Compilation of jurisprudence

Exclusion:
Articles 12 and 17 Qualification Directive

Second edition

EASO Professional Development Series for members of courts and tribunals

Updated by IARMJ-Europe
under contract to EASO

2020

European Asylum Support Office professional development materials have been created in cooperation with members of courts and tribunals on the following topics:

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European Asylum Support Office

The European Asylum Support Office (EASO) is an agency of the European Union that plays a key role in the concrete development of the Common European Asylum System (CEAS). It was established with the aim of enhancing practical cooperation on asylum matters and helping Member States fulfil their European and international obligations to give protection to people in need.

Article 6 of the EASO founding regulation ([1]) specifies that the Agency shall establish and develop training materials and make them available to members of courts and tribunals in the Member States. For this purpose, EASO shall take advantage of the expertise of academic institutions and other relevant organisations, and take into account the Union's existing cooperation in the field, while fully respecting the independence of national courts and tribunals.

The International Association of Refugee and Migration Judges

The International Association of Refugee and Migration Judges (IARMJ) ([2]) is a transnational, non-profit association that seeks to foster recognition that protection from persecution on account of race, religion, nationality, membership in a particular social group or political opinion is an individual right established under international law, and that the determination of refugee status and its cessation should be subject to the rule of law. Since the foundation of the association in 1997, it has been heavily involved in the training of judges around the world dealing with asylum cases. The European Chapter of the IARMJ (IARMJ-Europe) is the regional representative body for judges within Europe. One of IARMJ-Europe's specific objectives under its Constitution is 'to enhance knowledge and skills and to exchange views and experiences of judges on all matters concerning the application and functioning of the Common European Asylum System (CEAS)'.

Contributors

This compilation of jurisprudence has been developed by a process with two components: an editorial team (ET) of judges and tribunal members with overall responsibility for the final product and two researchers responsible for drafting.

To ensure that the integrity of the principle of judicial independence is maintained and that the EASO Professional development series for members of courts and tribunals is developed and delivered under judicial guidance, the members of the ET, composed of serving judges and tribunal members with extensive experience and expertise in the field of asylum law, were selected under the auspices of a joint monitoring group (JMG). The JMG is composed of representatives of the contracting parties, EASO and IARMJ-Europe. The ET reviewed drafts, gave detailed instructions to the drafting team, drafted amendments and was the final decision-making body as to the scope, structure, content and design of the work. The work of the ET was undertaken through regular electronic/telephonic communication.

Editorial team of judges and tribunal members

The judges and tribunal members of the ET for this judicial analysis were **Hugo Storey** (United Kingdom, chair), **Hilkka Becker** (Ireland), **Jakub Camrda** (Czechia), **Harald Dörig** (Germany), **Catherine Koutsopoulou** (Greece), **Florence Malvasio** (France), **Liesbeth Steendijk** (the Netherlands) and **Boštjan Zalar** (Slovenia). The ET was supported and assisted in its task by the project manager, **Clara Odofin**.

([1]) Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, OJ L 132/11, 29.5.2010.
([2]) Formerly known as the International Association of Refugee Law Judges (IARLJ).

Drafters

Claire Thomas (consultant) was the primary drafter, along with **Liesbeth Steendijk** (the Netherlands), who drafted summaries for transcripts in Dutch, and **Frances Nicholson** (consultant), who drafted summaries of transcripts in French and German, as well as providing editorial support.

Acknowledgements

Comments on the judicial analysis were received from Judge Lars Bay Larsen and Legal Secretary Yann Laurans of the Court of Justice of the European Union (CJEU) in their personal capacity. The Office of the United Nations High Commissioner for Refugees (UNHCR) also expressed its views on the draft text. EASO experts further reviewed the material and provided comments to IARMJ.

All of these comments were taken into consideration by the ET in finalising the text of the judicial analysis for publication. The members of the ET and EASO are grateful to all those who have made comments, which have been very helpful in finalising the analysis.

The methodology adopted for the production of the analysis is set out in Appendix F, 'Methodology' of the judicial analysis.

This compilation of jurisprudence will be updated, as necessary, by EASO, in accordance with the EASO Professional development series methodology for members of courts and tribunals.

Compilation of jurisprudence

This compilation of jurisprudence is intended to be an accompanying resource to the judicial analysis and to provide courts and tribunals in Member States with a helpful aid to refer to when hearing appeals or conducting reviews of decisions on applications concerning exclusion.

The cases summarised in this compilation are confined to those that have been named within the main body of text of the judicial analysis. Jurisprudence from the following is included in this compilation:

- European courts, that is, the CJEU and the European Court of Human rights (ECtHR);
- international tribunals, that is, the International Criminal Court (ICC) and the International Criminal Tribunal for the Former Yugoslavia (ICTY);
- national courts and tribunals of the EU Member States;
- national courts and tribunals of other states.

Within these sections, cases are listed in date order from the oldest to the most recent. National court and tribunal judgments are listed alphabetically by country, whether among EU Member States or other states, with the judgments of the highest court or tribunal first followed by lower courts or tribunals, again from the oldest to the most recent.

All cases cited or otherwise mentioned in the footnotes of the judicial analysis can be found in Appendix E, 'Primary sources'. Further information on all cases can be found through the hyperlinks provided or via the list of websites provided at the end of this compilation.

Court of Justice of the European Union

Cases are listed in date order from the oldest to the most recent.

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
CJEU (Grand Chamber)	*Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal* C-31/09 17 June 2010 EU:C:2010:351	**Keywords**: Directive 2004/83/EC – Minimum standards for the qualification and status of third country nationals or stateless persons as refugees – Stateless person of Palestinian origin who has not sought protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Judgment after a preliminary ruling concerning the interpretation of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. **Summary** Ms Bolbol, after having left the Gaza Strip in the company of her husband, arrived in Hungary with a visa on 10 January 2007. She subsequently obtained a residence permit from the immigration authority. Her residence permit was not extended and she submitted an application for asylum to the Office for Immigration and Citizenship (BAH), citing the unsafe situation in the Gaza Strip caused by the daily clashes between Fatah and Hamas. Ms Bolbol based her application on the second subparagraph of Article 1D of the Geneva Convention, pointing out that she was a Palestinian residing outside UNRWA's area of operations. Of her family members, only her father remained in the Gaza Strip. Ms Bolbol had not availed herself of the protection or assistance of UNRWA. She claimed, however, to be entitled to such protection and assistance, relying in support of that claim on a UNRWA registration card issued to the family of her father's cousins. In the absence of any documentary evidence, the defendant disputed the family connection on which she relied. In its decision of 14 September 2007, the defendant refused Ms Bolbol's application for asylum based on Article 3(1) of the Law on Asylum, but at the same time found that she could not be expelled. Ms Bolbol requested the referring court to vary BAH's decision and grant her refugee status pursuant to the second subparagraph of Article 1D of the Geneva Convention which, in her view, was a separate basis for recognition as a refugee. According to the referring court, Article 1D of the Geneva Convention is open to a number of interpretations and it therefore decided to stay the proceedings and refer for preliminary ruling. The court ruled that, for the purposes of the first sentence of Article 12(1)(a) of Council Directive 2004/83/EC, a person receives protection or assistance from an agency of the United Nations other than UNHCR [the United Nations High Commissioner for Refugees] when that person has actually availed himself of that protection or assistance. Therefore, as Ms Bolbol had not availed herself of protection or assistance from UNRWA, and in light of the reply to the first question, it was not necessary to reply to the other questions referred. **Relevant paragraphs**: 7, 44–48 and 51–53.	**CJEU** *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, 2 March 2010, EU:C:2010:105

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
CJEU (Grand Chamber)	*Bundesrepublik Deutschland* v *B and D* C-57/09 and C-101/09 9 November 2010 EU:C:2010:661	**Keywords**: Directive 2004/83/EC – Minimum standards for the grant of refugee status or of subsidiary protection – Article 12 – Exclusion from refugee status – Article 12(2)(b) and (c) – Notion of 'serious non-political crime' – Notion of 'acts contrary to the purposes and principles of the United Nations' – Membership of an organisation involved in terrorist acts – Subsequent inclusion of that organisation on the list of persons, groups and entities which forms the Annex to Common Position 2001/931/CFSP. Judgment after a preliminary ruling concerning (i) the interpretation of Article 12(2)(b) and (c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and (ii) the interpretation of Article 3 of that directive. **Summary** B entered Germany at the end of 2002, where he applied for asylum and for protection as a refugee and, in the alternative, for an order prohibiting his deportation to Turkey, on the basis that he had been a sympathiser of Dev Sol (now DHKP/C) and he had supported armed guerrilla warfare in the mountains. In 2004, the Bundesamt (Federal Office for Migration and Refugees) rejected B's application for asylum as unfounded, since B had committed serious non-political crimes, and held that there were no obstacles to B's deportation to Turkey under the applicable law. In 2006, that decision was annulled by the Verwaltungsgericht Gelsenkirchen (Administrative Court, Gelsenkirchen), which ordered that authority to grant B asylum and to declare that his deportation to Turkey was prohibited. On appeal, the Oberverwaltungsgericht (Higher Administrative Court) found, in particular, that the exclusion clause relied upon by the Bundesamt must be understood to the effect that it does not seek only to punish a serious non-political crime committed in the past, but also to forestall the danger which the applicant could pose to the host Member State, and that the application of that clause requires an overall assessment of the particular case in the light of the principle of proportionality. D had resided in Germany since 2001 and applied for asylum, stating, inter alia, that, in 1990, he had fled to the mountains where he joined the PKK [Kurdistan Workers' Party] and had been a guerrilla fighter for the PKK and one of its senior officials. He was granted asylum and refugee status under the national law in force at that time, but the Bundesamt initiated a revocation procedure and, by May 2004, it revoked the decision. The Bundesamt found that there were serious reasons for considering that D had committed a serious non-political crime outside Germany before being admitted to its territory as a refugee and that he had been guilty of acts contrary to the purposes and principles of the United Nations.	**CJEU** *Salahadin Abdulla and Others*, 2 March 2010, C-175/08, C-176/08, C-178/08 and C-179/08, 2 March 2010, EU:C:2010:105 *Bolbol*, C-31/09, 17 June 2010, EU:C:2010:351

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		The court ruled that: 1. Article 12(2)(b) and (c) of Council Directive 2004/83/EC must be interpreted as meaning that: • the fact that a person has been a member of an organisation which, because of its involvement in terrorist acts, is on the list forming the Annex to Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and that that person has actively supported the armed struggle waged by that organisation does not automatically constitute a serious reason for considering that that person has committed 'a serious non-political crime' or 'acts contrary to the purposes and principles of the United Nations'; • the finding, in such a context, that there are serious reasons for considering that a person has committed such a crime or has been guilty of such acts is conditional on an assessment on a case-by-case basis of the specific facts, with a view to determining whether the acts committed by the organisation concerned meet the conditions laid down in those provisions and whether individual responsibility for carrying out those acts can be attributed to the person concerned, regard being had to the standard of proof required under Article 12(2) of the directive. 2. Exclusion from refugee status pursuant to Article 12(2)(b) or (c) of Directive 2004/83 is not conditional on the person concerned representing a present danger to the host Member State. 3. The exclusion of a person from refugee status pursuant to Article 12(2)(b) or (c) of Directive 2004/83 is not conditional on an assessment of proportionality in relation to the particular case. 4. Article 3 of Directive 2004/83 must be interpreted as meaning that Member States may grant a right of asylum under their national law to a person who is excluded from refugee status pursuant to Article 12(2) of the directive, provided that that other kind of protection does not entail a risk of confusion with refugee status within the meaning of the directive. **Relevant paragraphs**: 78, 81, 83, 84, 89, 90, 91, 93, 94, 96–99, 103, 104, 107–109, 110, 111 and 115–120.	

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
CJEU (Grand Chamber)	*Mostafa Abed El Karem El Kott and Others* v *Bevándorlási és Állampolgársági Hivatal*C-364/11 9 December 2012 EU:C:2012:826	**Keywords**: Directive 2004/83/EC – Minimum standards for determining who qualifies for refugee status or subsidiary protection status – Stateless persons of Palestinian origin who have in fact availed themselves of assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) – The right of those stateless persons to recognition as refugees on the basis of the second sentence of Article 12(1)(a) of Directive 2004/83 – Conditions under which applicable – Cessation of UNRWA assistance 'for any reason'. Judgment after a preliminary ruling concerning the interpretation of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. **Summary** The applicants lived in difficult material circumstances at UNRWA refugee camps in Lebanon. Due to various circumstances involving threats, violence and torture, they left the camps, some initially to relocate elsewhere in Lebanon but all eventually leaving Lebanon altogether and fleeing to Hungary. In Hungary, the BAH did not recognise them as refugees but ordered that they should not be returned. They appealed against the decision before the referring court, challenging the refusal to recognise them as refugees. The court ruled that: 1. The second sentence of Article 12(1)(a) of Council Directive 2004/83/EC must be interpreted as meaning that the cessation of protection or assistance from organs or agencies of the United Nations other than the High Commission for Refugees (HCR) 'for any reason' includes the situation in which a person who, after actually availing himself of such protection or assistance, ceases to receive it for a reason beyond his control and independent of his volition. It is for the competent national authorities of the Member State responsible for examining the asylum application made by such a person to ascertain, by carrying out an assessment of the application on an individual basis, whether that person was forced to leave the area of operations of such an organ or agency, which will be the case where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his living conditions in that area would be commensurate with the mission entrusted to that organ or agency. 2. The second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, where the competent authorities of the Member State responsible for examining the application for asylum have established that the condition relating to the cessation of the protection or assistance provided by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is satisfied as regards the applicant, the fact that that person is *ipso facto* 'entitled to the benefits of [the] directive' means that that Member State must recognise him as a refugee within the meaning of Article 2(c) of the directive and that person must automatically be granted refugee status, provided always that he is not caught by Article 12(1)(b) or (2) and (3) of the directive. **Relevant paragraphs**: 7, 18, 21, 43, 48–52, 54, 58, 60–63, 76, 77 and 81.	**CJEU** *Bolbol*, C-31/09, 17 June 2010, EU:C:2010:351 *Y and Z*, C-71/11 and C-99/11, 5 September 2012, EU:C:2012:518 *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, 2 March 2010, EU:C:2010:105

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
CJEU (Grand Chamber)	*ZZ* v *Secretary of State for the Home Department* C-300/11 4 June 2013 EU:C:2013:363	**Keywords**: Freedom of movement for persons – Directive 2004/38/EC – Decision refusing a citizen of the European Union admission to a Member State on public security grounds – Article 30(2) of the directive – Obligation to inform the citizen concerned of the grounds of that decision – Disclosure contrary to the interests of State security – Fundamental right to effective judicial protection. Judgment concerning the interpretation of Article 30(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. **Summary** ZZ has dual French and Algerian nationality, and has been married to a British national since 1990, with whom he has eight children. ZZ resided lawfully in the United Kingdom from 1990 to 2005 and in 2004 the Secretary of State granted him a right of permanent residence in the United Kingdom. In 2005, he left the United Kingdom to go to Algeria and the Secretary of State decided to cancel his right of residence and to exclude him from the United Kingdom on the ground that his presence was not conducive to the public good. The Special Immigration Appeals Commission (SIAC) stated in its judgment that ZZ had no right of appeal against that decision cancelling his right of residence. On his return to the United Kingdom, he was refused admission and removed to Algeria. On the date when the present request for a preliminary ruling was lodged, he was residing in France. His appeal against the decision refusing entry was dismissed by SIAC on the basis that that decision was justified by imperative grounds of public security. In the appeal proceedings, and in accordance with the rules of procedure applicable before SIAC, two special advocates were appointed to represent ZZ's interests. Subject to limitations, the special advocates proceeded to represent ZZ's interests before SIAC with regard to 'closed evidence' and SIAC determined the extent to which disclosure to ZZ of the 'closed evidence' relied upon by the Secretary of State would be contrary to the public interest. Subsequently, a hearing devoted to ZZ's appeal took place, both in open and in closed sessions. The closed sessions took place in the absence of ZZ and his personal advisers, but in the presence of his special advocates, who made submissions on his behalf. SIAC dismissed ZZ's appeal and gave an 'open' judgment and a 'closed' judgment, the latter being provided only to the Secretary of State and ZZ's special advocates. In its open judgment, SIAC held, in particular, that 'little of the case against' ZZ had been disclosed to him and that which had been disclosed did not concern 'the critical issues'. SIAC concluded, in its open judgment, that, 'for reasons which are explained only in the closed judgment', it was satisfied that the personal conduct of ZZ represents a genuine, present and sufficiently serious threat which affects a fundamental interest of society, namely its public security, and that it outweighs his and his family's right to enjoy family life in the United Kingdom. The Court of Appeal is uncertain whether it was permissible for SIAC not to disclose to ZZ the essence of the grounds which constitute the basis of the decision refusing entry at issue in the main proceedings.	**CJEU** *Rintisch*, C-553/11, 25 October 2012, EU:C:2012:671 *Melki and Abdeli*, C-188/10 and C-189/10, 22 June 2010, EU:C:2010:363 *Commission* v *Italy*, C-387/05, 15 December 2009, EU:C:2009:781 *Byankov*, C-249/11, 4 October 2012, EU:C:2012:608 *Peñarroja Fa*, C-372/09 and C-373/09, 17 March 2011, EU:C:2011:156 *Gaydarov*, C-430/10, 17 November 2011, EU:C:2011:749 *Heylens and Others*, C-222/86, 15 October 1987, EU:C:1987:442 *P Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05, 3 September 2008, EU:C:2008:461

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		The question referred to the Court was whether the principle of effective judicial protection, set out in Article 30(2) of Directive 2004/38, as interpreted in the light of Article 346(1)(a) [TFEU], requires that a judicial body considering an appeal from a decision to exclude a European Union citizen from a Member State on grounds of public policy and public security under Chapter VI of Directive 2004/38 ensure that the European Union citizen concerned is informed of the essence of the grounds against him, notwithstanding the fact that the authorities of the Member State and the relevant domestic court, after consideration of the totality of the evidence against the European Union citizen relied upon by the authorities of the Member State, conclude that the disclosure of the essence of the grounds against him would be contrary to the interests of State security. It is incumbent upon the national court with jurisdiction, first, to ensure that the person concerned is informed of the essence of the grounds which constitute the basis of the decision in question in a manner which takes due account of the necessary confidentiality of the evidence and, second, to draw, pursuant to national law, the appropriate conclusions from any failure to comply with that obligation to inform him. Articles 30(2) and 31 of Directive 2004/38, read in the light of Article 47 of the Charter [of Fundamental Rights of the European Union], must be interpreted as requiring the national court with jurisdiction to ensure that failure by the competent national authority to disclose to the person concerned, precisely and in full, the grounds on which a decision taken under Article 27 of that directive is based and to disclose the related evidence to him is limited to that which is strictly necessary, and that he is informed, in any event, of the essence of those grounds in a manner which takes due account of the necessary confidentiality of the evidence. Relevant paragraph: 40.	*Varec*, C-450/06, 14 February 2008, EU:C:2008:91 *Commission* v *Ireland and Others*, C-89/08 P, 2 December 2009, EU:C:2009:742 *Banif Plus Bank*, C-472/11, 21 February 2013, EU:C:2013:88 *Commission* v *Finland*, C-284/05, 15 December 2009, EU:C:2009:778 **ECtHR** *Ruiz-Mateos* v *Spain*, No 12952/87, 23 June 1993, § 63
CJEU	*HT* v *Land Baden-Württemberg* C-373/13 24 June 2015 EU:C:2015:413	**Keywords**: Area of freedom, security and justice – Borders, asylum and immigration – Directive 2004/83/EC – Article 24(1) – Minimum standards for granting refugee or subsidiary protection status – Revocation of residence permit – Conditions for revocation of residence permit – Concept of 'compelling reasons of national security or public order'. Judgment after a preliminary ruling concerning the interpretation of Article 21(2) and (3) and Article 24(1) and (2) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.	**CJEU** *Lundberg*, C-317/12, 3 October 2013, EU:C:2013:631 *Bouman*, C-114/13, 12 February 2015, EU:C:2015:81

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		Summary Mr T., born in 1956, is a Turkish national of Kurdish origin. He has been living in Germany since 1989 with his wife, who is also a Turkish national, and their eight joint children, five of whom are German nationals. Since 24 June 1993, Mr T. has been recognised as a refugee within the meaning of the Geneva Convention. That recognition was motivated by the political activities he carried out in exile in support of the 'Kurdistan Workers' Party' ('the PKK') and by the threat of political persecution he would face were he to return to Turkey. Since 7 October 1993, Mr T. has been in possession of an indefinite residence permit in Germany. By decision of 21 August 2006, the competent authorities revoked Mr T.'s refugee status on the grounds that the political situation in Turkey had changed and that he was therefore no longer considered to be at risk of persecution in that country. That decision was annulled by judgment of the Verwaltungsgericht Karlsruhe (Administrative Court, Karlsruhe) of 30 November 2007, with the result that Mr T. retained his refugee status. The Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court, Baden-Württemberg) considers inter alia that the obligation imposed on Member States under the first subparagraph of Article 24(1) of that directive to issue to the beneficiaries of refugee status a residence permit valid for at least three years means that revoking that residence permit or an pre-existing permit is prohibited, where none of the reasons for which the grant of a residence permit may be refused outright are present. The court ruled that: 1. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that a residence permit, once granted to a refugee, may be revoked, either pursuant to Article 24(1) of that directive, where there are compelling reasons of national security or public order within the meaning of that provision, or pursuant to Article 21(3) of that directive, where there are reasons to apply the derogation from the principle of non-refoulement laid down in Article 21(2) of the same directive. 2. Support for a terrorist organisation included on the list annexed to Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism, in the version in force at the material date, may constitute one of the 'compelling reasons of national security or public order' within the meaning of Article 24(1) of Directive 2004/83, even if the conditions set out in Article 21(2) of that directive are not met. In order to be able to revoke, on the basis of Article 24(1) of that directive, a residence permit granted to a refugee on the ground that that refugee supports such a terrorist organisation, the competent authorities are nevertheless obliged to carry out, under the supervision of the national courts, an individual assessment of the specific facts concerning the actions of both the organisation and the refugee in question. Where a Member State decides to expel a refugee whose residence permit has been revoked, but suspends the implementation of that decision, it is incompatible with that directive to deny access to the benefits guaranteed by Chapter VII of the same directive, unless an exception expressly laid down in the directive applies. **Relevant paragraphs**: 36, 77–79 and 81–99.	*Pringle*, C-370/12, 27 November 2012, EU:C:2012:756 *M. and Others*, C-627/13 and C-2/14, 5 February 2015, EU:C:2015:59 *P. I.*, C-348/09, 22 May 2012, EU:C:2012:300 *Tsakouridis*, C-145/09, 23 November 2010, EU:C:2010:708 *Byankov*, C-249/11, 4 October 2012, EU:C:2012:608 *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2010:661

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
CJEU (Grand Chamber)	*Commissaire général aux réfugiés et aux apatrides* v *Mostafa Lounani* C-573/14 31 January 2017 EU:C:2017:71	**Keywords**: Area of freedom, security and justice – Asylum – Directive 2004/83/EC – Minimum standards for the qualification and status of third country nationals or stateless persons as refugees – Article 12(2)(c) and Article 12(3) – Exclusion from being a refugee – Concept of 'acts contrary to the purposes and principles of the United Nations' – Scope – Member of the leadership of a terrorist organisation. Judgment after a preliminary ruling concerning the interpretation of Article 12(2)(c) and Article 12(3) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. **Summary** Mr Lounani left Morocco in 1991 and travelled to Germany where he submitted an application for asylum, which was rejected. In 1997 he arrived in Belgium, where he has resided illegally since. By a judgment of 16 February 2006, Mr Lounani was convicted by the tribunal correctionnel de Bruxelles (Criminal Court, Brussels, Belgium) of participation in the activities of a terrorist group, namely the Belgian cell of the 'groupe islamique des combattants marocains' [the Moroccan Islamic Combatant Group; 'the MICG'], as a member of its leadership, as well as for criminal conspiracy, use of forged documents, and illegal residence, and sentenced, under, inter alia, Article 140 of the amended Criminal Code, to a period of six years imprisonment. On 16 March 2010, Mr Lounani applied to the Belgian authorities for refugee status, claiming that he feared persecution in the event of his being returned to Morocco because of the likelihood that he would be regarded by the Moroccan authorities as a radical Islamist and jihadist, following his conviction in Belgium. A decision was made on that application on 8 December 2010 by the Belgian Commissioner General for Refugees and Stateless Persons (CGRA), whereby Mr Lounani was excluded from refugee status under Article 55/2 of the Law of 15 December 1980 and Article 1F(c) of the Geneva Convention. Mr Lounani brought an action seeking the annulment of that decision. On 2 February 2011, the CGRA adopted a second decision excluding Mr Lounani from refugee status. On 24 May 2011 the CGRA adopted a third decision excluding Mr Lounani from refugee status. On 14 June 2011 Mr Lounani brought before the Council for asylum and immigration proceedings (CCE) an action seeking variation of that decision and recognition of his refugee status. By judgment of 1 July 2011, the CCE held that Mr Lounani ought to be granted refugee status. An administrative appeal against that judgment on a point of law having been brought before it, the Conseil d'État (Council of State, Belgium), by a judgment of 13 July 2012, set aside that judgment and referred the case back to the CCE, sitting in a different composition. The CCE varied the decision of the CGRA of 24 May 2011 and granted Mr Lounani refugee status.	**CJEU** *A and Others*, C-148/13 to C-150/13, 2 December 2014, EU:C:2014:2406 *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2010:661 *A and Others*, C-148/13 to C-150/13, 2 December 2014, EU:C:2014:2406 *Polkomtel*, C-397/14, 14 April 2016, EU:C:2016:256 *Petruhhin*, C-182/15, 6 September 2016, EU:C:2016:630 *Prezes Urzędu Komunikacji Elektronicznej and Petrotel*, C-231/15, 13 October 2016, EU:C:2016:769

