

2.3.4. Standard of proof

For the applicable standard of proof when applying this ground, the QR and the recast QD prescribe that there must be “serious reasons for considering” that an applicant has committed a serious (non-political) crime. Courts have interpreted this standard restrictively. It is generally agreed that a high standard of proof is required, although this is set at a lower threshold than the standard of proof required under criminal law.

The Supreme Administrative Court in Czechia, in *A.Z. v Czech Ministry of the Interior* (30 August 2021), referred to a threshold of 50% probability to establish “serious reasons to believe” in exclusion cases. Nevertheless when interpreting the standard of proof, divergence has been observed related to the principle of the benefit of the doubt. For example in *Applicant v Minister of Immigration and Asylum* (13 June 2025), the Administrative Court in Greece ruled that a high standard of proof is required, with the presumption of doubt operating in favour of the applicant. In contrast, the Latvian District Administrative Court in *Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia* (19 December 2024) held that serious reasons for believing that a person has committed a crime does not imply that all possible doubts about it should be assessed in favour of the applicant.

In light of the strict evidentiary requirements and the far-reaching consequences of the application of the exclusion clauses, the burden of proof generally rests on state authorities. However, the burden of proof may be reversed once the authorities have established serious reasons to believe that the applicant has committed a serious (non-political) crime. Referring to Dutch national law on asylum,5 the Dutch District Court of the Hague noted in *Applicant v The Minister for Asylum and Migration* (21 December 2020) that the applicant must refute the conclusions of the authority with reasons in order to avoid the application of the exclusion clause.

As regards evidence and credibility assessments, it is generally established that a final conviction is not necessary to find that the applicant has committed a serious, non-political crime. In general, the applicant’s own voluntary reporting of their participation or contribution to the crime has been considered sufficient by courts to establish credibility. In this regard, the Finnish Supreme Administrative Court in *Applicant v Finnish Immigration Service* (7 April 2025) held that “suspicion of a crime must be considered justified when the person has voluntarily reported the acts on which the exclusion is based and there has been no reason to question the reliability of his or her account in that respect”.

The Supreme Administrative Court in Czechia emphasised in *A.Z. v Czech Ministry of the Interior* (30 April 2021) that for the standard of proof to be met, strong evidence must be relied upon, in

the form of clear, convincing and credible evidence, and not mere conjecture. It noted that evidence may include a confession by the applicant but may also include a third-party testimony when the credibility of the applicant was not established. The court also noted that a conviction or a criminal charge is not required to meet the standard of proof, while a mere request for extradition or ongoing criminal prosecution in the applicant's country of origin also are not decisive elements. In this respect, when a case concerns ongoing proceedings in the applicant's country of origin, the Latvian administrative court in *Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia* (19 December 2024) stressed that courts must ascertain whether the charges against the person could be substantiated.

Convictions outside the country of refuge

Although a conviction is not necessary to establish the seriousness of a crime, when there is a conviction, it must be taken into account. When a conviction has been reached outside of the country of refuge, it is also necessary to determine the reliability of the conviction in light of the right to a fair trial. For example in *Applicant v State Secretary for Justice and Security* (13 December 2023),the Council of State in the Netherlands ruled on a case of a Turkish applicant who was convicted in Türkiye for murder and assault, to which he claimed he confessed because he was tortured and sexually abused. The council held that if torture or sexual violence are used during criminal proceedings to elicit a confessional statement, the entire criminal procedure is in principle unreliable. The court referred to the ECtHR ruling of 17 January 2012, *Othman (Abu Qatada) v the United Kingdom*, in which the ECtHR held that a confession obtained under torture is contrary to the right to a fair trial under Article 6 of the ECHR. Additionally, the council clarified that if a conviction is in any case partly based on confessional statements obtained under torture, the asylum authority may not rely on that conviction as a basis to apply Article 1(F) of the 1951 Geneva Convention. The council thus made it clear that an asylum authority cannot invoke the argument that a criminal judgment relies not only on the confession but on other items of evidence to reach the conviction. It held that an additional investigation would need to be carried out to determine if there are serious reasons to believe that the applicant has committed a serious crime.

It also noted that when assessing evidence, the criminal judgment alone must be considered within the context of the rest of the proceedings and other related documentary evidence. While the asylum authority in this case held that it cannot be deduced from the criminal judgment that the confessional statement of the applicant played a role in the conviction, the Council of State disagreed with the finding, noting that other documents in the case files, such as the opinion of the Public Prosecutor's Office of the Chief Public Prosecutor which listed a confessional statement as evidence, the minutes of the hearing, as well as the indictment of the case of the Prosecutor General, made it clear that the confessional statements of the applicant played a role in the proceedings. The court thus remitted the case for further assessment, ordering the asylum authority to assess the credibility that the applicant was tortured by taking into account medical evidence and assess the plausibility of the late disclosure of the alleged torture due to shame, followed by an assessment of the consequences if the credibility of the torture was established.

Similarly, the Finnish Supreme Administrative Court halted the application of exclusion clauses and ordered the asylum authority to reassess a case where there were indications that the applicant's right to a fair trial was not upheld. In *Applicant* v *Finnish Immigration Service* (20 January 2022), the court considered the appeal of an applicant who was sentenced to death in his home country but was excluded from international protection for committing a serious, non-political crime. The applicant argued that he was innocent and the trial had lacked fairness. The court noted that the asylum authority failed to adequately assess whether his right to a fair trial was upheld. It found that the decision lacked information on relevant domestic criminal procedural legislation, including on the possibility to appeal, as well as information on the handling of the case by the higher courts. It clarified that allegations related to an unfair trial must be clarified on a case-by-case basis, taking into account the applicant's statements, the available legal documents, the legislation of the relevant country, international agreements and sources, and CJEU jurisprudence.

