

2.3.3. Non-political character of crimes

While both exclusion from refugee status and exclusion from subsidiary protection require that the relevant offence be serious, exclusion from refugee status under Article 12(2)(b) of the recast QD includes an additional condition, as the crime must also be *non-political*. This requirement reflects the principle that not all serious violence automatically constitutes ordinary criminality for the purposes of exclusion, particularly when acts occur within the context of armed conflict or resistance against state authority.

The EUAA Practical Guide on Exclusion for Serious (Non-political) Crimes (October 2026) recognises that certain offences may be considered *purely political* and therefore fall outside the scope of Article 12(2)(b), such as direct attacks on the integrity of the state, treason, espionage, subversive propaganda and membership of a prohibited political party.

A 'predominance test' is often relied on by courts to ascertain the political nature of the crime, by assessing whether the crime has a predominantly nonpolitical motivation or is disproportionate to a claimed political objective. This test is set out in the EUAA practical guide and involves the consideration of whether:

i. The offence is connected to a struggle for political power;
ii. The offence is motivated by political ideology;
iii. There is a close and causal link between the act and its claimed objective; and
iv. The means used and the harm caused are proportionate to the claimed political objective.

A similar analytical approach is evident in the jurisprudence of the French Council of State, which emphasises both the *direct link* between the act and the political objective, and the *adequacy and proportionality* of the means used. Its reasoning in *D.B.A.* v *OFPRA* (21 June 2022) demonstrates the importance of contextualising violent conduct within the factual setting of armed struggle. The applicant, affiliated with the Front for the Liberation of the Enclave of Cabinda - Cabindan Armed Forces, participated in operations against Angolan armed forces resulting in the deaths of soldiers and one ambush caused the death of two expatriate civilian workers. Nevertheless, the council upheld the CNDA's finding that these acts were not properly characterised as serious crimes under ordinary law within the meaning of Article 1F(b). Central to this conclusion was the fact that the ambush occurred in the context of an armed confrontation directed against state forces and the civilian deaths were incidental rather than the object of the attack. The case therefore illustrates that the presence of civilian casualties does not automatically strip an act of its political character. What matters is whether civilians were deliberately targeted and whether the violence was indiscriminate.

When attacks are deliberately targeted against civilians, even with a purportedly political objective, they may be regarded as serious, non-political crimes. This was exemplified by the Swiss Federal Administrative Court in *Applicant* v *State Secretariat for Migration* (31 August 2021) when the court excluded a former member in Sri Lanka of the Liberation Tigers of Tamil Eelam (LTTE), who held a prominent position with the organisation between 1996-2009. It found that the applicant had participated in offences including assault, homicide and the deprivation of liberty, which are classified as serious crimes. The court determined that the crimes were not of a political nature as, although they had a political component, their nature was disproportionate to the pursued political interests, especially considering that they targeted people who were not directly participating in the fighting, including traitors, which is not permissible under international humanitarian law. It held that attacks against traitors had a terrorist character.

In contrast, the Norwegian Court of Appeal found that the actions of an applicant did not constitute a serious, non-political crime in *Immigration Appeals Board* v *Applicant* (6 June 2024). The court ruled that a Syrian applicant's participation in an armed rebel force against the Assad regime, including taking part in fighting and firing his weapon, were acts of a political nature and therefore did not satisfy the application of the exclusion ground. Although the court did not dispute the serious nature of the crimes of murder and attempted murder, it nevertheless found that there was a clear connection between the applicant's combat actions and a political motivation to topple the regime. It was not found that the applicant or the group had committed torture, executions or other activities that could be considered war crimes or violations of humanitarian law. It was further not determined that the applicant or the group subjected civilians to acts of terrorism or treatment that violated humanitarian law. It was noted that although civilians may have been exposed to violations, particularly when conflict occurred in cities, this was mostly due to government attacks.

The Norwegian District Court's reasoning in *Applicant* v *Immigration Appeals Board* (12 June 2024) further illustrates how violence may be stripped of political character when it resembles self-policing or terror tactics rather than politically-oriented combat. The applicant, affiliated with the Kurdistan Workers' Party (PKK) between 2013 and 2015, participated in armed clashes with Turkish police using firearms and explosives, but also carried out attacks against civilians, including shooting a teacher as a form of punishment and targeting drug dealers and drug addicts. While the court accepted that attempted murder and aggravated violence constitute serious crimes, it placed particular emphasis on context, finding that during the applicant's membership a ceasefire existed, meaning the situation was not characterised by an active armed conflict but rather "scattered unrest". This weakened the claim that the applicant's conduct constituted combat-related political action. The court further rejected the argument that the violence against civilians advanced the PKK's political aims, instead interpreting these acts as self-appointed law enforcement and extrajudicial punishment. Even attacks against police were viewed as resembling terrorism or ambush tactics rather than proportionate political resistance.

Courts thus appear willing to treat violence against state armed forces within an armed struggle as political when the targeting of civilians is absent and the conduct remains linked to a political objective. However, when violence becomes indiscriminate, punitive or directed against civilians or other protected persons, the political justification is treated as insufficient. The decisive analytical distinction is therefore not simply whether the applicant acted in a politically-charged

setting but whether the act retained a close and proportionate nexus to a legitimate political aim.

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