

3.4.4. Human smuggling

The 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 the application of this ground to the smuggling/trafficking of migrants would be misguided (see para 48). However, different approaches have been observed by national courts. The position of UNHCR was reflected in Germany as the Higher Administrative Court in *Federal Office for Migration and Refugees* v *Applicant* (23 October 2025) ruled that human smuggling cannot be consider to be contrary to the purposes and principles of the UN. In contrast to international terrorism, the court considered that in the area of human smuggling the UN has not made identical and unambiguous references to the goals of world peace and international security. It considered that although there is a convention adopted by the UN against Transnational Organized Crime with an Additional Protocol against the Smuggling of Migrants by Land, Sea and Air, these instruments do not indicate that smuggling activities violate the objectives and principles of the UN. Likewise, relevant Security Council resolutions do not explicitly indicate this either.

The court held that smuggling may run counter to the purposes and principles of the UN only when it is committed by individuals exercising state or state-like power and directly contributing to violations attributable to the state. The fact that smuggling is regarded in the EU and Germany as a serious phenomenon which threatens individual rights and state security was not sufficient according to the court to bring all smuggling offences within this category, and extending this exclusion to all individuals would require a clear and explicit determination by the UN, comparable to that made in relation to international terrorism.

In contrast, the High Administrative Court in Croatia, in *A.M.H.A.* v *Ministry of the Interior of the Republic of Croatia, Directorate for Immigration, Citizenship and Administrative Affairs* (6 July 2022), considered that activities relating to the smuggling of people, which it described as the illegal transfer of people across the state border, may constitute an act contrary to the purposes and principles of the UN. The court did not require an explicit mention of human smuggling in the Security Council resolution. In contrast to the approach of the German court, it found the broader international issues caused by human smuggling to be sufficient, referring to it as "an international problem of economic social and humanitarian nature, the solution of which falls within the scope of the objectives of the UN in accordance with Article 1(3) of the said Charter".

These cases provide a practical illustration of how the boundaries drawn by jurisdictions when relying on international legal instruments to characterise the applicant's conduct as contrary to the purposes and principles of the UN have consequences on the outcome of the assessment. The approach of the German Higher Administrative Court to human smuggling is the clearest expression of this principle applied restrictively. In the absence of an explicit and unambiguous

Security Council determination comparable to that made in relation to terrorism, it declined to extend the ground to cover smuggling activities without a state nexus, reasoning that such an extension requires a clear Security Council resolution, rather than a general assessment of international harmfulness. Meanwhile, the Croatian High Administrative Court's treatment of human smuggling takes a comparatively expansive approach, finding the humanitarian objectives of the UN Charter sufficient to bring smuggling activities within the scope of Article 12(2)(c) without requiring an explicit Security Council resolution.

The jurisprudence in this section reflects an exclusion ground that is both expanding in its application and uneven in its interpretation. The CJEU's judgments in *B and D* and *Lounani* have provided an important normative foundation, confirming that Article 12(2)(c) extends beyond the direct commission of terrorist acts to encompass facilitative and preparatory conduct, that exclusion is not contingent on a prior criminal conviction, and that an individualised assessment of personal responsibility is always required. These principles have been widely cited in national jurisprudence and have broadly shaped the framework within which courts approach this ground. At the same time, significant gaps and divergences remain that the existing CJEU framework has not yet resolved.

The most consequential source of divergence in the terrorism context is the characterisation of whether a group qualifies as a terrorist organisation. As the contrasting jurisprudence related to the PKK and jihadists demonstrates, when courts reach different conclusions on this threshold question, the same individual conduct – such as fundraising, promotional activities and logistical support – produces entirely different outcomes. Courts have given different weight to the EU terrorist listing mechanism, drawn different inferences from shared open-source databases such as the Global Terrorism Database and applied different thresholds for the remoteness of individual conduct before it falls outside the scope of Article 12(2)(c).

Beyond terrorism, the jurisprudence reveals an expanding but legally uncertain use of this ground. The Swedish, French and Croatian cases illustrate that courts are increasingly willing to apply Article 12(2)(c) to conduct which falls outside of terrorism, including state-facilitated exploitation, interference with international criminal justice and human smuggling. However, the legal reasoning underpinning these extensions is not always grounded in the same interpretive approach.

A central point of divergence concerns the range of international legal instruments capable of supporting a finding under this provision. Courts that require an explicit Security Council determination, as the German court did in the case of human smuggling, apply a more constrained scope. Courts that draw on the broader corpus of international law, including UN General Assembly resolutions, international conventions and European instruments, as the French CNDA did in the human trafficking case, are prepared to extend the ground to a wider range of conduct. This divergence has direct consequences for the scope of the exclusion ground across EU+ jurisdictions and reflects a fundamental question that the CJEU has addressed only in the terrorism context and has not yet resolved more broadly, i.e. what legal instruments can be relied upon to characterise acts as contrary to the purposes and principles of

the UN.

Finally, the concept of ‘serious and sustained violations of human rights’ as a distinct basis for exclusion under this ground has received limited attention in national case law. The French CNDA's human trafficking decision provides a judicial interpretation of this category, establishing that violations of non-derogable rights carried out in an organised and systematic manner within a state structure can satisfy the threshold without a direct connection to international peace and security. However, the scarcity of jurisprudence based on this concept as a discrete legal concept means that its precise boundaries remain undefined, and national courts approaching novel scenarios have limited guidance on how to apply it. The result is that the scope of Article 12(2)(c) beyond its terrorism core continues to be shaped by individual national decisions rather than by a coherent and shared analytical framework. This divergence has not been addressed by the CJEU, and the absence of authoritative guidance on which international instruments are capable of grounding a finding under Article 12(2)(c) and 17(c) in non-terrorism contexts is a notable gap in the existing framework.

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