



VRIJE
UNIVERSITEIT
AMSTERDAM

Faculty of Law



**Conditions for the revocation and withdrawal of refugee status under Article
14(4)(b) of the Qualification Directive**

March 2023

Migration Law Clinic
www.migrationlawclinic.org

Migration Law Clinic and Migration Law Expertise Centre

This is an expert opinion by the Migration Law Clinic. The Migration Law Clinic of the VU University Amsterdam provides legal advice to lawyers, Non-Governmental Organisations, and other organisations on complex legal questions of European migration law. Top students in the last years of their study at the Law Faculty of the VU University Amsterdam carry out research and write legal advice at the Clinic.

They are closely supervised by the staff of the Migration Law Section of this Faculty.

The Migration Law Clinic is the responsibility of the Foundation (Stichting) Migration Law Expertise Centre (No. 59,652,969 Chamber of Commerce). For more information see: migrationlawclinic.org.

The following persons contributed to this expert opinion: Billie Almbasher-Goode, Maureen Krösschell, Salemcondory Behnam, Kyle Kimball, Luca Scheid (students), mr. dr. Lisa-Marie Komp (Supervisor), mr. dr. Marcelle Reneman (Supervisor and Coordinator).

© Migration Law Clinic 2023

This expert opinion is copyright, but may be reproduced by any method, but not for resale. For any inquiries, please contact migrationlawclinic@vu.nl. Available online at: migrationlawclinic.org.

TABLE OF CONTENTS

1. Introduction	4
1.1 Background of the Case	4
1.2 Outline of this expert opinion	5
1.3 Methodology	5
2. Methodological Interpretation of ‘Particularly Serious Crime’	7
2.1 Literal Interpretation of ‘Particularly Serious Crime’	7
2.2 Historical Interpretation of ‘Particularly Serious Crime’	7
2.3 Structural Interpretation of ‘Particularly Serious Crime’	8
2.3.1 The hierarchy of criminal severity within the Qualification Directive	8
2.3.2 Autonomous and uniform interpretation: the <i>Ahmed</i> criteria	9
2.4 Sub-Conclusion	10
3. Methodological Interpretation of ‘Danger to the Community’	11
3.1 Literal Interpretation of ‘Danger to the Community’	11
3.2 Historical and Interpretation of ‘Danger to the Community’	12
3.3 Structural Interpretation of ‘Danger to the Community’	12
3.3.1 Widespread Societal Impact of the Crime	12
3.3.2 Forward-looking Approach	13
3.3.3 Burden of Proof	13
3.4 Sub-conclusion	14
4. Member State Comparison	15
4.1 The Netherlands	15
4.2 Member State practice under Article 14(4)(b) QD	16
4.2.1 Sentencing Guidelines	17
4.2.2 Category of the Offense	18
4.2.3 Remaining Member States	18
4.3 Sub-conclusion	19
5. Conclusion	20
Annex I: Member State Comparison: Correspondence	23
Annex II Member State Comparison Raw Data Chart	25

1. Introduction

This expert opinion was written at the request of Lawyer Rob van den Berg from Mr RC van den Berg Advocatuur in the context of Case C-402/22, which was referred to the Court of Justice of the European Union (CJEU) by the Administrative Jurisdiction Division of the Council of State (henceforth: the Council of State on 15 June 2022.

1.1 Background of the Case

Article 14(4) of Directive 2011/95/EU (the Qualification Directive, henceforth QD)¹ provides EU Member States with the grounds upon which they can make an exception to principle that a refugee status is granted to third-country nationals who qualify as a refugee in accordance with the Directive (Article 13 QD). On 15 June 2022, the Council of State has asked the CJEU to provide clarification² with respect to several key legal issues pertaining to the interpretation and application of Article 14(4)(b) QD by Member States, which outlines:

‘4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:
...
b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.’

In this respect, four main questions have been referred to the Court. These are summarised as follows:

1. What constitutes a ‘particularly serious crime’?
2. Do interpretations of Article 17(1)(b) QD as defined by the CJEU in *Ahmed* pertaining to the assessment of a ‘serious crime’ in the context of subsidiary protection revocation or cessation, influence how Article 14(4)(b) QD should be interpreted?
3. Is a final conviction of a ‘particularly serious crime’ sufficient to consider a recipient of international protection a ‘danger to the community’?
4. If a final conviction of a ‘particularly serious crime’ is insufficient to consider the applicant a ‘danger to the community’ how then should the Member State evaluate the last mentioned constituent element?

The exception to granting refugee status provided in Article 14(4)(b) QD has proven to incite much controversy. This is especially because, over the years, the use of the term ‘particularly serious crime’ has been a matter of some contention. During the drafting process, a definition of the term ‘particularly serious crime’ was omitted. Moreover, no precise distinction was made between ‘serious’ crimes referred to in Article 17(1)(b) QD about exclusion from subsidiary protection and ‘particularly serious’ crimes. Thus, an explicit legal scope of limitation is lacking. This led to heterogeneous interpretations of the provision by Member States, which, to date, has resulted in broad understandings of the term ‘particularly serious crime’ in practice at the national level.

¹ 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 [2011] OJ L 337/9.

² Preliminary questions referred in Council of State 15 June 2022, ECLI:NL:RVS:2022:1703 resulting in CJEU Case C-402/22.

Whilst in some instances the CJEU certainly allows the Member States discretion, the Court also provides that a common standard between all EU Member States should be applied.³ Application of any such law that does not adhere to an established common standard would place a Member State in violation of the Qualification Directive. The recent questions referred to the CJEU by the Dutch Council of State, the Belgian Council of State⁴ and the Austrian *Verwaltungsgerichtshof*⁵ indicate that the Member States have adopted different interpretations of Article 14(4)(b) QD. Moreover, in recent years, some Member States, such as the Netherlands, have taken steps to establish lower thresholds under Article 14(4)(b) QD in their national legislation. This raises the question whether this legislation is in conformity with Article 14(4)(b) QD.

It must be borne in mind that withholding refugee status to a person who qualifies as a refugee according to the standards of the QD has serious consequences. In the Netherlands, such a person cannot obtain legal residence and as a result has no access to the labour market or social benefits. While such a person cannot be expelled on the basis of the principle of *non-refoulement*, they do not have perspective in the Netherlands to build up a normal life. Given these serious consequences, a restrictive application of Article 14(4)(b) QD is required. Moreover, due to the vulnerability of the individuals concerned (refugees), the application of this exception clause in practice requires an especially detailed degree of sensitivity and scrutiny.

1.2 Outline of this expert opinion

This expert opinion addresses the questions referred to the CJEU by the Council of State. It will analyse the terms ‘particularly serious crime’ (Chapter 2) and ‘danger to the community’ (Chapter 3). Moreover it provides an overview of Member State practice in the context of Article 14(4)(b) QD (Chapter 4). A brief summary of how respective evaluation criteria have developed in the Netherlands in recent years is juxtaposed against the transposition of the Qualification Directive into the domestic law of the 25 Member States bound by the Directive. Member State practice is separated into three categories: States which evaluate a ‘particularly serious crime’ by sentence duration, those who do so by categorisation of offences, and those with an alternate system. Finally, Chapter 5 will provide the conclusion and suggests answers to the preliminary questions referred to the CJEU. The subsequent annexes summarise the findings of the research that was conducted for the purpose of this expert opinion, including the responses and raw data retrieved from the outreach for the Member State comparison.

1.3 Methodology

In order to answer the preliminary questions presented to the CJEU, this expert opinion adopted a legal normative approach and drew on relevant international refugee law, primary and secondary EU law, case law and domestic legal provisions and policies of the Member States bound by the Qualification Directive. The expert opinion is further supported by relevant secondary literature in the field of international and European refugee law as well as EU law.

Regarding the two crucial constituent elements of Article 14(4)(b) QD, namely ‘particularly serious crime’ and ‘danger to the community’, we will make use of the hermeneutical methods of interpretation and thus analyse them from a textual, historical, and structural point of view. In this

³ CJEU Case C-294/16 *JZ* [2016] EU:C:2016:610, paras 35-37; CJEU Case C-225/16 *Ouhrami* [2017] EU:C:2017:590, para 38; CJEU Case C-550/16 *A and S* [2018] EU:C: 2018:248, para 41.

⁴ CJEU Case C-8/22 (pending).

⁵ CJEU Case C-663/21 (pending).

context, we will further draw analogies to relevant case law on comparable legal issues of EU migration law.

To ascertain how Member States apply Article 14(4)(b) QD in practice, we conducted an in-depth comparative study as the basis of the research, whereby we analysed the national legislation of the different Member States. To begin with, we reached out to the country representatives of the European Legal Network on Asylum (ELENA) for expert guidance on their Member State's respective domestic transposition. For this purpose, we presented the following questions to the country representatives:

- a) How and where is Article 14(4)(b) QD transposed into the domestic law of Member States?
- b) Is an explicit definition provided for the terms 'particularly serious crime' and/or 'danger to the community' in the domestic law of Member States, be it in the context of asylum law or criminal law?
- c) If these terms are undefined or defined literally, is there a judicial body or state agency which defines or contextualises these terms?
- d) Are national immigration authorities granted discretion in deciding on the denial of refugee status on the basis of the domestic transposition law of Article 14(4)(b) QD or are they entirely bound by criminal convictions of national criminal courts?