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		The court ruled that: 1. Article 12(2)(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that it is not a prerequisite for the ground for exclusion of refugee status specified in that provision to be held to be established that an applicant for international protection should have been convicted of one of the terrorist offences referred to in Article 1(1) of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism. 2. Article 12(2)(c) and Article 12(3) of Directive 2004/83 must be interpreted as meaning that acts constituting participation in the activities of a terrorist group, such as those of which the defendant in the main proceedings was convicted, may justify exclusion of refugee status, even though it is not established that the person concerned committed, attempted to commit or threatened to commit a terrorist act as defined in the resolutions of the United Nations Security Council. For the purposes of the individual assessment of the facts that may be grounds for a finding that there are serious reasons for considering that a person has been guilty of acts contrary to the purposes and principles of the United Nations, has instigated such acts or has otherwise participated in such acts, the fact that that person was convicted, by the courts of a Member State, on a charge of participation in the activities of a terrorist group is of particular importance, as is a finding that that person was a member of the leadership of that group, and there is no need to establish that that person himself or herself instigated a terrorist act or otherwise participated in it. Relevant paragraphs: 46–49, 51–53 and 62–78.	
CJEU (Grand Chamber)	*K* v *Staatssecretaris van Veiligheid en Justitie and HF* v *Belgische Staat* C-331/16 and C-366/16 2 May 2018 EU:C:2018:296	**Keywords**: Citizenship of the European Union – Right to move and reside freely within the territory of the Member States – Directive 2004/38/EC – Second subparagraph of Article 27(2) – Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health – Expulsion on grounds of public policy or public security – Conduct representing a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Judgment after a preliminary ruling concerns the interpretation of the second subparagraph of Article 27(2), Article 28(1) and Article 28(3)(a) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.	**CJEU** *Zh. and O*, C-554/13, 11 June 2015, EU:C:2015:377 *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2010:661 *Tsakouridis*, C-145/09, 23 November 2010, EU:C:2010:708

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		Summary K. has both Croatian nationality and the nationality of Bosnia-Herzegovina. K. arrived in the Netherlands on 21 January 2001, accompanied by his wife and a minor son. K. resided continuously in the Netherlands since that date. On 27 April 2006 his wife gave birth to their second son. In 2001 K. submitted to the Secretary of State an initial application for a temporary residence permit as an asylum seeker, which was rejected by the Secretary of State. In 2011 K. submitted a second asylum application, which was also rejected. That decision, which was accompanied by a ban on entering the Netherlands for a period of 10 years, becoming final following its confirmation by a judgment of 10 February 2014 of the Raad van State (Council of State). On 3 October 2014 K. made an application for the withdrawal of the Netherlands entry ban imposed on him. The Secretary of State accepted that application but declared K. to be an undesirable immigrant to the Netherlands, on the basis of Article 67(1)(e) of the Law on Foreign Nationals. The complaint lodged by K. against that decision was rejected. It was held that K had been guilty of conduct within the scope of Article 1F(a) of the Geneva Convention. K. brought an action against the decision of 9 December 2015 before the referring court. H. F., an Afghan national, arrived in the Netherlands on 7 February 2000 and was excluded from refugee status on the basis of Article 1F(a) of the Geneva Convention. The competent Netherlands authority refused to issue to H. F. with a temporary residence permit in the Netherlands. H. F. and his daughter settled in Belgium. H. F. lodged an application for a residence permit which was rejected as being inadmissible and he was ordered to leave Belgium. The justification for the adoption of that decision was the information contained in the file relating to his application for asylum in the Netherlands, obtained through the cooperation of the Netherlands. It was apparent that H. F. had committed crimes falling within the scope of Article 1F(a) of the Geneva Convention and, on all those grounds, the refusal to grant a right of residence to H. F. was proportionate. The court ruled that: 1. Article 27(2) of Directive 2004/38/EC must be interpreted as meaning that the fact that a European Union citizen or a third-country national family member of such a citizen, who applies for a right of residence in the territory of a Member State, has been the subject, in the past, of a decision excluding him from refugee status under Article 1F of the Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 and supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, or Article 12(2) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, does not enable the competent authorities of that Member State to consider automatically that the mere presence of that individual in its territory constitutes, whether or not there is any risk of re-offending, a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, capable of justifying the adoption of measures on grounds of public policy or public security.	*P. I.*, C-348/09, 22 May 2012, EU:C:2012:300 *E*, C-193/16, 13 July 2017, EU:C:2017:542 *H. T.*, C-373/13, 24 June 2015, EU:C:2015:413 *Ziebell*, C-371/08, 8 December 2011, EU:C:2011:80 *Orfanopoulos and Oliveri*, C-482/01 and C-493/01, 29 April 2004, EU:C:2004:262 *Bouchereau*, C-30/77, 27 October 1977, EU:C:1977:172 *Gaydarov*, C-430/10, 17 November 2011, EU:C:2011:749 *Aladzhov*, C-434/10, 17 November 2011, EU:C:2011:750 *B and Vomero*, C-316/16 and C-424/16, 17 April 2018, EU:C:2018:256

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		The finding that there is such a threat must be based on an assessment, by the competent authorities of the host Member State, of the personal conduct of the individual concerned, taking into consideration the findings of fact in the decision to exclude that individual from refugee status and the factors on which that decision is based, particularly the nature and gravity of the crimes or acts that he is alleged to have committed, the degree of his individual involvement in them, whether there are any grounds for excluding criminal liability, and whether or not he has been convicted. That overall assessment must also take account of the time that has elapsed since the date when the crimes or acts were allegedly committed and the subsequent conduct of that individual, particularly in relation to whether that conduct reveals the persistence in him of a disposition hostile to the fundamental values enshrined in Articles 2 and 3 TEU [Treaty on European Union], capable of disturbing the peace of mind and physical security of the population. The mere fact that the past conduct of that individual took place in a specific historical and social context in his country of origin, which is not liable to recur in the host Member State, does not preclude such a finding. In accordance with the principle of proportionality, the competent authorities of the host Member State must, in addition, weigh the protection of the fundamental interest of society at issue, on the one hand, against the interests of the person concerned in the exercise of his right to freedom of movement and residence as a Union citizen and in his right to respect for private and family life. 2. Article 28(1) of Directive 2004/38 must be interpreted as meaning that, where the measures envisaged entail the expulsion of the individual concerned from the host Member State, that State must take account of, inter alia, the nature and gravity of the alleged conduct of the individual concerned, the duration and, when appropriate, the legality of his residence in that Member State, the period of time that has elapsed since that conduct, the individual's behaviour during that period, the extent to which he currently poses a danger to society, and the solidity of social, cultural and family links with that Member State. Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that it is not applicable to a European Union citizen who does not have a right of permanent residence in the host Member State, within the meaning of Article 16 and Article 28(2) of that directive. **Relevant paragraphs**: 46 and 50.	*Ziolkowski and Szeja*, C-424/10 and C-425/10, 21 December 2011, EU:C:2011:866 *Lassal*, C-162/09, 7 October 2010, EU:C:2010:592

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
CJEU (Grand Chamber)	*Serin Alheto* v *Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* C-585/16 25 July 2018 EU:C:2018:584	**Keywords**: Common policy on asylum and subsidiary protection – Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection – Directive 2011/95/EU – Article 12 – Exclusion from refugee status – Persons registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) – Existence of a 'first country of asylum', for a refugee from Palestine, in the UNRWA area of operations – Common procedures for granting international protection. Judgment after a preliminary ruling concerning the interpretation of Article 12(1) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted and Article 35 and Article 46(3) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. **Summary** Ms Alheto, born on 29 November 1972 in Gaza, held a passport issued by the Palestinian National Authority and was registered with UNRWA. In 2014, Ms Alheto left the Gaza Strip via underground tunnels linking that territory to Egypt. From that country, she went on to Jordan by boat. On 7 August 2014, the consular service of the Republic of Bulgaria in Jordan issued Ms Alheto with a tourist visa for travel to Bulgaria, valid until 1 September 2014. On 10 August 2014, Ms Alheto entered Bulgaria, having flown from Amman to Varna. On 28 August 2014, the validity of that visa was extended to 17 November 2014. On 11 November 2014, Ms Alheto lodged an application for international protection with the Deputy Chairperson of the State Agency for Refugees, Bulgaria (DAB), which she repeated on 25 November 2014. In support of that application, she claimed that to return to the Gaza Strip would expose her to a serious threat to her life since she would risk experiencing torture and persecution there. That threat was linked to the fact that she carried out work in the social sphere informing women of their rights and that that activity was not accepted by Hamas, the organisation which controlled the Gaza Strip. Ms Alheto claimed that, in the light of armed conflict between Hamas and Israel, the situation in the Gaza Strip was one of indiscriminate violence. Between December 2014 and March 2015, the DAB conducted several personal interviews with Ms Alheto. The Deputy Director of the DAB refused the application for international protection lodged by Ms Alheto, on the basis of Article 75 of the ZUB [Law on asylum and refugees], read in conjunction with Articles 8 and 9 of that law ('the contested decision'), on the ground that Ms Alheto's statements lacked credibility. The Deputy Director of the DAB explained that the mere fact that Ms Alheto was a woman who informed other women residing in the Gaza Strip of their rights was not sufficient to find that there was a real risk of persecution. It was difficult to believe that Ms Alheto's activity exposed her to serious and individual threats and the Deputy Director added that Ms Alheto was not driven to make an application for international protection on account of indiscriminate violence caused by an armed conflict. Ms Alheto brought an action before the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria) for annulment of the contested decision. That court considered that the DAB should, in principle, have examined the application for international protection lodged by Ms Alheto on the basis of Article 12(1)(4) of the ZUB and not on the basis of Articles 8 and 9 of that law. The contested decision does not therefore comply with the ZUB or with the corresponding rules laid down in Directive 2011/95, in particular Article 12(1)(a) of that directive.	**CJEU** *Cordero Alonso*, C-81/05, 7 September 2006, EU:C:2006:529 *VTB-VAB and Galatea*, C-261/07 and C-299/07, 23 April 2009, EU:C:2009:244 *Abed El Karem El Kott and Others*, C-364/11, 19 December 2012, EU:C:2012:826 *Dominguez*, C-282/10, 24 January 2012, EU:C:2012:33 *Association de médiation sociale*, C-176/12, 15 January 2014, EU:C:2014:2 *Ambisig*, C-46/15, 7 July 2016, EU:C:2016:530 *Diakité*, C-285/12, 30 January 2014, EU:C:2014:39 *Zh and O*, C-554/13, 11 June 2015, EU:C:2015:377 *Jafari*, C-646/16, 26 July 2017, EU:C:2017:586 *Sacko*, C-348/16, 26 July 2017, EU:C:2017:591

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		The court ruled that: 1. Article 12(1)(a) of Directive 2011/95/EU, read in conjunction with Article 10(2) of Directive 2013/32/EU, must be interpreted as meaning that the processing of an application for international protection lodged by a person registered with the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) requires an examination of whether that person receives effective protection or assistance from that agency, provided that that application has not been previously rejected on the basis of a ground of inadmissibility or on the basis of a ground for exclusion other than that laid down in the first sentence of Article 12(1)(a) of Directive 2011/95. 2. The second sentence of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and the second sentence of Article 12(1)(a) of Directive 2011/95 must be interpreted as: • precluding national legislation which does not lay down or which incorrectly transposes the ground for no longer applying the ground for exclusion from being a refugee contained therein; • having direct effect; and • being applicable even if the applicant for international protection has not expressly referred to them. 3. Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a court or tribunal of a Member State seised at first instance of an appeal against a decision relating to an application for international protection must examine both facts and points of law, such as the applicability of Article 12(1)(a) of Directive 2011/95 to the applicant's circumstances, which the body that took that decision took into account or could have taken into account, and those which arose after the adoption of that decision. 4. Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter of Fundamental Rights, must be interpreted as meaning that the requirement for a full and *ex nunc* examination of the facts and points of law may also concern the grounds of inadmissibility of the application for international protection referred to in Article 33(2) of that directive, where permitted under national law, and that, in the event that the court or tribunal hearing the appeal plans to examine a ground of inadmissibility which has not been examined by the determining authority, it must conduct a hearing of the applicant in order to allow that individual to express his or her point of view in person concerning the applicability of that ground to his or her particular circumstances.	

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		5. Point (b) of the first paragraph of Article 35 of Directive 2013/32 must be interpreted as meaning that a person registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) must, if he or she is a beneficiary of effective protection or assistance from that agency in a third country that is not the territory in which he or she habitually resides but which forms part of the area of operations of that agency, be considered as enjoying sufficient protection in that third country, within the meaning of that provision, when it: • agrees to readmit the person concerned after he or she has left its territory in order to apply for international protection in the European Union; and • recognises that protection or assistance from UNRWA and supports the principle of non-refoulement, thus enabling the person concerned to stay in its territory in safety under dignified living conditions for as long as necessary in view of the risks in the territory of habitual residence. 6. Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter of Fundamental Rights, must be interpreted as meaning that it does not establish common procedural standards in respect of the power to adopt a new decision concerning an application for international protection following the annulment, by the court hearing the appeal, of the initial decision taken on that application. However, the need to ensure that Article 46(3) of that directive has a practical effect and to ensure an effective remedy in accordance with Article 47 of the Charter of Fundamental Rights requires that, in the event that the file is referred back to the quasi-judicial or administrative body referred to in Article 2(f) of that directive, a new decision must be adopted within a short period of time and must comply with the assessment contained in the judgment annulling the initial decision. **Relevant paragraphs**: 7, 42–62, 84–87, 89, 92, 101, 118 and 132–134.	

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
CJEU	*Shajin Ahmed* v *Bevándorlási és Menekültügyi Hivatal* C-369/17 13 September 2018 EU:C:2018:713	**Keywords**: Area of freedom, security and justice – Borders, asylum and immigration – Refugee status or subsidiary protection status – Directive 2011/95/EU – Article 17 – Exclusion from subsidiary protection status – Grounds – Conviction for a serious crime – Determination of seriousness on the basis of the penalty provided for under national law. Judgment after a preliminary ruling concerns the interpretation of Article 17(1)(b) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted. **Summary** Mr Ahmed obtained refugee status by decision of the Immigration and Nationality Office, Hungary (the Office), of 13 October 2000 on account of the risk of persecution that he faced in his country of origin, as his father was a high-ranking officer in the Najibullah regime. Criminal proceedings were subsequently brought in Hungary against Mr Ahmed, in the course of which he requested that the consulate of the Islamic Republic of Afghanistan be fully informed of the outcome. Taking the view that it could be inferred from the request for protection, which Mr Ahmed had voluntarily sent to his country of origin that the risk of persecution had ceased to exist, the Office initiated of its own motion a procedure to review his refugee status in 2014. Mr Ahmed received a custodial sentence of two years and loss of civic rights for four years, for attempted murder as well as a custodial sentence of four years and loss of civic rights for three years, for attempted blackmail. By decision of 4 November 2014, the Office withdrew Mr Ahmed's refugee status pursuant to Article 11(3) of the Law on the right to asylum. Mr Ahmed filed a new application for refugee status and subsidiary protection status, which was rejected by the Office by decision of 9 December 2015. Mr Ahmed brought an action against that decision. The action was upheld and it was ordered that the Office was to initiate a new administrative procedure, during which they dismissed Mr Ahmed's application both for refugee status and for subsidiary protection status on the basis that Mr Ahmed had committed a crime for which Hungarian law provides a custodial sentence of five years or more. Mr Ahmed brought an action against that decision before the referring court. The court ruled that: Article 17(1)(b) of Directive 2011/95/EU must be interpreted as precluding legislation of a Member State pursuant to which the applicant for subsidiary protection is deemed to have 'committed a serious crime' within the meaning of that provision, which may exclude him from that protection, on the basis of the sole criterion of the penalty provided for a specific crime under the law of that Member State. It is for the authority or competent national court ruling on the application for subsidiary protection to assess the seriousness of the crime at issue, by carrying out a full investigation into all the circumstances of the individual case concerned. **Relevant paragraphs**: 33, 34, 36, 37 and 43–57.	**CJEU** *JZ*, C-294/16 PPU, 28 July 2016, EU:C:2016:610 *Ouhrami*, C-225/16, 26 July 2017, EU:C:2017:590 *A and S*, C-550/16, 12 April 2018, EU:C:2018:248 *N.*, C-604/12, 8 May 2014, EU:C:2014:302 *Alo and Osso*, C-443/14 and C-444/14, 1 March 2016, EU:C:2016:127 *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2010:661 *Lounani*, C-573/14, 31 January 2017, EU:C:2017:71

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Cases are listed in date order from the oldest to the most recent.

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
ECtHR (Grand Chamber)	*A and Others* v *United Kingdom* No 3455/05 19 February 2009	**Keywords**: Article 5 – Detention – Terrorist threat – Derogation order – Proportionality – Discrimination between nationals and non-nationals. Judgment concerning the legality of derogation measures and whether detention under the 2001 Anti-terrorism, Crime and Security Act was in breach of rights under Articles 3, 5, 6 and 14 of the Convention. **Summary** On 11 September 2001, four commercial aeroplanes were hijacked over the United States of America. Two of them were flown directly at the Twin Towers of the World Trade Centre and a third at the Pentagon, causing great loss of life and destruction to property. The Islamist extremist terrorist organisation al-Qaeda, led by Osama Bin Laden, claimed responsibility. The United Kingdom joined with the United States of America in military action in Afghanistan, which had been used as a base for al-Qaeda training camps. The Government contended that the events of 11 September 2001 demonstrated that international terrorists, notably those associated with al-Qaeda, had the intention and capacity to mount attacks against civilian targets on an unprecedented scale. Further, given the loose-knit, global structure of al-Qaeda and its affiliates and their fanaticism, ruthlessness and determination, it would be difficult for the State to prevent future attacks. In the Government's assessment, the United Kingdom, because of its close links with the United States of America, was a particular target. They considered that there was an emergency of a most serious kind threatening the life of the nation. Moreover, they considered that the threat came principally, but not exclusively, from a number of foreign nationals present in the United Kingdom, who were providing a support network for Islamist terrorist operations linked to al-Qaeda. A number of these foreign nationals could not be deported because of the risk that they would suffer treatment contrary to Article 3 of the Convention in their countries of origin. In November 2001, the Secretary of State made a derogation order under section 14 of the Human Rights Act 1998 in which he set out the terms of a proposed notification to the Secretary General of the Council of Europe of a derogation pursuant to Article 15 of the Convention. In December 2001, the Government lodged the derogation with the Secretary General of the Council of Europe. The derogation notice then set out the provisions of Part 4 of the Anti-terrorism, Crime and Security Bill 2001. The Bill was passed by Parliament in two weeks, with three days of debate on the floor of the House of Commons set aside for its 125 clauses in a restrictive programming motion, prompting both the Joint Committee of Human Rights and the Home Affairs Select Committee to complain of the speed with which they were being asked to consider the matter, now the Anti-terrorism, Crime and Security Act, which came into force on 4 December 2001. During the lifetime of the legislation, 16 individuals, including the present 11 applicants, were certified under section 21 and detained.	**ECtHR** *Burden* v *United Kingdom* [GC], No 13378/05, 29 April 2008 *Saadi* v *United Kingdom* [GC], No 13229/03, 29 January 2008 *Saadi* v *Italy* [GC], No 37201/06, 28 February 2008 *Z and Others* v *United Kingdom* [GC], No 29392/95, 10 May 2001 *Denmark, Norway, Sweden and the Netherlands* v *Greece*, Nos 3321/67, 3322/67, 3323/67 and 3344/67, Commission's report of 5 November 1969 *Gebremedhin [Gaberamadhien]* v *France*, No 25389/05, 26 April 2007 *Marshall* v *United Kingdom* (dec.), No 41571/98, 10 July 2001

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		In proceedings before the Special Immigration Appeals Commission (SIAC), the first seven applicants challenged the legality of the derogation, claiming that their detention under the 2001 Act was in breach of their rights under Articles 3, 5, 6 and 14 of the Convention. Each, in addition, challenged the Secretary of State's decision to certify him as an international terrorist. SIAC rejected the applicants' complaints under Article 3 and did not accept that Article 6 of the Convention applied to the certification process. However, it did rule that the derogation was unlawful because the relevant provisions of the 2001 Act unjustifiably discriminated against foreign nationals, in breach of Article 14 of the Convention. The House of Lords examined whether the detention regime under Part 4 of the 2001 Act was a proportionate response to the emergency situation, and concluded that it did not rationally address the threat to security and was a disproportionate response to that threat. They relied on three principal grounds: firstly, that the detention scheme applied only to non-nationals suspected of international terrorism and did not address the threat which came from United Kingdom nationals who were also so suspected; secondly, that it left suspected international terrorists at liberty to leave the United Kingdom and continue their threatening activities abroad; thirdly, that the legislation was drafted too broadly, so that it could, in principle, apply to individuals suspected of involvement with international terrorist organisations which did not fall within the scope of the derogation. The declaration of incompatibility made by the House of Lords in December 2004, in common with all such declarations, was not binding on the parties to the litigation. The applicants remained in detention, except for the second and fourth applicants who had elected to leave the United Kingdom and the fifth applicant who had been released on bail on conditions amounting to house arrest. Moreover, none of the applicants was entitled, under domestic law, to compensation in respect of their detention. The applicants, therefore, lodged their application to the Court in January 2005. The Government withdrew the derogation notice in March 2005. As the House of Lords found, there was no significant difference in the potential adverse impact of detention without charge on a national or on a non-national who in practice could not leave the country because of fear of torture abroad. The Court, like the House of Lords, and contrary to the Government's contention, found that the derogating measures were disproportionate in that they discriminated unjustifiably between nationals and non-nationals. It followed that there had been a violation of Article 5 in respect of the first, third, fifth, sixth, seventh, eighth, ninth, tenth and eleventh applicants. **Relevant paragraphs**: 202–224.	*Ramirez Sanchez* v *France* [GC], No 59450/00, 4 July 2006 *Z and Others* v *United Kingdom* [GC], No 29392/95, 10 May 2001 *Keenan* v *United Kingdom*, No 27229/95, 3 April 2001 *Roche* v *United Kingdom* [GC], No 32555/96, 19 October 2005 *Kafkaris* v *Cyprus* [GC], No 21906/04, 12 February 2008 *Kudła* v *Poland* [GC], No 30210/96, 26 October 2000 *Mouisel* v *France*, No 67263/01, 14 November 2002 *Włoch* v *Poland*, No 27785/95, ECHR 17 January 2001 *Reinprecht* v *Austria*, No 67175/01, ECHR 12 April 2006 *Nikolova* v *Bulgaria* [GC], No 31195/96, 25 March 1999 *Becciev* v *Moldova*, No 9190/03, 4 October 2005

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			Ţurcan v *Moldova*, No 39835/05, 23 October 2007 *Fodale* v *Italy*, No 70148/01, ECHR 2006-VII *Jasper* v *United Kingdom* [GC], No 27052/95, 16 February 2000 *S. N.* v *Sweden*, No 34209/96, 2 July 2002 *Botmeh and Alami* v *United Kingdom*, No 15187/03, 7 June 2007 *Edwards and Lewis* v *United Kingdom* [GC], Nos 39647/98 and 40461/98, 27 October 2004 *Lucà* v *Italy*, No 33354/96, 27 February 2001 *Al-Nashif* v *Bulgaria*, No 50963/99, 20 June 2002 *Garcia Alva* v *Germany*, No 23541/94, 13 February 2001

