

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 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.

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