

5.4.3. To what extent can a substantial contribution be inferred from COI and other contextual factors?

Even when a court does not formally require a direct link between the applicant's contribution and a specific criminal act, it must still decide to which extent the applicant's conduct can be inferred to have had a substantial contribution based on COI and other contextual factors, such as the applicant's position, duration of service and form of association. This question has practical consequences, as a court that is willing to infer causal impact from COI and other contextual factors is in practice applying a different threshold than one that insists on specific evidence of causal effect.

The Dutch District Court of the Hague's assessment in *Applicant* v *The Minister for Asylum and Migration* (14 November 2024), concerning a Syrian police sergeant and assistant officer who conducted background checks on wanted persons, demonstrates a permissive approach to inferring causal impact from COI. The applicant worked in a department that examined the personal data of citizens applying for certificates or stopped by police, cross-checking names against lists of wanted persons supplied by various security services. When a person appeared on the list, the information was passed on and the person was arrested by other authorities. The applicant claimed never to have personally caused an arrest. The court found this implausible.

Drawing on COI documenting the widespread and arbitrary nature of arrests carried out by the Syrian security authorities, it inferred that the applicant would inevitably have encountered wanted individuals in the course of his work and concluded on that basis that his actions formed an important link in the system, which lead to arrests that exposed individuals to a significant risk of torture and ill treatment. The court did not require specific evidence of what happened to particular people whom the applicant identified as the systemic character of the abuse documented in COI was treated as sufficient to establish that his role had the required causal effect.

A similar approach was adopted by the Supreme Administrative Court in *Applicant* v *Finnish Immigration Service* (7 April 2025). The court assessed the individual responsibility of an Afghan applicant who worked with the Afghan National Security Service and arrested members of the Taliban. The Finnish court excluded the applicant on the basis that between 2011-2014 he participated in at least 300 operations aimed at detaining persons suspected of being Taliban or their supporters. The applicant noted that the investigation unit tortured the detainees, which the court characterised as an aggravated, non-political crime. It found that the applicant's

participation in the arrests constituted a substantial contribution to the excludable acts. The court assessed his contribution as substantial on account of his long duration of service and the large number of operations in which he was involved, thus concluding that the people he apprehended were also subsequently tortured, especially considering the systematic nature of the torture according to COI.

In contrast, the Swiss Federal Administrative Court declined to draw this inference in comparable circumstances. In the Syrian checkpoint guard case discussed in Section 5.4.1, the court acknowledged the COI establishing the large scale of violence carried out by the Syrian army against civilians. It nonetheless held that from this general context it could only be speculated what effect the applicant's specific activities, including transporting people and food and guarding checkpoints, would have had on the commission of particular criminal acts. The possibility that his activities could have contributed to the Syrian army's goals was not disputed, but the court treated that possibility as insufficient to establish the required causal effect without specific evidence of what his individual conduct actually produced. The court thus refused to allow COI to bridge the gap between the general context and the specific causal impact that its standard requires.

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