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			Perks and Others v *United Kingdom*, Nos 25277/94, 25279/94, 25280/94, 25282/94, 25285/94, 28048/95, 28192/95 and 28456/95, 12 October 1999 *Kingsley* v *United Kingdom* [GC], No 35605/97, ECHR 2002, *Hood* v *United Kingdom* [GC], No 27267/95, ECHR 1999-I *Nikolova* v *Bulgaria* [GC], No 31195/96, 25 March 1999, § 76 *Assanidze* v *Georgia* [GC], No 71503/01, 8 April 2004 *Vilvarajah and Others* v *United Kingdom*, Nos 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87, 30 October 1991 *Chahal* v *United Kingdom* [GC], No 22414/93, 15 November 1996 *Lawless* v *Ireland (No 3)*, No 332/57, 1 July 1961

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			Pine Valley Developments Ltd and Others v *Ireland*, No 12742/87, 29 November 1991 *Kolompar* v *Belgium*, No 11613/85, 24 September 1992 *Brannigan and McBride* v *United Kingdom*, Nos 14553/89 and 14554/89, 26 May 1993 *James and Others* v *United Kingdom*, No 8793/79, 21 February 1986 *Winterwerp* v *the Netherlands*, No 6301/73, 24 October 1979 *Bouamar* v *Belgium*, No 9106/80, 29 February 1988 *Lamy* v *Belgium*, No 10444/83, 30 March 1989 *Aerts* v *Belgium*, No 25357/94, 30 July 1998 *Doorson* v *the Netherlands*, No 20524/92, 26 March 1996

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			Van Mechelen and Others v *the Netherlands*, Nos 21363/93, 21364/93, 21427/93 and 22056/93, 23 April 1997 *Tinnelly & Sons Ltd and Others and McElduff and Others* v *United Kingdom*, Nos 20390/92 and 21322/92, 10 July 1998 **United Kingdom House of Lords** *Secretary of State for the Home Department (Respondent)* v *MB (FC) (Appellant)* [2007] UKHL 46 **England and Wales (United Kingdom) Court of Appeal** *A. and Others* v *Secretary of State for the Home Department* [2002] EWCA Civ 1502 *Secretary of State for the Home Department* v *AF* [2008] EWCA Civ 1148 **England and Wales (United Kingdom) High Court (Queen's Bench Division)** *R.* v *Governor of Durham Prison*, ex parte *Hardial Singh* [1984] 1 WLR 704

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			Supreme Court of Canada *Charkaoui* v *Minister of Citizenship and Immigration* [2007] 1 SCR 350 **United States Supreme Court** *Hamdi* v *Rumsfeld* 542 US 507 (2004)
ECtHR	*Ljatifi* v *The former Yugoslav Republic of Macedonia* No 19017/16 17 May 2018	**Keywords**: Expulsion decision – Grounds of national security – Inadequate judicial scrutiny – Undisclosed classified information. Judgment concerning an explicit order or measure of expulsion, which fell within the ambit of Article 1 of Protocol No 7 which was based on based on a classified document obtained from the Intelligence Agency. **Summary** In 1999 the applicant fled Kosovo to the former Yugoslav Republic of Macedonia (now North Macedonia), where in 2005 she was granted asylum status. Her residence permit was extended each year until 2014, when the Ministry of the Interior terminated her asylum status, stating merely that she was 'a risk to [national] security', and ordered her to leave the territory of the respondent State within 20 days of receipt of the final decision. The domestic courts upheld that decision, noting that it was based on a classified document obtained from the Intelligence Agency. They considered irrelevant the applicant's argument that the document had never been disclosed to her. As the classified document had not been available to the applicant and the Ministry's decision did not provide her with the slightest indication of the factual grounds for considering her a security risk, she had been unable to present her case adequately in the ensuing judicial review proceedings. There was nothing to suggest that the domestic courts had been provided with the classified document or any further factual details for the purpose of verifying that the applicant really did represent a danger for national security. They had thus confined themselves to a purely formal examination of the impugned order. The domestic courts had furthermore not given any explanation of the importance of preserving the confidentiality of the classified document or indicated the extent of the review they had carried out. They had therefore failed to subject the executive's assertion that the applicant posed a national security risk to any meaningful scrutiny. There has been a violation of paragraph 1 (a) and (b) of Article 1 of Protocol No 7 to the Convention. **Relevant paragraph**: 35.	**ECtHR** *Radomilja and Others* v *Croatia* [GC], No 37685/10, 20 March 2018 *Söderman* v *Sweden* [GC], No 5786/08, 12 November 2013 *Moretti and Benedetti* v *Italy*, No 16318/07, 27 April 2010 *Lupsa* v *Romania*, No 10337/04, 8 June 2006 *Saeed* v *Denmark* (dec.), No 53/12, 24 June 2014 *Vučković and Others* v *Serbia* (preliminary objection) [GC], Nos 17153/11 and 29 others, 25 March 2014

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			C. G. and Others v *Bulgaria*, No 1365/07, 24 April 2008 *Regner* v *the Czech Republic* [GC], No 35289/11, 19 September 2017 *Kaya* v *Romania*, No 33970/05, 12 October 2006 *Editions Plon* v *France*, No 58148/00, 18 August 2008 *Belchev* v *Bulgaria*, No 39270/98, 8 April 2004 *Hajna* v *Serbia*, No 36937/06, 19 June 2012

International Criminal Court

Cases are listed in date order from the oldest to the most recent.

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
ICC (Trial Chamber I)	*Situation in the Democratic Republic of the Congo in the case of The Prosecutor v Thomas Lubanga Dyilo* 14 March 2012 ICC-01/04–01/06	**Keywords**: Armed conflict – Conscription and enlistment – Witness evidence. Judgment pursuant to Article 74 of the Rome Statute. **Summary** Armed conflict In determining whether there was a relevant armed conflict and, if so, whether it was international or non-international in character, the Trial Chamber accepted that international and non-international conflicts may coexist; and the Chamber found that the armed conflict between the Union des Patriotes Congolais (UPC)/ the military wing of the UPC (FPLC) and other armed groups between September 2002 and 13 August 2003 was non-international in nature. Intermediaries In determining whether, during the investigations leading to this trial, four of the intermediaries, employed by the prosecution, suborned the witnesses they dealt with, when identifying or contacting these individuals or putting them in touch with the investigators, and whilst carrying out risk assessments, thus any witnesses the intermediaries had dealings with should not be relied on, the Chamber is of the view that the prosecution should not have delegated its investigative responsibilities to the intermediaries in the way set out, notwithstanding the extensive security difficulties it faced. A series of witnesses have been called during this trial whose evidence, as a result of the essentially unsupervised actions of three of the principal intermediaries, cannot safely be relied on. The Chamber spent a considerable period of time investigating the circumstances of a substantial number of individuals whose evidence was, at least in part, inaccurate or dishonest. The prosecution's negligence in failing to verify and scrutinise this material sufficiently before it was introduced led to significant expenditure on the part of the Court. An additional consequence of the lack of proper oversight of the intermediaries is that they were potentially able to take advantage of the witnesses they contacted. Irrespective of the Chamber's conclusions regarding the credibility and reliability of these alleged former child soldiers, given their youth and likely exposure to conflict, they were vulnerable to manipulation. Conscription, enlistment and use of children under the age of 15 within the UPC/FPLC	Due to the length of the ICC judgments and the fact that they contain a great many references to other case-law, the cases cited have not been provided here, since this would make this compilation too long.

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		In determining whether the accused conscripted and enlisted children under the age of 15 years into the armed forces of the UPC/FPLC and used them to participate actively in hostilities between 1 September 2002 and 13 August 2003, the Chamber found that, between 1 September 2002 and 13 August 2003, the armed wing of the UPC/FPLC was responsible for the widespread recruitment of young people, including children under the age of 15, on an enforced as well as a 'voluntary' basis. The evidence of witnesses, coupled with the documentary evidence, establishes that during this period certain UPC/FPLC leaders, including Thomas Lubanga, Chief Kahwa, and Bosco Ntaganda, and Hema elders, such as Eloy Mafuta, were particularly active in the mobilisation drives and recruitment campaigns that were directed at persuading Hema families to send their children to serve in the UPC/FPLC army. Criminal responsibility of Thomas Lubanga Dyilo The Pre-Trial Chamber held that, under the control-over-the-crime approach, in contrast to the objective approach, the principals to a crime are not limited to those who physically carry out the objective elements of the offence. Rather, principals also include those individuals who, in spite of their absence from the scene of the crime, control or mastermind its commission because they decide whether and, if so, how the offence will be committed. The accused and his co-perpetrators agreed to, and participated in, a common plan to build an army for the purpose of establishing and maintaining political and military control over Ituri. This resulted, in the ordinary course of events, in the conscription and enlistment of boys and girls under the age of 15, and their use to participate actively in hostilities. The accused and at least some of his co-perpetrators were involved in the takeover of Bunia in August 2002. The Chamber concluded that, between 1 September 2002 and 13 August 2003, a significant number of high-ranking members of the UPC/FPLC and other personnel conducted a large-scale recruitment exercise directed at young people, including children under the age of 15, whether voluntarily or by coercion. The Chamber was satisfied beyond reasonable doubt that, as a result of the implementation of the common plan to build an army for the purpose of establishing and maintaining political and military control over Ituri, boys and girls under the age of 15 were conscripted and enlisted into the UPC/FPLC between 1 September 2002 and 13 August 2003. Similarly, the Chamber was satisfied beyond reasonable doubt that the UPC/FPLC used children under the age of 15 to participate actively in hostilities, including during battles. They were also used, during the relevant period, as soldiers and as bodyguards for senior officials, including the accused. Therefore, the Chamber finds Mr Thomas Lubanga Dyilo guilty of the crimes of conscripting and enlisting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities within the meaning of Articles 8(2)(e)(vii) and 25(3)(a) of the Statute from early September 2002 to 13 August 2003. **Relevant paragraphs**: 533; 536, 538 and 541.	

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
ICC (Trial Chamber II)	*Situation in the Democratic Republic of the Congo in the case of The Prosecutor v Germain Katanga* 7 March 2014 ICC-01/04–01/07	**Keywords**: Article 25 Rome Statute – War crimes – Murder as a crime against humanity – Attack against a civilian population. Judgment pursuant to Article 74 of the Rome Statute. **Summary** The crimes for which Germain Katanga stands accused were committed on 24 February 2003 during the attack on Bogoro, a village in Ituri, in the Democratic Republic of the Congo (DRC). He jointly committed through other persons, within the meaning of Article 25 of the Statute, war crimes including but not limited to the war crime of wilful killing, the crime against humanity of murder, the war crime of directing an attack against a civilian population as such or against individual civilians not taking direct part in hostilities, the war crime of destruction of property and the war crime of pillaging. On 2 July 2007, Pre-Trial Chamber I issued a warrant of arrest against Germain Katanga. On 17 October 2007, the Congolese authorities surrendered him to the Court, and transferred him to The Hague the following day. In a decision of 21 November 2012, the Chamber stated its intention to implement regulation 55 of the Regulations of the Court, specifying that the mode of liability under which Germain Katanga stood charged was amenable to legal recharacterisation pursuant to Article 25(3)(d) of the Statute. The decision was upheld by the Appeals Chamber. Thereafter, the Chamber issued several decisions relating to the implementation of regulation 55 of the Regulations of the Court. The Chamber, UNANIMOUSLY, MODIFIES, pursuant to regulation 55 of the Regulations of the Court, the legal characterisation of the facts such that the armed conflict connected to the charges was not of an international character between August 2002 and May 2003; BY MAJORITY, MODIFIES, pursuant to regulation 55 of the Regulations of the Court, and with the exception of the crime of using children under the age of 15 years to participate actively in hostilities (Article 8(2)(e)(vii)), the legal characterisation of the mode of liability initially applied to Germain Katanga under Article 25(3)(a) of the Statute (indirect co-perpetration) so as to apply to him Article 25(3)(d) (accessoryship through a contribution made 'in any other way to the commission of a crime by a group of persons acting with a common purpose');	

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		REJECTS the application for a permanent stay of proceedings; FINDS GERMAIN KATANGA GUILTY, under Article25(3)(d) of the Statute, as an accessory to the crimes committed on 24 February 2003, of: • Murder as a crime against humanity under Article 7(1)(a) of the Statute; • Murder as a war crime under Article 8(2)(c)(i) of the Statute; • Attack against a civilian population as such or against individual civilians not taking direct part in hostilities, as a war crime under Article 8(2)(e)(i) of the Statute; • Destruction of enemy property as a war crime under Article 8(2)(e)(xii) of the Statute; and • Pillaging as a war crime under Article 8(2)(e)(v) of the Statute; UNANIMOUSLY, NOT GUILTY, under Article 25(3)(d) of the Statute, as an accessory to the crimes of: • Rape and sexual slavery as crimes against humanity under Article 7(1)(g) of the Statute; • Rape and sexual slavery as war crimes under Article 8(2)(e)(vi) of the Statute; and ACQUITS him of those charges; NOT GUILTY, under Article 25(3)(a) of the Statute, of the crime of: • Using children under the age of 15 years to participate actively in hostilities as a war crime under Article 8(2)(e)(vii) of the Statute; and ACQUITS him of that charge. Consequently, the Chamber, BY MAJORITY, DECIDES that Germain Katanga shall remain in detention until such time as sentence is passed; and ORDERS the Victims and Witnesses Unit to take the measures necessary to ensure the protection of the witnesses pursuant to Article 68 of the Statute. **Relevant paragraphs**: 1096–1099, 1100, 1123, and 1177–1180.	

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
ICC (Trial Chamber III)	*Situation in the Central African Republic in the case of The Prosecutor v Jean-Pierre Bemba Gombo* 21 March 2016 ICC-01/05–01/08	**Keywords**: Article 28 Rome Statute – War crimes – Murder as a crime against humanity – Rape – Pillaging. Judgment pursuant to Article 74 of the Rome Statute. **Summary** Mr Jean-Pierre Bemba Gombo (Mr Bemba), a national of the Democratic Republic of the Congo (DRC), was born on 4 November 1962 in Bokada, Équateur Province, DRC. Mr Bemba was President of the Mouvement de libération du Congo (MLC), a political party founded by him, and Commander-in-Chief of its military branch, the Armée de libération du Congo (ALC). At the time of his arrest on 24 May 2008, he was a member of the Senate of the DRC. Mr Bemba is responsible as a person effectively acting as a military commander within the meaning of Article 28(a) for the crimes against humanity of murder, Article 7(1)(a), and rape, Article 7(1)(g), and the war crimes of murder, Article 8(2)(c)(i), rape, Article 8(2)(e)(vi), and pillaging, Article 8(2)(e)(v), allegedly committed on the territory of the Central African Republic ('CAR') from on or about 26 October 2002 to 15 March 2003. Mr Bemba was arrested in the Kingdom of Belgium on 24 May 2008. In 2009, the Pre-Trial Chamber issued its Confirmation Decision, confirming charges against Mr Bemba on the basis of command responsibility under Article 28(a), for the crimes against humanity of murder and rape, and the war crimes of murder, rape, and pillaging. On the basis of the evidence submitted and discussed before the Chamber at trial, and the entire proceedings, pursuant to Article 74(2) of the Statute, the Chamber finds Mr Bemba guilty under Article 28(a) of the Statute, as a person effectively acting as a military commander, of the crimes of: • murder as a crime against humanity under Article 7(1)(a) of the Statute; • murder as a war crime under Article 8(2)(c)(i) of the Statute; • rape as a crime against humanity under Article 7(1)(g) of the Statute; • rape as a war crime under Article 8(2)(e)(vi) of the Statute; and • pillaging as a war crime under Article 8(2)(e)(v) of the Statute. **Relevant paragraphs**: 128 and 163.	A list of the authorities cited is available online (https://www.icc-cpi.int/RelatedRecords/CR2016_02246.PDF).

International Criminal Tribunal for the Former Yugoslavia

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
ICTY (Appeals Chamber)	*Prosecutor* v *Duško Tadić* 2 October 1995 IT-94-1-A	**Keyword**: Jurisdiction. Judgment concerning the jurisdiction of the Appeals Chamber to hear this appeal and the jurisdiction of the International Tribunal to hear this case on the merits. **Summary** In the light of the intent of the Security Council and the logical and systematic interpretation of Article 3 [of the Refugee Convention] as well as customary international law, the Appeals Chamber concluded that, under Article 3, the International Tribunal has jurisdiction over the acts alleged in the indictment, regardless of whether they occurred within an internal or an international armed conflict. Thus, to the extent that Appellant's challenge to jurisdiction under Article 3 is based on the nature of the underlying conflict, the motion must be denied. **Relevant paragraphs**: 81–84, 94, 128–134 and 177.	Due to the length of the ICC judgments and the fact that they contain a great many references to other case-law, the cases cited have not been provided here, since this would make this compilation too long.

National courts and tribunals of EU Member States

EU national court and tribunal judgments ([3]) are listed alphabetically by country, with the judgments of the highest court or tribunal first followed by lower courts or tribunals, with judgments listed from the oldest to the most recent within those categories.

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
Austria Constitutional Court	U1907/10 13 December 2011 (an English summary is available)	**Keywords**: Directive 2004/83/EC – Article 17(1)(d) and Article 19 QD – Danger to the community or to the security of the Member State – Revocation of subsidiary protection status – Violation of the right to equal treatment among foreigners by revocation of subsidiary protection due to convictions for minor criminal offences. Judgment concerning the revocation of subsidiary protection status on account of convictions for minor criminal offences and the proper interpretation of the national legislation implementing Article 17(1)(d) and Article 19 QD under the Austrian constitution. **Summary** The case concerned the proposed revocation of the subsidiary protection status of a Russian citizen of Ingushetian ethnicity. He had been convicted of six minor offences related to his drug dependency resulting in maximum sentences of no more than six months' imprisonment. The Federal Asylum Agency wished to withdraw his subsidiary protection status on the grounds that he was likely to reoffend and therefore constituted a danger to the general public/community. The Asylum Court had upheld the revocation of his protection status, but the Constitutional Court found that, for exclusion under Article 17(1)(d) QD to be applicable, at least the commission of an offence of similar gravity to those referred to in Article 17(1)(a) to (c) QD must be present. The court considered that this was confirmed by the fact that the directive and its *travaux préparatoires* refer to the Refugee Convention, Article 33(2) of which also refers to a danger to the security or to the community of a country. The court noted that the case law and academic literature on Article 33(2) of the Refugee Convention show that there is only a danger to the security or the community of a country if the existence or territorial integrity of a state is endangered, or if particularly serious crimes (such as homicide, rape, drug trafficking or armed robbery) have been committed. The appeal was granted and the decision of the Asylum Court that had been challenged was revoked.**Relevant paragraphs**: 2.5–2.6.	**VfSlg (Sammlung der Erkenntnisse und wichtigsten Beschlüsse des Verfassungsgerichtshofes, Collection of the determinations and most important rulings of the Constitutional Court)** VfSlg. 10.065/1984 VfSlg. 11.776/1988 VfSlg. 13.785/1994 VfSlg. 13.836/1994 VfSlg. 14.776/1997 VfSlg. 14.391/1995 VfSlg. 14.393/1995 VfSlg. 14.650/1996 VfSlg. 15.354/1998 VfSlg. 15.451/1999 VfSlg. 16.080/2001 VfSlg. 16.214/2001 VfSlg. 16.273/2001 VfSlg. 16.297/2001 VfSlg. 16.314/2001 VfSlg. 16.354/2001 VfSlg. 16.737/2002 VfSlg. 16.993/2003 VfSlg. 17.026/2003

([3]) At the time of writing, the United Kingdom was a member of the European Union.

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			VfSlg. 18.142/2007 VfSlg. 18.257/2008 VfSlg. 18.362/2008 VfSlg. 18.614/2008 VfSlg. 19.251/2010 VwSlg. 13963 A/1993 **Verfassungsgerichtshof (Constitutional Court – VfGH)** VfGH, 5 October 2011, B1100/09 **VwGH (Verwaltungsgerichtshof, Administrative Court - VwGH)** VwGH, 27 April 2006, 2003/20/0050
Belgium Council for Alien Law Litigation (Raad voor Vreemdelingenbetwistingen/ Conseil du contentieux des étrangers)	Case No 190 280 31 July 2017 (a UNHCR summary is available in English)	**Keywords**: Article 1D Refugee Convention – EU QD – Palestinian – Country of origin information – UNRWA – Protection and assistance – Continued availment of protection. Judgment concerning the interpretation of Article 1D Refugee Convention and Article 12(1)(a) of the EU QD in the context of Palestinian refugees seeking international protection. **Summary** The Council of Alien Law Litigation granted refugee status to a Palestinian from Gaza who had his asylum application rejected by the Office of the Commissioner General for Refugees and Stateless Persons based on the exclusion grounds provided by Article 55(2) of the Belgian Aliens Act in accordance with Article 1D of the 1951 Refugee Convention. Despite the fact that the applicant had obtained assistance from the UNRWA in the past, the Council found that a return to the Gaza Strip was virtually impossible in practice due to the security situation in that territory, the humanitarian impact of the Israeli blockade and the border crossing situation. Therefore, relying upon UNHCR's Interpretation of Article 1D of the 1951 Refugee Convention and Article 12(1)(a) of the EU QD, the Council found that the applicant could no longer avail himself of the protection by UNRWA and should, therefore, be granted refugee status in Belgium. **Relevant paragraphs**: 2.15 and 2.16.	

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
Czechia Supreme Administrative Court	*A. S.* v *Ministry of Interior* (in Czech) 7 September 2010 4 Azs 60/2007-119	**Keywords**: Assessment of facts and circumstances – Exclusion from international protection – Serious non-political crime. Judgment concerning whether the conditions for applying an exclusion clause can be fulfilled without considering if there are grounds for granting protection. **Summary** The applicant was excluded from international protection, as there were reasons to believe that he had committed a serious non-political crime. In Ukraine he was prosecuted for the crime of human trafficking and his extradition to Ukraine was also requested. However, he alleged that he helped the opposition in Ukraine before the elections and that he supported Yushchenko. The applicant claimed that he and his wife were threatened and told to abandon opposition activities. He also argued that the prosecution was fabricated. He pointed out that Ukraine violated his procedural rights and also that the women he allegedly trafficked were forced to make statements under pressure from the investigator. The applicant also claimed that the Ministry of the Interior and the Regional Court, which dismissed his appeal, had not evaluated whether or not the conditions for granting asylum (protection) were fulfilled and immediately considered the application of the exclusion clause. The applicant sought annulment of the Regional Court's decision before the Supreme Administrative Court (SAC). As the SAC's case law on this issue varied, the proceedings were suspended, and the matter referred to the extended bench of the SAC. The SAC concluded that a claim for asylum does not have to be investigated prior to findings of grounds for exclusion from protection. Neither the 1951 Refugee Convention nor the QD precludes the procedure chosen by the Ministry of the Interior, where, if during the proceedings facts come to light justifying exclusion from protection, there is no need to consider whether or not the person concerned also fulfilled the conditions for granting protection. The Asylum Act, as well as abovementioned instruments, distinguish between these two principles and allow an assessment of exclusion from protection separately. The SAC also generally noted that exclusion clauses must be interpreted restrictively and must be thoroughly investigated, especially if there really are serious reasons to believe the person has committed the crime. It is also necessary to consider whether the criminal prosecution could actually be politically motivated. The SAC also noted that if an exclusion clause is to be applied it is necessary to disclose this fact to the applicant and question the applicant about issues relevant to it. **Relevant paragraph**: 19.	**Supreme Administrative Court, Czechia** *R. K.* v *Ministry of Interior*, 20 June 2007, 6 Azs 142/2006-58 *Y. A.* v *Ministry of Interior*, 24 February 2004, 6 Azs 50/2003-89

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
France Council of State ([4])	*Office français de protection des réfugiés et apatrides c M. A.* No 320910 4 May 2011 ECLI:FR:CESSR:2011: 320910.20110504 (an English summary is available)	**Keywords**: Article 1F(b) Refugee Convention – Exclusion from protection – Serious non-political crime – Expiation – Danger or risk to the population. Judgment concerning applicability of Article 1F(b) 1951 Refugee Convention even if the sentence (for a serious non-political crime) has been served. The inquiry must assess whether the reception of the applicant in France represents a danger or a risk to the population. **Summary** The applicant's asylum claim was rejected by the French Office for the Protection of Refugees and Stateless Persons (OFPRA). On appeal, the National Court of Asylum Law (Cour nationale du droit d'asile – CNDA) overturned OFPRA's decision and granted him refugee status. OFPRA in turn appealed against the judgment. The Council of State considered that, while Article 1F(b) of the Refugee Convention may in principle justify the refusal of refugee protection, on the grounds that an applicant may not use the asylum procedure to avoid prosecution for serious criminal acts that he or she has committed, if the criminal acts have resulted in a sentence which has been effectively served, they do not prevent international protection from being granted, unless the state in which the applicant has sought protection considers that, due to the serious non-political crimes committed in the past, that he or she represents a danger or a risk for the population. In the present case, the Council of State found that the CNDA had made an error of law in considering that the fact that the punishment to which the applicant had been sentenced in Italy had been fully served meant that Article 1F(b) did not apply. The Council of State found rather that the CNDA was required to examine whether the application should be refused because of the serious non-political crimes committed by the applicant in the past and whether his continued reception in France presented a danger or a risk to the population. The Council of State therefore annulled the CNDA's decision and returned the case to the CNDA.	