In total, we received 11 responses from ELENA country representatives (see Annex I of this expert opinion). Most of them expressed curiosity in seeing the outcome of the preliminary ruling procedure, while others pointed towards resources which proved useful in answering the above questions. Subsequently, we conducted a complementary assessment of the Member State's domestic migration laws and criminal codes to ascertain how Article 14(4)(b) QD was transposed, how its constituent elements are defined and who or what organ of state is responsible for their interpretation as pertains to the revocation or cessation of refugee protection.

2. Methodological Interpretation of ‘Particularly Serious Crime’

This chapter addresses the first and second question submitted to the CJEU. In order to precisely identify the legal requirements relating to ‘particularly serious crime’, we will analyse the provision from a literal, historical and structural point of view. Furthermore, we will draw conclusions from the CJEU’s ruling in the case of *Ahmed*, which - given that it particularly addresses the interpretation of the exclusion from subsidiary protection status for having committed a ‘serious crime’ - serves as a valid reference point.

2.1 Literal Interpretation of ‘Particularly Serious Crime’

Pursuant to Article 14(4)(b) QD, Member States may revoke, end, or refuse to renew ‘refugee status’ where the person is considered to be a danger to the community after having been convicted of a ‘particularly serious crime’. Similarly, the Refugee Convention uses the term ‘particularly serious crime’ in Article 33(2).⁶

Within the context of the Qualification Directive and the Refugee Convention, a literal reading of the term ‘particularly serious crime’ can be said to, in itself, indicate a certain level of severity that is elevated above the standard. It can therefore be understood as meaning very serious, even more serious, or especially serious. It thus provides that a higher threshold of seriousness must be apparent than that which is already considered to reach the serious threshold. By way of elaboration, if we take, for example, one of the most renowned language dictionaries – the Oxford Dictionary – as a foundational source of common knowledge, this text reveals that ‘particularly’ can be understood as ‘to a higher degree than is usual or average’.⁷

The textual understanding therefore becomes a matter concerning the scale of extremity – where a clear distinction must be made. This would indicate that there is a different type of levelling system that should be applied when classifying the seriousness of a crime. It also suggests that, in instances of serious crimes that trigger ‘particularly serious’, a higher threshold must be applied.

The text ‘having been convicted of a particularly serious crime’ also suggests that the nature of the (one) crime committed needs to be particularly serious. This would entail that a refugee cannot be withheld refugee status on the basis of convictions for a number of crimes, which individually cannot be considered particularly serious.

2.2 Historical Interpretation of ‘Particularly Serious Crime’

When looking at the Qualification Directive, the documentation detailing the drafting process does not provide a clear answer as to what the drafters specifically intended as constituting a ‘particularly serious crime’.⁸ It appears that, because there was much discussion about Article 14 QD, the whole

⁶ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, Treaty Series, vol. 189, p 137.

⁷ Oxford English Dictionary, <https://www-oed-com.proxy.uba.uva.nl/view/Entry/138269?redirectedFrom=particularly#eid>, accessed 27 January 2023.

⁸ For example, Council of the European Union, Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection [2002], 11356/02 ASILE 40; Council of the European Union, Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection [2002], 12620/02 ASILE 54.

provision was a compromise between the Member States and was therefore left deliberately vague.⁹ However, one of the later drafts included a proposal to add the following recital to the Preamble of the Directive: 'Whereas, particularly serious crimes should include in particular crimes against peace, war crimes or crimes against humanity.'¹⁰ This was not reproduced in the final text of the directive. Nevertheless, it shows that at the time it was drafted, the phrase 'particularly serious crime' was understood to mean a truly severe crime. Thus, the history of the Qualification Directive suggest that a very high threshold should be used to classify a crime as 'particularly serious'.

This is confirmed by the *travaux préparatoires* of the Refugee Convention. According to Article 78(1) TFEU and Recital 4 of the Preamble to the Qualification Directive, the Refugee Convention provides the cornerstone of the EU's legal regime for the protection of refugees. Therefore, the drafting process of the Refugee Convention becomes important also with regard to the current application of Article 14(4)(b) QD. In the *travaux préparatoires*, it was stated that despite it being difficult to define 'what crimes are meant [...]. Certainly, capital crimes such as murder, rape, armed robbery and arson are included'.¹¹ Other examples widely believed to fall within this scope include homicide, child abuse, drug trafficking and international terrorism.¹²

2.3 Structural Interpretation of 'Particularly Serious Crime'

2.3.1 The hierarchy of criminal severity within the Qualification Directive

A structural comparison of relevant provisions of the Qualification Directive¹³ illustrates that the Directive recognises three different degrees of severity categorising crimes: (ordinary) crimes, serious crimes and 'particularly serious crimes'. The latter mirrors the highest possible degree of criminal severity and is based on a double qualification as respective crimes not only need to be serious but *particularly* serious.

In addition, attention needs to be drawn to the general legal principle according to which exceptional clauses such as Article 14(4)(b) QD need to be interpreted narrowly. This aspect was highlighted by UNHCR as well, which found that the underlying Article 33(2) of the Refugee Convention 'can only be applied in extreme cases'.¹⁴ This is also 'consistent with the restrictive scope of the

⁹ H Dörig, I Kraft, H Storey & H Battjes, 'Asylum Qualification Directive 2011/95/EU' in: D Thym & K Heilbronner (eds) *EU Immigration and Asylum Law. Article-by-article Commentary*, 3rd edition, p 1361.

¹⁰ Council of the European Union, Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection [2002], 15068/02 ASILE 77.

¹¹ UNHCR, *The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis* (1990), Art. 33(2).

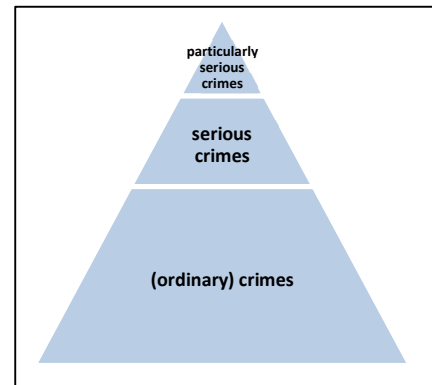
¹² E Lauterpacht & D Bethlehem, 'The Scope and Content of the Principle of Non-Refoulement', in: E Feller, V Türk & N Nicholson (eds.) *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003) p 139.

¹³ See Art 12(2)(b), Art 14(4)(b), Art 17(1)(b), Art 17(3) and Art 21(2)(b) QD.

¹⁴ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (February 2019), para 154.

exception and emphasises that refoulement may be contemplated pursuant to this provision only in the most exceptional of circumstances'.¹⁵

A further argument may be drawn from the European Asylum Support Office's (EASO) report on exclusion under the premises of Article 12 and Article 17 of the Qualification Directive. As examples of offences which generally satisfy the threshold of a 'serious crime' EASO mentioned (attempted) murder, rape, armed robbery, torture, grievous bodily harm, human trafficking, kidnapping, malicious arson, child abduction, drug trafficking, conspiracy to promote terrorist violence and grave economic crimes.¹⁶ Since these examples refer to the lower standard of 'serious crimes', the overall threshold in cases of '*particularly serious crimes*' must consequently be at least as strict and thus can be satisfied only by a very limited number of extraordinary offences.



2.3.2 Autonomous and uniform interpretation: the *Ahmed* criteria

Even though Article 14(4)(b) QD merely states that the person concerned must be convicted of a 'particularly serious crime' (albeit, without specifying the criteria which need to be fulfilled for that condition to be satisfied), it by no means allows every single Member State to individually determine the threshold of what types of crimes constitute 'particularly serious crimes'. It is a well-established principle of EU law that whenever a respective provision – for its meaning and scope – does not expressly refer to the law of the Member States, it should be interpreted as autonomous and uniform throughout the European Union.¹⁷ This principle is complemented by Recital 12 of the Preamble to the Qualification Directive according to which 'the main objective of this Directive is [...] to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection'.

The necessity of an autonomous and uniform interpretation of EU law also marked the starting point of the CJEU's ruling in *Ahmed*. This ruling was not only explicitly referred to in the preliminary questions presented to the CJEU but also serves as a valid reference point, given that it particularly addresses the interpretation of the lower degree of 'serious crime'. There, it was found that 'Article 17(1)(b) of Directive 2011/95 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' [...], 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'.¹⁸ Even though the Court acknowledged that the criterion of the sentence imposed on the convicted criminal is of particular importance when assessing the seriousness of a crime, it held that 'the competent authority of the Member State concerned may apply the ground for exclusion laid down by that provision *only after*

¹⁵ E Lauterpacht & D Bethlehem, 'The Scope and Content of the Principle of Non-Refoulement', in: E Feller, V Türk & F Nicholson (eds) *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003) p 139.

¹⁶ EASO, Exclusion: Articles 12 and 17 Qualification Directive (2011/95/EU). A Judicial Analysis (2016) p 24.

¹⁷ CJEU Case C-294/16 *JZ* [2016] EU:C:2016:610, paras 35-37; CJEU Case C-225/16 *Ouhrami* [2017] EU:C:2017:590, para 38; CJEU Case C-550/16 *A and S* [2018] EU:C:2018:248, para 41.

