

6.1.2. Immaturity

Although not referred to as a ground exempting criminal responsibility under the Rome Statute, in the context of asylum, immaturity constitutes a further ground relevant to capacity to act. The EUAA's guidance states that exclusion is not justified when an applicant has not reached the minimum age of criminal responsibility at the time of the excludable conduct. Since no internationally agreed minimum age applies specifically to the exclusion context, courts generally rely on national criminal law of the host country to establish the applicable threshold. Even when an applicant has reached the age of criminal responsibility, the guidance cautions that additional circumstances must be considered, including the applicant's emotional, mental and intellectual maturity.

This ground arises most frequently in cases involving former child soldiers, when the combination of young age, coercive recruitment and exposure to violence raises particular challenges for the assessment of individual responsibility. This is illustrated in *M.C. v OFPRA* (4 October 2021). The CNDA found that a former Liberian child soldier who joined the Liberians United for Reconciliation and Democracy (LURD) at the age of 12 could not be held individually responsible for the atrocities he committed during the civil war in his home country. The CNDA noted the following as negating factors: "his very young age at the time of the events, his extreme vulnerability resulting in particular from the disappearance of his family members in sordid conditions and the physical and psychological control exercised by the other members of the group".

The CNDA considered that the recruitment of the applicant between the age of 12-14, the violence he experienced within the group and the abuses he had to take part in under threats of violence and under the forced consumption of drugs constituted war crimes. It grounded this conclusion in international law, including Article 77 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 38 of the United Nations Convention on the Rights of the Child, Article 8 of the Rome Statute and Article 461-7 of the Criminal Code. The applicant was granted refugee status for his past experience of persecution of exceptional gravity and inability to claim protection from the Liberian authority, in light of the intense and permanent physical and psychological aftereffects that he retained. The case established an important principle that when the combination of age, coercion and vulnerability is sufficiently compelling, former child soldiers who have committed serious crimes may not be held individually responsible for those acts.

When assessing the applicant's capacity to act, as the Finnish Supreme Administrative Court has demonstrated in *Applicant v Finnish Immigration Service* (26 May 2023), the applicant's profile

must be assessed within the context of the applicant’s environment and not merely their age and mental state in isolation. The court found that the applicant, who was 16 years old when he joined the Afghan police force and therefore at the minimum age of criminal responsibility under Finnish law, could not be excluded from international protection. While acknowledging his age, mental maturity and state of health as relevant factors, the court gave decisive weight to the context in which the applicant operated, characterised by a protracted conflict involving multiple state and non-state actors, the use of violent disciplinary methods by police without accountability, and reports and rumours heard by the applicant that officers who disobeyed orders risked being shot by their own people in combat situations. Assessed against these circumstances, as well as in light of the applicant’s young age and relatively low level of education and position, the court concluded that the applicant had no realistic opportunity to act differently given his knowledge and resources, thus he could not be considered to have understood that transporting apprehended persons would constitute a material contribution to aggravated crimes.

The French and Finnish cases illustrate that the assessment of immaturity is not reducible to a simple question of age. It requires a contextualised evaluation of the applicant's capacity to understand and resist participation in the excludable acts, taking into account the full range of personal, environmental and situational factors that shaped their conduct at the relevant time. When those factors combine to deprive the applicant of any realistic opportunity to act differently, the immaturity ground may negate individual responsibility even when the formal age threshold has been reached.

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