([4]) Decisions of the French Council of State can be found online (https://www.conseil-etat.fr/ressources/decisions-contentieuses/arianeweb2).

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
France Council of State	*M. A.* No 402242 11 April 2018 FR:CECHR:2018: 402242.20180411 (an English summary is available)	**Keywords**: Article 1F(b) and (c) Refugee Convention – Exclusion – Acts contrary to the purposes and principles of the UN – Terrorism – International dimension and severity of terrorist acts. Judgment concerning exclusion of a Turkish Kurd from refugee status for involvement in a violent attack in France and requirement to assess international dimension to this attack and its severity. **Summary** The case concerns a Turkish citizen of Kurdish origin, who had been excluded from refugee status by the lower court on the grounds that there were serious reasons for considering that he had committed acts contrary to the purposes and principles of the UN within the meaning of Article 1F(c) of the Refugee Convention. The lower court had found that (i) the applicant had been charged with offences in connection with a violent act organised by the PKK in which Molotov cocktails were thrown at the premises of a Turkish cultural association in France; and (ii) that act had been categorised as a terrorist act by the prosecutor, and was part of a series of violent acts carried out in Europe by the PKK, which was considered a terrorist organisation by the European Union. The Council of State annulled the decision of the lower court on the grounds that it had failed to assess the seriousness of the act in issue in relation to its international dimension. It ruled that if acts of a terrorist nature can fall within Article 1F(b) of the Refugee Convention, terrorist acts of an international scale in terms of gravity, international impact and implications for peace and international security can also amount to acts contrary to the purposes and principles of the United Nations within the meaning of Article 1F(c) of the Refugee Convention (unofficial translation, para. 2). **Relevant paragraphs**: 1–3; 2 (unofficial translation).	**CNDA, France** *M. K*, decision of 23 June 2016, No 12025076

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
France Council of State	*M. A.* No 410897 11 April 2018 FR:CECHR:2018: 410897.20180411	**Keywords**: Article 1F(c) Refugee Convention – Exclusion – Acts contrary to the purposes and principles of the UN – Individual responsibility – Rank necessary for complicity in criminal acts. Judgment concerning individual responsibility for acts contrary to the purposes and principles of the UN of a junior officer in the Syrian Air Force. **Summary** A young Syrian of Alaouite origin who was a junior officer in the Syrian Air Force applied for international protection on the grounds that he faced persecution on account of his denunciation of the Syrian regime after he had fled Syria. He had been a junior officer responsible for logistics in the air force intelligence services. His application had been rejected including by the CNDA at appeal, on the grounds that he had organised and been at a meeting at which it was decided to send 180 special operations personnel to prevent a group of demonstrators from reaching the town of Deraa. This operation resulted in the massacre of several dozen civilians and led the lower court to uphold a decision to exclude him from refugee status on the grounds that his actions were contrary to the purposes and principles of the UN. The Council of State determined, however, that to exclude someone from refugee status on the basis of Article 1F(c) it was necessary to determine that a part of the responsibility for such an act must be personally imputable to the applicant and that he was personally implicated in such an act. In this case, the appellant had had no decision-making role in the meeting. He denied prior knowledge of the massacre that took place and said that afterwards he had expressed his opposition to the operation to his superior, which resulted in his imprisonment for 70 days after which he was pardoned and released. He fled shortly afterwards. The Council of State found that the lower court had not evaluated the facts accurately and annulled the exclusion decision. **Relevant paragraphs**: 2–5.	**CNDA, France** Decision of 25 January 2017, No 16021185

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
France Council of State	*M. A.* No 414821 A 28 February 2019 ECLI:FR:CECHR:2019: 414821.20190228	**Keywords**: Article 1F(a) Refugee Convention – Exclusion – Conspiracy to commit crime against humanity – Genocide – Violation of common Article 3 of the Geneva Conventions – International Criminal Tribunal for Rwanda (ICTR) – Serious reasons for considering – Individual responsibility. Judgment concerning exclusion from refugee status of a high-ranking officer in the Rwandan army who had been acquitted of genocide by the International Criminal Tribunal for Rwanda (ICTR). **Summary** The Council of State upheld a judgment of the lower court that had excluded a Rwandan of Hutu origin from refugee status under Article 1F(a) of the Refugee Convention, even though he had been acquitted on appeal by the ICTR of the crime of conspiracy to commit or commission of genocide on the basis that the facts of the crime of which he was accused had not been established. The Council of State found that Article 1F can be applied on the basis of 'serious reasons for considering' that the appellant had committed excludable crimes and that proof or conviction beyond reasonable doubt was not required. It found that M. A. had been a high-ranking officer in the Rwandan army from 1993 and at the time of the genocide in 1994 he had commanded the armoured a reconnaissance battalion known by the name RECCE that was one of the three battalions that had played a direct role in the planning, organising and commissioning the genocide. **Relevant paragraphs**: 7–9.	**CNDA, France** Decision of 22 June 2017, No 15027005-337525

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
France National Court of Asylum Law ([5])	*M. G.* No 14020621 C 15 February 2018	**Keywords**: Article 1F(a) Refugee Convention – War crime – Torture – Revocation of refugee status – Fraud – 'Internationalised' internal armed conflict. Judgment concerning revocation of refugee status of an Afghan police officer on the grounds that he had made fraudulent declarations and that, although he had a well-founded fear of persecution if returned, there were serious reasons for considering that he had committed a war crime when interrogating prisoners. **Summary** The case concerned an Afghan of Hazara origin from the Ghazni province who asserted that he faced persecution by the Taliban on account of his Hazara ethnicity. He said that he had been detained by the Taliban for 12 days in 1998 and subjected to violence before being released. He later fled to Iran for some years and, when he was expelled from there in 2005, he returned to Ghazni and joined the local police force as a measure of self-protection. In the course of his work, he later admitted to having tortured Taliban prisoners during interrogation. The French Office for the Protection of Refugees and Stateless Persons (OFPRA) submission to the CNDA stated that M. G. had said that he had left Afghanistan later than he had to hide the time he had spent in Norway and Denmark before coming to France so as to avoid falling under the Dublin Regulation, that he nevertheless had a well-founded fear of persecution and therefore that he should be excluded from refugee status on the grounds that he had committed a war crime in torturing three Taliban prisoners during interrogation. The court found that, although he had made false declarations regarding the date of his departure from Afghanistan, that did not impact on the credibility of his account of his situation and events in Afghanistan and that he therefore faced a well-founded fear of persecution on account of his Hazara origins and his imputed political opinion (paragraph 10). With regard to exclusion, the court found that the situation in Afghanistan at the relevant time represented an 'internationalised internal armed conflict' (paragraph 13). It stated that M. G. had initially spontaneously admitted to having tortured Taliban prisoners while interrogating them, but had later denied these statements, and that he had failed to provide a convincing explanation for these contradictions (paragraph 16). It found that M. G.'s statement that he had acted under his commander's orders did not exonerate him from individual responsibility (paragraph 17). It determined that there were therefore serious reasons for considering that he had committed a war crime and that he should be excluded from refugee status under Article 1F(c) of the Refugee Convention (paragraph 18). **Relevant paragraphs**: 10 and 12–18.	**Council of State, France** *M.A.*, Decision of 22 June 2017, No 401045

([5]) Judgments of the French National Court of Asylum Law can be found online (http://www.cnda.fr/Ressources-juridiques-et-geopolitiques/Recueils-de-jurisprudence).

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
France National Court of Asylum Law	*OFPRA c Mme A. A.* No 17021233 3 July 2018	**Keywords**: Exclusion from subsidiary protection – Threat to public order, public security or the security of the state – Acts contrary to the purposes and principles of the UN – Use of classified information – Individual responsibility – Requirement for current, tangible elements indicating threat to public order, public security or the security of the state – Internal armed conflict – Generalised violence. Judgment concerning the repeal of decision denying subsidiary protection to an Alaouite Muslim woman from Syria on the grounds that apparent ideological proximity to the Syrian regime was not a sufficient ground for exclusion **Summary** The applicant, an Alaouite Muslim woman from Syria who had come to France as a student on a Syrian government bursary, appealed against the rejection of her application for international protection on the grounds that she feared persecution if returned because (i) she had abandoned her university post in Syria and was unable to repay her debt to the state after she had failed to complete her studies in France, (ii) her elder brother had threatened her following her marriage to a Sunni Syrian; and (iii) of the situation of generalised violence in Syria (paragraph 3). She also claimed that she had not been allowed to see an information note provided by the Central Anti-terrorist Unit (l'unité centrale de lutte anti-terroriste – UCLAT), on the basis of which she had been excluded from international protection (paragraph 4). With regard to this latter statement, the CNDA noted that during her second asylum interview the French Office for the Protection of Refugees and Stateless Persons (OFPRA) had explained the contents of the note extensively (paragraph 8). The CNDA found that Mme A. A.'s obligation to repay the bursary that she had received constituted neither a convention-related reason for claiming persecution, nor a discriminatory or disproportionate measure that would expose her to inhuman or degrading treatment if she were retuned (paragraph 9). With regard to her fear vis-à-vis her elder brother, the CNDA noted that she had continued to maintain family contacts and to visit her family in Lebanon and that her marriage had now ended, so that there were in any case no longer current reasons for such a fear (paragraph 10). The CNDA also rejected her assertion that she would face persecution on account of her presumed political opinion following her desertion of her university post. It found rather that her profile and statements at the hearing evidenced a notable benevolence towards the regime in Damascus and that it was unlikely that she would be perceived as opposing the regime (paragraph 11). As a result, the court determined that Mme A. A. had not justified her claim of persecution (paragraph 12). By contrast, the CNDA found that there were serious reasons to consider that a civilian returned to Syria faced a real risk of being subjected to a serious threat to their life or person by reason of indiscriminate violence given the situation of internal armed conflict throughout Syria (paragraphs 13–14).	

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		With regard to OFPRA's assertion, based on the UCLAT note, that Mme A. A. represented a threat to public order, public security or the security of the state, the CNDA ruled that neither the note nor other documentation provided constituted precise or objective reasons that acts contrary to the purposes of the principles of the UN were personally imputable to the applicant. It found that her ideological proximity to the regime was insufficient on its own to impute to her such acts. Although the OFPRA decision had referred to two types of acts, these did not arise from the UCLAT note but from general country of origin information. Thus, in the absence of the slightest objective or precise facts, Mme A. A.'s personality was not sufficient to impute to her such reprehensible acts on French territory or such acts with repercussions in Syria (paragraph 17). The court also found that the OFPRA decision had not provided any information regarding the risk that Mme A. A. was supposed to represent to public order, public security or the security of the state. It concluded that, in the absence of current, tangible elements indicating her dangerousness and of any police measures against her, it was not possible to conclude that she constituted a threat to public order, public security or the security of the state (paragraph 18). **Relevant paragraphs**: 4–18.	
France National Court of Asylum Law	*M. G.* No 14033102 20 February 2019	**Keywords**: Article 1F(a) Refugee Convention – Crime against peace, war crime or crime against humanity – Individual responsibility. Judgment concerning former soldier in the Rwandan armed forces (Forces armées rwandaises – FAR) found to have played an active role in the Rwandan genocide and therefore excluded from refugee status under Article 1F(a) Refugee Convention. **Summary** M. G. was an ethnic Hutu from Rwanda, who had led the second platoon of the second company of the para-commando battalion of the Rwandan armed forces (Forces armées rwandaises, FAR) as a sub-lieutenant. Although he had left the FAR after being wounded in February 1993, he had rejoined his company after the attack in April 1994, which killed President Habyarimana (paragraph 3). The National Court of Asylum Law (Cour nationale du droit d'asile, CNDA) found that his 'personalised and circumstantial' account of both of these events, his life before April 1994 and his subsequent flight to the former Zaire, his return to Rwanda, his arrest and detention there, the arrest of his brother, who had also been in the FAR, and his later flight to Uganda and then France to be 'substantiated and convincing'. It therefore ruled that he had a well-founded fear of being persecuted on account of imputed political opinion (paragraphs 4–5).	**International Criminal Tribunal for Rwanda** Judgment of 18 December 2008, *Prosecutor* v *Théoneste Bagosora et al.*, No ICTR-98-41-T Judgment of 14 July 2009, *Prosecutor* v *Tharcisse Renzaho*, No ICTR-97-31-T

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		The court determined by contrast that M. G.'s account of the events between April and May 1994 in Gisenyi, where Tutsi and moderate Hutus were massacred, were 'particularly elusive and confused' and that he had manifestly sought to conceal his movements and actions at that time (paragraph 8). Referring to case-law of the ICTR, the CNDA ruled it improbable that M. G. could have been in the military camp in Gisenyi at this time without participating in these crimes against the civilian population or at least witnessing them, which he had consistently denied (paragraph 9). The CNDA likewise found his account during the asylum procedure of his time in Kigali between April and June 1994, when particularly serious massacres were committed, to be strongly contradictory (paragraphs 10–11). Citing ICTR case-law once again, the CNDA found that it 'appeared inconceivable that M. G., as a member of a para-commando battalion and *a fortiori* as the head of a platoon with more than 40 persons under his orders, was kept away from the operations undertaken by this battalion and had never participated in or, if not, been present at the abuses perpetrated by that battalion against civilians who were principally Tutsi' (paragraph 12). The court noted that M. G. had never dissociated himself from the genocide committed against the Tutsis and had moreover refused to use that term. It concluded that M. G.'s attitude throughout the hearing had been to present himself as a neutral element when he was in Kigali in April 1994 without giving the least indication, one way or another, of any attempt to dissuade the men in his platoon from committing, or incite them to commit, the murders. The court noted that his platoon was part of the battalion regularly reported by ICTR judgments as having participated in the massacres committed in Kigali in April 1994 and that this meant that he could be regarded as having personally contributed to, or facilitated the execution of, these crimes (paragraph 13). **Relevant paragraphs**: 3–5, 8 and 9–13.	

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
France National Court of Asylum Law (Grand Chamber)	*Mme I.* No 180287385 25 June 2019	**Keywords**: Revocation of subsidiary protection – Article 1F(b) and (c) Refugee Convention – Acts contrary to the purposes and principles of the UN – Serious non-political crime – Serious reasons for considering – Former victim of human trafficking – Individual responsibility – Trafficking as able to be contrary to purposes and principles of the UN – Serious threat to public order, public security or state security – Severity and international impact of crime. Judgment concerning a Nigerian woman and former victim of human trafficking appealing against the revocation of her subsidiary protection status following her conviction for pimping and her early release from prison and subsequent good behaviour. **Summary** Mme I. was a Nigerian woman and former victim of human trafficking, who had been granted subsidiary protection. When she was convicted of aggravated pimping in France (and Greece), the decision-making authority OFPRA revoked her subsidiary protection status on the grounds that she had committed acts against the purposes and principles of the UN or at least a serious crime. Mme I. argued that her status should not be revoked, on the grounds that she had acted under duress, had served her sentence, had expressed regret for her crimes and had renounced criminality (paragraph 6). The CNDA found that, even though Mme I. had served her sentence, this did not attenuate her personal responsibility for the particularly serious crime of trafficking (paragraph 7). With regard to acts contrary to the purposes and principles of the UN, the court found that it was necessary to examine a person's level of personal implication in such acts (paragraph 8). To apply this exclusion ground in the subsidiary protection context, the CNDA stated that the obligations under Article 1F(c) of the Refugee Convention must be taken into account and that application of that article should be strictly reserved for circumstances where an act and its consequences are defined by its level of severity, the way in which it is organised, its international impact and the long-term implications for international peace and security as per UNHCR guidelines (paragraph 9). While the court found that human trafficking could constitute an act contrary to the purposes and principles of the UN, it was necessary in the individual case to determine the seriousness of the act(s) committed by the person concerned, their position within the trafficking network, the degree of knowledge they had or should have had of the activities of the network, and possible factors influencing their behaviour (paragraph 10). The CNDA found that, although Mme I. was personally implicated in the trafficking network, her low level of responsibility did not rise to the level of seriousness or of individual responsibility to constitute an act contrary to the purposes and principles of the UN (paragraph 11).The court took into account that, although Mme I. had been convicted of trafficking and pimping, her sentence had been reduced, she had not committed further crimes and was integrating well into society. It found therefore that she did not represent a serious threat to public order, public security or state security (paragraph 12). The CNDA therefore concluded that there were no serious reasons to consider that Mme I. was responsible for acts contrary to the purposes and principles of the UN or that she represented a serious threat to public order, public security or state security. It found, however, that there were serious reasons for considering that she had committed a serious non-political crime and that she was therefore not entitled to maintain her subsidiary protection status (paragraph 13). **Relevant paragraphs**: 6–13.	**Council of State (France)** No 410897, 11 April 2018, FR:CECHR:2018: 410897.20180411

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
France National Court of Asylum Law	*M. A.* No 18052314 30 August 2019	**Keywords**: Revocation of refugee status – Article 1F(c) Refugee Convention – Acts contrary to the purposes and principles of the UN – Serious reasons for considering – Trafficking for prostitution – Individual responsibility – Leading role. Judgment concerning the revocation of the refugee status of a Nigerian man who had been convicted of trafficking and pimping in a transnational network that had exploited many victims and who had played a leading role in the network. **Summary** M. A. was a Nigerian refugee sentenced to eight years' imprisonment for his involvement in a trafficking network for prostitution and operating in France, Italy and Nigeria. OFPRA, the decision-making authority, therefore sought to revoke his refugee status on the basis of Article 1F(c) Refugee Convention (paragraph 1). The CNDA found that, for Article 1F(c) to be applied, there must be serious reasons for considering that part of the responsibility for acts contrary to the purposes and principles of the UN must be imputable to the person individually and that they were personally involved in such acts (paragraph 5). The court found that Article 1F(c) covered crimes capable of affecting international peace, security and peaceful relations between states, as well as serious and sustained violations of human rights; that its application should only be triggered in extreme circumstances by activity that attacks the very basis of the international community's coexistence; and that the activities must have an international dimension (paragraph 6). The court found that trafficking may constitute an act contrary to the purposes and principles of the UN when it is undertaken by organised criminal groups that threaten international security. Mere membership in such a group is not, however, sufficient. Rather, a case-by-case examination is required to determine the seriousness of the acts committed, the individual's position within the trafficking network, their degree of knowledge of the group's activities or the knowledge they ought to have had, and any mitigating factors. (paragraphs 7 and 8). In this case, the CNDA ruled that there were no exonerating considerations regarding M. A. He had already been convicted of serious crimes under two different identities; he was one of the three leaders of the network; he organised recruitment directly, the immigration of new 'recruits' using false papers and 'juju' ceremonies to ensure they repaid 'loans'; he was regularly in touch with smugglers and forgers to arrange travel; and he knew perfectly well what was going on including through contacts with consulates to secure travel documents. The court ruled that in view of M. A.'s high rank and responsibility in a transnational prostitution network, he should be excluded under Article 1F(c). It found that he had directed the network with others, including through high-level contacts among the administrative and diplomatic elite, that the network had exploited a high number of victims and that he had received multiple heavy sentences for various crimes (paragraph 9). His refugee status was therefore revoked (paragraph 10). **Relevant paragraphs**: 1, 5–10.	

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
France Refugee Appeals Board	*M. S.* No 552944 25 January 2007	**Keywords**: Article 1F(b) Refugee Convention – Serious non-political crime – Arrest and detention – Torture during detention – Whether account needs to be taken of political objectives pursued by rebels and the legitimacy of the violence perpetrated – Operations against civilian population – Customary laws of war – War crimes – Well-founded fear of persecution. Judgment concerning Russian applicant of Chechen origin who took part in military operations against the Russian armed forces but who did not commit abuses against civilians or violations of customary laws of war. **Summary** M. S. was a Russian of Chechen origin who had finally agreed to join a rebel Chechen unit in December 1994 after his town had been attacked and some family members had been killed. He participated in operations against the Russian armed forces, but returned to his family at the end of 1996 and joined in with the reconstruction of his town. When the second Chechen conflict started in 1999, he refused to fight, as he did not agree with the methods used by the rebels. Detained and tortured by Russian soldiers in 2001, he was released in 2003 only after family members paid a significant bribe. Learning that members of his family had fled to France and been granted refugee status and managing to avoid another arrest, he fled to France. The Refugee Appeals Board found that, to apply Article 1F(b) of the Refugee Convention, it was necessary, if such crimes had been committed, not only to assess their seriousness, but also to consider the objectives pursued by the perpetrators and the degree of legitimacy of the violence committed. It found that M. S.'s had engaged in such acts to defend the Chechen people and his own family and that his rebel unit had not committed abuses against the civilian population or committed war crimes. It noted that, having ceased fighting in 1996, he refused to participate in the second Chechen conflict. It ruled that the mere fact that he had participated in the first Chechen conflict on the basis outlined above was not sufficient to exclude him from refugee status. Rather, he had a well-founded fear of being persecuted on account of his Chechen ethnicity and his perceived opposition to the Russian authorities. The rejection by OFPRA of his application was therefore overturned and he was granted refugee status. **Relevant pages**: pp. 99–100.	