¹⁸ CJEU Case C-369/17 *Ahmed* [2018] ECLI:EU:C:2018:713, para 58 (emphasis added).

undertaking, for each individual case, an assessment of the specific facts [emphasis added].¹⁹ Insofar, the national immigration authorities need to consider, amongst others:

- the nature of the offence;
- the seriousness of the offence (e.g., based on the minimum sentence entailed in the domestic criminal provisions);
- the nature of the act itself (i.e., the particular behaviour of the culprit while committing the crime);
- the personal circumstances of the culprit up to the relevant crime (in this regard it might become relevant whether the enforcement of the applicant's deportation order was pending);
- the damage caused (i.e., the effective actual harm inflicted on the victim);
- whether violence or a weapon was used and (if applicable) the degree of violence;
- the nature of the sentence (imprisonment/suspension on probation/supplementary penalties) and the duration of the sentence;
- the reference to the maximum penalty that would potentially be faced upon conviction; and
- whether other Member States consider the offence as a serious crime as well.

As regards the transferability of these criteria to the purposes of Article 14(4)(b) QD, it is to be noted that in *Ahmed* the Court itself explicitly referred to a respective set of criteria it had already developed within another ruling on Article 12(2)(b) QD, which refers to the exclusion from refugee status for having committed a serious non-political crime.²⁰ Consequently, these criteria also need to be applied in cases concerning a decision to refuse a refugee status. However, as these assessment criteria were established with regard to the lower standard of 'serious crimes' they ought to be applied differently in cases of '*particularly serious crimes*'. Arguably, the mentioned criteria need to be applied stricter in order to satisfy the particular context of Article 14(4)(b) QD.

2.4 Sub-Conclusion

The application of the hermeneutical methods of interpretation has demonstrated the need for a restrictive application of 'particularly serious crime' as laid down in Article 14(4)(b) QD. As the literal, historical and structural analysis has revealed, only crimes such as murder, rape, armed robbery and arson be categorially considered as being particularly serious. In the light of the Court's ruling in *can Ahmed*, it is further necessary to conduct a thorough individual assessment based on factors like the nature and seriousness of the offence in order to satisfy the high threshold of a 'particularly serious crime' as required by law.

¹⁹ CJEU Case C-369/17 *Ahmed* [2018] ECLI:EU:C:2018:713, para 55. See also CJEU Case C-57/09 and C-101/09 *B and D* [2010] EU:C:2010:661, para 87 and CJEU Case C-573/14 *Lounani* [2017] EU:C:2017:71, para 72.

²⁰ CJEU Case C-369/17 *Ahmed* [2018] ECLI:EU:C:2018:713, para 50: 'Such a requirement must be transposed to decisions to exclude a person from subsidiary protection'.

3. Methodological Interpretation of 'Danger to the Community'

This chapter addresses the third and fourth questions submitted to the CJEU, suggesting that under Article 14(4)(b) QD two requirements should be cumulatively fulfilled to revoke the refugee status. In addition to the criteria pertaining to the assessment of 'particularly serious crime,' existence of a danger to the community as the second requirement is subject to the fulfilment of certain criteria. It will be elaborated that the criteria for assessing the requirement of constituting a 'danger to the community' should be differentiated from the criteria for implementing and applying it. Before that, the issue should be examined from a literal and historical point of view.

3.1 Literal Interpretation of 'Danger to the Community'

From a literal point of view, the material consideration to be made about Article 33(2) of the Refugee Convention and Article 14(4)(b) QD is whether the person will act in a certain way in the future that will harm the security or community of the country.²¹ The definitions of 'danger' in the Oxford Dictionary underline this prospective nature, namely 'liability or exposure to harm or injury' and 'the condition of being exposed to the chance of evil' or 'risk'.²² 'Community', on the other hand, is to be defined as 'a body of people or things viewed collectively'.²³

Looking at the parallel provision of Article 14(4)(a) QD, regarding a person as a 'danger to the security' does not necessarily require a specific criminal act or omission, whilst under Article 14(4)(b) QD the community may only be endangered if a 'particularly serious crime' is committed. Hence, in contrast to the 'security of the Member State', an accumulation of additional circumstances is needed to consider a Member State's community as a whole is at stake. Moreover, the difference must be noted with Article 17 QD, which mentions the fact that a person 'has committed a serious crime' and the fact that a person 'constitutes a danger to the community or to the security of the Member State' as two separate grounds for exclusions from subsidiary protection. Furthermore, it must be highlighted that only a preconditioned final conviction for a 'particularly serious crime' - as opposed to lower degrees of severity such as a 'serious crime' - may constitute a danger to the community and thus provoke the revocation of refugee status. Therefore, a comparably higher standard must be construed and applied.²⁴

Besides, as the threshold of prospective danger in Article 33(2) of the Refugee Convention is higher than Article 1F of the Refugee Convention²⁵, the term 'danger' in Article 33(2) of the Refugee Convention and 'Article 14(4)(b) QD refers to nothing less than but a very serious danger'.²⁶ It should also be noted that the present tense is used to formulate the term 'constitutes a danger to the community of the Member State,' which literally suggests that a forward-looking approach should be

²¹ E Lauterpacht & D Bethlehem, 'The Scope and Content of the Principle of Non-Refoulement' in: E Feller, V Türk, F Nicholson (eds) *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003) pp 164 and 181.

²² Oxford English Dictionary, <https://www-oed-com.proxy.uba.uva.nl/view/Entry/138269?redirectedFrom=particularly#eid>, accessed 27 January 2023.

²³ Oxford English Dictionary, <https://www-oed-com.proxy.uba.uva.nl/view/Entry/138269?redirectedFrom=particularly#eid>, accessed 27 January 2023.

²⁴ J Hathaway & M Foster, *The Law of Refugee Status*, 2nd Ed., (Cambridge University Press, 2014) p 540.

²⁵ Ibid, p 170.

²⁶ Ibid.

taken into account when assessing how a previous criminal act and conviction presupposes the probable present or upcoming danger.²⁷

3.2 Historical and Interpretation of 'Danger to the Community'

Due to there being limited findings, this expert opinion will not further elaborate on the historical interpretation of 'danger to the community'.

3.3 Structural Interpretation of 'Danger to the Community'

There is no doubt that the concepts of 'danger to the security' and 'danger to the community' should be perceived and interpreted differently. Despite that, the available case law and the literature on the first concept help define the meaning of the latter analogically. Under the structural interpretation part, first the criteria for assessing what constitutes a danger to the community (sections 3.3.1 and 3.3.2) and then the question who bears the burden of proof (section 3.3.3) are discussed.

3.3.1 Widespread Societal Impact of the Crime

Searching the CURIA database indicates that Article 14(4)(b) QD in connection with the term 'constitutes a danger to the community of that Member State' has been mentioned 14 times in the CJEU's judgments or opinions. However, in none of these proceedings has the Court provided an interpretation of what constitutes a danger to the community.

Yet, in the case of *HT*, the CJEU dealt with Article 14(4)(a) QD and the concept of 'danger to the security' concerning the revocation of refugee status due to the applicant's membership in and support of a terroristic group.²⁸ In this judgement, the Court interprets the term 'danger to the security' as activities generally affecting the survival of the population, when individuals' safety is targeted indirectly.²⁹ Hence, comparatively speaking, the term 'danger to the community' should be construed as activities directly involving the individuals' rights in a way that affects the community as a whole.

As to the meaning of the word 'community', it is evident that this is intended as a reference to the safety and well-being of the population in general, in contrast to the national 'security' exception which is focused on the larger interests of the State.³⁰ Consequently, the word 'community' as used in Article 33(2) of the Refugee Convention denotes the population at large, and therefore a 'danger to the community' equals a danger to the peaceful life of the population in its many facets. In this sense, a person will be a danger to the community if s/he 'sabotages means of communication, blows up or sets fire to houses and other constructions or assaults peaceful citizens, commits burglaries, holdups or kidnapping etc., in short, if s/he disrupts or upsets civil life, and particularly if this is done on a large scale, so that the person concerned actually becomes a public menace'.³¹ Hence, to fall under the scope of constituting a 'danger to the community', a crime must not only meet the particularity and

²⁷ E Lauterpacht & D Bethlehem, 'The Scope and Content of the Principle of Non-Refoulement' in: E Feller, V Türk, F Nicholson (eds) *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003) p 164.

²⁸ CJEU Case C-373/13 *HT v Land Baden-Württemberg* [2015] ECLI:EU:C:2015:413.

²⁹ *Ibid*, para 78.

³⁰ E Lauterpacht & D Bethlehem, 'The Scope and Content of the Principle of Non-Refoulement' in: E Feller, V Türk, F Nicholson (eds) *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003) p 191f.

³¹ A Grahl-Madsen, *Commentary on the Refugee Convention* (October 1997) p 121.

seriousness criteria, but its impact also needs to go beyond the individual level and affect the society in part or the community as a whole.

3.3.2 Forward-looking Approach

If the crime's impact is felt by the community at an extensive level, the likelihood of further dangerous actions is to be examined in an individualised process. Indeed, 'the 'danger to the community' clause focuses on protecting the public against potentially dangerous refugees. 'The exclusion clause looks to the past whereas the 'danger to the community' clause looks to the future'.³²

In the case of *Tsakouridis*,³³ the CJEU started off by acknowledging that trafficking in narcotics as part of an organised group could generally reach the level of intensity for being a danger to public security. However, according to the Court, an individual examination of the specific case needs to be carried out involving (a) the nature and seriousness of the offence committed, (b) the duration of residence of the person concerned in the host Member State, (c) the period which has passed since the offence was committed as well as the conduct of the person concerned during that period, and (d) the solidity of the social, cultural and family ties with the host Member State.

