**CASE LAW STUDY**

Mr Lounani, a Moroccan national, arrived in Europe in 1991 and initially applied for asylum in Germany where his application was rejected. He moved to Belgium in 1997 and lived there illegally. In 2010 he was convicted of membership of the Moroccan Islamic Combatant Group (MICG), an organisation that has been listed by the United Nations Security Council as a terrorist organisation. It appears he occupied a leading role in the MICG over many years and participated in various aspects of its organisation including fund-raising, forging of documents and arranging the travel of individuals to Iraq. Crucially, however, he was never convicted of direct terrorist acts and there appears to be some dispute as to whether the MICG and/or individuals Mr Lounani aided in travelling to Iraq themselves participated directly in terrorist acts.

Mr Lounani subsequently claimed asylum in Belgium on the grounds that, following his conviction for terrorist related offences, he would be persecuted upon return to Morocco. An initial decision excluding him from refugee status on the basis of Article 12(2)(c) of the Qualification directive was overturned on review. That decision was in turn appealed to the Conseil d’Etat which stayed the case and referred a number of questions to the Court of Justice asking essentially if the exclusion clause operated only in relation to terrorist acts as defined in Article 1 of the Framework Decision on Combatting Terrorism (FDCT)[[4]](https://europeanlawblog.eu/2017/03/03/terror-and-exclusion-in-eu-asylum-law-case-c-57314-lounani-grand-chamber-31-january-2017/" \l "_ftn4) or if ancillary acts of participation in terrorist organisation and facilitating the commission of terrorist acts could be considered contrary to the principles and values of the UN as referred to in Articles 12(2)(c) and 12(3)[[5]](https://europeanlawblog.eu/2017/03/03/terror-and-exclusion-in-eu-asylum-law-case-c-57314-lounani-grand-chamber-31-january-2017/" \l "_ftn5) of the Qualification Directive. Finally, if so, the Conseil d’Etat queried if a criminal conviction would automatically lead to the application of the exclusion clause.

The starting point for this issue is the wording of the UN [Refugee Convention](http://www.unhcr.org/uk/3b66c2aa10), known by the EU as the ‘Geneva Convention’, which contains an ‘exclusion’ clause in Article 1.F:

*F. 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.*

Article 12(3) of that Directive reads as follows:

*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*