

***A New World on the move: The realities of irregular Mass Migration and the Challenges facing asylum and migration judges. IARMJ World Conference Costa Rica, 17 – 21 February 2020.***

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*Provisional draft paper for the Working Group on Exclusion*

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Professor/ judge Satvinder Juss presented for the World Conference in Bled in 2011 an extensive draft paper on Exclusion and terrorism. Apparently no further paper has been produced the Working group after this. It is hoped that the World Conference in Costa Rica will revitalize the Working Group in this important field. Especially after the rise and fall of groups like ISIS/ Daesh it would appear that the number of cases of exclusion will rise as several countries take back their citizens or persons from the terror groups apply for asylum.

It has been impossible to provide an updated paper for this conference, amongst other things the lack of an updated list of participants in the group. We have to be satisfied with just giving a brief update with two cases on the more recent case law of the Court of Justice of the European Union (CJEU). It is not intended at this stage to provide more than a reference to the essence of the cases as these cases can be found on the website of the CJEU ([www.curia.eu](http://www.curia.eu)). With the participation of old and new members of the Working Group, we hope to be able to put together a more comprehensive overview of the case law of other countries in the months after the Conference. It will be distributed amongst the members of the Working party and published on the IARMJ website.

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**Legal context:**

**1. Convention relating to the Status of Refugees (1951) Article 1F**

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

2. **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, article 12:**

**Exclusion**

1. A third-country national or a stateless person is excluded from being a refugee if:
  - (a) he or she falls within the scope of Article 1(D) of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall ipso facto be entitled to the benefits of this Directive;
  - (b) he or she is recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those.
2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:
  - (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;
  - (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.
3. Paragraph 2 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

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**Case C-573/14, *Lounani*, 31 January 2017.**

In the case the CJEU was asked to interpret the Qualification Directive (QD) Article 12(2)(c). The first question the CJEU had to interpret was whether it was a prerequisite for exclusion that an applicant for international protection had been convicted of a terrorist offence.

The CJEU noted that the Geneva Convention constitutes a cornerstone of the legal regime for protection of refugees and that the QD must be interpreted in a manner consistent with the Geneva Convention (and other relevant treaties). Article 12(2)(c) corresponds in essence to the GC Article 1F(c).

The CJEU found that it was not a prerequisite for exclusion after QD Article 12(2)(c) that the applicant for international protection should have been convicted for one of the terrorist offences referred to. The CJEU also found that the QD must be interpreted as meaning that acts constituting participation in the activities of a terrorist group does not mean that it must be 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.

In this case the person concerned had been convicted of being part of the leadership of a terrorist group by providing logistical support, information and material resources, engaging in forgery and fraudulent transfer of passports and actively participating in the organizing of a network for sending volunteers to Iraq. The CJEU found that such a conviction was of particular importance and there was no need to establish that the person himself or herself instigated a terrorist act or otherwise participated in it.

**Case C-585/16, *Alheto*, 25 July 2018.**

The case concerns *inter alia* the question of exclusion from refugee status for persons registered with UNWRA, having moved from their place for habitual residence but still reside in an area where UNWRA operates. Provided that the applicant would be allowed to return to this area, and that State recognizes the protection or assistance from UNWRA, and supports the principle of non-refoulement, the applicant would be excluded from refugee status.