

5.2. CJEU jurisprudence

The CJEU first addressed the need to establish individual responsibility in the case of *B and D* in the context of a terrorism-related case assessed within the scope of Article 12(2)(b) and (c) of Directive 2004/83/EC (QD). Nevertheless, in *Ahmed* the CJEU held that this requirement extends to decisions excluding a person from subsidiary protection *(see paras 48-50)*. This practice is confirmed in the EUAA and UNHCR guidance, and national court practices.

In *B and D*, the CJEU held that the mere fact that an applicant belongs to an organisation listed as a possible terrorist organisation in the annex to the Common Position 2001/931 or they participate in the activities of a terrorist group within the meaning of Article 2(2)(b) of Framework Decision 2002/475 does not automatically lead to their exclusion from international protection. The CJEU held that an individual assessment of the specific facts of each case is necessary to assess whether the exclusion clauses apply. The court referred not only to the findings that an applicant has committed a serious, non-political crime or is guilty of acts contrary to the purposes and principles of the UN, but also noted other modes of participation, including instigating such a crime or act or participating in them in some other way. This reflects the different modes of participation laid in the recast QD.

The CJEU elaborated that a share of the responsibility for the acts must be attributed to the applicant, which must be assessed in the light of both objective and subjective criteria. The CJEU held that:

“To that end, the competent authority must, inter alia, assess the true role played by the person concerned in the perpetration of the acts in question; his position within the organisation; the extent of the knowledge he had, or was deemed to have, of its activities; any pressure to which he was exposed; or other factors likely to have influenced his conduct.” (para 97).

In *Lounani*, the CJEU also noted how a prominent position within an organisation which uses terrorist methods or a prior conviction are important indicators which can lead to the finding of the individual responsibility of the applicant for acts committed by the organisation during the relevant period. However, it stressed that it remains necessary to examine all the relevant circumstances before issuing an exclusion decision.

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