Accordingly, a rational nexus between the particular nature of the crime and presumed danger should be identified. This means that pursuant to the commission of the crime, the state may examine whether the convicted criminal poses further risks to the community. Therefore, a prospective analysis of the threat must be applied and the mere fact that there has been a final conviction of a refugee or an applicant for refugee status respectively does not suffice to demonstrate that a person imposes a threat to the community of a Member State.

3.3.3 Burden of Proof

The Refugee Convention and the Qualification Directive both refer to the final conviction and do not necessitate serving time in prison before revoking the refugee status. Even if imprisonment of the convicted refugee before expulsion is not considered to be a double jeopardy, in the cases of individuals who have served a particular amount of time in prison and can then be considered rehabilitated or unlikely recidivists, the Member State still has to demonstrate that the person is likely to cause further risks to the society, now or in the future. This cannot just be assumed on the basis of the past conviction.

Indeed, this is consistent with the restrictive application of exceptions and the general legal principle that the person wishing to establish a legal claim should bear the burden of proof.³⁰ Hence, the judicial or administrative body that issues the revocation of refugee status, should reasonably demonstrate that the particularity of crime has affected the community and therefore undertake an individualised, forward-looking assessment whether the person still exposes the community to further threats, even after having served the sentence. As a result, the burden of proof within the process of revoking a refugee status lies with the State, i.e. the public authorities should identify the existence of a potential intent (*Mens Rea*) for further criminal activities of the applicant. The UNHCR takes a similar approach regarding Article 14(4)(b) QD, stating that 'the burden of proof for establishing that the

³² EASO, Practical Guide on Exclusion for Serious (Non-Political) Crimes, Practical Guide Series (December 2021) para 181. UNHCR, Current Issues in the Application of The Exclusion Clauses (2001) p 32f.

³³ CJEU Case C-145/09 *Land Baden-Württemberg v Panagiotis Tsakouridis* [2010] EU:C:2010:708.

criteria under Article 14(4)(a) and (b) are fulfilled should be on the Member State applying the provision'.³⁴

3.4 Sub-conclusion

This chapter highlighted that the cumulatively required element of 'danger to the community' further increases the need for a restrictive application in order to satisfy the criterion of having been convicted of a 'particularly serious crime'. A final conviction of a 'particularly serious crime' on its own is thus not sufficient to consider a recipient of international protection a 'danger to the community'. It was demonstrated that this element necessitates a widespread impact of the crime on the community as a whole, a forward-looking prognosis when assessing the severity and existence of danger and proven continuation of the danger pursuant to conviction and punishment. In this context, the burden of proof rests on the Member State.

The legally required necessity of a restrictive application of Article 14(4)(b) QD is reflected in the domestic transposition laws of most Member States. This will be examined in detail in the subsequent chapter.

³⁴ UNHCR, Annotated Comments on the EC 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 (28 January 2005) p 30.

4. Member State Comparison

The questions referred to the CJEU ask whether the Dutch interpretation of Article 14(4)(b) QD falls complies with EU law, specifically with regard to the application of the sentence length as a means of establishing what constitutes both a 'particularly serious crime' and a 'danger to the community'. Given that the CJEU's decision impacts all Member States bound by the Qualification Directive to avoid undue conflict, it would be beneficial to understand the present interpretive landscape and see whether a trend or trends exists across the European Union.

This chapter will summarise the findings from our comprehensive research study comparing the transposition of Article 14(4)(b) QD within the Member States. One research limitation of note is that, of the four questions posed to the ELENA country representatives, the responses were of limited detail. Therefore, this information was complemented with information gathered by independent research on the domestic migration laws and criminal codes (see Annex II of this expert opinion). This chapter will first address the legislation and policy in the Netherlands. After that, it will discuss the practice in other Member States.

4.1 The Netherlands

The Netherlands holds an exceptionally low threshold for defining a crime as 'particularly serious'. This can be traced back to a series of policy changes over the last few years. The recent discussion on Article 14(4)(b) QD in the Netherlands began with a Parliamentary debate on 29 September 2015. Several Members of Parliament (MPs) expressed concern about the safety of religious people in asylum centres. This was because recent news reports highlighted incidents of Christian asylum seekers being bullied and threatened in Dutch and German refugee camps. As asked by the Parliamentarians, the State Secretary promised to look for ways to protect (religious) refugees, as well as ways to broaden the criteria for refusing asylum seekers, who committed a crime, a protection status within the international legal system.³⁵

Shortly afterwards, the majority of the House of Representatives voted in favour of a tougher approach towards asylum seekers, who commit crimes. They considered that asylum seekers who have committed a crime should be deported, as people who abuse the state's hospitality do not deserve the right to seek asylum.³⁶ These developments resulted in a considerable change of policy.³⁷ Firstly, it was decided that the asylum procedure should be prolonged up to the maximum time that is permitted within EU law (12 months), if there is reason to believe that the asylum seeker has committed a crime. Secondly, the standard for a crime to be regarded as 'particularly serious' or 'serious' was lowered. The minimum length of a sentence was set to be 10 months (previously 24) for 'a particularly serious crime' and six months (previously 18) for a 'serious crime'. The reasons to define a crime solely by the duration of the prison sentence imposed as a sanction to the offence are that this, according to the State Secretary, demonstrates the 'seriousness' of the crime.

Dutch policy concerning the refusal of refugee status to a refugee who has committed a crime is laid down in section C2/10.7.1. of the Aliens Circular. This section mentions that the question whether a person has committed a (particularly) serious crime is examined on an individual basis, taking into account the special circumstances forwarded by the migrant relating to the nature and seriousness of the crime and the time that has lapsed since the crime was committed.

³⁵ Dutch Second Chamber Handelingen II 2015/16, nr. 7, item 4.

³⁶ Dutch Second Chamber Kamerstukken II 2015/16 19637, no. 2069.

³⁷ Dutch Second Chamber Kamerstukken II 2015/16 19637, no 2078.

It should be noted that not only a prison sentence of 10 months or more for one crime can lead to refusal of refugee status. The Immigration Service looks at *the sum of the sentences* for different crimes. In this context the Immigration Service takes into account the share of the crimes, which constitute a danger to the community: at least one of the sentences must relate to a crime which poses a danger to the community. Moreover, *suspended* sentences for drug-related crimes, sex crimes, crimes committed with the use of violence, crimes concerning human trafficking and terrorist crimes are taken into account. Finally, the Immigration services looks at sentences imposing *community service*, counting in the prison sentence which would replace the community service if it is not properly executed.

In the context of the question whether a refugee constitutes a danger to the community, the Immigration Service takes into account the nature of the crime and the sentence imposed and looks at the situation at the time of the examination of the asylum application. The Immigration Service can always conclude that the refugee constitutes a danger to the community if the refugee has been convicted for drug crimes, sex crimes and violent crimes, arson, human trafficking, illegal trade in weapons, ammunition and explosives or illegal trade in human organs and tissues. The Immigration Service assesses whether the facts and circumstances forwarded by the migrant make plausible that there is no danger to the community in the individual case.

The next section will examine how the other Member State of the European Union apply Article 14(4)(b) QD. It will show that the Dutch policy is more restrictive than that in other EU Member States.

4.2 Member State practice under Article 14(4)(b) QD

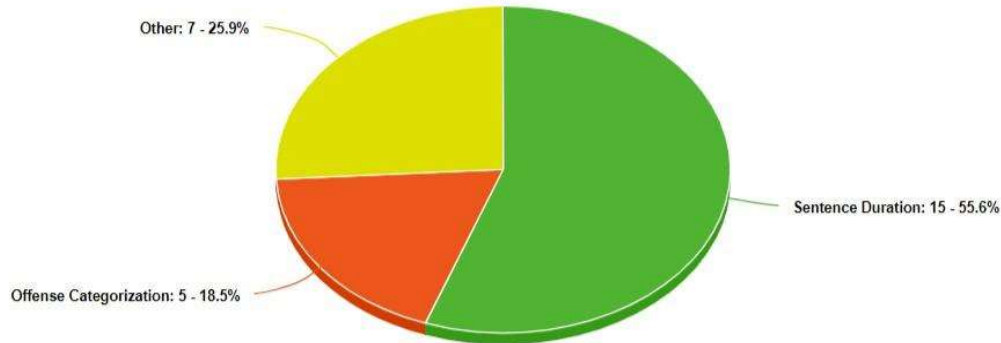
Of the 27 Member States, two have opted out of the Qualification Directive, namely Ireland and Denmark. This leaves 25 Member States from which insight can be drawn. Of these 25 Member States, 15 define a 'particularly serious crime' by the length of the sentence handed down for a given offence. Five Member States define 'particularly serious crime' contextually by categorisation, providing a set of offences which are considered to meet the revocation threshold established by Article 14(4)(b) QD. Germany and Greece are the only Member States, which exist in both groups; Greece provides decision-makers with a minimum sentencing guideline and a list of offences considered serious enough to merit revocation or cessation of international protection. Germany typically carries a three-year sentencing guideline with certain crimes triggering a one year sentencing guideline. The seven remaining Member States are unique in that while for the most part they have transposed the entirety of Article 14(4)(b) QD into their domestic law they either

- a) have an independent state body or agency responsible for the assessment of revocation cases;
- b) have 'upper limit' sentencing guidelines which don't establish a minimum, or;
- c) leave the term entirely undefined.

