

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 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 disproportionally 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.

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