

4.3.3. Patterns of violence

While isolated factors may be insufficient, courts recognise that a holistic evaluation of an applicant's behaviour may substantiate a finding of dangerousness. In this regard, an applicant does not need to be linked to the commission of a specific crime, but rather account must be taken of all the acts attributable to him/her. This reasoning was reflected by the French Council of State in *N.I. v OFPRA* (22 April 2022), where the council applied this exclusion ground due to an applicant's behaviour in the reception centre, including aggressive and threatening remarks against staff and against the country, including the threat to burn down the buildings and death threats. He was briefly involuntarily hospitalised due to these threats, though released on procedural grounds despite medical advice. Although it was acknowledged that his mental state at the time may have impaired his ability to comprehend what he was saying, the court concluded that this did not reduce his dangerousness, noting his continued disruptive behaviour and threats, including against his own lawyer who feared for her own safety.

The CNDA further illustrated the importance of evaluating patterns of violent behaviour in *A. v OFPRA* (26 February 2021). The CNDA noted that the applicant had been convicted three times for relatively short sentences, but it emerged from further investigations that he had been the subject of 18 proceedings. This led the CNDA to establish a pattern of violence, based on the high number of offences committed by the applicant, their frequency and repetition, their accelerating rate in both pace and severity, and their violent nature, which caused psychological distress for his victims and those who tried to help him. Because the applicant systematically challenged the authorities, justified his actions, his antisocial, impulsive, intolerant and violent personality, and systematically refused any psychological support, the court found that the applicant represented a present and future threat for French society and public order, without a possibility for any economic or social reintegration measures to relieve him from this cycle of violence.

A comparable approach was adopted by the Latvian Administrative District Court in *Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia* (26 June 2023). The court applied this exclusion ground to an applicant who displayed a consistent pattern of disruptive, aggressive and non-compliant behaviour while in detention. This included repeated rule violations, provocative and abusive conduct toward staff and authorities, unfounded complaints, inappropriate sexual behaviour, attempts to manipulate surveillance systems and an attempted escape. The information further showed that the applicant disregarded legal norms and institutional authority, including conduct undermining the judiciary and misuse of police resources. Based on this evidence, the court concluded that the applicant's behaviour was unacceptable in a democratic state and exhibited a tendency toward unlawful conduct and violation of socially-accepted norms. The court thus found that the applicant's actions posed a

danger to society.

In conclusion, the assessment of whether an applicant constitutes a danger under Article 17(1)(d) of the recast QD/QR is inherently fact-specific and requires careful evidentiary analysis. Based on national case law to date, a holistic assessment involves considering the applicant's past conduct, including criminal convictions, acts of violence and breaches of public order, while recognising that such acts alone cannot automatically establish a present threat.

Courts have ruled that authorities must also examine the pattern and escalation of behaviour, evaluating the repetition, frequency, and severity of actions over time, as well as the applicant's response to institutional authority and compliance with social norms. Contextual factors, such as behaviour in detention, interaction with officials and mitigating circumstances like mental health, must be integrated into the assessment to determine whether past actions translate into a present danger. The assessment also looks at the likelihood of recurrence and the potential for rehabilitation or reintegration.

A central principle emerging from both CJEU and national case law is that exclusion cannot be based on automatic or presumptive reasoning. Rather, courts have ruled that the determining authority must establish that the individual poses a genuine, present and sufficiently serious threat by taking into account all relevant circumstances and not relying solely on isolated indicators, such as the applicant's membership or association with a terrorist or criminal organisation, or an ongoing criminal investigation.

The CJEU has set important limits on how this assessment must be conducted. In *GM*, it confirmed that the determining authority must form its own independent and reasoned view of the facts and cannot simply adopt the conclusions of national security bodies. In *XXX*, it confirmed that the danger must be genuine and present, as a potential or abstract risk is not enough, and the decision must be properly reasoned. These requirements provide a clear procedural framework, but they leave open the question of how serious the conduct must be.

As national case law illustrates, courts have shifted from requiring a concrete threat of a serious crime to establishing a danger based on patterns of antisocial behaviour and the accumulation of less serious offences.

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