

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 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 Idegenrendeszeti 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.

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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”.

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