For instance, Germany and Slovenia presently employ a future looking assessment to quantify risk when calculating whether a person constitutes a 'danger to the community'. In Germany's case, this can be found in the explanatory memorandum of the domestic transposition law³⁸ as well as in

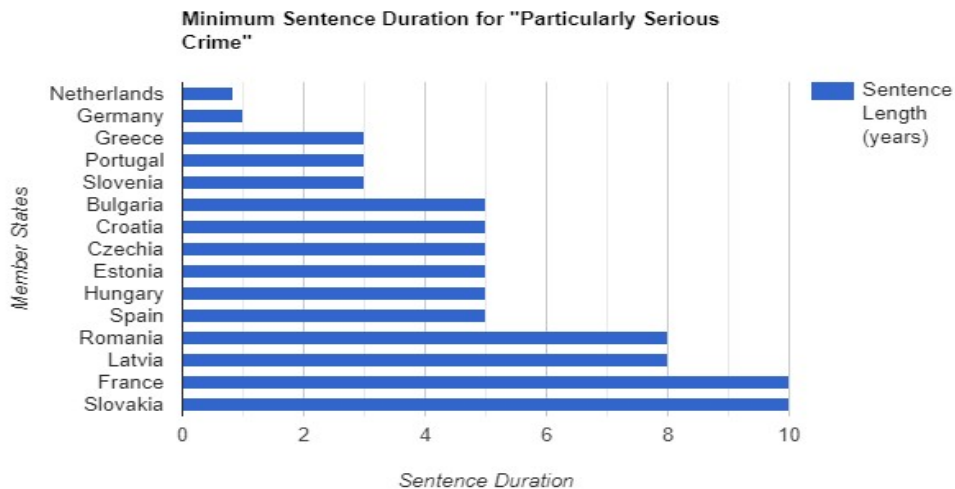
³⁸ Explanatory Memorandum to the Act on the Facilitated Expulsion of Criminal Foreigners and on the Extended Exclusion of Refugee Recognition in the case of asylum seekers who have committed a criminal offence, printing matter 18/7537, p 8f.

respective national case law.³⁹ With respect to Slovenia, this can be found within their criminal code.⁴⁰ Please be advised that when summing the above figures, the final number will be 27, reflecting the unique status of Germany and Greece.



4.2.1 Sentencing Guidelines

In total, 15 Member States evaluate a 'particularly serious crime' by the duration of a prison sentence attached to the offence. Of these, only two attach a sentence of one year or less: the Netherlands (10 months) and Germany (one year as an exception for specific crimes). Three of 15 set a minimum sentence of three years and above, six of 15 set a minimum sentence of five years and above, and the remaining four all establish a minimum sentence for the revocation or cessation of international protection at eight years and above.⁴¹



The key takeaway here is that 13 out of 15 of the Member States presently bound by the Qualification Directive who evaluate a 'particularly serious crime' by the duration of sentence handed down for an

³⁹ Administrative Court of Munich, ECLI:DE:VGMUENC:2022:0603.M22K18.32695.00, para 31f ('This assessment requires a prognosis that the foreigner will continue his misconduct [...] and punishable misconduct is likely to continue in the future'); Administrative Court of Stuttgart, ECLI:DE:VGSTUTT:2022:0210.A11K8038.19.0A, para 57; both courts were explicitly referring to the CJEU's ruling in *Ahmed*.

⁴⁰ Criminal Code KZ-1, Chapter 4 Art 49(1)(2).

⁴¹ See Annex I of this expert opinion for source information and Annex II for the findings of the research.

offence, do so with sentences exceeding a minimum of three years with Germany only reverting to a one-year sentence in specific egregious cases.

4.2.2 Category of the Offense

Five of the 25 Member States bound by the Qualification Directive assess whether a 'particularly serious crime' has occurred by reference to any number of offences which serve as a guideline for decision-makers. Omission of an offence does not necessarily mean it could not also be considered a 'particularly serious crime' as these lists are by no means exhaustive. As one might expect, crimes such as rape and murder are generally included in the list of crimes which may lead to refusal of refugee status. Their absence in those lists in certain Member States may simply be an indication of a Member State's assessment of those offenses as self-evidently 'particularly serious'. Member States, which choose to contextualise a 'particularly serious crime' in reference to other offences do so within the boundaries of a common person's understanding of the term with few exceptions. The following is a selection of Member States and offences considered as 'particularly serious crimes':

- Austria: homicides, rape, child abuse, arson, drug trafficking, armed robbery;
- Belgium: supporting terrorist activities, piracy, murder, attempted manslaughter, rape, to theft with violence or threat;
- Italy: The list of crimes which qualify as 'particularly serious' is detailed in Article 407 of the Italian Procedural Penal Code.⁴² While it is far too long to display here it includes: terrorism, the manufacture of weapons of war, the creation of an organisation to carry out crimes, the production and/or possession of child pornography, kidnapping, and sexual assault (for which there is a sentencing minimum of six years);
- Greece: abduction of minors, serious bodily harm, physical harm to weak persons, rape, insult to sexual dignity, sexual act with or in the presence of minors, abuse of minors, pornography of minors, attraction of minors for sexual reasons, pimping, sexual intercourse with a minor for payment, robbery and extortion;
- Germany: criminal offences against life or physical integrity or sexual self-determination or property, attacks against police officers.

Three of these states (Austria, Belgium and Germany) specifically consider murder to qualify as a 'particularly serious crime' while all five share rape and sexual assault as an offense meeting the threshold of a 'particularly serious crime'.

4.2.3 Remaining Member States

Where neither category nor minimum sentence duration are established, the remaining seven Member States resolve the question of what constitutes a 'particularly serious crime' their own way. Member States in this group include Cyprus, Finland, Lithuania, Luxembourg, Malta, Poland, and Sweden. Of these, all but Sweden leave the assessment of whether an individual has met the criteria of Article 14(4)(b) QD to a board, agency, or state body with wide discretion in this procedure.

Sweden is an interesting case in that it uses the term 'exceptionally gross offence' as an analogy of 'particularly serious crime'. While there is no definition in the Swedish Criminal Code of

⁴² Decree of the President of the Republic 22 September 1988 as modified by Decree 113/2018.

'exceptionally gross offence'⁴³ it can be described contextually. In Swedish law, a 'gross assault' would carry a sentence between 1.5-6 years where an 'exceptionally gross assault' carries a sentence of 5-10 years. Not every offence can be modified by the 'exceptionally gross' classification and so it would not be appropriate to include Sweden in the above 'Minimum Sentence Duration' category. However, it is clear that in their transposition of Article 14(4)(b) QD Sweden gives due credence to the meaning of the phrase 'particularly serious'.

4.3 Sub-conclusion

When comparing the Netherlands with other Member States, the Netherlands appears to have an exceptionally low threshold for applying Article 14(4)(b) QD. Particularly striking is that for those States, which use sentence duration to determine what constitutes a 'particularly serious crime', all but Germany and the Netherlands employ a three-year minimum sentence. Dutch Parliamentary history shows that this is due to normative considerations, i.e. to revoke the protection status of persons whom Parliament deems unworthy to reside in the Netherlands.

⁴³ in Swedish 'synnerligen grov misshandel'.

5. Conclusion

In Case C-402/22, four questions have been referred to the CJEU:

1. What constitutes a 'particularly serious crime'?
2. Do interpretations of Article 17(1)(b) QD as defined by the CJEU in *Ahmed* pertaining to the assessment of a 'serious crime' in the context of subsidiary protection revocation or cessation influence how Article 14(4)(b) QD should be interpreted?
3. Is a final conviction of a 'particularly serious crime' sufficient to consider a recipient of international protection a 'danger to the community'?
4. If a final conviction of a 'particularly serious crime' is insufficient to consider the applicant a 'danger to the community' how then should the Member State evaluate this clause (e.g. do past actions imply future danger or must the danger specified be a current threat, especially in the cases of individuals who have served time and can then be considered rehabilitated/unlikely recidivists)?

This conclusion will answer these questions succinctly.

1. What constitutes a 'particularly serious crime'?

Chapter II of this expert opinion examined the interpretation of the term 'particularly serious crime' as laid down in Article 14(4)(b) QD. It argued that a literal and structural interpretation of this term indicates that the severity of the crime must be elevated above the standard. Article 14(4)(b) QD also requires a higher threshold than Article 17 QD, which uses the term 'serious crime'. Finally, the history of the Qualification Directive and of Article 33 of the Refugee Convention shows that the term 'particularly serious crime' entails a high threshold and refers to crimes such as murder, rape, armed robbery and arson

Our research on Member State practice indicates that the vast majority of Member States already interprets this phrase to apply to a select class of crimes which are self-evidently more damaging to victims and/or society than what would commonly be considered grave offences. While there is great variance in how domestic legal systems have developed a test for particular seriousness (length of the sentence, crime category, or other) there is no doubt that the Netherlands' interpretation of this concept is a significant outlier. Our research shows:

- If defined by minimum sentence duration, the Netherlands is the only Member State, which considers the 'particularly serious crime' threshold to be met with a sentence duration of less than one year;
- if defined categorically there is a general consensus that offenses which qualify as 'particularly serious' include, inter alia, rape and murder.

2. Do interpretations of Article 17(1)(b) QD as defined by the CJEU in Ahmed pertaining to the assessment of a 'serious crime' in the context of subsidiary protection revocation or cessation influence how Article 14(4)(b) QD should be interpreted?

