

5.4.4. Does aiding and abetting require purpose-based intent?

When assessing aiding and abetting cases, one of the main points of divergence is whether this mode of participation requires ‘purpose-based intent’ (intent for the consequences of the crime) or whether knowledge that one's conduct would facilitate the crime is sufficient. Article 25(3)(c) of the Rome Statute sets the threshold at purpose-based intent, requiring that the person acts “for the purpose of facilitating the commission of such a crime”. The EUAA and UNHCR guidance explicitly departs from this, holding that it is sufficient that the applicant intentionally engaged in the assisting conduct while knowing that such assistance would facilitate the commission of an excludable act. National courts have not resolved this question consistently, and the divergence has produced opposite outcomes in cases involving comparable conduct.

The Norwegian Court of Appeal has taken the position that exclusion standards are not necessarily governed by ICC criminal liability rules, and when there is a deviation between UNHCR guidance and the Rome Statute, UNHCR guidance must take precedence in deciding asylum cases. The court applied this reasoning in *Applicant v Immigration Appeals Board* (16 April 2024), where it rejected the argument that aiding and abetting requires purpose-based intent derived from Article 25(3)(c) of the Rome Statute (“for the purpose of facilitating”). The case, previously mentioned in Section 5.4.1, concerned a former Syrian conscript ordered to participate in house searches leading to arrests, where those detained were later tortured and killed. It found that there was no doubt that the applicant had knowledge of the consequences of his actions. However, it found no basis that the applicant acted with the intention for the consequences to occur or that his activities were carried out with the ‘purpose of’ the consequences. The court nevertheless concluded that, although it could not be established that the applicant acted with intent to bring about the crimes, the relevant subjective requirement is knowledge that one’s conduct would facilitate the crime, and it found this clearly established in the applicant’s case.

The Norwegian court also addressed a related but distinct question about the minimum level of awareness that satisfies the knowledge and intent requirement for exclusion in *A v Immigration Appeals Board (5 September 2022)*. Drawing on Section 22 of the Norwegian Penal Code, it identified three levels of intent: direct intent, where the applicant deliberately brought about the criminal consequence; probable intent, where the applicant was aware that the consequence would most likely follow from their actions; and possible intent, where the applicant considered the criminal consequence possible but chose to act anyway. The court left open whether this lowest level, where the applicant was aware only that the crime may occur, rather than that it would, is sufficient to ground exclusion, noting that it may not be compatible with Article 30 of

the Rome Statute which requires that material elements be committed with both intent and knowledge. This is a significant gap in the jurisprudence, as even when courts agree that purpose-based intent is not required, it does not follow that any degree of awareness will suffice. There remains an unresolved question about how certain an applicant must have been that their conduct would facilitate a crime before the knowledge threshold for exclusion can be considered to be met.

On the other hand, a stricter approach was adopted by the Belgian Council of State in *XXX* v *CGRS* (29 January 2025). The lower court (CALL) considered that an applicant had aided and abetted war crimes by providing logistical support to soldiers of Mudundu 40 in the Democratic Republic of the Congo, including through the collection of food and money. The alleged war crimes included murder, torture, inhuman and degrading treatment, and the enlistment of child soldiers. While the lower court established that aiding and abetting was based on it being unlikely that the applicant was unaware of the crimes, the Council of State held that Article 25 of the Rome Statute requires proof that the assistance was provided with the intention of facilitating the commission of the crime. It found that mere awareness of the group's crimes did not, without further reasoning, establish the required intent. The Council of State obliged CALL to explain why it considered that the conditions for the application of a legal provision were met. [8] Thus, in contrast to the Norwegian court, the requirement of 'knowledge' was not the decisive element to establish individual responsibility. As the Council of State is a higher court than CALL, this ruling is particularly impactful in setting the standards to be applied in Belgian case law.

- 8

  Following a rehearing of the case, CALL issued another judgment on 5 August 2025, once again confirming the exclusion of the applicant for aiding and abetting war crimes. The judgment is available on the EUAA Case Law Database: https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?Case

© European Union Agency for Asylum 2026 | Email: info@euaa.europa.eu