

7.1. CJEU jurisprudence

In the *Galte* ruling, the CJEU confirmed for the first time that post-offence considerations are relevant to the assessment of the exclusion clauses based on Article 12(2)(b) of the recast QD and must be taken into account by determining authorities. This ruling may have implications for the other exclusion provisions and for the application of the corresponding provisions of the QR.

The court interpreted the temporal distinction within the concept of a serious, non-political crime. It noted that the word ‘crime’ refers to factual circumstances fixed at the point in time when the act was committed. The qualifying adjective ‘serious’, by contrast, is an element of assessment that is not fixed at that moment. It therefore ruled that the seriousness of a crime may be assessed differently at the time it was committed and at the time the asylum application is examined. It follows that post-offence developments are not irrelevant to the exclusion assessment but must be considered as part of the evaluation of seriousness.

On the basis of this reasoning, the court specified that the following factors must be taken into account in assessing the seriousness of a crime: the type of act; the possible sentence and the one imposed; the period which has elapsed since the criminal conduct; the conduct of the applicant during that period; and any remorse expressed.

The court gave particular weight to whether the applicant had served their sentence, noting that the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status expressly identifies this as a relevant consideration, and emphasising the importance of the UNHCR's role as conferred by the Geneva Convention. The court was nonetheless careful to clarify that serving a sentence does not automatically preclude the application of the exclusion clauses.

Additionally, in justifying its position, the CJEU noted that by taking into account the sentence served by the applicant, the objectives of the exclusion clauses would not be undermined. In this regard, it held that the exclusion of an applicant who has served their sentence would not be justified by the objective of preventing that person from escaping criminal liability for the crime, while on the other hand, the crime cannot permanently render the person underserving of international protection without taking into consideration their possible rehabilitation. The court also emphasised that the application of Article 12(2)(b) does not depend on the person representing a present danger to the host country or on a proportionality assessment, and therefore, the assessment of the level of seriousness of a crime does not preclude the authorities from taking into account whether a sentence was served.

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