Given that to reach their conclusion in *Ahmed* the CJEU explicitly referenced previous case law concerning Article 12(2) QD concerning exclusion from refugee status, it can be assumed that the Court's decision in *Ahmed* would provide equally useful guidance for interpreting the revocation of refugee status. The criteria provided in *Ahmed* for the assessment whether a person in need of

subsidiary protection has committed a 'serious crime' are equally relevant when examining whether a refugee has committed a 'particular serious crime'. It follows from the *Ahmed* judgment that it is necessary to conduct a thorough individual assessment based on factors like the nature and seriousness of the offence in order to satisfy the high threshold of a 'particularly serious crime' as required by law. Nevertheless, because Article 14(4)(b) QD requires that the refugee has committed a '*particularly serious crime*' a higher threshold should apply when applying the *Ahmed* criteria than under Article 17(1)(b) QD. This implies for example that for refusal of a refugee status under Article 14(4)(b) QD, it is required that the crime committed is of a more serious nature, the sentence imposed is longer, the behaviour of the person concerned is more culpable and/or the damage caused by the crime is more severe.

3. *Is a final conviction of a 'particularly serious crime' sufficient to consider a recipient of international protection a 'danger to the community'?*

In *Ahmed*, the CJEU established that a sentence of any length is not sufficient to satisfy the conditions necessary to revoke or cease subsidiary protection. In order for the Court to remain consistent in its application of this logic, a compelling consequence would be the rejection of a final conviction as the only ground for the revocation of international protection as per Article 14(4)(b) QD. This expert opinion thus argued that the requirement of 'danger to the community' further increases the need for a restrictive application in order to satisfy the criterion of having been convicted of a 'particularly serious crime'. This requirement necessitates a widespread impact of the crime on the community as a whole, a forward-looking prognosis when assessing the severity and existence of danger and proven continuation of the danger pursuant to conviction and punishment. In this context, the burden of proof rests on the Member State.

The Member State comparison provided in Annex II illustrates that, should the CJEU find that a final conviction of a 'particularly serious crime' would be sufficient to consider a recipient of international protection a 'danger to the community', the vast majority of Member States have already adopted a standard which would preclude the practice presently undertaken by the Netherlands.

4. *If a final conviction of a 'particularly serious crime' is insufficient to consider the applicant a 'danger to the community' how then should the Member State evaluate this clause?*

As detailed above, the concept of 'danger to the community' within Article 14(4)(b) QD is to be based on a forward-looking approach. It is thus imperative that special care is taken with regards to establishing a burden of proof and proportionality. For the former, most juridical frameworks understand a conviction as a punitive measure for an act which carries a specific punishment. Fulfilling the terms of that punishment (a fine, public service, a period of incarceration, etc.) implies that the subject has fulfilled their 'debt to society' and as such is free to enjoy the rights provided by their residence status. On the subject of proportionality, it is critical to consider the grave implications of the refusal or revocation of refugee status. Further criteria are detailed both in *Ahmed* and in the travaux préparatoires of the Refugee Convention, including seriousness of the crime, possibility of recidivism, conduct since the commission of said crime or alike.

In sum, we respectfully suggest the CJEU answer the preliminary questions as follows:

- a) a 'particularly serious crime', only concerns exceptionally serious crimes such as murder, rape, armed robbery, and arson;

- b) the CJEU's ruling in *Ahmed* must be extended to a ruling on Article 14(4)(b) QD. However, given that *Ahmed* only referred to 'serious crimes', in cases of refusal or revocation of refugee status (which require a particularly serious crime), the existing criteria from *Ahmed* need to be applied more strictly;
- c) a final conviction of a 'particularly serious crime' is not sufficient in itself to determine whether an individual is a 'danger to the community';
- d) it is incumbent upon the state to provide evidence that, having fulfilled the terms of their prison sentence, the individual would continue to be a 'danger to the community' upon release, thereby applying a forward-looking approach;
- e) a proportionality test must be applied in the context of assessing the criterion, which define a 'danger to the community', where other factors such as the person's conduct after serving the sentence and the principle of *ultima ratio* play a decisive role;
- f) the burden of proof for establishing that the criteria under Article 14(4)(b) QD are fulfilled should be on the Member State applying the provision.

Annex I: Member State Comparison: Correspondence

As mentioned in the main document, part of the research strategy was to contact individuals listed as country representatives in the ELENA Index. The following table below summarises the countries analysed, as well as the number of individuals that we contacted per country:

Country	Number of representatives contacted
Austria	3
Belgium	1
Bulgaria	1
Croatia	1
Cyprus	1
Czech Republic	1
Denmark	1
Estonia	1
Finland	2
France	1
Germany	1
Greece	4
Hungary	2
Iceland	1
Ireland	2
Italy	2
Latvia	1
Lithuania	1
Luxembourg	1
Malta	3
The Netherlands	1
Norway	1
Poland	3
Portugal	2
Romania	1
Slovak Republic	2
Slovenia	3
Spain	3
Sweden	2
Switzerland	2
Turkey	4
Ukraine	4
UK	5

One will notice that several representatives operate in states which are no longer members of the EU, or have never been members of the EU, nor are they party to the Qualification Directive. Nonetheless, in the process of the initial outreach, we felt it prudent to include these countries so as to a) leverage connections between colleagues the index can't detail and b) see what results we could return for the sake of a broader comparison than what ultimately came to be included in this opinion. While many of these email addresses are no longer active (the index was updated last in 2018) we did receive a number of responses.

Correspondence Response

From our outreach, we received 11 responses. The Member States and representative responding organisations are below:

Country	Organisation
Belgium	Jus Cogens Avocats
Cyprus	Cyprus Refugee Council
Denmark	Danish Refugee Council
Greece	ELENA
Hungary	Hungarian Helsinki Council
Latvia	Lithuanian Red Cross Asylum and Migration Programme
Malta	Aditus Foundation
Portugal	Conselho Português para os Refugiados
Slovenia	Hungarian Helsinki Council
Sweden	Swedish Refugee Law Center
Switzerland	Swiss Refugee Council

The insight provided by the above individuals proved invaluable in shaping our understanding of the challenges faced by recipients of international protection in disparate legal environments while also providing a launching point for our research into Member States where information on the domestic interpretation of Article 14(4) QD is either outdated, unavailable, or currently being developed. A number of respondents agreed that the crux of this undertaking was as of yet poorly understood with many expressing desire to be informed of our conclusions when they became available. Several offered linguistic assistance; as one might expect the transposition of the phrase 'particularly serious crime' into national law must take into account vernacular differences.

The existence of the word 'particularly' varies greatly across linguistic families, as does the interpretation of how one evaluates what constitutes a 'serious' crime. We take this into account in our comparison and where possible note these differences to provide greater context for the Court in their interrogation of the questions referred for a preliminary ruling. Many respondents who expressed their own curiosity in the matter pointed us in the right direction with regards to domestic statutes which allowed us to focus our energies on strategies which we could confidently expect to yield results.

Annex II Member State Comparison Raw Data Chart

Member State	Cessation/Revocation Law	Cessation/Revocation Grounds	Additional Information	Source Information
Austria	Asylum Act 2005 Section 3(6)(1)	1. 'A foreigner is excluded from being granted the status of a person entitled to asylum if...he has been convicted by a domestic court of a particularly serious crime and this criminal behaviour represents a danger to the community. A conviction by a foreign court that meets the requirements of Section 73 of the Criminal Code, Federal Law Gazette No. 60/1974 is equivalent to a conviction by a domestic court. 2. '...the term 'particularly serious crime' concerns only criminal offenses that objectively violate particularly important legal interests. Typically, serious crimes include homicides, rape, child abuse, arson, drug trafficking, armed robbery, and the like.'		1. Bundesgesetz über die Gewährung von Asyl (Asylgesetz 2005 - AsylG 2005) 2. Stand der Gesetzesgebung: 05.01.2023 Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (Strafgesetzbuch – StGB) StF: BGBl. Nr. 60/1974 (NR: GP XIII RV 30 AB 959 S. 84. BR: S. 326. NR: Einspr. d. BR: Einspr. d. BR: 1000 AB 1011 S. 98.)
Belgium	Aliens Act Article 8	1. 'Refugee status can be revoked anytime the refugee is considered a danger to society, sentenced for a very serious crime or when there are reasonable grounds to consider the refugee a threat to national security.' 2. '...[Belgium] has considered crimes ranging from supporting terrorist activities, piracy, murder, attempted manslaughter, rape, to theft with violence or threat as a particularly serious crime. Even crimes that were committed years ago can prove a danger to society according to [Belgium]L. In the context of demonstrating if the danger is still present, the steps taken to rehabilitation and reintegration often do not detract from the observation that the fact that a person was convicted of a particularly serious crime is sufficient to demonstrate the danger to society. The risk of recidivism plays a role in the assessment of [Belgium] in certain cases, but it does not seem to be a necessary element.'		1. Loi du 15 décembre 1980 portant sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (dans sa teneur modifiée au 28 août 2020) 2. 8 Juin 1867 Code Penal. Intégration des modifications en vigueur publiées jusqu'au 26-10-2022 inclus. Voir la loi du 10 juillet 1996 portant abolition de la peine de mort et modifiant les peines criminelles, notamment l'article 3, 1996-07-10/42

