

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.

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

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