

7.2. Impact of the Galte ruling on national case law

The *Galte* judgment substantially impacted the application of the relevant legal provisions.

Prior to the CJEU's ruling, post-offence considerations were generally entirely disregarded from the exclusion assessment, or when invoked by the applicant, their relevancy was explicitly ruled out by the court. For example, French courts have consistently rejected arguments based on the sentence served as a basis for precluding the application of the exclusion clauses. This is illustrated by the French Council of State in *A v OFPRA* (13 March 2020), which concerned the exclusion from refugee status of an applicant who had financed a terrorist organisation. The council ruled that neither Article 1F(c) of the Geneva Convention nor the corresponding national provisions make the application of the exclusion clauses conditional on the existence of a present danger to the host state and the applicant could not therefore rely on the fact that he had served his prison sentence.

An exception to this emerges from German case law. The German Regional Administrative Court's decision in *Applicant v Federal Office for Migration and Refugees* (3 June 2024) was particularly significant because the court independently reached a position close to what the CJEU later confirmed in *Galte*, without the benefit of that ruling. The case concerned an applicant who had been sentenced to 2 years 6 months in juvenile detention for rape, which had led to his exclusion from subsidiary protection on the ground of having committed a serious, non-political crime. The court held that because the offence had occurred 2.5 years earlier, additional criminal offences had not been committed and the applicant had completed all probation measures, these aspects "must undoubtedly be included in the assessment of the seriousness of the criminal offence". This reasoning reflects what the CJEU later ruled in *Galte;* that the seriousness of a crime is an element of assessment that may change over time. It also demonstrates that at least some national courts had already moved in this direction prior to the CJEU's judgment.

The case also illustrates the limits of post-offence factors where a pattern of violence and absence of remorse is established. Notwithstanding its acknowledgement that the passage of time and completion of probation were relevant, the court ultimately upheld the exclusion on the basis that the applicant had multiple prior convictions for violent offences, attempted to influence a witness to give false testimony, had not assumed genuine responsibility for the crime and the victim continued to suffer considerable harm. This illustrates how these factors may be assessed in practice, showcasing that when harmful tendencies persist and remorse is absent, the passage of time becomes less relevant.

Given the recent pronouncement of the CJEU's ruling, only limited national jurisprudence was identified which has applied the *Galte* reasoning. The Belgian case law provides a clear illustration of the direct impact of the *Galte* ruling on national practice.

Prior to *Galte*, CALL had consistently rejected post-offence considerations as irrelevant to the exclusion assessment. For example, in *X v CGRS* (12 May 2022) it ruled that the fact that an applicant who was convicted of migrant smuggling with aggravating circumstances had served his sentence and had subsequently focused on for social reintegration were not exonerating circumstances capable of precluding the application of the exclusion clauses.

Following *Galte*, CALL's approach shifted materially. In *X v CGRS* (22 May 2025), the court annulled a decision excluding an applicant from international protection for having committed a serious, non-political crime outside of Belgium, where a sentence of 1 year 3 months was served by the applicant in Germany for assault and battery. Applying the CJEU's reasoning directly, the court assessed the seriousness of the crime in light of the post-offence factors identified in *Galte*, including the sentence served, the passage of time and the applicant's conduct during that period. It concluded that the concept of 'serious' can evolve over time, and the fact that a person commits serious offences at a certain point in their life must not necessarily lead to that person being permanently considered unworthy of international protection. The decision therefore suggests that the *Galte* ruling has the potential to produce concrete changes in exclusion outcomes, particularly in cases involving less grave offences where post-offence factors weigh significantly in the applicant's favour.

Additionally, the Austrian Supreme Administrative Court's decision in *Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA) v Applicant (30 June 2025)* is significant because it extends *Galte* to subsidiary protection and identifies a specific risk of misapplication. The case concerned an Afghan national convicted of multiple offences in Austria over several years, including drug trafficking, resulting in a three-year custodial sentence. The Federal Administrative Court found that his return would violate Article 3 of the ECHR and granted him subsidiary protection under section 8(1) of the Asylum Act 2005. It held that his convictions could not form a sound basis for exclusion under section 9(2)(3) of the Act, which implements Article 17(1)(b) of the recast QD, because they were more than six years old and closely linked to an addiction disorder. It reached this conclusion without making findings on the underlying criminal conduct.

The Supreme Administrative Court set aside the decision in so far as it concerned subsidiary protection, finding it unlawful in content. First, it confirmed that the post-offence circumstances identified in *Galte* must also be taken into account when assessing exclusion from subsidiary protection. Although *Galte* concerned exclusion from refugee status under Article 12(2)(b) of the recast QD, both provisions share the same purpose of excluding persons unworthy of the protection associated with the relevant status. Secondly, with reference to the CJEU ruling in *Ahmed*, the court held that these circumstances can only be weighed against established findings on the criminal conduct itself. Whether serving the sentence and subsequent good conduct have caused an earlier unworthiness to cease depends on the nature of that conduct. The lower court had instead relied on the passage of time and the addiction without establishing what the applicant had done. The court further held that addiction is relevant only where the

offences were committed without criminal responsibility and the criminal court had ordered committal alone. There was no such finding, and the record suggested the opposite. The court also pointed out that the applicant had been released in November 2020 and convicted again in 2023.

In effect, the lower court used post-offence factors to avoid the exclusion assessment rather than as part of it. In accordance with the Supreme Administrative Court's approach, the correct sequence is first to establish the criminal conduct and determine whether it constitutes a serious crime, and then to assess whether the passage of time and subsequent conduct mean that the person is no longer unworthy of protection at the time of the decision. As *Galte* does not make this sequence explicit, the Austrian decision adds an important practical clarification in this regard.

The full impact of *Galte* across EU jurisdictions remains to be seen. The limited national case law since its pronouncement reflects the recency of the judgment rather than a considered judicial response to it. As national courts begin to apply the ruling more systematically, the key questions will be how they calibrate the weight given to each of the factors identified by the CJEU and, in particular, how they apply the principle that the relevance of post-offence considerations diminishes as the gravity of the crime increases.

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