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
Germany Federal Administrative Court	BVerwG 10 C 24.08 24 November 2009 ECLI:DE:BVerwG:2009:241109U10C24.08.0 (an English summary is available)	**Keywords**: Combatant – Crime against humanity – Insufficient findings of fact – Internal armed conflict – International criminal law – International humanitarian law – Non-political crime – Reason for exclusion – Refugee status – separatism – Standard of proof – Terrorism – International dimension – War crime. Judgment concerning whether the reasons for exclusion were improperly dealt with. **Summary** The applicant is a Russian citizen from Chechnya. He applied for international protection in Germany in June 2001. In his procedure, he stated that he had been a member of the Chechen security service between 1996 and 1999 and a member of a group of Chechen rebels between 1999 and 2001. They hid during the day and at night attacked Russian troops with mortars and machine guns. He claimed that Russian security forces had destroyed his house when searching for him and that his mother had died of a heart attack in the incident. After this, he said he was weary of war and that his brother had advised him to emigrate. His application for asylum was rejected by the German authorities in July 2001. An appeal to the Administrative Court of Wiesbaden was rejected in October 2004. Upon a further appeal, the High Administrative Court of Hesse (3 UE 411/06.A) decided on 24 April 2008 that the applicant was entitled to refugee status on the grounds that he was at risk of human rights violations by the Russian authorities which could not be justified by the legitimate aim of fighting terrorism. Although the applicant had admitted to having participated in the killing of Russian soldiers, the High Administrative Court found that there were no grounds for exclusion from refugee status, as the killings were part of combat missions which had been directed against combatants and not against civilians. The High Administrative Court granted leave for a review ('revision') of its decision because of the basic significance of the legal case (Section 132 I Verwaltungsgerichtsordnung/Code of Administrative Court Procedure). The Federal Administrative Court found that the High Administrative Court's interpretation of the term 'war crime' was insufficient and that a definition of war crimes or crimes against humanity must be based on the ICC Statute which represents the current state of international criminal law. The court pointed out that Article 8(2)(c) of the Rome Statute includes, among other points, the killing and abuse of members of the armed forces who have laid down their arms or are otherwise placed *hors de combat*. Article 8(2)(e)(ix–xi) of the Rome Statute also extends protection to combatant adversaries in the case of killing or wounding treacherously a combatant adversary, declaring that no quarter will be given, or the physical mistreatment of persons who are in the power of another party to the conflict. It found out that the lower court had failed to examine whether there were factual indications as to whether or not these defining elements of offences were present.	**ICTY** *Prosecutor* v *Dusko Tadic aka 'Dule' (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction)*, 2 October 1995, IT-94-1 **Federal Administrative Court (BVerwG), Germany** 9 April 1991, BVerwG 9 C 91.90 14 December 1993, BVerwG 9 C 45.92 25 July 2000, BVerwG 9 C 28.99 7 February 2008, BVerwG 10 C 33.07 24 June 2008, BVerwG 10 C 43.07 14 October 2008, BVerwG 10 C 48.07 25 November 2008, BVerwG 10 C 25.07 19 January 2009, BVerwG 10 C 52.07

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		Furthermore, the Federal Administrative Court found that the High Administrative Court had only relied on the statements of the applicant and of his relatives, even though it had itself pointed to the existence of terrorist attacks and massive rights violations by Chechen rebels in the course of the Second Chechen war. This evidence required at least an attempt to clarify whether other sources indicated that the group of rebels to which the applicant belonged might be suspected of having been involved in abuses that might be classified as war crimes. It found that for exclusion grounds to apply it is not necessary for their existence to be established with absolute certainty. Not every criminal act is a sufficient reason for exclusion from refugee status. The crime must be a serious one under international (not local) standards, i.e. either a capital crime or another crime that is defined as extraordinarily serious in most legal systems. It must also be non-political, i.e. it must be committed for reasons such as personal motivations or greed. A crime also must be classified as non-political if there is no clear connection between the crime and the alleged political goal or if it is disproportionate to the alleged political goal. In particular, German law defines cruel acts as serious non-political crimes even if they supposedly pursue political aims (according to Article 12(2)(b) QD). As a rule, this applies to acts of violence which are commonly defined as 'terrorist' acts. Historically, the exclusion ground of war crimes on the one hand and of 'common' crimes on the other were based on different sources and were applied to different settings (acts committed at war time and in peace time, respectively). However, this does not mean that the two exclusion grounds should be considered to be mutually exclusive, since serious non-political crimes can also be committed by combatants in an armed conflict. An internal armed conflict and the corresponding rules and sanctions of international humanitarian law have an impact on the standards of proportionality of certain acts. If, for example, the killing of combatants in a combat operation does not constitute an element of a war crime and is not punishable under international law, then it would be contradictory if the same act would automatically result in the exclusion from refugee status on the grounds of being classified as a serious non-political crime. As a rule, combat operations executed by combatants in an internal armed conflict which do not constitute crimes against peace, war crimes or crimes against humanity (under Section 3 II (1) (1) of the German Asylum Procedure Act), will also not constitute the exclusion ground of a serious non-political crime. Therefore, there are no objections to the High Administrative Court's approach according to which the killing of Russian soldiers in the course of combat operations of Chechen combatants does not as such constitute a serious non-political crime. However, in this regard also, the High Administrative Court had not based its decision on a sufficient foundation of facts. As the High Administrative Court has not sufficiently established the facts which must be considered relevant for exclusion, the Federal Administrative Court could not come to a conclusion whether the applicant was entitled to refugee status or not. The matter was therefore referred back to the High Administrative Court, which subsequently ruled that applicant was excluded. **Relevant paragraphs**: 23, 29, 31, 35, 42 and 43.	5 May 2009, BVerwG 10 C 21.08 United Kingdom House of Lords (Judicial Committee): *T* v *Secretary of State for the Home Department* [1996] 2 All ER 865

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
Germany Federal Administrative Court	BVerwG 10 C 2.10 31 March 2011 DE:BVerwG:2011: 310311U10C2.10.0	**Keywords**: UN resolutions – Asylum – Crimes against humanity – International criminal law – Non-state actors – Priority of EU law – Purposes and principles of the UN – Reason for exclusion – Recognition of refugee status – Revocation – Standard of proof – Stay of proceedings – Terrorism – War crimes. Judgment concerning the revocation of recognition as a refugee and a person entitled to asylum. **Summary** The complainant, a Rwandan citizen, was a member of the Hutu ethnic group. Since the civil war in Rwanda in 1994, the complainant had been involved in Rwandan exile organisations in Germany, primarily in a leadership capacity. By a decision of 17 March 2000, he was recognised as a person entitled to asylum on the basis of the danger of political persecution, with which he was threatened because of his political activities in exile, and it was found that the requirements under Section 51(1) of the Aliens Act existed with regard to Rwanda. In mid-2001, the complainant became President of the Forces démocratiques de libération du Rwanda ('FDLR'), a Hutu exile organisation founded in 1999, which has armed combatant units in the eastern part of the Democratic Republic of the Congo (DRC). In 2005, the Sanctions Committee of the UN Security Council – on the basis of Security Council Resolution 1596 (2005) of 18 April 2005 – included the Complainant in the list of persons and institutions on whom restrictions were imposed because of the arms embargo for the territory of the DRC. Thereupon, in 2006, the Federal Office for Migration and Refugees revoked the recognition of his entitlement to asylum and the finding that the requirements under Section 51(1) of the Aliens Act were met, and found that the requirements under Section 60(1) of the Residence Act manifestly did not exist. The revocation was founded in substance on the fact that the Complainant is the President of the FDLR, and therefore there is good reason to believe that he has committed war crimes and crimes against humanity, as well as actions that contravene the purposes and principles of the United Nations. The Federal Office found that the FDLR was responsible for regular abuses – such as raids, rapes and abductions – of villagers in the eastern Congolese province of South Kivu. It estimated that the organisation had 10 000-15 000 combatants in the eastern part of the DRC, and for years had been committing crimes against the Congolese civilian population. These, the Federal Office found, were war crimes and crimes against humanity within the meaning of the 1998 Rome Statute of the ICC. It found that the Complainant was responsible for these, as a superior officer. Moreover, by violating the arms embargo imposed by the UN Security Council on 28 July 2003, the FDLR was committing acts contrary to the purposes and principles of the UN. For that reason, the Sanctions Committee of the Security Council had placed the Complainant on the list of persons against whom sanctions were imposed, and who the Committee was convinced were violating the arms embargo.	**CJEU** *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2010:661 *Kadi and Al Barakaat*, C-402/05 P and C-415/05 P, 3 September 2008, EU:C:2008:461 **Federal Constitutional Court (BVerfG), Germany** 20 December 1989, 2 BvR 958/86, BVerfGE 81 26 October 2000, 2 BvR 1280/99 13 March 2007, 1 BvF 1/05, BVerfGE 118 30 June 2009, 2 be 2/08 et al., BVerfGE 123 6 July 2010, 2 BvR 2661/06 **BVerwG, Germany** 17 February 1972, BVerwG 8 C 84.70

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		The Administrative Court reversed the revocation decision in 2006. The decision rested primarily on the consideration that the Federal Office had been unable to adequately set forth and document the existence of the requirements for exclusion. The court found that the information produced in the proceedings was rather vague and insufficiently reliable. The same was all the more true, the court said, for the Complainant's responsibility. The Respondent appealed that decision. In the course of the appeal proceedings, the Complainant was taken into investigative custody under an arrest warrant from the investigating judge of the Federal Court of Justice, in part on suspicion of crimes against humanity and war crimes. In 2010, the investigating judge of the Federal Court of Justice ordered that the investigative custody be continued and the Attorney General of Germany brought a criminal action against the Complainant and the Vice-President of the FDLR before the Federal Court of Justice, in part because of crimes against humanity and war crimes; the Stuttgart Higher Regional Court found that the action was procedurally allowable. The Higher Administrative Court amended the judgment at the first instance, and denied the complaint. It shared the opinion of the Federal Office that as the President of the FDLR, the Complainant had brought about the circumstances for exclusion and therefore the requirements for revocation of his refugee status were met. The court saw no obstacle to this revocation in the fact that the actions that resulted in exclusion were subsequent in time to the grant of protection as a refugee. Nor did anything different apply, in substance, for the revocation of the recognition of entitlement to asylum. The Complainant appeals the revocation of his recognition as a refugee and a person entitled to asylum. The Respondent argues against the appeal, and in substance defends the judgment of the Higher Administrative Court. The Complainant's appeal to this Court is without merit. The Higher Administrative Court determined specifically which actions it was satisfied that the FDLR had committed that would lead to exclusion under Section 3(2)(1) of the Asylum Procedure Act. These included plundering the population, burning down villages, shooting women and children, abductions, mass rape, and mutilations as means of waging war, together with recruiting child soldiers. The lower court not only developed its opinion on the basis of a comprehensive assessment of situation reports from the Foreign Office, but also referred to specifically listed cases in a report from a UN group of experts dated 23 November 2009, in the arrest warrant from the investigating judge of the Federal Court of Justice of 16 November 2009, in the reports from Human Rights Watch of April and December 2009, and in the informational bulletin from the Federal Office for Migration and Refugees of May 2009. The assessment of the evidence is founded on a sufficiently broad foundation of fact.	1 July 1975, BVerwG 1 C 44.68 15 April 1983, BVerwG 1 B 133.82 10 January 1995, BVerwG 9 C 276.94 22 December 1997, BVerwG 8 B 255.97 30 March 1999, BVerwG 9 C 23.98 13 June 2007, BVerwG 10 B 61.07 14 October 2008, BVerwG 10 C 48.07 24 November 2009, BVerwG 10 C 24.08, BVerwGE 135 **United Kingdom Immigration Appeal Tribunal** Judgment of 7 May 2004, 00101 [2004] UKIAT 00101 **Supreme Court of Canada** *Pushpanathan* v *Canada* [1999] INLR 36

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		The Higher Administrative Court correctly views these acts as war crimes within the meaning of Article 8 and crimes against humanity within the meaning of Article 7(a) and (g) of the 1998 Rome Statute of the International Criminal Court. In its judgment of 24 November 2009 – BVerwG 10 C 24.08 – this Court has previously decided that the question of whether war crimes or crimes against humanity within the meaning of Section 3(2) sentence 1 no. 1 of the Asylum Procedure Act exist should currently be decided primarily in accordance with the circumstances constituting these crimes as defined in the Rome Statute. This manifests the current status of developments in international criminal law regarding violations of international humanitarian law. In this regard, the Higher Administrative Court was free to set aside the question of whether the combat in eastern Congo is an international or non-international armed conflict, because the murders, rapes, mutilations, plundering and forced recruitment of child soldiers found there are to be considered war crimes in both cases, under Article 8 of the Rome Statute (Article 8(2)(a) item I, (b) items I, II, X, XVI and XXII, (c) item I and (e) items I, V, VI, VII and XI of the Rome Statute) and Articles 2 and 3 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (BGBl 1954 II, p. 917). The murders and rapes, as part of a sustained, systematic attack on the civilian population, at the same time constitute crimes against humanity within the meaning of Article 7(a) and (g) of the Rome Statute. The lower court correctly found that the Complainant bore a responsibility for the crimes committed by the FDLR, on the basis of his position as President of the organisation and the associated influence over the actions of its combatants. The findings in the appealed judgment support the conclusion that the Complainant should be viewed as a perpetrator of the crimes committed by the FDLR, and not only – as held in the appealed judgment – as a person otherwise involved, in accordance with Section 3(2) sentence 2 of the Asylum Procedure Act. The Complainant's responsibility proceeds from Article 28(a) of the Rome Statute. That Article provides, among other points, that a military commander is criminally responsible for crimes committed by forces under his effective command or control if he knew, or should have known, that the forces were committing such crimes, and he failed to take all necessary and reasonable measures within his power to prevent their commission. The Higher Administrative Court found that the Complainant is the President of the FDLR, exerts a significant influence over the organisation, and has unrestricted power of command and disposition within the FDLR. In addition, it cites the arrest warrant from the investigating judge of the Federal Court of Justice of 16 November 2009, who likewise comes to this conclusion. According to that warrant the Complainant, as President of the FDLR, is at the same time its supreme military commander and is consequently empowered both to issue commands for strategic missions and to suppress certain acts or methods of combat. The warrant states that also exercised a de facto power of command, the warrant indicates and that commanders subordinated to the Complainant, and acting in the field, had regularly sought close contact with the Complainant via satellite telephone, email or conventional telephone connections, in order to take his orders or at least obtain his consent for certain military actions. These findings by the court (Section 137(2) of the Administrative Code) result in the Complainant's responsibility for the war crimes and crimes against humanity committed by the FDLR, pursuant to Article 28 (a) of the Rome Statute.	

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		… the Complainant also acted wilfully. To be sure, negligence suffices for subjective responsibility within the meaning of Article 28(a) of the Rome Statute. With regard to subjective responsibility, however, the Higher Administrative Court cites the arrest warrant of 16 November 2009, in which the investigating judge arrives at the conclusion that the Complainant acted wilfully. As grounds, the judge cites that on the basis of the numerous reports and of personal information from the local commanders of the FDLR, the Complainant had a knowledge of the criminal acts of the FDLR militiamen. More-over, the judge states, the Complainant was well aware that the militiamen he commanded would continue committing killings, torture, plundering and forced displacement within their zone of control as long as he did not suppress such actions. The court below rightly comes to the conclusion that distancing press releases are not sufficient for an appropriate suppression of the crimes. Nor does the inclusion of a prohibition of such crimes in the bylaws of the FDLR, which the appeal to this Court cites, suffice, if the Complainant takes no suitable measures to enforce the prohibition. One may also conclude that the Complainant is responsible, if one applies the criteria of the CJEU as developed in its judgment of 9 November 2010 for the exclusion of refugee status under Article 12(2)(b) and (c) QD. According to those criteria, a member of an organisation may be attributed with a share of the responsibility for the acts committed by the organisation in question while that person was a member. Here it is of particular significance what role was played by the person concerned in the perpetration of the acts in question; his position within the organisation; and the extent of knowledge he had, or was deemed to have, of its activities. Here the Complainant, as the President and supreme military commander, held a high position in the organisation that committed war crimes and crimes against humanity. He knew of the crimes that had been committed, and took no suitable measures to prevent the acts. **Relevant paragraphs**: 26, 35 and 38.	

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
Germany Federal Administrative Court	BVerwG 10 C 13.11 4 September 2012 ECLI:DE:BVerwG:2012:040912U10C13.11.0 (an English summary is available)	**Keywords**: Directive 2004/83/EC – Article 12(1), Article 12(2)(b) and (c) and Article 17 QD – Exclusion from international protection – Subsidiary protection – Serious non-political crime – Terrorism – Internal armed conflict – 'Serious reasons for considering' – Acts contrary to the principles and purposes of the UN – Individual responsibility – Mere membership of the PKK – Assistance contributing to the commission of excludable acts. Judgment concerning a former member of the Kurdistan Workers' Party (PKK) and analysis required to determine whether his activities meant that could be considered to have committed a serious non-political crime excluding him from subsidiary protection. **Summary** The appellant, a Turkish national of Kurdish ethnicity, travelled to Germany in May 2006 and applied for international protection. He said he had been imprisoned for 10 years in Turkey because of his support of the PKK. After his release in 1990, he trained in Syria and Lebanon as a PKK militant and was involved in combat operations in 1992/93 in Turkey. He later joined the National Liberation Front of Kurdistan (ERNK) and organised campaigns to gain support for the PKK among local inhabitants. In 1999, he was wounded as a guerrilla in Northern Iraq in an attack by the Turkish army and subsequently remained in a camp until 2004. He was then appointed to the Kurdistan People's Congress in Northern Iraq as a contact with other organisations. Until 2006, he had hoped that the PKK would renounce violence. When it became clear that this would not happen, he left the PKK. He told his family he feared the PKK would kill him as a traitor and then travelled to Germany. The BVerwG overturned the Higher Administrative Court's decision that the applicant should not be excluded from refugee status and returned it to that court for reassessment. The BVerwG found that the Higher Administrative Court's assessment as to whether he had committed a serious non-political offence whilst he was a member of the PKK and whether he could be held responsible for such an offence had referred exclusively to violent terrorist acts committed by the PKK characterised by violence against the civil population and had thereby selected too narrow a benchmark.	**CJEU** *B and D*, C-56/09 and C-101/09, 9 November 2010, EU:C:2010:661 **BVerwG, Germany** 6 April 1992, BVerwG 9 C 143.90 15 December 1987, BVerwG 9 C 285.86 30 March 1999, BVerwG 9 C 23.98 8 February 2005, BVerwG 1 C 29.03 11 September 2007, BVerwG 10 C 8.07 31 March 2011, BVerwG 10 C 2.10 7 July 2011, BVerwG 10 C 26.10

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		The Higher Administrative Court could only have avoided consideration of the applicant's participation in fighting in 1992–93 and PKK attacks resulting in casualties among the Turkish security forces if it had first established that the armed conflict between the PKK and the Turkish state had reached the level of an internal armed conflict involving war crimes violating Article 8(2)(d) and (f) of the International Criminal Court statute. Unless war crimes or crimes against humanity are under consideration, the provisions of the Rome Statute are not applicable and there are no uniform international criteria for the assessment of the perpetration of, and participation in, excludable acts under Article 12(2)(b) and (c) QD (recast). Violence against the civilian population is not a necessary, but is already, a sufficient prerequisite for the existence of a non-political crime. In addition, it found that the lower court's assessment of the applicant's involvement in a meeting at which the assassination of a renegade PKK member had been decided upon by more than 500 PKK activists was flawed, as even a simple PKK activist would have been aware of the unlawfulness of this act. In relation to the lower court's assessment that the applicant did not support any terrorist activities of an international nature, it had considered only terrorist activities of the PKK in Europe but not its cross-border activities in Northern Iraq. In assessing individual responsibility for excludable crimes, acts supporting an organisation such as the PKK, which commits terrorist acts with an international dimension, are not limited to such terrorist actions, but can include purely logistical support of sufficient weight, and thereby constitute acts contrary to the purposes and principles of the UN justifying exclusion. (Issues concerning first country of asylum and safe third country also arising in this judgment are not covered in this summary.)	24 November 2009, BVerwG 10 C 24.08 **Lower level courts, Germany** Some lower level German court judgments are also cited.

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
Greece Council of State	Case No 1694/2018 21 August 2018 (an English summary is available)	**Keywords**: Exclusion from protection – Serious non-political crime – Benefit of doubt – Burden of proof – Standard of proof. Judgment on the case of one of the eight Turkish military servicemen who requested asylum in Greece in the aftermath of the 2016 Turkey *coup d'état* attempt. **Summary** The Greek Asylum Service had denied granting the applicant international protection on the basis of his exclusion from refugee status, due to his alleged role in the *coup d'état* attempt. Upon appeal, the Independent Appeals Authority overturned the first-instance decision and granted the applicant refugee status. The Greek government sought to overturn this decision, by applying for its annulment. At the last instance, the Council of State dismissed the government's arguments and upheld the applicant's refugee status. In its reasoning, which was published on 21 August, the Supreme Court relied on the provisions of the Geneva Convention, the 2011/95/EU Directive, as well as international jurisprudence, to elaborate on the standard of proof regarding exclusion from refugee status. According to the line followed, the establishment of the involvement of an asylum seeker in a serious non-political crime, or in crimes aiming at the attainment of a group's political purposes, should be the result of clear and credible evidence, following individual assessment. Moreover, the applicant's actions should be conscious and substantial, establishing a causative link between their actions and the criminal purpose of the group, or the crimes committed in the context of this purpose. As such, for the exclusion clause to be triggered, the applicant must be at least partly liable for the serious criminal acts committed by the group that attempted to overthrow the Turkish government. Notably, the Court observed that the Asylum Services' findings on the applicant's participation in the coup were largely deductive and hypothetical, without any assessment of reliable evidence.	**CJEU** *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2009:285 **Supreme Court of Canada** Ezokola v *Canada (Minister of Citizenship and Immigration)* [2013] 2 SCR 678 **Federal Court of Appeal, Canada** Sivakumar v *Canada (Minister of Employment and Immigration)*, 1993 CanLII 3012 (FCA), [1994] 1 FC 433 **Supreme Court of New Zealand** Attorney-General (Minister of Immigration) v *Tamil X and Refugee Status Appeals Authority*, 27 August 2010, SC 107/2009 [2010] NZSC 107

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
Ireland High Court	AB v *Refugee Appeals Tribunal and Minister of Justice, Equality and Law Reform* 5 May 2011 [2011] IEHC 198	**Keywords**: Article 1F Refugee Convention. Judgment concerning whether by reason of his combat activities as a regional commander for the Taliban forces in opposing the NATO-led International Security Assistance Force (ISAF) in Afghanistan, the applicant can be regarded as having forfeited his right to seek asylum; in essence, whether or not he can be regarded as fleeing persecution or prosecution. **Summary** The applicant claims to be an ethnic Pashtun from the Helmand province and that his father was a prominent military commander during the Soviet occupation who joined the Taliban when they came to power. After graduating from law school he was appointed by the Taliban as a prosecutor with the task of investigating political and military prisoners and after his father was presumed dead he was then appointed a commander. He fought on behalf of the Taliban for approximately five years. The essence of his claim is that if he is returned he would suffer persecution by reason of his status as a prominent Taliban commander. He further contended that he might well be imprisoned and his life might be at risk, which was later accepted by the Tribunal. The Tribunal found that the applicant's case was credible and that the applicant presented a well-founded fear. The applicant is *prima facie* entitled to refugee status in view of the definition contained in Section 2 of the Refugee Act 1996. The question is whether the applicant comes within any of the exclusions to that primary definition of refugee by reason of what the Tribunal described as his 'relatively senior position in both the Hezb-i-Islami and the Taliban'. The Tribunal was clearly entitled to form the view that by virtue of the applicant's 'relatively senior position' in the Taliban it was legitimate to presume that, in the language of the Court of Justice, he had 'individual responsibility for acts committed by that organisation during the relevant period.' Yet paragraph 97 in particular of the judgment of the Court of Justice in *B und D* clearly requires that adjudicating authority to conduct an individual assessment of the applicant's circumstances and, specifically, in his own complicity – he admitted openly engaging in combat with troops whose presence in Afghanistan was expressly sanctioned and authorised by UN Security Council Resolutions was not *in and of itself* contrary to the purposes and principles of the United Nations within the meaning of Section 2(c)(iii) of the 1996 Act – in crimes against humanity which, as we have already noted, the Taliban undoubtedly committed. The Tribunal are often faced with considerable difficulties in making credibility assessments in respect of events which are said to have occurred in unfamiliar jurisdictions of which we have but imperfect knowledge. But at least, in such circumstances, the adjudicator has the benefit of country of origin information. While this type of documentation is generally unlikely to be able to shed much light on the question of whether an individual had the kind of personalised knowledge and complicity which the Court of Justice appears to require, whether difficult or otherwise, this type of assessment is what is now required in the light of the *B und D*. The applicant established substantial grounds that the Tribunal did not conduct this type of assessment. **Relevant paragraph**: 50.	**CJEU** *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2010:661 **ICTY Appeal Chamber** *Prosecutor* v *Tadic*, 15 July 1999, IT-94-1A **International Court of Justice** *Libyan Arab Jamarihiya* v *United Kingdom (Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie)* [1992] I. C. R. 3 **Supreme Court of Ireland** *McD.* v *L.*, 10 December 2009, [2009] IESC 81 **United Kingdom Supreme Court** *R (JS)* v *Secretary of State for the Home Department* [2010] UKSC 15 [2010] 2 WLR 766 **Supreme Court of New Zealand** Attorney-General (Minister of Immigration) v *Tamil X and Refugee Status Appeals Authority*, 27 August 2010, SC 107/2009 [2010] NZSC 107

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
The Netherlands Council of State	200308845/1 2 June 2004 ECLI:NL:RVS: 2004:AP2043	**Keywords**: Inclusion before exclusion. Judgment concerning Article 1F Refugee Convention. **Summary** As the applicability of Article 1F of the Geneva Convention precludes the establishment of refugee status, the minister may first of all, in cases in which he considers this appropriate, determine whether the Refugee Convention is applicable in view of that provision (paragraph 2.2.1). On the other hand, the State Secretary is free to deal with inclusion before exclusion (paragraph 2.6.8). Relevant paragraphs: 2.2.1 and 2.6.8.	
The Netherlands Council of State	200402639/1 en 200402651/1 23 July 2004 ECLI:NL:RVS: 2004:AQ5615	**Keywords**: War crimes. Judgment concerning Article 1F Refugee Convention. **Summary** The PKK was guilty of killing village guards and their relatives, placing mines and carrying out terrorist attacks, and publicly declaring in 1994 that the PKK intended to kill teachers and teachers in south-eastern Turkey, an intention that was subsequently implemented, according to the State Secretary. The acts in question by their nature fall within the scope of Article 13, paragraph 2, of Protocol II to the Geneva Conventions and must therefore be regarded as war crimes, as referred to in Article 1 (F) of the Refugee Convention. **Relevant paragraphs**: 2.6.1 and 2.6.3.	