Bulgaria	Law on Asylum and Refugees Article 12(1)(7)	1. Refugee status shall not be granted to an alien for whom 'having been convicted by an enforceable sentence of a serious crime, constitutes a danger to the community.' 2. Criminal Code Article 11(5) ' When the law qualifies the act as a more serious crime due to the occurrence of additional socially dangerous consequences, if no deliberation is required for these consequences, the perpetrator shall be charged for the more serious crime if he has acted incautiously with regard to them.' 3. Criminal Code 7. (Suppl., SG 50/95; amend., SG 153/98): "Serious crime" is a crime for which the law stipulates a punishment of imprisonment of more than five years, life imprisonment or life imprisonment without an option;"	In a 2012 agreement between the USA and Bulgaria on 'Enhancing Cooperation in Preventing and Combating Serious Crime' Article 1(5) defines serious crime as '...conduct constituting an offense punishable by a maximum deprivation of liberty of more than one year or a more serious penalty.'	1. ЗАКОН ЗА УБЕЖИЩЕТО И БЕЖАНЦИТЕ В сила от 01.12.2002 г. 2. Наказателният кодекс 1968
Croatia	Act on International and Temporary Protection Article 6(2)	1. 'A third-country national or stateless person who meets the conditions for approval of international protection or who has had international protection approved may be expelled or returned to a country where the principle referred to in paragraph 1 of this Article would not be undermined if he/she represents a risk to national security, or has been convicted of a serious criminal offence by a final judgement, signifying that they are a risk for public order.' 2. Article 31(2): 'A serious crime referred to in paragraph 1, point 1, sub-paragraph 2 of this Article is deemed to be a crime which, pursuant to legislation of the Republic of Croatia, is punishable by a term of imprisonment of five years or more.'		1. Zakon o međunarodnoj i privremenoj zaštiti pročišćeni tekst zakona NN 70/15, 127/17 na snazi od 01.01.2018 2. Kazneni zakon, pročišćeni tekst zakona, NN 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, na snazi od 31.07.2021.

Cyprus	The Refugee Law of 2000 6a(1)(d)	1. Status is revoked when the Head of the Asylum Service '...considers that the person concerned constitutes a danger to Cypriot society, having been convicted by a final judgment of a particularly serious crime.'		1. Refugee Law of 2000 (No. 6(l) of 2000) 2. Criminal Code CAP 154
Czech Republic	Act on Asylum Section 17(1)(j)	1. '...the recognised refugee has been legally convicted of a particularly serious crime and therefore poses a threat to national security.' 2. Czech Criminal Code Section 14: "(1) Criminal offenses are divided into misdemeanors and felonies. (2) Misdemeanors are all negligent crimes and those intentional crimes for which the criminal law stipulates a prison sentence with an upper limit of the criminal rate of up to five years. (3) Felonies are all criminal acts that are not misdemeanors under the Criminal Code; especially serious crimes are those intentional crimes for which the criminal law stipulates a prison sentence with an upper limit of the criminal rate of at least ten years." 3. Asylum Act Section 17(1)(j): "Asylum shall be withdrawn if...the recognised refugee has been lawfully convicted of an extremely serious crime and therefore poses a threat to national security"	1. Subsidiary protection ends when, as per Section 17(1)(d), '...a person enjoying subsidiary protection has committed a particularly serious crime.' 2. Czech Criminal Code Article 54(1)(2): 'An exceptional sentence of imprisonment shall be understood as a sentence of imprisonment beyond twenty years up to thirty years and a sentence of imprisonment for life. An exceptional sentence of imprisonment may be imposed only for an especially serious felony, where the Criminal Code allows it. (2) A sentence of imprisonment beyond twenty years up to thirty years may the court impose only if the seriousness of the especially serious felony is very high or if the possibility of reformation of the offender is especially complicated.'	1. Zákon č. 325/1999 Sb., o azylu a o změně zákona č. 283/1991 Sb., o Policii České republiky, ve znění pozdějších předpisů (dále jen 'zákon o azylu') 2. Zákon č. 40/2009 Sb, Zákon trestní zákoník, Aktuální znění 05.01.2023 - 30.06.2023
Estonia	Act on Granting International Protection to Aliens Division 4 Section 49(3)(2)	1. 'The Police and Border Guard Board may revoke refugee status, if...a judgment of conviction in the first degree crime has entered into force with regard to an alien.' 2. Criminal Code Part 1 Chapter 1 Section 4(2): 'A criminal offence in the first degree is an offence the maximum punishment prescribed for which in this Code for a natural person is imprisonment for a term of more than five years or life imprisonment. An offence of a legal person is a criminal offence in the first degree if imprisonment for a		1. Valismaalasele rahvusvahelise kaitse andmise seadus 2. Karistusseadustik, Vastu võetud 06.06.2001, RT I 2001.61.364, jõustumine 01.09.2002

		term of more than five years or life imprisonment is prescribed for the same act as maximum punishment for a natural person.'		
Finland	Aliens Act Chapter 6 Section 108(2)	1. 'When considering a revocation of refugee status or subsidiary protection status, an individual investigation shall be conducted.' 2. Section 87(2) Aliens Act details grounds for refusal of Asylum but no mention is made of PSC. 3. Grounds for deportation as per Section 149(1)(2): 'An alien who has resided in Finland under a residence permit or who has lost Finnish citizenship may be deported if...he or she is found guilty of an offence carrying a maximum sentence of imprisonment for a year or more, or if he or she is found guilty of repeated offences' It is unclear how this interacts with Section 116(1)(2); ostensibly this applies only to aliens who are not recipients of international protection although we felt it was important to include for context.	1. Section 116(1)(2): 'The Finnish Immigration Service...decides on ending and revoking refugee status and subsidiary protection status.' The criteria used to make this determination is proprietary to the Finnish Immigration Service.	1. Ulkomaalaislaki 301/2004 Ajantasainen lainsäädäntö seurattu SDK 1027/2016 saakka Rikoslaki 19.12.1889/39
France	Articles L.511-8 and L. 511-7 Ceseda, as amended by Article 5 Law n. 2018-778 of 10 September 2018	1. Refugee status shall be withdrawn where the refugee '...has been sentenced in France, another EU Member State or third country whose criminal legislation and jurisdictions are recognised by France for a crime related to terrorism or for an offence by 10 years of imprisonment, and represents a serious threat for society.'		1. Code de l'entrée et du séjour des étrangers et du droit d'asile Article L.511-8/L.511-7 tel que modifié par l'article 5 de la loi n. 2018-778 du 10 septembre 2018 2. Code penal, version en vigueur au 14 janvier 2023
Germany	Sec 60(8) German Residence Act	1. 'a foreigner is excluded from refugee recognition if he or she constitutes a danger to the general public because he or she has been sentenced by a final court decision to at least three years' imprisonment' 2. '(8) Subsection (1) does not apply if, for serious reasons, the foreigner is to be regarded as a threat to the security of the Federal Republic of Germany or constitutes a threat to		1. Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet 1) (Aufenthaltsgesetz - AufenthG) Inhaltsübersicht 2. Strafgesetzbuch in der Fassung der Bekanntmachung vom 13. November

		the general public because he or she has been incontestably sentenced to a prison term of at least three years for a crime or a particularly serious offence. The same applies if the foreigner meets the conditions stipulated in section 3 (2) of the Asylum Act. Application of subsection (1) may be waived if the foreigner represents a threat to the general public because he or she has been incontestably sentenced to a prison term or a term of youth custody of at least one year for one or more intentionally committed offences against life, physical integrity, sexual self-determination or property or for resisting enforcement officers if the criminal offence was committed using violence, using a threat of harm to life or limb, or with guile, or if it constitutes an offence pursuant to section 177 of the Criminal Code.'		1998 (BGBl. I S. 3322), das zuletzt durch Artikel 4 des Gesetzes vom 4. Dezember 2022 (BGBl. I S. 2146) geändert worden ist
Greece	Law 4939/2022 Article 13 par 4(b)	1. 'The person constitutes a danger to the community of the country after being convicted by final judgement for a particularly serious crime, including the crimes that are mentioned in article 16 par 1 lit b of the present law.' 2. Article 16 par1 lit B of 4939/2022 defines 'serious crime': '...a felony or a misdemeanour punishable by a prison sentence of at least three (3) years and the following crimes: abduction of minors, serious bodily harm, physical harm to weak persons, rape, insult to sexual dignity, sexual act with or in the presence of minors, abuse of minors, pornography of minors, attraction of minors for sexual reasons, pimping, sexual intercourse with a minor for payment, robbery and extortion.'		1. ΝΟΜΟΣ ΥΠ' ΑΡΙΘΜ. 4939 ΦΕΚ Α 111/10.6.2022 2. ΝΟΜΟΣ 4619/2019 Κύρωση του Ποινικού Κώδικα
Hungary	Asylum Act Chapter 3 Section 11(3)	1. 'The refugee authority shall revoke the recognition as a refugee if a court with a final and absolute decision sentences the refugee for having committed a crime which is according to law punishable by five years or longer term imprisonment.'		1. 2007. évi LXXX. Törvény a Menedékjogró 2. 2012. évi C. törvény a Büntető Törvénykönyvről