Evidentiary value of extradition court rulings

In exclusion cases, it may be the case that a court in the country of asylum has ruled on the extradition of the applicant to another country.

As concerns extraditions between Member States, the European Arrest Warrant (EAW) has simplified extradition procedures by ensuring that an EAW issued by a judicial authority of a Member State is valid in the entire territory of the EU and is based on the principle of mutual recognition. The Court of Cassation in France has ruled that the criminal court ruling on the extradition of an applicant takes clear precedence on matters of criminal fact and the legal classification of crimes, and it is not up to an asylum judge to re-examine the facts or reclassify the offence under national law. In this particular case, the court ruled in *OFPRA* v *M.C.B* (8 February 2023) that the CDNA wrongly restored the applicant's refugee status because it failed to give proper effect to the judgment of the Investigation Chamber of the Versailles Court of Appeal, which had authorised the execution of a European arrest warrant and classified his acts as trafficking in human beings following his final conviction in Hungary for organising migrant smuggling for payment. The CDNA had considered that the classification adopted by the Versailles Court of Appeal could not be upheld since the elements constituting this offence under national criminal law were not met, amongst other considerations including the small scale and modesty of the sums collected, and the fact that the applicant had not engaged in other similar acts before or after the crime. The Court of Cassation held that the asylum judge could not call into question the legal classification made by the Versailles Court of Appeal in the context of judicial cooperation within the European Union, nor reassess the seriousness of the offences by relying on factors such as the age of the crime. In light of the binding criminal findings recognised by the Versailles Court, it found that there were serious reasons to consider that the applicant had committed a serious, non-political crime before being granted asylum, justifying the withdrawal of his refugee status and the annulment of the CNDA's decision.

On the other hand, when an applicant was subject to extradition proceedings in relation to a conviction from Russia, which falls outside of the European Union, the Supreme Administrative Court (SAC) in *A.Z.* v *Czech Ministry of the Interior* (30 April 2021) confirmed that the decision of the criminal court concerning the admissibility of extradition to Russia could not be relied upon

solely when deciding on the substance of the applicant's asylum application. SAC noted that the ministry was obliged to make its own independent and sufficiently-reasoned assessment if the conditions for the exclusion clause were fulfilled within the meaning of asylum law. It held that it could not rely 'blindly' on the assessment made by the criminal courts. It considered that if the outcome of the extradition proceeding was determinative for the outcome of asylum proceedings, the constitutional requirement to halt the extradition until the final asylum decision is reached would lose its sense. SAC concluded that in order to assess the serious reasons for considering that the applicant committed a serious, non-political crime, due regard must be given to the applicant's asylum story and its credibility, which could point to the superficial and persecutory nature of the criminal charges against the applicant.

Despite the clear framework established by the CJEU in *B and D* and *Ahmed*, the exclusion ground based on a serious (non-political) crime continues to raise significant challenges in national courts. The requirement for a fully individualised assessment is broadly accepted in principle, yet in practice courts diverge considerably in how they weigh the relevant criteria against one another, in particular the relative importance attached to the nature of the act, the harm caused and the penalty imposed.

The risk of over-reliance on COI as a substitute for precise, factual findings is a recurring concern, as illustrated by cases related to applicants involved in torture, where general country information about abusive practices has in some instances been treated as sufficient to establish the seriousness of an individual applicant's conduct without adequate scrutiny of what that applicant specifically did and what consequences directly followed from their acts.

The penalty criterion presents its own difficulties. While courts widely accept that it cannot be the sole determinant of seriousness, there is no consensus on the length of a sentence that leads to the finding of a serious crime, a consistent approach on weighting the penalty alongside other factors, or how much regard should be paid to the maximum penalty available as opposed to the sentence actually imposed.

Under exclusion from refugee status, the non-political character requirement adds a further layer of complexity, particularly in cases arising from armed conflict or resistance movements when the boundary between politically-motivated conduct and indiscriminate or punitive violence is not always clearly drawn. The predominance test provides a useful analytical structure, and the reviewed case law suggests a degree of consistency in its application. Courts have generally treated violence against state armed forces as retaining its political character when civilians are not targeted, while treating violence directed deliberately against civilians or conduct that resembles punitive self-policing rather than politically-motivated combat as sufficient to strip an act of its political character.

The standard of proof in exclusion cases is broadly agreed to require clear and convincing evidence which falls below the criminal law threshold, with the burden of proof resting primarily on state authorities. A final conviction is not required, and voluntary disclosure by the applicant has generally been treated as a strong basis for credibility. Beyond these points of agreement,

two challenges stand out. First, the benefit of the doubt has not been applied consistently, with courts divided on whether uncertainty should operate in the applicant's favour. This represents a significant gap given the serious consequences of exclusion. Second, where a foreign conviction exists, its role in the exclusion assessment raises a series of difficult and unresolved questions concerning the weight to be accorded to it, the degree of independence required of the asylum authority in reassessing the underlying facts, and the consequences of credible fair trial concerns for the reliability of the conviction as a whole.

While the concept of a serious crime must be interpreted autonomously under EU asylum law, national criminal law classifications and standards continue to exert a significant influence on how courts approach the assessment in practice, thus presenting a challenge in the uniform application of this ground.

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  Para C2/7.10.2.4 of the Aliens Circular 2000 (Vc).

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