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
The Netherlands Council of State	200408765/1 18 April 2005 NL:RVS:2005: AT4663	**Keywords**: Applicability of Exclusion clauses to crimes committed prior to the entry into force of relevant international treaties. Judgment concerning Article 1F(a) Refugee Convention. **Summary** There is no support for the view that an international agreement in the context of the application of Article 1F can be significant only if that agreement was applicable at the time when the crimes against the alien concerned took place. Neither the wording of the provision nor the guidelines drawn up by the United Nations High Commissioner for Refugees for the interpretation and application of the Refugee Convention, including the 'Guidelines on international protection: Application of the Exclusion Clauses: Article 1F of the 1952 Status of Refugees' of 4 September 2003 provide this support. The minister rightly argues that the reference to international conventions in Article 1F(a) is intended to include developments in the field of international criminal law and that the designation of crimes as war crimes thus laid down in this treaty provision for so-called dynamic character. In the judgment of 10 August 1995 in the Tadic case (IT-94-I-T), the Yugoslavia Tribunal considered that Common Article 3 should be regarded as a rule of customary international law and that violations thereof during an armed conflict result in war crimes, whether or not the armed conflict has an international or internal character. The fact that serious violations of Common Article 3 can be classified as war crimes is further confirmed by the fact that Article 8, second paragraph, preamble, and under c of the Statute, states that such violations constitute war crimes. In view of the above, the minister may rely on a violation of Common Article 3 when classifying certain behaviours as war crimes, as referred to in Article 1F(a) of the Refugee Convention. **Relevant paragraphs**: 2.4, 2.4.1 and 2.4.2.	
The Netherlands Council of State	201405219/1/V1 15 October 2014 NL:RVS:2014: 3833	**Keywords**: War crimes – Serious reasons for considering. Judgment concerning Article 1F(a) and (b) Refugee convention **Summary** The applicant had been a leader of several armed groups in the Democratic Republic of the Congo, whose members had on a large scale committed crimes falling within the scope of Article 1(F)(a) and (b) Refugee Convention. Because of his position as a leader, he was considered able to influence the behaviour of the members of the groups. He was acquitted by the ICC on an indictment of being involved, as a leader of one of those groups, in war crimes and crimes against humanity committed during the attack of village (x) on 24 February 2003, because, according to Trial Chamber II, it was not beyond reasonable doubt that he had acted as a leader during this attack. The acquittal does not alter the fact that he could be held liable for crimes committed in a period following the attack on village (x). **Relevant paragraph**: 2.5.	**CJEU** *Elgafaji* v *Staatssecretaris van Justitie*, C-465/07, 17 February 2009, EU:C:2009:94 **ECtHR** *Z. M.* v *France*, No 40042/11, 14 November 2013

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
The Netherlands Council of State	201506251/1/V1 17 May 2016 ECLI:NL:RVS: 2016:1441	**Keywords**: Article 1F Refugee Convention – Crimes committed by members of army unit – Command responsibility. Judgment concerning whether the criteria for command responsibility under Article 28 of the Rome Statute were met. **Summary** The State Secretary has rightly held against the applicant that he has failed to take all necessary and reasonable measures within his power to prevent or restrict the commission of crimes. The court finds support for this assessment in the judgment of 30 June 2006 of the ICTY, N. Orić (IT-03-68-T), in which it was considered in paragraph 331 that a superior fails to take necessary and reasonable measures if he, although aware of the crimes of his subordinates, does nothing, for example by simply ignoring that information. Furthermore, the court finds support for this judgment in the ruling of 21 March 2016 of Trial Chamber III of the International Criminal Court (ICC-01/05-01/0803343: www.icc-cpi.int) in the case against J. Bemba Gombo. In paragraph 202 of this judgment, it is considered that a commander is in breach of his obligation as referred to in Article 28, preamble and under a (ii) of the Statute, if he does not take measures to stop crimes that are about to take place. In addition, it is stated in paragraph 200 of this judgment that if a commander has fulfilled his duty to take all necessary and reasonable measures within his control, he cannot be held responsible, even if the crimes nevertheless ultimately take place or the perpetrators go unpunished. **Relevant paragraph**: 5.2.	
The Netherlands Council of State	201803118/1/V2 21 August 2018 ECLI:NL:RVS: 2018:2813	**Keywords**: War crimes – Human rights violations. Judgment concerning war crimes that can, at the same time, constitute a serious non-political crime within the meaning of Article 12(2)(b) and/or a crime against humanity as meant in Article 12(2)(a) QD (recast). **Summary** The country of origin information provided by the Minister of Foreign Affairs stated that the Afghan government army was engaged in a bloody civil war with the Mudjahedin in the years 1979–1992. The Afghan government army was on a large scale guilty of war crimes and human rights violations. There was often excessive violence, involving tens of thousands if not hundreds of thousands of people being killed, villages being bombed, lands destroyed, villagers suspected of maintaining ties with the Mudjahedin killed, women raped, and prisoners of war and resistance leaders tortured and killed. The State Secretary rightly assumed from the information contained in those official messages, namely that brigade generals of the Afghan government army could take military action without prior consultation and that the government army joined the military actions that took place between 1979 and 1992, that the Afghan government army was extensively guilty of war crimes and human rights violations **Relevant paragraph**: 8.4.	**CJEU** *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2009:285 *K* v *Staatssecretaris van Veiligheid en Justitie and HF* v *Belgische Staat*, C-331/16 and C-366/16, 2 May 2018, EU:C:2018:296

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
The Netherlands Council of State	201708043/1/V1 19 February 2019	Keywords: Receiving UNRWA protection. Judgment concerning UNRWA protection. **Summary** [The applicants are a woman and her husband, and minor children]. The woman stated that her family has a UNRWA card on which she is registered. She also stated during the interview that she had never received help from UNRWA. During the court hearing, her husband stated that she was registered with UNRWA, but he was not and that they had never received help from UNRWA. Because the applicants had not actually received assistance from UNRWA, Article 1D Refugee Convention does not apply to them. **Relevant paragraph**: 4.2.	**CJEU** *Abed El Karem El Kott and Others*, C-364/11, 19 December 2012, EU:C:2012:826 *Bolbol*, C-31/09, 17 June 2010, EU:C:2010:351 *Serin Alheto* v *Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, C-585/16, 25 July 2018, EU:C:2018:584
United Kingdom Supreme Court	*JS (Sri Lanka)* v *Secretary of State for the Home Department* 17 March 2010 [2010] UKSC 15	Keywords: Article 1F(a) Refugee Convention – Serious reasons for considering – Individual responsibility. Judgment concerning whether 'there are serious reasons for considering' the asylum seeker to be disqualified as a war criminal under Article 1F(a). **Summary** It was common ground between the parties (i) that there can only be one true interpretation of Article 1F(a), an autonomous meaning to be found in international rather than domestic law; (ii) that the international instruments referred to in the article are those existing when disqualification is being considered, not merely those extant at the date of the Convention; (iii) that because of the serious consequences of exclusion for the person concerned the Article must be interpreted restrictively and used cautiously; and (iv) that more than mere membership of an organisation is necessary to bring an individual within the Article's disqualifying provisions. JS, a 28-year-old Sri Lankan Tamil, became a member of the Liberation Tigers of Tamil Eelam (LTTE) at the age of 10. Over the years, he climbed the ranks through the Intelligence Division to the point where he could be sent in plain clothes to Colombo. He was ultimately appointed one of the chief security guards to the Intelligence Division's leader, whom he accompanied as a trusted aide, and later he went on to serve as second in command of the combat unit. In 2006, upon learning his presence in Colombo had been discovered and arrangements were made for him to leave the country, he arrived in the UK and applied for asylum. His application was refused on the basis that he operated within the LTTE as a voluntary member and with command responsibility within an organisation that has been responsible for widespread and systemic war crimes and crimes against humanity. He sought judicial review. Leave was eventually granted and an order made for the substantive challenge to be heard by the Court of Appeal who quashed the Secretary of State's decision.	**ICTY** *Prosecutor* v *Tadic*, 15 July 1999, IT-94-1-A *Prosecutor* v *Brdjanin* (unreported), 3 April 2007, IT-99-36-A *Prosecutor* v *Krajišnik* (unreported), 17 March 2009, IT-00-39-A England and Wales (United Kingdom) Court of Appeal: *KJ (Sri Lanka)* v *Secretary of State for the Home Department* [2009] EWCA Civ 292 *Yasser Al-Sirri* v *Secretary of State for the Home Department* [2009] EWCA Civ 222

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		The court concluded that it is a mistake to try to paraphrase the straightforward language of the Convention: it has to be treated as meaning what it says. The appeal was dismissed but the order varied to provide that in re-determining the respondent's asylum application, the Secretary of State should direct himself in accordance with this Court's judgments, not those of the Court of Appeal. **Relevant paragraphs**: 8, 31 and 33.	*MH (Syria)* v *Secretary of State for the Home Department* [2009] EWCA Civ 226 **United Kingdom Immigration Appeals Tribunals** *Gurung* v *Secretary of State for the Home Department* [2002] UKIAT 4870 **Scottish Court of Session, United Kingdom** *DKN* v *Asylum and Immigration Tribunal* [2009] CSIH 53 **BVerwG, Germany** 14 October 2008, BVerwG 10 C 48.07 **Federal Court of Appeal, Canada** *Ramirez* v *Canada (Minister of Employment and Immigration)*, 1992 CanLII 8540 (FCA), [1992] 2 FC 306 *Nagamany* v *Canada (Minister of Citizenship and Immigration)*, 2005 FC 1554 **United States Court of Appeals** *McMullen* v *INS* 685 F 2d 1312 (1981)

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
United Kingdom Supreme Court	*Al-Sirri* v *Secretary of State for the Home Department; DD (Afghanistan)* v *Secretary of State for the Home Department* 21 November 2012 [2012] UKSC 54	**Keywords**: Article 1F(c) Refugee Convention. Judgment concerning Article 1F(c) Refugee Convention, which excludes from refugee status and protection 'any person with respect to whom there are serious reasons for considering that … he has been guilty of acts contrary to the purposes and principles of the United Nations.' **Summary** These appeals are concerned with Article 1F(c) Refugee Convention. This excludes from refugee status and protection 'any person with respect to whom there are serious reasons for considering that … he has been guilty of acts contrary to the purposes and principles of the United Nations'. For the time being at least, however, the Home Secretary accepts that these appellants cannot be returned to their home countries because they face a real risk of torture or inhuman or degrading treatment or punishment there. It is the grant of refugee status, rather than the right to stay in this country, which is in issue in these proceedings. The issues in the two cases are different. In *Al-Sirri*, the question is whether all activities defined as terrorism by our domestic law are for that reason alone acts contrary to the purposes and principles of the United Nations, or whether such activities must constitute a threat to international peace and security or to the peaceful relations between nations. In *DD*, the question is whether armed insurrection is contrary to the purposes and principles of the United Nations if directed, not only against the incumbent government, but also against a United Nations-mandated force supporting that government, specifically the International Security Assistance Force ('ISAF') in Afghanistan. The appeal in regards to appellant DD was dismissed, as the object of his argument was to establish that his activities could not be contrary to the principles and purposes of the United Nations. However, the Court of Appeal were correct to hold that there were material errors of law in the Asylum and Immigration Tribunal (AIT) findings in that they failed to examine the appellant's conduct in the manner prescribed by this court in *JS* and to consider whether he had been guilty of acts contrary to the purposes and principles of the United Nations. The order remitting the case to the Upper Tribunal for reconsideration should stand. The appeal in *Al-Sirri* is rather different. Technically, the appellant has challenged the decision of the Court of Appeal to remit his case to the tribunal, rather than to find that he was not excluded from the status of refugee. The appeal was dismissed, but the reality is that he was challenging certain aspects of the guidance given to the tribunal, which would hear the remitted case. In that he has succeeded to some extent. Consideration will also have to be given to whether it is more appropriate for the case to be remitted to the First-tier or to the Upper Tribunal, given that the evidence will have to be examined afresh. **Relevant paragraphs**: 13–16, 38, 59–68 and 75.	**CJEU** *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2010:661 **United Kingdom Supreme Court**: *R (JS (Sri Lanka))* v *Secretary of State for the Home Department* [2010] UKSC 15 **United Kingdom House of Lords** *R* v *Secretary of State for the Home Department,* ex parte *Adan* [2001] 2 AC 477 **United Kingdom Queen's Bench Division**: *R* v *Uxbridge Magistrates' Court,* ex parte *Adimi* [2001] QB 667 **High Court of Ireland** *B* v *Refugee Appeals Tribunal and Others* [2011] IEHC 198 **Administrative Appeals Tribunal, Australia**

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			W97/164 v *Minister for Immigration and Multicultural Affairs* [1998] AATA 618 **Supreme Court of Canada** *Pushpanathan* v *Canada (Minister of Citizenship and Immigration)* [1998] 1 SCR 982 *Cardenas* v *Canada (Minister of Employment and Immigration)* [1994] FCJ No 139 **Court of Appeal, New Zealand** *X* v *Refugee Status Appeals Authority; Attorney-General (Minister of Immigration)* v *Y*, [2009] NZCA 488, 20 October 2009
United Kingdom Court of Appeal (England and Wales)	*CM (Zimbabwe)* v *Secretary of State for the Home Department* 30 July 2013 [2013] EWCA Civ 1303	**Keywords**: Evidence – Non-disclosure – Fraud – Withholding material – Public interest immunity – Anonymous evidence – Weight. Judgment concerning whether an earlier decision consisted of 'fraud by reason of non-disclosure', withholding material on public interest immunity grounds; and, there was a question as to what weight should be accorded to anonymous evidence.	**ECtHR** *Sufi and Elmi* v *United Kingdom*, Nos 8319/07 and 11449/07, 28 June 2011 **United Kingdom Supreme Court** *Al-Rawi* v *the Security Service* [2012] 1 AC 531 **United Kingdom House of Lords** *R (Abdi)* v *SSHD* [1996] 1 WLR 298

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		Summary CM, the appellant, was one of the appellants in *EM and Others (Returnees) Zimbabwe CG* [2011] UKUT 98 (IAC) on 14 March 2011 (*EM*). He and one of the other appellants, JG, sought permission to appeal to this court against the *EM* country guidance decision. There followed a somewhat tortuous procedural course. Permission to appeal to this court against the *EM* country guidance decision was at length granted. There were two directions hearings in the Upper Tribunal after remittal by this court. The three grounds on which the appellant has leave to appeal against the Upper Tribunal's subsequent decision are that the Tribunal erred in not finding that the Secretary of State was under a general duty to provide disclosure in an asylum and Article 3 appeal. Secondly, in the light of the decision of the Strasbourg Court in *Sufi and Elmi* v *United Kingdom* [2011] ECHR 1045, it was submitted that the Tribunal erred in relying on wholly anonymous evidence in the report of the fact-finding commission. Thirdly, it was contended that the Tribunal erred in appointing a public interest immunity advocate instead of a specially appointed advocate in respect of the disclosure ordered by the Court of Appeal. Therefore, the principal issue was whether the earlier decision in *EM* was 'fraud by reason of non-disclosure'; consideration was to be given to the Secretary of State's outstanding claim to withhold material on public interest immunity grounds; and, there was a question as to what weight should be accorded to anonymous evidence, which post-dated the promulgation of the *EM* country guidance determination. The appellant, JG, disappeared from the scene because she obtained leave to remain in the United Kingdom. There is no general rule at common law or inspired by the European Convention on Human Rights that uncorroborated anonymous material can never be relied on in a country guidance case or any other case. Sometimes that will be the position. Whether or not it is so will depend on all the circumstances. That is the approach taken by the Upper Tribunal in this case. Generally of course the effect of anonymity will go to the weight to be attached to the material in question and care must always be taken in assessing the weight of such material. The conclusions of the Upper Tribunal, moreover, are not in my judgment undermined by considerations of common law standards of fairness, Article 47 of the Charter of Fundamental Rights or fair trial guarantees under the European Convention. This was not a case of a party being denied any opportunity of knowing the case against him or of having to face the difficulties of a closed material procedure. It seems to me that in this respect also the Upper Tribunal's decision was correct and appropriate. The Secretary of State's duty in my judgment is to take reasonable steps to ensure that material relevant to a country guidance case is placed before the tribunal, and she must be candid in relation to documents of which she is aware whether or not they assist her. She may have to enquire of persons or bodies such as other government departments with which in any event the Home Office will be in communication, but she is not required to undertake unprompted or undirected searches. The Kerrouche approach adopted by the Upper Tribunal is correct. It is of course always important that the court or tribunal should satisfy itself that a proper result is arrived at in any PII [public interest immunity] issue. That that requirement was satisfied in this case is to my mind supported by the very terms on which the Upper Tribunal sought the appointment of a PII counsel. I would reject all three of the grounds of appeal. Relevant paragraphs: 11, 17, 19 and 27.	*RB (Algeria)* v *Home Secretary* [2009] UKHL 10 [2010] 2 AC 10 **England and Wales (United Kingdom) Court of Appeal** *AHK* v *SSHD* [2009] EWCA Civ 287 *R* v *SSHD* ex parte *Kerrouche (No 1)* [1997] Imm AR 610 *MT* v *SSHD* [2008] QB 533 **England and Wales (United Kingdom) High Court (Administrative Court)** *R(Cindo)* v *IAT* [2002] EWHC Admin 246 **United Kingdom Upper Tribunal** *EM and Others (Returnees) Zimbabwe CG* [2011] UKUT 98 (IAC) **United Kingdom Asylum and Immigration Tribunal** *RN (Returnees) (Zimbabwe) CG* [2008] UKAIT 00083 *FZ & Ors* v *SSHD* [2003] Imm AR 633

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
United Kingdom Court of Appeal (England and Wales)	*AH (Algeria)* v *Secretary of State for the Home Department* 14 October 2015 [2015] EWCA Civ 1003	**Keywords**: Article 1F(b) and (c) Refugee Convention – Serious non-political crime – Complicity – Serious reasons for considering – Preparation of acts of terrorism. Judgment concerning the administration of Article 1F(b). **Summary** The appellant, an Algerian national, went to France in 1992. In 1993 he was convicted in Algeria, in his absence, of complicity in a bombing at Houari Boumediene Airport in Algiers. In October 1995 he was arrested in France and charged with two offences said to have been committed in France, namely falsifying administrative documents and being a member of an association or grouping formed with a view to preparing acts of terrorism. He was tried with others in June 1998 in Paris. He was convicted of the first offence and sentenced to six months' imprisonment, but acquitted of the second. However in 1999 the acquittal was overturned and a sentence of two years' imprisonment was imposed, together with an order that the appellant be excluded from France for good. Given time already served, the appellant was released from custody, and in 2001 made his way to the United Kingdom and applied for asylum. In 2004 he was granted discretionary leave, it being accepted that he had a well-founded fear of persecution within the meaning of Article 1A(2) of the Convention; but the Secretary of State decided to exclude him from the Convention's protection by force of Article 1F 'because you were convicted of a serious criminal offence in France'. He was granted further limited leave in 2006, but the application of Article 1F was maintained. The appellant's appeal against the refusal of asylum was dismissed in 2006. However that determination was found to be flawed by error of law, and at length the appeal was reconsidered by the Asylum and Immigration Tribunal. That tribunal's fresh decision remained adverse to the appellant, and was to the effect that he was excluded from the Convention's protection under Article 1F(b) and (c). The case then came to this court, which ([2012] 1 WLR 3469) held that the AIT had fallen into error 'because the decision upon which they relied and upon which they based their approach, namely, *Gurung* v *SSHD [2003] Imm AR 115*, was subsequently disapproved of by the Supreme Court in *R (JS) (Sri Lanka)* v *Home Secretary [2010] UKSC 15*, [2011] 1 AC 184'. The case was therefore remitted to the tribunal for a fresh hearing. The Upper Tribunal (UT) was satisfied that there were serious reasons to consider that the appellant committed a serious crime in France before coming to the United Kingdom and as a consequence, that he is excluded from the protection of refugee status and subsidiary humanitarian protection. On appeal, the issues raised were that (i) the UT did not find facts sufficient to show such a degree of personal involvement in serious crime on the appellant's part as to justify exclusion under Article 1F; they failed to mark important distinctions between him and some of his co-accused; and failed properly to assess or confront the nature of the participatory offence with which he was charged; (ii) the UT failed to apply the correct construction of Article 1F(b), by which 'serious' is to be equated with 'particularly serious', to the facts of the case; and (iii) they also failed to take into account facts arising since the commission of the offence which, Mr Husain submitted, went to expiate the appellant's discredit and should have saved him from exclusion under Article 1F(b).	**CJEU** *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2010:661 **United Kingdom Supreme Court** *R (JS) (Sri Lanka)* v *Home Secretary* [2010] UKSC 15, [2011] 1 AC 184 *HJ (Iran)* v *Secretary of State* [2011] 1 AC 596 *RT (Zimbabwe)* v *Secretary of State* [2013] 1 AC 152 *Al-Sirri* [2013] 1 AC 745 *R (ST)* v *SSHD* [2012] 2 AC 135 **United Kingdom House of Lords** *Sepet* v *SSHD* [2003] 1 WLR 856 *Horvath* v *Secretary of State for the Home Department* [2001] 1 AC 489 *Adan* v *SSHD* [2001] 2 AC 477 *R* v *SSHD ex p Adan* [1999] 1 AC 293

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		The UNHCR is a significant voice in the interpretation of the Convention. But it is not a lawgiver, or a source of law. It is a contributor of the first importance to the protection of refugees; and that fact itself must qualify the force of what it has to say when a balance falls to be struck between the interests of a putative refugee and those of the potential receiving State: 'exclusion clauses should not be enlarged in a manner inconsistent with the *Refugee Convention*'s broad humanitarian aims, but neither should overly narrow interpretations be adopted which ignore the contracting states' need to control who enters their territory'. In my judgment there are in particular two areas in the administration of Article 1F(b) where the proposition bites. The first is the application of the term 'serious non-political crime'. The second is the sense to be given to 'serious reasons for considering that … he or she has committed [a crime]'. The latter expression imposes a demanding hurdle for the application of Article 1F(b). Even without the authority of the Supreme Court of Canada in *Febles*, I would in the circumstances have rejected the submissions of Mr Husain and Mr Fordham on this part of the case, on grounds that (a) given the language of Article 1F(b), they cannot be justified by the measure of any ordinary canon of construction; (b) in particular they would confer on Article 1F a function and purpose quite different from the other provisions in Article 1; and (c) that function tends anyway to be contradicted by the *travaux préparatoires* of the Convention. In the result I can find nothing in this court's earlier decision to call in question my view that the UT was entitled to conclude, as it did, that the appellant was giving succour to a terrorist cause, and doing so as a senior conspirator; and as such had plainly committed a 'serious non-political crime' within the meaning of Article 1F(b). **Relevant paragraphs**: 10–11, 20 and 30.	**England and Wales (United Kingdom) Court of Appeal** *R* v *Asfaw* [2008] 1 AC 1061 **England and Wales (United Kingdom) High Court (Administrative Court)** *R* v *Uxbridge MC ex p Adimi* [2001] QB 667 **United Kingdom Upper Tribunal** *KK (Article 1F(c)) (Turkey)* [2004] UKIAT 00101 *AA (Exclusion Clause) (Palestine)* [2005] UKIAT 00104 *Gurung* v *SSHD* [2003] Imm AR 115 **Supreme Court of Canada** *Pushpanathan* [1998] 1 SCR 982 *Febles* v *Canada (Minister of Citizenship and Immigration)* [2014] SCC 6

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
United Kingdom Court of Appeal (England and Wales)	*Youssef* v *Secretary of State for the Home Department* 26 April 2018 [2018] EWCA Civ 933	**Keywords**: Article 1F(a) and (c) Refugee Convention – Terrorism. Judgment concerning whether acts may be sufficient to satisfy the threshold for exclusion from the Refugee Convention under Article 1F(c), where those acts were neither themselves completed or attempted terrorist acts, nor can they be shown to have led to specific completed or attempted terrorist acts by others. **Summary** The Appellant Youssef is an Egyptian national, who arrived in the United Kingdom in 1994. He has a complex background, which has included the accusation that he has been involved in Islamic terrorist activities. However, it is said that he has published many sermons and other material on the internet glorifying Al Qaeda, and past and present leaders of Al Qaeda. Although there are competing submissions as to the proper emphasis and understanding to be applied to this material, there is little or no dispute as to the content. In a decision of the Upper Tribunal (Immigration and Asylum Chamber) [UTIAC] in 2016, they dismissed the appeal against the Respondent's decision that the Appellant's activities excluded him from the Refugee Convention. The Appellant N2 is thought to be a Jordanian national. He entered the United Kingdom, it is believed in 2002, on a false passport. His asylum claim was refused later that year as being fraudulent, and his appeal dismissed in 2003. Nevertheless, he remained in the UK. In 2007, he received a total of nine years' imprisonment for offences contrary to the Terrorism Act 2000. He was sentenced on the basis that he was a sleeper for a terrorist organisation. His applications for permission to appeal against conviction and sentence were dismissed by the Court of Appeal in November 2008. There followed a complex history of immigration dispute and litigation. In 2015, the Respondent served the Appellant with a letter of refusal of asylum and exclusion from refugee status under Article 1F(c). The Appellant appealed, his case being certified so that his appeal was heard by the Special Immigration Appeals Commission ['SIAC'], because of the implications for national security of some of the evidence relied on. SIAC considered the exclusion issue and ruled against the Appellant. The common issue in both appeals is whether acts may be sufficient to satisfy the threshold for exclusion from the Convention under Article 1F(c), where those acts were neither themselves completed or attempted terrorist acts, nor can they be shown to have led to specific completed or attempted terrorist acts by others.	**CJEU** *Lounani*, C-573/14, 31 January 2017, EU:C:2017:71 *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2009:285 **United Kingdom Supreme Court** *Al-Sirri* v *Secretary of State for the Home Department* [2012] UKSC 54 *R (JS (Sri Lanka))* v *Home Secretary* (SC (E)) [2011] 1 AC 184 *Al-Waheed* v *Ministry of Defence* [2017] AC 821

