status under Article 12(2)(b) of the recast QD, both provisions share the same purpose of excluding persons unworthy of the protection associated with the relevant status. Secondly, with reference to the CJEU ruling in *Ahmed*, the court held that these circumstances can only be weighed against established findings on the criminal conduct itself. Whether serving the sentence and subsequent good conduct have caused an earlier unworthiness to cease depends on the nature of that conduct. The lower court had instead relied on the passage of time and the addiction without establishing what the applicant had done. The court further held that addiction is relevant only where the offences were committed without criminal responsibility and the criminal court had ordered committal alone. There was no such finding, and the record suggested the opposite. The court also pointed out that the applicant had been released in November 2020 and convicted again in 2023.

In effect, the lower court used post-offence factors to avoid the exclusion assessment rather than as part of it. In accordance with the Supreme Administrative Court's approach, the correct sequence is first to establish the criminal conduct and determine whether it constitutes a serious crime, and then to assess whether the passage of time and subsequent conduct mean that the person is no longer unworthy of protection at the time of the decision. As *Galte* does not make this sequence explicit, the Austrian decision adds an important practical clarification in this regard.

The full impact of *Galte* across EU jurisdictions remains to be seen. The limited national case law since its pronouncement reflects the recency of the judgment rather than a considered judicial response to it. As national courts begin to apply the ruling more systematically, the key questions will be how they calibrate the weight given to each of the factors identified by the CJEU and, in particular, how they apply the principle that the relevance of post-offence considerations diminishes as the gravity of the crime increases.



Conclusions

Exclusion clauses under EU asylum law are a complex and evolving area of jurisprudence in which the interplay between international criminal law, EU asylum law and national court interpretations continues to generate both convergence and divergence across EU+ jurisdictions. While the CJEU has played an indispensable standard-setting role, most notably through its judgments in *Germany v B and D*, *Shajin Ahmed*, *Lounani*, *GM* and, most recently, *Galte*, the analysis of national case law reveals that significant gaps in harmonisation persist, with potentially serious consequences for the coherence and fairness of exclusion decisions across the CEAS.

Several unresolved legal questions and challenges of significant practical importance have been identified. With regards to the ground of a serious (non-political) crime, a uniform definition of a serious crime does not exist across jurisdictions. The *Ahmed* criteria have not been given any hierarchical weighting, leaving courts to weigh them differently. There is also no consensus on what length of sentence is indicative of seriousness, nor on whether the actual sentence or the maximum available is the more relevant reference point.

Concerning acts contrary to the purposes and principles of the UN, the CJEU in *Lounani* confirmed that facilitation of terrorism or a terrorist act can fall within Article 12(2)(c) but left unresolved how remote or minor the conduct may be before it falls outside of the provision, with national courts subsequently applying different thresholds. Courts have also reached opposite conclusions on whether specific groups qualify as terrorist organisations. As the terrorist character of a group is a threshold question for the application of *Lounani*, this divergence may produce entirely different outcomes for identical conduct.

Beyond the context of terrorism, there is divergence on whether findings under this ground require an explicit UN Security Council resolution or whether a broader range of international instruments can suffice. Courts which have relied on a broader scope of instruments have applied this ground to acts which would not have been covered through a more restrictive approach, such as human smuggling.

Finally, the concept of ‘serious and sustained violations of human rights’ as a distinct basis for exclusion on this ground has generated very little jurisprudence. The French CNDA’s ruling which designated human trafficking by the state as a serious and sustained violation of human rights provides one interpretive model, but the threshold remains undefined on how systematic the violations must be, whether a state nexus is required and which rights qualify.

Regarding Article 17(1)(d) (Danger to the community or security of a Member State), the CJEU confirmed that a danger to the community must be genuine and present, but it has not specified how serious the threatened conduct must be. While German courts previously required a concrete threat comparable to terrorism, homicide or major trafficking, the German Federal Administrative Court has recently shifted this stance to encompass the accumulation of less serious violations. Similarly, courts in France and Latvia have applied this ground in the case of applicants who demonstrate a pattern of antisocial behaviour and institutional non-



compliance. Additionally, following the CJEU's ruling in *GM*, the depth of a judicial review of national security assessments remains unresolved and courts have interpreted this differently.

The assessment of individual responsibility, and in particular the modes of participation and the applicable requirements, emerges as the area of greatest divergence at the national level. Most national courts do not identify the specific mode of participation before conducting the assessment, meaning that different evidentiary criteria, which vary by mode, are applied inconsistently. What constitutes a 'substantial contribution' is interpreted in fundamentally different ways, while the requirements for knowledge and intent also raises several points of divergence, including on whether aiding and abetting requires purpose-based intent or knowledge that one's conduct would facilitate the crime, and to which extent can individual knowledge about abusive practices within an institution be inferred from COI documenting its widespread nature.

The CJEU's 2025 ruling in *Galte* marks a significant step forward in the evolution of the exclusion framework, confirming that post-offence factors – such as serving a sentence, the passage of time, subsequent conduct and the expression of remorse – must form part of the assessment of the seriousness of a crime. This ruling, which aligns CJEU jurisprudence with the longstanding position of the EUAA and UNHCR, offers national authorities a clearer basis for conducting a more holistic and temporally-sensitive assessment. The early incorporation of the *Galte* reasoning into Belgian case law suggests that this judgment has the potential to introduce a meaningful corrective to the previously rigid approach of some national courts. However, the full impact of this ruling across EU+ jurisdictions remains to be seen, and its implementation will require sustained attention and guidance.

Looking forward, the direct applicability of the QR from 12 June 2026 is expected to reduce some of the interpretive variation that previously arose from the non-uniform transposition of the recast QD. The QR confirms that no proportionality assessment is required for any exclusion ground, clarifies the temporal scope of exclusion from subsidiary protection, codifies the requirements for an assessment of the individual responsibility of the applicant, and adds additional safeguards for minors.

These developments are welcome, but the QR does not resolve the deeper substantive questions identified in this report. The challenges of securing a consistent and fair application of the exclusion clauses across EU+ countries will continue to require judicial engagement and authoritative guidance from the CJEU. The harmonisation of outcomes will largely depend on the consistent application of this framework by national decision-makers and courts.



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