Italy	Law 251/2007 and Law 113/2018	1. Conviction at first instance of the following crimes determined to define a 'socially dangerous' person leads to status suspension/expulsion: 'violence or threat to a public official; serious personal injury; female genital mutilation; serious personal injury to a public official during sporting events; theft if the person wears weapons or narcotics, without using them; home theft; non-aggravated drug offenses'.		1. Decreto Legge 4 ottobre 2018, n. 113, convertito con modificazioni dalla Legge di 1 dicembre 2018, n. 132 2. Codice penale 2022 Aggiornato al D.L. 25 febbraio 2022, n. 13 e alla Legge 9 marzo 2022, n. 22
Latvia	Asylum Law Chapter 10 Section 56(1)	1. ' Refugee status shall be revoked for a person, if at least one of the following conditions exists...the conditions of Section 45, Paragraph one of this Law apply to such person.' 2. Chapter 7 Section 45(1)(7): 'Refugee status shall not be granted if at least one of the following conditions exists...the person who has been recognised as guilty of committing a particularly serious crime by a court judgement of the Republic of Latvia poses a threat to the society of Latvia.' Criminal Law Chapter 2 Section 7(1): 'Criminal offences shall be divided into criminal violations and crimes according to the nature and harm of the threat to the interests of a person or the society. Crimes shall be divided as follows: less serious crimes, serious crimes and especially serious crimes.' 4. Criminal Law Chapter 2 Section 7(5): 'An especially serious crime is an intentional offence for which the deprivation of liberty for a period exceeding eight years or life imprisonment is provided for in this Law.'		1. Patvērums likums Krimināllikums

Lithuania	Law on the Legal Status of Foreigners IX-2206 Article 90(1)(9)	1. Refugee status granted to a foreigner shall be withdrawn if 'there are serious reasons for considering his stay in the Republic of Lithuania as a threat to national security or he, having been convicted by a final judgment of a grave crime, constitutes a danger to the community'. 2. Criminal Code Article 11 defines 'grave crime' as 'a premeditated crime punishable by a custodial sentence of the maximum duration in excess of ten years.'	1. Law on the Legal Status of Foreigners Article 4(3) leaves the assessment of 'danger to the community' to police or border guard, both of whom have procedural regulations applied for said assessment	1. Lietuvos Respublikos įstatymas dėl užsieniečių teisinės padėties, 2004 m. balandžio 29, Nr. IX-2206, (Su paskutiniais pakeitimais, padarytais 2022 m. sausio 11 d. – Nr. XIV-893) 2. Lietuvos Respublikos baudžiamasis kodeksas
Luxembourg	Law of 18 December 2015 Article 47(4)(b)	1. 'The Minister may revoke the status granted to a refugee: (a) where there are reasonable grounds for considering him to be a threat to the security of the country; (b) when, having been convicted as a last resort for a particularly serious crime, he constitutes a threat to the society of the country.'	1. Rape is 5 to 10 years punishment and considered a 'particularly serious crime', indecent assault without violence is 1 month to 2 years. 2. Tribunal administratif - Arrêt n° 38646 du 26 septembre 2017 - Protection internationale (art. 47 (4), L. 18.12.2015) is a case where a Kosovar refugee committed violent rape after a litany of previous crimes. The rape was declared a particularly serious crime and as such he was regarded as a danger to the community, so while the Article 14(4) QD terms are not explicitly defined they clearly have guidelines	1. A255 Loi du 18 décembre 2015 2. Code pénal version consolidée au 1 novembre 2018

Malta	International Protection Act Article 10(4)(b)	1. 'The International Protection Agency may revoke, end or refuse to renew the status granted to a refugee when... he, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community.' 2. Malta does not use the terminology 'serious crime' or 'particularly serious crime' but the Maltese criminal code does refer to 'aggravated' crimes e.g. if a theft involves the breaking of a lock what would have been basic theft is now aggravated.		1. International Protection Act 2. Kodici Kriminali Biex jemenda u jikkonsolida l-ligijiet penali u lligijiet ta' proċedura kriminali
Netherlands	Aliens Circular	1. Er is sprake van een 'bijzonder ernstig misdrijf' indien aan alle volgende voorwaarden wordt voldaan: • de vreemdeling is bij onherroepelijk rechterlijk vonnis veroordeeld tot een gevangenisstraf, of aan hem is een vrijheidsbenemende maatregel opgelegd; en • de opgelegde straf of maatregel bedraagt in totaal tenminste 10 maanden.		1. Vreemdelingen-circulaire paragraaf C2/10.7.1
Poland	Article 54b Law on Protection	1. 'The cessation procedure is initiated by the Head of the Office for Foreigners ex officio or on other authorities' demand. 2. 'A decision on deprivation of international protection is issued by the Head of the Office for Foreigners and can be appealed to the Refugee Board with suspensive effect. A foreigner should leave Poland within 30 days from the day of the delivery of the Refugee Board's decision on cessation of international protection.'		1. Law on Protection (Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej) 2. Kodeks Karny z dnia 6 czerwca 1997 r. (Dz.U. tłum. gb Nr 88, poz. 553)

Portugal	Asylum Act Chapter 5 Article 41(5)(d)	1. 'The renewal of the right to asylum or subsidiary protection is repealed, suppressed or refused when it is seen that the foreign national or stateless person...has been sentenced by a judgement of the court of last resort for an intentional common law crime punishable with a prison term of more than three years, represents a danger for internal security or for public order.'	1. Article 43(1): 'The member of the government responsible for home affairs is responsible for declaring the loss of the right to international protection, based on a proposal submitted by the SEF national director'	1. Lei n.º 27/2008, de 30 de Junho Concessao de Asilo ou Proteccao Subsidiaria contém as seguintes alterações: - Lei n.º 26/2014, de 05 de Maio 2. Código Penal de 1982 Versao Consolidada Posterior A 1995
Romania	Law no 122/2006 on Asylum in Romania Chapter 1 Article 6 3(a)(b)/4	1. 'Without breaching the provisions of paragraph (2) and without affecting, automatically, the form of protection that one is the beneficiary of, the person who has been recognised as a refugee or who has been granted subsidiary protection can be removed from Romanian territory if: a. There are founded reasons for the person in question to be considered a danger to the security of the Romanian state; or b. The person in question, being convicted of a serious criminal offence by final decision, is to be considered a danger to public order in Romania'. 2. 'In the sense of the present law, a serious criminal offence is considered any crime for which the law requires the punishment to deprivation of liberty with a special maximum sentence of over 5 years.'		1. Legea nr. 122/2006 privind azilul în România 2. Codul penal al României, Legea nr. 286/2009
Slovakia	480 Act on Asylum and Amendment of Some Acts Part 2 Chapter 1 Section 13(5)(a)(b)	1. 'a) the applicant can be reasonably considered a danger to the security of the Slovak Republic; b) the applicant has been convicted of a particularly serious crime and constitutes a danger to the community' Slovak Criminal Code Part 1 Title 2 Division 1 Section 11(3) 'Particularly serious crimes are those intentional criminal offences for which this Act sets out a prison sentence with a lower penalty limit of at least ten years.'		1. Zákon o azyle č. 480/2002 v znení neskorších predpisov 2. Zákon č. 300/2005 Z. z.Trestný zákon

Slovenia	Act on International Protection Article 68(1)	1. 'A refugee's status is revoked if...after a final conviction for a serious crime, represents a danger to the Republic of Slovenia'	1. Criminal Code KZ-1 Chapter 4 Article 49(1)(2): '(1) The perpetrator shall be sentenced for a criminal offence within the limits of the statutory terms provided for such an offence and with respect to the gravity of his offence and his culpability. (2) In fixing the sentence, the court shall consider all circumstances, which have an influence on the grading of the sentence (mitigating and aggravating circumstances), in particular: the degree of the perpetrator's criminal liability; the motives, for which the offence was committed; the intensity of the danger or injury caused to the property protected by law; the circumstances, in which the offence was committed; the perpetrator's past behaviour; his personal and pecuniary circumstances; his conduct after the committing of the offence and especially, whether he recovered the damages caused by the committing of the criminal offence; and other circumstances referring to the personality of the perpetrator.'	1. Zakon o Mednarodni Zasciti ZMZ-1 2. Kazenski Zakonik KZ-1
----------	--	---	--	---

Spain	Law 12/2009 Article 44	1. Revocation of refugee status or subsidiary protection status shall be carried out when: 'any of the exclusion scenarios provided for in Articles 8, 9, 11 and 12 of this Law are met.' 2. Article 9: 'The right of asylum shall be refused [to]...persons who, having been the subject of a firm conviction for a serious crime, constitute a threat to the community.' 3. Spanish Criminal Code Title 1 Chapter 1 Article 13: 'Serious criminal offences are criminal offences that the Law punishes with serious penalties.' 4. Spanish Criminal Code Title 3 Chapter 1 Article 33(1)(2)(3): a 'less serious' penalty would include 'Imprisonment from three months to five years'	1. Article 89(1): Prison sentences exceeding one year handed down to an alien shall be substituted by his deportation from Spanish territory.' It is unclear how this interacts with refugee status. Article 89(4) is specific to EU citizens and states 'Deportation of a citizen of the European Union shall only be carried out when said individual represents a serious threat to public order or public security, taking into account the nature, circumstances and seriousness of the criminal offence committed, his record and personal circumstances.'	1. Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria 2. Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal
Sweden	Aliens Act Chapter 8 Section 11	1. 'An alien who is a refugee and who needs a haven in Sweden may only be expelled if he or she has committed an exceptionally gross offence and it would entail serious danger to public order and security to allow the alien to stay here.' 2. 'Exceptionally gross' is defined contextually by Swedish Criminal Code specific to the offense committed. Example: for assault, gross assault carries a sentence between 1.5-6 years. For exceptionally gross assault, the sentence is between 5-10 years.		1. SFS 2005:716 Utlänningslag 2. SFS 1962:700 Brottsbalken