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		It cannot be taken to be a redundant provision, which would be the case if all acts for which individuals were responsible had to constitute crimes within international criminal law and therefore by definition constitute breaches of Article 1F(a). Individuals may be in breach of both Article 1F(a) and Article 1F(c), but its very existence must give rise to the inference that individuals may breach 1F(c) without breaching 1F(a). The obvious reading of Article 1F(c) is that it founds exclusion for 'acts' which are not 'crimes' in international law. I am not convinced that there is any persuasive argument based on international criminal law confining the ambit of Article 1F(c) to acts which would satisfy the requirements for specific prosecution in the ICC, or the ICTY. The specific creation of an international criminal offence of incitement to genocide cannot directly affect the ambit of Article 1F(c), although of course it may have an effect on the ambit of Article 1F(a). In my judgment it is clear that Article 1F(c) extends beyond acts which would also satisfy Article 1F(a). Lord Brown and Lord Hope in *JS (Sri Lanka)* were only considering the ambit of Article 1F(a) and, while their broad approach to the interpretation of the Charter is helpful, their particular conclusions are not decisive in this case. It appears to me that none of the rather technical arguments advanced in relation to the ambit of Article 1F(c) can succeed. Equally, I see no basis for successful appeal on Ground ii in Youssef, which appears to me somewhat obscure in its meaning, and is perhaps no more than a repetition of Ground i. In respect of N2, given my view on Grounds i and ii in Youssef and N2's additional submissions, it follows that I would dismiss his appeal. The UTIAC dealt fully with the argument that crimes must be proved, and did so correctly. However, there is no passage in their reasons which demonstrates that thereafter they stood back and considered the gravity or seriousness of Youssef's conduct, once that argument was disposed of. In the end I am not convinced that they directed themselves on this issue with sufficient clarity. On that ground, but on that ground alone, I would allow Youssef's appeal, and remit the matter to the Upper Tribunal for reconsideration. **Relevant paragraphs**: 68–77.	**United Kingdom House of Lords** *R* v *SSHD* ex parte *Adan* [2001] 2 AC 477 R v *Asfaw (UN High Commissioner for Refugees intervening) [2008] AC 1061* **England and Wales (United Kingdom) High Court** *R* v *Uxbridge Magistrates' Court, Ex p Adim* [2001] QB 667

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
United Kingdom Upper Tribunal (Immigration and Asylum Chamber)	*MT (Article 1F(a) – aiding and abetting) Zimbabwe* 2 February 2012 [2012] UKUT 00015(IAC)	Keywords: Article 1F(a) Refugee Convention. Judgment concerning exclusion under Article 1F(a) of the 1951 Refugee Convention. **Summary** The appellant, a national of Zimbabwe, arrived in the UK in 2007 and claimed asylum in 2009 on the basis that in Zimbabwe she had been a police officer stationed at Bulawayo between 2000 – 2007. In 2007 she found herself under pressure from her superiors to participate in various acts against political opponents, including attendance at rallies where police beat supporters with batons, two incidents in which torture was used, and she had also been ordered to go to a village where 30 people had been killed the night before, and bury the bodies in shallow graves. Despite the risks, she had been able to desert and travel to Sudan, returning for a brief period in the second half of September in order to try, unsuccessfully, to get a passport for her daughter. She had then travelled, via South Africa, to the UK. In 2010 the respondent decided to remove her as an illegal entrant having refused to grant her asylum. At the same time the respondent certified her claim under Section 55 of the Immigration, Asylum and Nationality Act 2006 because it was considered that Article 1F(a) and (c) of the Refugee Convention operated so as to exclude her from the protection of the Refugee Convention because there were serious reasons for considering she had committed crimes against humanity. The Upper Tribunal was satisfied that the appellant's involvement amounted to serious non-political crimes falling within Article 1F(b) of the 1951 Convention. In assessing what constitutes a '… non-political crime' we must apply a principle of proportionality. The essence of any definition of the 'non-political' category must have regard to whether any purportedly political act is proportionate. In our judgment the appellant's involvement in two incidents of torture does not meet the proportionality standard. We agree the statement in the respondent's certificate that the appellant committed excludable acts falling with Article 1F(a). There are serious reasons for considering she did so as an aider and abettor. Accordingly, we must dismiss the asylum dimensions of the appeal without considering any other aspect of the case. We do not find that the appellant faces a real risk of serious harm (under Article 15 of Directive 2004/83/EC, QD) or of treatment proscribed by Article 3 of the ECHR. On the basis of our findings of fact, she is a person who was a serving police officer in Zimbabwe and she has failed to show that she left that service in adverse circumstances either by deserting or otherwise showing disloyalty to the regime. We consider her subsequent conduct, returning to Bulawayo, Zimbabwe from adjoining countries on two occasions and then, once in the UK going personally to the Zimbabwe Embassy in London to renew her passport, confirms us in that opinion. The appeal was dismissed and the Secretary of State's Section 55 certificate was re-made. **Relevant paragraphs**: 121 and 131.	**CJEU** *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2009:285 **United Kingdom Supreme Court** *R (JS (Sri Lanka))* v *Secretary of State for the Home Department* [2010] UKSC 15 *Al-Sirri (FC) and DD (Afghanistan) (FC) (Appellant)* v *Secretary of State for the Home Department (Respondent)* [2012] UKSC 54 **England and Wales (United Kingdom) Court of Appeal** *Yasser Al-Sirri* v *Secretary of State for the Home Department* [2009] EWCA Civ 222 *MH (Syria)* v *Secretary of State for the Home Department* [2009] EWCA Civ 226 *Secretary of State for the Home Department* v *A (Iraq)* [2005] EWCA Civ 1438 *SS (Libya)* v *Secretary of State for the Home Department* [2011] Civ 1547

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			United Kingdom Immigration Appeal Tribunal *Gurung (IG (Exclusion, Risk, Maoists) Nepal* [2002] UKIAT 04870 on 14 October 2002 **United Kingdom Upper Tribunal** *EM and Others (Returnees) Zimbabwe CG* [2011] UKUT 98 (IAC) on 14 March 2011 *SK (Article 1F(a) exclusion) Zimbabwe* [2010] UKUT 327 (IAC) *Azimi-Rad (Art.1F(a) – complicity – Arts 7 and 25 ICC Statute) Iran* [2011] UKUT 339 (IAC) **United Kingdom Asylum and Immigration Tribunal** *AA (Risk for involuntary returnees) Zimbabwe CG* [2006] UKAIT 00061 *HS (Returning asylum seekers) Zimbabwe CG* [2007] UKAIT 00094 **ICC** *Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Kenya*, 31 March 2010, ICC-01/09

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			ICTY *Prosecutor* v *Endermovic*, 7 June 1997, IT-96-22 *Prosecutor* v *Tadic*, 15 July 1999, IT-94-1-A *Prosecutor* v *Kordic and Cerkez Trial Chamber*, IT-95-14/2 *Prosecutor* v *Krnojelac Trial Chamber*, 15 March 2002, IT-97-25-A *Prosecutor* v *Krstic Trial Chamber*, IT-98-33 *Prosecutor* v *Naletilic and Martinovic*, IT-98-34 *Prosecutor* v *Akeyesu*, IT-95-14/l-T *Prosecutor* v *Furundzija*, 10 December 1998, IT-95-17/1-T *Prosecutor* v *Brdanin*, 3 April 2007, IT-99-36-A, Appeal Chamber *Prosecutor* v *Perisic*, 6 September 2011, IT-04-81-T *Prosecutor* v *Blagojovic*, 17 January 2005, IT-02-60-T

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
United Kingdom Upper Tribunal (Immigration and Asylum Chamber)	*CM (Article 1F(a) – superior orders) Zimbabwe* 17 April 2012 [2012] UKUT 00236(IAC)	**Keywords**: Article 1F(a) Refugee Convention – Crime against peace, war crime, crime against humanity – Serious reasons for considering – Duress – Superior orders. Judgment concerning the context of deciding whether a person is excluded from Refugee Convention protection by virtue of having committed acts contrary to Article 1F(a). The effect of Article 33(1) of the Statute of the International Criminal Court (the Rome Statute) is that while obedience to superior orders can be a defence if each of its three requirements is met, by virtue of Article 33(2), the Article 33(1)(c) requirement can **never** be met in cases where the order was to commit genocide or a crime against humanity. Such cases are always 'manifestly unlawful'. For a person alleged to be criminally responsible for crimes against humanity the defence of obedience to superior orders is unavailable. **Summary** The appellant, a national of Zimbabwe, arrived in the UK in 2002 and then obtained further leave to remain until 2006. He was refused further leave beyond that. In 2009 he claimed asylum. His claim was rejected and the Secretary of State decided to issue a certificate under Section 55 of the Immigration, Asylum and Nationality Act 2006 on the basis that there were serious reasons for considering that he had committed excludable crimes under Article 1F(a) of the 1951 Refugee Convention. The Secretary of State accepted the appellant's claim to have been in the Zimbabwe army between 1987 – 1990 as a full-time soldier and then from late 1989 as a reservist. They accepted that as a reservist he was recruited in 2000 to be a member of the 'people's militia' and noted the evidence in his asylum interview that in 2001–2002 he had been involved in beatings which he had been ordered to carry out by his superiors. His involvement in two beatings in April 2002 was a particular focus. However, the Secretary of State did not accept his claim that he had sought to dissociate himself from such activities as soon as he could, nor his claim that he had carried out orders to beat people in order to save his own life. It was not accepted that in April 2002 he had been ordered to kill his uncle or that it was his refusal to carry out such an order that caused him to leave Zimbabwe. The Secretary of State also rejected the appellant's asylum-related grounds of appeal on the basis that due to his military service in support of the authorities he would be considered loyal. The Secretary of State found there were no Article 8 ECHR circumstances of significance. The Upper Tribunal upheld the Secretary of State's Section-55 certificate on the basis that they were satisfied the appellant was excluded from status as a refugee by virtue of Article 1F(a); they dismissed the appeal on asylum-related grounds as the appellant failed to show that he had a well-founded fear of persecution or faced a real risk of serious harm or treatment contrary to Article 3 ECHR on return; and they dismissed the appeal on Article 8 ECHR grounds. **Relevant paragraphs**: 17, 23 and 24.	**CJEU** *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2009:285 **United Kingdom Supreme Court** *R (JS (Sri Lanka))* v *Secretary of State for the Home Department* [2010] UKSC 15 **England and Wales (United Kingdom) Court of Appeal** *SK (Zimbabwe)* v *Secretary of State for the Home Department* [2012] EWCA Civ 807 **United Kingdom Upper Tribunal** *MT (Article 1F(a) – aiding and abetting) Zimbabwe* [2012] UKUT 00015 (IAC) *Azimi-Rad (Art.1F(a) – complicity – Arts 7 and 25 ICC Statute) Iran* [2011] UKUT 339 (IAC) **Nuremberg Military Tribunal** *US* v *Freidrich Flick et al.*, Case 5 Vol VI *US* v *Alfred Krupp Von Bohlen and Halbach (the Krupp case)*, Vol IX **ICTY** *Prosecutor* v *Darko Mrda*, IT-02-59-S

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
United Kingdom Upper Tribunal	*CM (EM country guidance; disclosure) Zimbabwe CG* 31 January 2013 [2013] UKUT 00059	**Keywords**: Country guidance cases – Disclosure – Country information material. Judgment concerning the disclosure of country information material within the proceedings of country guidance cases. **Summary** (1) There is no general duty of disclosure on the Secretary of State in asylum appeals generally or Country Guidance cases in particular. The extent of the Secretary of State's obligation is set out in R v SSHD ex p Kerrouche No 1 [1997] Imm AR 610, as explained in R (ota Cindo) v IAT [2002] EWHC 246 (Admin); namely, that she must not knowingly mislead a court or tribunal by omission of material that was known or ought to have been known to her. (2) The Country Guidance given by the Tribunal in EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC) on the position in Zimbabwe as at the end of January 2011 was not vitiated in any respect by the use made of anonymous evidence from certain sources in the Secretary of State's Fact Finding Mission report of 2010. The Tribunal was entitled to find that there had been a durable change since RN (Returnees) Zimbabwe CG [2008] UKAIT 00083. The Country Guidance in EM does not require to be amended, as regards the position at that time, in the light of- (a) the disclosure by the Secretary of State of any of the materials subsequently disclosed in response to the orders of the Court of Appeal and related directions of the Tribunal in the current proceedings; or (b) any fresh material adduced by the parties in those proceedings that might have a bearing on the position at that time. (3) The only change to the EM Country Guidance that it is necessary to make as regards the position as at the end of January 2011 arises from the judgments in RT (Zimbabwe) [2012] UKSC 38. The EM Country Guidance is, accordingly, re-stated as follows (with the change underlined in paragraph (5) below): (1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC [Movement for Democratic Change] profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.	**ECtHR** *Sufi and Elmi* v *United Kingdom*, Nos 8319/07 and 11449/07, 28 June 2011 *NA* v *United Kingdom*, No 25904/07, 17 July 2008 **United Kingdom Supreme Court** *RT (Zimbabwe)* v *Secretary of State* [2013] 1 AC 152 **United Kingdom House of Lords** *R (*Abdi) v SSHD [1996] 1 WLR 298 *Tweed* v *Parades Commission for Northern Ireland* [2006] I AC 650 **England and Wales (United Kingdom) Court of Appeal** *PO (Nigeria)* [2011] EWCA Civ 132 [2011] Imm AR 466

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		(2) The position is, however, likely to be otherwise in the case of a person without ZANU-PF [Zimbabwe African National Union – Patriotic Front] connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe)). (3) The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent. (4) In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU-PF chief, or the like. (5) A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socioeconomic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a 'loyalty test'), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF. (6) A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile. (7) The issue of what is a person's home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona. (8) Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general, more realistic; but the socioeconomic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.	*AH* v *SSHD* [2009] EWCA Civ 287 [2009] 1 WLR 2049 *R* v *SSHD* ex parte *Kerrouche (No 1)* [1997] Imm AR 610 *AN and FA* v *SSHD* [2012] EWCA Civ 1636 *Sandralingam and Ravichandran* v *Secretary of State for the Home Department* [1996] Imm AR 97 *R* v *Lancashire CC ex p Huddleston* [1986] 2 All ER 941 **England and Wales (United Kingdom) High Court (Administrative Court)** *R(Cindo)* v *IAT* [2002] EWHC Admin 246 **United Kingdom Upper Tribunal** *RS and Others (Zimbabwe – AIDS)* CG [2010] UKUT 363 (IAC) *AMM and Others (conflicts; humanitarian crisis; returnees; FGM)* Somalia CG [2011] UKUT 00445 (IAC) *EM and Others (returnees)* Zimbabwe CG [2011] UKUT 98 (IAC)

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		(9) The economy of Zimbabwe has markedly improved since the period considered in RN. The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15 % of the population still requiring food aid, there has not been any deterioration in the humanitarian situation since late 2008. Zimbabwe has a large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter. (10) As was the position in RN, those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis. (11) In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU-PF and/or (b) that they would be returning to a socioeconomic milieu in which problems with ZANU-PF will arise. This important point was identified in RN … and remains valid. (4) In the course of deciding CM's appeal, the present Tribunal has made an assessment of certain general matters regarding Zimbabwe as at October 2012. As a result, the following country information may be of assistance to decision-makers and judges. It is, however, **not** Country Guidance within the scope of Practice Direction 12 and is based on evidence which neither party claimed to be comprehensive: (a) The picture presented by the fresh evidence as to the general position of politically motivated violence in Zimbabwe as at October 2012 does not differ in any material respect from the Country Guidance in EM. (b) Elections are due to be held in 2013; but it is unclear when. (c) In the light of the evidence regarding the activities of Chipangano, judicial-fact finders may need to pay particular regard to whether a person, who is reasonably likely to go to Mbare or a neighbouring high density area of Harare, will come to the adverse attention of that group; in particular, if he or she is reasonably likely to have to find employment of a kind that Chipangano seeks to control or otherwise exploit for economic, rather than political, reasons. (d) The fresh evidence regarding the position at the point of return does not indicate any increase in risk since the Country Guidance was given in HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094. On the contrary, the available evidence as to the treatment of those who have been returned to Harare Airport since 2007 and the absence of any reliable evidence of risk there means that there is no justification for extending the scope of who might be regarded by the CIO [Criminal Intelligence Organisation] as an MDC activist. **Relevant paragraphs**: 23–32, 45, 87 and 108.	*RN (returnees)* Zimbabwe CG [2008] UKAIT 0008 *HS (returning asylum seekers)* Zimbabwe CG [2007] UKAIT 00094 *SM and Others (MDC-internal flight-risk categories)* Zimbabwe CG [2005] UKIAT 00100 *MS and Others (risk on return, depleted uranium)* Kosovo [2003] UKIAT 00031 *TK (Tamils, LP updated)* Sri Lanka CG [2009] UKAIT 49 *AA (Non-Arab Darfuris, relocation)* Sudan CG [2009] UKAIT 0056 *FZ & Ors* v *SSHD* [2003] Imm AR 633

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
United Kingdom Upper Tribunal	*AH (Article 1F(b) – 'serious') Algeria* 25 July 2013 [2013] UKUT 382	**Keywords**: Article 1F(b) Refugee Convention – Serious reasons for considering. Judgment concerning whether there are 'serious reasons to consider that the appellant is guilty of conduct that amounts to a serious non-political offence'. **Summary** The appellant, an Algerian citizen, cannot return to Algeria as his life and liberty are in jeopardy. It is recognised that he has a well-founded fear of persecution there. He arrived in the United Kingdom in 2001 and claimed asylum and humanitarian status. Those claims were refused because the Secretary of State concluded that the exclusion clauses applied in both cases. The appellant has been granted periods of discretionary leave for six months at a time and there are no removal directions. He appealed against the refusal of status in 2006 and his appeal has not been finally resolved since. In the appeal he seeks to upgrade his status from discretionary leave to remain to that of refugee or humanitarian status under Council Directive 2004/83/EC (QD). The basis for his exclusion was his conviction in France in 1999 of the offence of 'participation à une association de malfaiteurs en relation avec une entreprise terroriste' ('participation in a criminal association with a terrorist enterprise'). He had been acquitted of this offence by the Tribunal de Grand Instance on 30 June 1998 but given a six-month sentence for a lesser offence of possession and use of false documents. The prosecutor appealed the acquittal and, on a re-hearing before the Cour d'Appel (Court of Appeal, France), he was convicted of the above offence and sentenced to two years' imprisonment that had already been served on remand. The test is whether there are serious reasons to consider that the appellant is guilty of conduct that amounts to a serious non-political offence. We accept that a serious crime for the purpose of the exclusion clause cannot be defined purely by national law or the length of the sentence. We must search for the autonomous international meaning of the term rather than what might be purely national law concerns about what conduct should be penalised and sentencing policy. It seems clear that the exclusion clause was intended to have two purposes: first, the prevention of abuse of the asylum system by undermining extradition law or the mutual interest amongst states in prosecuting serious offenders. This first reason can have no purchase where the offence has been prosecuted and the offender served his punishment. The second is to exclude from protection those who have demonstrated by their conduct they are not worthy of it. It is this purpose that is relevant here. We think that limbs 1F(a) and (c) serve to illustrate the level of seriousness required to engage Article 1F(b); the genus of seriousness is at a common level throughout. Those who commit war crimes and acts against the principles and purposes of the United Nations are clear examples of people who are unworthy of protection. The examination of seriousness should be directed at the criminal acts when they were committed, although events in the supervening passage of time may be relevant to whether exclusion is justified: a formal pardon, or subsequent acquittal, or other event illuminating the nature of the activity may be relevant to this assessment. Despite suggestions to the contrary by respected commentators, it does not appear to be the case that service of the sentence, or indeed a final acquittal, brings the application of the exclusion clause to an end. It may be that the passage of time may serve to remove any basis for exclusion of protection but if so we have no basis for deciding how long a period is appropriate and in reality a claimant who has protection against expulsion is likely to be eligible for settlement on long residence grounds before being able to expiate culpability sufficiently to acquire refugee status.	**CJEU** *B and D*, C-57/09 and C-101/09, EU:C:2009:285 **United Kingdom Supreme Court** *R (JS (Sri Lanka))* v *Secretary of State for the Home Department* [2010] UKSC 15 *Al-Sirri (FC) and DD (Afghanistan) (FC) (Appellant)* v *Secretary of State for the Home Department (Respondent)* [2012] UKSC 54 *AH (Algeria)* v *SSHD (No 2)* [2015] EWCA Civ 1003 **United Kingdom Upper Tribunal** *Gurung (exclusion, risk, Maoists)* Nepal [2002] UKIAT 04870 on 14 October 2002

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		Overall, we are satisfied that there are serious reasons to consider that the appellant committed a serious crime in France before coming to the United Kingdom and as a consequence, that he is excluded from the protection of refugee status and subsidiary humanitarian protection. **Relevant paragraphs**: 86 and 100–102.	
United Kingdom Upper Tribunal	*TG (Interaction of Directives and Rules)* 18 May 2016 [2016] UKUT 00374 (IAC)	Keywords: Article 1E Refugee Convention – Interaction of directives and rules. Judgment concerning the situation of a Tibetan illegally resident in India and his rights in that country; interpretation of paragraph 334 of the Immigration Rules is subject to the QD and the APD. **Summary** The appellant, an ethnic Tibetan from the People's Republic of China, appealed against a decision to remove him to India consequent to the refusal of his protection claim for asylum, on the basis that he is a refugee whose removal from the UK would breach the UK's obligations under the Refugee Convention and/or that such removal would be unlawful as incompatible with his human rights. The appellant claims that, as an ethnic Tibetan from China, he faces a real risk of persecution on return and argues that the exclusionary provisions in Article 1E (Refugee convention) and the QD (339C) do not apply as he is unable to return to India and would not be recognised as having the same or equivalent rights to an Indian National. The respondent accepted the appellant was from China and the reason (race) for claiming asylum as valid; but did not accept that the appellant faced a fear of persecution in or that the appellant had obtained a registration certificate (RC) through an agent and was using false information in 2001. It was not accepted that he was born in Tibet and went to India at the age of seven. The respondent considered that the appellant would be able to return to India relying on the stamp in his I certificate (IC) which showed his legal residence as a Tibetan refugee. As to fear of return to China the respondent relied on the Swiss Federal Migration Office (FMO) and in the country of origin information report (COIR) which stated that there were no reported deportations of Tibetan refugees to China and that the Indian government provided protection. The respondent considered that the appellant faced no risk as a failed asylum seeker in India. Section 8 Asylum & Immigration (Treatment of claimants etc) Act 2004 was relied on because of the delay in claiming asylum in the UK. Human rights were considered under the Rules and outside of the rules, and rejected. The Tribunal found that the appellant came to the UK from India where he had previously lived illegally. As a Tibetan exile from China, he does not have the rights and obligations which are attached to Indian nationality or rights and obligations equivalent to those and accordingly he benefits from the Refugee Convention. Article 1E and the QD pursuant to Article 12(1)(b) do not apply on the grounds that he is not recognised by the Indian authorities as having such rights. The appellant is a refugee in accordance with the definition in Article 1 and pursuant to the QD chapters (ii) and (iii). He should be granted refugee status under the QD Article 13. **Relevant paragraph**: 32.	**England and Wales (United Kingdom) Court of Appeal** *MA (Ethiopia)* [2009] EWCA Civ 289 **United Kingdom Upper Tribunal** *SP and Others (Tibetan, Nepalese departure, illegal, risk)* People's Republic of China CG [2007] UKUT 00021 **Federal Court, Canada** *Tendzin Choezom* v *MCI* [2004] FC 1329

