

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 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.

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