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
United Kingdom Upper Tribunal (Immigration and Asylum Chamber)	*AB (Article 1F(a) – defence – duress) Iran* 22 July 2016 [2016] UKUT 00376 (IAC)	**Keywords**: Article 1F(a) Refugee Convention – Crime against peace, a war crime or a crime against humanity – Serious reasons for considering – Individual responsibility – Duress. Judgment concerning an allegation that a person should be excluded under Article 1F(a) of the Refugee Convention because there are serious reasons for considering that the person has committed a crime against peace, a war crime or a crime against humanity as defined in the Rome Statute. In response to such an allegation, there is an initial evidential burden on an appellant to raise a ground for excluding criminal responsibility such as duress. The overall burden remains on the respondent to establish that there are serious reasons for considering that the appellant did not act under duress. **Summary** The appellant, an Iranian citizen, held a senior role in a women's prison under the control of the Islamic Revolutionary Guard Corps in which political prisoners were detained and tortured. In 2009 she, her husband and her young child left Iran clandestinely with the help of an agent. Having become separated from her husband, the appellant arrived in the United Kingdom with her child in 2009 and claimed asylum. It transpired that her husband had made his way to Turkey but had been forcibly returned from there to Iran, where he was detained and tortured over a period of months. On his release he subsequently made his way to the United Kingdom, arriving in 2010, when he too claimed asylum. The respondent refused each of the applications, giving reasons for doing so, explaining that the appellant was to be excluded from the protection of the Refugee Convention upon the grounds set out in Article 1F(a), namely that there were serious grounds for considering that she had committed a crime against humanity, and her consequential certification under section 55 of the Immigration Asylum and Nationality Act 2006 that she was not entitled to the protection of Article 33 paragraph 1 of the Refugee Convention. For the same reasons she concluded that the appellant did not qualify for protection under the QD. The appellant, her child and her husband all appealed against the respondent's decisions and their linked cases were heard together before the First-tier Tribunal. The First-tier Tribunal upheld the respondent's decision to exclude the appellant from protection under the Refugee Convention and the QD and in doing so rejected the appellant's claim that she was excluded from criminal responsibility on account of having acted under duress. However, by concession it allowed the appellant's appeal on human rights grounds on the basis that she would be at real risk of ill treatment on return to Iran. The appeals of the appellant's husband and her child were each allowed on both asylum and human rights grounds. After permission to appeal to the Upper Tribunal was refused, the appellant sought Judicial Review which was granted. It was held that the decision of the First-tier Tribunal involved the making of an error on a point of law, as its finding that the appellant could have left the prison service 'without serious difficulty' was inadequately reasoned and not supported by evidence before it. The decision on the appellant's appeal was ordered to be remade with the original findings and decision in relation to exclusion from protection under the Refugee Convention and the QD being set aside. The remaining findings and decisions of the First-tier Tribunal were preserved.	**United Kingdom Supreme Court** *R (JS) (Sri Lanka)* v *Home Secretary* [2010] UKSC 15 [2011] 1 AC 184 *Al-Sirri* v *Secretary of State for the Home Department* [2012] UKSC 54 **United Kingdom House of Lords** *R* v *Hasan* [2005] 2 AC 467 **England and Wales (United Kingdom) Court of Appeal** *AA-R (Iran)* v *SSHD* [2013] EWCA Civ 835 **United Kingdom Upper Tribunal** *MT (Article 1F(a) – aiding and abetting) Zimbabwe* [2012] UKUT 00015 (IAC) **Immigration and Refugee Board, Canada** Oberlander v *Attorney General of Canada* 2015 FC 46

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
		The first question to be addressed is whether an individual could avoid exclusion from the protection of the Refugee Convention under Article 1F(a) upon the basis that whilst he or she might appear to have engaged in conduct which would fit the definition of crimes against humanity, he or she was acting under duress. The appellant is an intelligent, articulate and qualified woman. She is also resourceful. The account which she gives of her escape from Iran is illuminating. The reality of the appellant's account of acting under duress is that for a period of many years she took no steps whatsoever to avoid compliance with her duties in the prison, despite her knowledge of the consequence for those taken to the torture facility. Even despite being off work after the birth of her child for a lengthy period of time, she chose not to explore any other option but to return to her duties in the prison. She continued in those duties accepting promotion along the way. The immediacy of her reaction on learning of her relative's detention and the combined manner of the transfer to hospital and subsequent escape is evidence of a cunning and resourceful nature, along with an ability and willingness to take appropriate steps when she chose to do so. We are perfectly satisfied that the defence of duress cannot be engaged on the basis of the evidence which the appellant has adduced. It is untenable on the basis of the vague and speculative consequence which she has associated with making a request to be allowed to resign, leave or transfer. It is equally untenable on the basis of the appellant's own evidence of having made no effort of any description to extricate herself from her duties at the prison over a period of many years. The harm which the appellant knew she was causing was out of all proportion to the risk to herself which she has identified as befalling her if she had made efforts to leave short of desertion. In these circumstances we are satisfied that the necessary evidential burden has not been discharged by the appellant and she has advanced no valid answer to the serious reasons for considering that she has committed a crime against humanity as identified by the Secretary of State. Since we were otherwise satisfied that the Secretary of State was well entitled to arrive at the conclusion which she did, the appellant's appeal against the Secretary of State's decision of 2 October 2012 must fail. If we ask ourselves whether the Secretary of State has shown that there are serious reasons for considering that the appellant did not act under duress, then the answer is that she has. We therefore uphold the Secretary of State's certificate under Section 55 of the Immigration Asylum and Nationality Act 2006. The appellant's claims under the Refugee Convention and the QD are excluded by reason of Article 1F(a) of the Refugee Convention and Article 12.2 of the QD and therefore cannot succeed. **Relevant paragraphs**: 63 and 39.	**Attorney General, Canada** *Oberlander* v *Canada (Attorney General)* 2016 FCA 52 **ICTY** *Prosecutor* v *Erdemović*, 7 June 1997, IT-96-22 *Prosecutor* v *Julio Fernandes*, No 7 of 2001

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
United Kingdom Upper Tribunal (Immigration and Asylum Chamber)	*AAS and Others* v *Secretary of State for the Home Department* 14 May 2019 AA/08375/2011 and Ors	**Keywords**: Article 1F(b) Refugee Convention – Serious non-political crime – Highjacking of a plane. Judgment to decide whether the First-tier Tribunal (the 2015 Panel) erred in law in their decision dated 7 July 2015 that the appellants are excluded from the Refugee Convention under Article 1F(b). **Summary** On 6 February 2000 the appellants and others took control of an Ariana Afghan Airlines Boeing 727 during an internal flight from Kabul to Mazar-e-Sharif in Afghanistan, their country of nationality. The plane flew to Tashkent where it refuelled and then to Kazakhstan for a minor repair, before reaching Moscow. It is believed that some passengers were released at a point prior to the aircraft reaching Moscow where a further number were released. The plane continued to the United Kingdom where it landed in the early hours on the following day. The appellants were accompanied by several of their family members. The complement of those on board by the time the plane landed in Stansted included the flight crew, some 50 passengers being the appellants and their family members and about 100 other passengers. A handful of those passengers were released after arrival. Some of the flight crew escaped but otherwise the appellants, their family members and the other passengers remained on board for upwards of 70 hours until the hijackers surrendered to the UK authorities on 10 February when they claimed asylum. Prior to a decision on their asylum claims, charges were laid against the appellants who were remanded to HMP Belmarsh Prison. They were subsequently released on bail by the Crown Court and from administrative detention by the immigration authorities under the Immigration Act 1971. Their appeals are in order to decide whether the First-tier Tribunal erred in law in their decision dated 7 July 2015 that the appellants are excluded from the Refugee Convention under Article 1F(b). The Upper Tribunal were not persuaded that the 2015 Panel erred on a point of law by failing to exercise a discretion not to exclude KU (one of the appellants) from the Refugee Convention and were satisfied that the 2015 Panel did not make an error that required its decision to be set aside. The appellants' appeals were dismissed and the decision of the 2015 Panel stands. **Relevant paragraphs**: 77 and 118–122.	**CJEU** *B and D*, C-57/09 and C-101/09, 9 November 2010, EU:C:2010:661 **Attorney General's Opinion** *Federal Republic of Germany* v *B and D* [2012] 1 WLR 1076 **United Kingdom House of Lords** *Tsu-Tsai Cheng* v *Governor of Pentonville Prison* [1973] AC 931 *T* v *Immigration Officer* [1996] AC 742 ; *T* v *SSHD* [1996] 2 All E. R. 865 *R* v *Asfaw* (Appellant) [2008] UKHL 31 *R* v *Secretary of State for the Home Department,* ex parte *Adan* [2001] 2 AC 477

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			R v *Howe* [1987] AC 417 *R* v *Z* [2005] UKHL 22 **United Kingdom Supreme Court** *Al-Sirri (FC) and DD (Afghanistan) (FC) (Appellant)* v *Secretary of State for the Home Department (Respondent)* [2012] UKSC 54 **England and Wales (United Kingdom) Court of Appeal** *AH (Algeria)* v *SSHD (No 2)* [2015] EWCA Civ 1003 *Graham* [1982] 1 WLR 294 *R* v *Safi (Ali Ahmed) and Ors* [2003] EWCA Crim 1809 **United Kingdom Queen's Bench Division** *R* v *Governor of Brixton* ex parte *Kolczynski and Others* [1955] 1QB 540 *R* v *Uxbridge Magistrates' Court,* ex parte *Adimi* [2001] QB 667

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			United Kingdom Upper Tribunal *Safi and Others (permission to appeal decisions)* [2018] UKUT 388 *MT (Article 1F(a) – aiding and abetting)* Zimbabwe [2012] UKUT 00015 (IAC) *AH (Article 1F(b) – 'serious')* Algeria [2013] UKUT 00382 (IAC) **Supreme Court, Canada** *Febles* v *Canada (Minister of Citizenship and Immigration)* [2014] SCC 68 *Canada (Attorney General)* v *Ward* [1993] 2 SCR 689 *Pushpanathan* v *Canada (Minister of Citizenship and Immigration)* [1998] 1 SCR 982. **Federal Court of Appeal, Canada** *Gil* v *Canada (Minister of Employment and Immigration)*, 1994 CanLII 3523 (FCA), [1995] 1 FC 508 **United States Court of Appeal** *McMullen* v *Immigration and Naturalization Service* 788 F.2d 591

National courts and tribunals of non-EU states

Non-EU national court and tribunal judgments are listed alphabetically by country, with the judgments of the highest court or tribunal first followed by lower courts or tribunals, again with judgments listed from the oldest to the most recent within those categories.

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
Canada Federal Court of Appeal	*Sivakumar* v *Canada (Minister of Employment and Immigration)* 4 November 1993 1993 CanLII 3012 (FCA) [1994] 1 FC 433	**Keywords**: Citizenship and immigration – Convention refugees – Article 1(F)(a) Refugee Convention – Crimes against humanity – Serious reasons for considering – Individual responsibility. Judgment concerning the standard of proof regarding Article 1(F)(a) (serious reasons for considering a person has committed a crime against humanity) requiring more than suspicion or conjecture, but less than proof on balance of probabilities. Association with an organisation responsible for international crimes may constitute complicity in cases of personal and knowing participation and toleration of crimes, especially where the person is in a position of leadership or command within an organisation. **Summary** The appellant, a Tamil from Sri Lanka, was found to have a well-founded fear of persecution at the hands of the Sri Lankan government. However, the Refugee Division decided to exclude him on the basis of section 1(F)(a) of the United Nations Convention Relating to the Status of Refugees as someone who had committed crimes against humanity. The issue on this appeal was whether the appellant was properly held responsible for crimes against humanity alleged to have been committed by the Liberation Tigers of Tamil Eelam (LTTE) even though he was not personally involved in the actual commission of the criminal acts. Although it was not established that the appellant had personally committed crimes against humanity, he was responsible for crimes against humanity committed by the LTTE because of his leadership position within that organisation and his continuing participation in it. The evidence demonstrated that the appellant was not merely a member of the LTTE, but that he held several positions of leadership within the organisation. Given that, an inference could be drawn that he knew of the crimes committed by the LTTE and shared the organisation's purpose in committing those crimes. Recent cases in the Federal Court have established that there could be liability for such crimes as an accomplice, even though one had not personally done the acts amounting to the crime. This was essentially a factual question that could be answered only on a case-by-case basis. And there could be complicity through association. The case for an individual's complicity in international crimes committed by his organisation is stronger if the member holds a position of importance within the organisation. The closer one is to a position of leadership or command within an organisation, the easier it will be to draw an inference of awareness of the crimes and participation in the plan to commit them. And remaining in a leadership position with the knowledge that the organisation was responsible for crimes against humanity may constitute complicity.	**Referred to** *Dunlop and Sylvester* v *The Queen*, 1979 CanLII 20 (SCC), [1979] 2 SCR 881 *Rudolph* v *Canada (Minister of Employment and Immigration) (C. A.)*, 1992 CanLII 8526 (FCA), [1992] 2 FC 653 **Distinguished** Moreno v Canada (Minister of Employment and Immigration), 1993 CanLII 2993 (FCA), [1994] 1 FC 298 **Applied** Naredo and Arduengo v Minister of Employment and Immigration *37 FTR 161* *Ramirez* v *Canada (Minister of Employment and Immigration)*, *1992 CanLII 8540 (FCA), [1992] 2 FC 306* *Naredo c Canada (Ministre de l'Emploi et de l'Immigration)*, 11 Imm LR (2d) 92

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
Canada Supreme Court	*Veluppillai Pushpanathan* v *Minister of Citizenship and Immigration* 4 June 1998 1998 CanLII 778 (SCC) [1998] 1 SCR 982	**Keywords**: Immigration – Convention refugee – Exclusion – Article 1F(c) Refugee Convention – Acts contrary to the purposes and principles of the United Nations – Individual guilty of serious narcotics offence in Canada claiming refugee status – Whether claim for refugee status should be denied – Meaning of phrase 'guilty of acts contrary to the purposes and principles of the United Nations'. Judgment concerning who may be admitted to Canada as a refugee: first, the proper standard of judicial review over decisions of the Immigration and Refugee Board; second, the meaning of the exclusion from refugee status of those who are 'guilty of acts contrary to the purposes and principles of the United Nations'. **Summary** In 1985, the appellant claimed refugee status under the UN Convention Relating to the Status of Refugees ('Convention'), as implemented by the Immigration Act, but his claim was never adjudicated as he was granted permanent residence status in Canada under an administrative program. The appellant was later arrested in Canada and charged with conspiracy to traffic in a narcotic. At the time of his arrest, he was a member of a group in possession of heroin with a street value of some $10 million. He pleaded guilty and was sentenced to eight years in prison. In 1991, the appellant, then on parole, renewed his claim for Convention refugee status. Employment and Immigration Canada subsequently issued a conditional deportation order against him under ss. 27(1)(d) and 32.1(2) of the Act. Since the deportation pursuant to those sections is conditional upon a determination that the claimant is not a Convention refugee, the appellant's claim was referred to the Convention Refugee Determination Division of the Immigration and Refugee Board. The Board decided that the appellant was not a refugee by virtue of the exclusion clause in Art. 1F(c) of the Convention, which provides that the provisions of the Convention do not apply to a person who 'has been guilty of acts contrary to the purposes and principles of the United Nations'. The Federal Court, Trial Division dismissed the appellant's application for judicial review and certified the following as a serious question of general importance for consideration: Is it an error of law for the Refugee Division to interpret Art. 1F(c) of the Convention to exclude from refugee status an individual guilty of a serious narcotics offence committed in Canada? The Federal Court of Appeal answered 'no' and upheld the judgment of the Trial Division. The appeal was allowed. **Relevant paragraphs**: 66, 67 and 69–72.	**Considered** *Sivasamboo* v *Canada (Minister of Citizenship and Immigration)*, 1994 CanLII 3532 (FC), [1995] 1 FC 741 **Referred to** *Pasiechnyk* v *Saskatchewan (Workers' Compensation Board)*, 1997 CanLII 316 (SCC), [1997] 2 SCR 890 *U. E. S., Local 298* v *Bibeault*, 1988 CanLII 30 (SCC), [1988] 2 SCR 1048 *Canada (Director of Investigation and Research)* v *Southam Inc.*, 1997 CanLII 385 (SCC), [1997] 1 SCR 748 *United Brotherhood of Carpenters and Joiners of America, Local 579* v *Bradco Construction Ltd.*, 1993 CanLII 88 (SCC), [1993] 2 SCR 316 *Pezim* v *British Columbia (Superintendent of Brokers)*, 1994 CanLII 103 (SCC), [1994] 2 SCR 557 *National Corn Growers Assn.* v *Canada (Import Tribunal)*, 1990 CanLII 49 (SCC), [1990] 2 SCR 1324

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			Canada (Attorney General) v *Mossop*, 1993 CanLII 164 (SCC), [1993] 1 SCR 554 *Yuen* v *Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1045 (QL) *Franco* v *Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1011 (QL) *Sornalingam* v *Canada (Minister of Citizenship and Immigration)* (1996), 107 FTR 128 *Vetter* v *Canada (Minister of Employment and Immigration)* (1994), 89 FTR 17 *Ismaeli* v *Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 573 (QL) *Connor* v *Canada (Minister of Citizenship and Immigration)* (1995), 95 FTR 66 *Ross* v *New Brunswick School District No 15*, 1996 CanLII 237 (SCC), [1996] 1 SCR 825

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			University of British Columbia v *Berg*, 1993 CanLII 89 (SCC), [1993] 2 SCR 353 *Canada (Attorney General)* v *Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 *Thomson* v *Thomson*, 1994 CanLII 26 (SCC), [1994] 3 SCR 551 *Moreno* v *Canada (Minister of Employment and Immigration)*, 1993 CanLII 2993 (FCA), [1994] 1 FC 298 *Sivakumar* v *Canada (Minister of Employment and Immigration)*, 1993 CanLII 3012 (FCA), [1994] 1 FC 433

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
Canada Supreme Court	*Febles* v *Minister of Citizenship and Immigration* 30 October 2014 2014 SCC 68 (CanLII) [2014] 3 SCR 431	**Keywords**: Exclusion based on commission of serious crime prior to admission to country of refuge – Cuban national seeking refugee protection in Canada – Immigration and Refugee Board rejecting claim for refugee protection on grounds that claimant committed serious crimes prior to admission to Canada – Whether consideration of grounds for exclusion should include matters or events after commission of crime, such as whether claimant is fugitive from justice or unmeritorious or dangerous at the time of the application for refugee protection. Judgment concerning whether or not Article 1F(b) (the 'serious criminality' exclusion) of the Convention Relating to the Status of Refugees, incorporated in Canada by Section 98 of the Immigration and Refugee Protection Act, SC 2001, c. 27, bars someone from refugee protection because of crimes committed in the past. **Summary** Febles was admitted to the United States as a refugee from Cuba. While living in the United States, he was convicted and served time in prison for two assaults with a deadly weapon – in the first case he struck a roommate on the head with a hammer, and in the second, he threatened to kill a roommate's girlfriend at knifepoint. The U. S. revoked his refugee status and issued a removal warrant. Febles subsequently fled to Canada and sought Canadian refugee protection. Refugee protection claims in Canada are governed by the Immigration and Refugee Protection Act ('IRPA'). Section 98 of the IRPA excludes from refugee protection in Canada all persons referred to in Article 1F(b) of the United Nations Convention Relating to the Status of Refugees ('Refugee Convention'). Article 1F(b) of the Refugee Convention excludes from refugee protection all persons who have committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee. Refugee protection claims in Canada are adjudicated by the Refugee Protection Division of the Immigration and Refugee Board ('Board'). In deciding Febles' refugee protection claim, the Board concluded that Febles was among the persons referred to by Article 1F(b) of the Refugee Convention, and therefore ineligible for refugee protection in Canada pursuant to s. 98 of the IRPA. Both the Federal Court and the Federal Court of Appeal dismissed Febles' application for judicial review. The appeal was dismissed. **Relevant paragraphs**: 6 and 60.	**Referred to** *Pushpanathan* v *Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 778 (SCC), [1998] 1 SCR 982 *Thomson* v *Thomson*, 1994 CanLII 26 (SCC), [1994] 3 SCR 551 *Januzi* v *Secretary of State for the Home Department*, [2006] UKHL 5 *Ezokola* v *Canada (Citizenship and Immigration)*, 2013 SCC 40 (CanLII), [2013] 2 SCR 678 *R. (European Roma Rights Centre)* v *Immigration Officer at Prague Airport*, [2004] UKHL 55

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			Canada (Attorney General) v *Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 *B (Area of Freedom, Security and Justice)* (2008), BVerwG 10 C 48.07, OVG 8 A 2632/06.A *Bundesrepublik Deutschland* v *B.* [2010] EUECJ C-57/09 *T* v *Secretary of State for the Home Department* [1996] 2 All ER 865 *AH (Algeria)* v *Secretary of State for the Home Department* [2013] UKUT 00382 *Dhayakpa* v *Minister of Immigration and Ethnic Affairs* (1995), 62 FCR 556 *Ovcharuk* v *Minister for Immigration and Multicultural Affairs* (1998), 88 FCR 173 *Minister for Immigration and Multicultural Affairs* v *Singh*, [2002] HCA 7, 209 CLR 533 *Attorney-General (Minister of Immigration)* v *Tamil X* [2010] NZSC 107

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
			X v *Commissaire général aux réfugiés et aux apatrides*, No 27.479, 18 May 2009 *X* v *Commissaire général aux réfugiés et aux apatrides*, No 69656, 8 November 2011 *Office français de protection des réfugiés et apatrides* v *Hykaj*, No 320910, 4 May 2011 *Jayasekara* v *Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404 (CanLII), [2009] 4 FCR 164 *Chan* v *Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 17150 (FCA), [2000] 4 FC 390 *Bell ExpressVu Limited Partnership* v *Rex*, 2002 SCC 42 (CanLII), [2002] 2 SCR 559 *Suresh* v *Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 (CanLII), [2002] 1 SCR 3

State/court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
New Zealand Supreme Court	*The Attorney General (Minister of Immigration) v Tamil X and Refugee Status Appeals Authority* 27 August 2010 [2010] NZSC 107	**Keywords**: Article 1F Refugee Convention – Crime against humanity – Serious non-political crime – Individual responsibility. Judgment gave rise to questions concerning the meaning and scope of the exclusionary provision of Article 1F of the Convention. **Summary** The respondent, a Sri Lankan citizen, had been chief engineer on a cargo vessel owned by the LTTE during a voyage in which it was transporting munitions and weapons to Sri Lanka for their use. The Refugee Status Appeals Authority found that, before the ship embarked, the respondent knew of the nature of the cargo, its destination and of many atrocities committed by the LTTE during the civil war in Sri Lanka. The voyage concerned ended when the vessel was intercepted by the Indian navy and escorted towards Chennai. Before reaching that port, it was scuttled by those on board, some of whom were LTTE soldiers. An Indian court convicted the respondent and other crew members of criminal charges arising from this event. The Crown argued in the Supreme Court that the respondent's involvement in the voyage made him complicit in the atrocities committed by the LTTE, so that he had committed crimes against humanity as an accomplice. As well, his involvement in the sinking of the vessel was a serious non-political crime. The Crown's submission was that each aspect of his conduct disqualified him from being recognised as a refugee under the Refugee Convention and New Zealand law. The Supreme Court decided that it was not shown that the respondent's supportive activities were actually linked to any atrocities committed by the LTTE. This was because the armaments which he helped transport did not reach the LTTE as they went down with the ship. Accordingly, it was not established that any crime against humanity had been committed to which the respondent was an accomplice. Furthermore, any crime committed in relation to the sinking of the vessel was of a political nature, which did not disqualify the respondent from holding refugee status under the Convention. The Supreme Court referred the respondent's application for refugee status back to the Appeals Authority for consideration of whether he meets the general requirements of the Convention and New Zealand law to be recognised as a refugee. The Supreme Court, in a unanimous decision, has dismissed an appeal by the Attorney-General against a Court of Appeal judgment which held that the respondent, a Sri Lankan citizen who arrived in New Zealand in 2001, was eligible to claim refugee status. The Refugee Convention excludes from refugee status persons in respect of whom there are serious reasons for considering that they have committed a crime against humanity or a serious non-political crime. **Relevant paragraphs**: 81–100.	**ICTY** *Prosecutor* v *Tadic* (ICTY, Appeals Chamber), 15 July 1999, IT-94-1-A **United Kingdom Supreme Court** *R (JS (Sri Lanka))* v *Secretary of State for the Home Department* [2010] UKSC 15 **United Kingdom House of Lords** *T* v *Immigration Officer* [1996] AC 742 **United Kingdom Court of Appeal** *R (JS (Sri Lanka))* v *Secretary of State for the Home Department* [2009] EWCA Civ 364 **Canada** *Ramirez* v *Canada (Minister of Employment and Immigration)* (1992) 89 DLR *Bazargan* v *Canada (Minister of Citizenship and Immigration)* (1996) 205 NR 282 *Sumaida* v *Canada (Minister of Citizenship and Immigration)* (2000) 183 DLR *Mugesera* v *Canada (Minister of Citizenship and Immigration)* 2005 SCC 40 **New Zealand** *Jiao* v *Refugee Status Appeals Authority* [2003] NZAR 647

Case-law websites for European institutions and EU Member States

Below is a list of the main websites of case-law on asylum and migration law for European institutions and EU Member States:

- Court of Justice of the European Union: http://curia.europa.eu/juris/recherche.jsf?language=en
- European Court of Human Rights: https://hudoc.echr.coe.int/eng#
- EASO, Information and Documentation System on Case Law: https://caselaw.easo.europa.eu/Pages/default.aspx
- UNHCR Refworld: https://www.refworld.org/cgi-bin/texis/vtx/rwmain (advanced search: https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&advsearch=y&process=n)
- European Council on Refugees and Exiles, European Database of Asylum Law: https://www.asylumlawdatabase.eu/en
- list of links to national case-law sites maintained by the European Commission: https://beta.e-justice.europa.eu/13/EN/national_case_law

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