



**Observatoire ARGA**

**ARGA Atlas**

**INTERNATIONAL PROTECTION IN FRAUD CASES,  
INCLUDING ARTICLE 159 OF THE CRIMINAL CODE OF  
THE RUSSIAN FEDERATION**

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## **Purpose of the document:**

To explain why an allegation of fraud does not in itself exclude international protection, how such cases are assessed through the prism of asylum, non-refoulement, fair trial, and the prohibition of arbitrary detention, in which situations fraud charges may be intertwined with political, corporate, or repressive elements, and why, in cases connected with Article 159 of the Criminal Code of the Russian Federation, defense strategy must be built simultaneously across the criminal, migration, and international legal dimensions. The official wording of Article 159 of the Criminal Code of the Russian Federation defines fraud as the theft of another's property or the acquisition of the right to another's property by means of deception or abuse of trust.

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## **1. EXECUTIVE SUMMARY**

Fraud cases occupy a special place in international protection because, formally, they appear to be ordinary criminal cases concerning property and trust, yet in practice they are often linked to corporate conflicts, debt disputes, redistribution of assets, clashes with state interests, or a broader repressive context. International law does not establish any general rule under which any fraud charge automatically deprives a person of asylum or protection against extradition or removal. On the contrary, international mechanisms require an individualized assessment: what exactly is being alleged, how serious it is, whether the case is genuinely an ordinary criminal matter, whether the accusation is masking a private-law or politically sensitive conflict, and whether there is a real risk after transfer.

This is precisely where the central practical error usually arises. States, and sometimes even defense counsel, fall too easily into binary logic: if the case concerns fraud, then it must be a “non-political”

offense and the question of international protection is nearly closed; or, on the contrary, if the person alleges pressure, then the entire fraud case must immediately be treated as political. International law does not work that way. UNHCR has made clear that Article 1F of the 1951 Convention contains exclusion clauses, including in relation to a serious non-political crime, but those clauses require a separate legal analysis rather than an automatic reaction to the mere label attached to the charge.

Even where refugee status is complicated by possible exclusion clauses, that does not eliminate anti-refoulement guarantees. Article 3 of the Convention against Torture expressly prohibits the expulsion, return, or extradition of a person to a state where there are substantial grounds for believing that the person would be in danger of torture. In EU law, Article 19 of the Charter likewise prohibits removal, expulsion, or extradition to a state where there is a serious risk of the death penalty, torture, or other inhuman or degrading treatment. Consequently, even a serious allegation of fraud does not relieve a state of the obligation to assess the risk after transfer.

The fair trial dimension is equally important. General Comment No. 32 of the Human Rights Committee emphasizes that the right to equality before courts and tribunals and to a fair hearing is a safeguard of the rule of law. In fraud cases, this matters especially because such accusations are often built around the interpretation of contracts, relationships of trust, management decisions, financial flows, and alleged intent. Where investigators or courts use that complexity to replace a civil-law or corporate dispute with a criminal narrative, the issue extends beyond the ordinary classification of the offense and becomes a matter of abuse of criminal qualification.

This report proceeds from the premise that international protection in fraud cases, including cases under Article 159 of the Criminal Code of the Russian Federation, requires a multi-layered analysis. It is necessary to assess simultaneously the formal criminal qualification, possible exclusion issues, the risk of torture, inhuman treatment, or a flagrant denial of justice, the signs of artificial criminalization of a private dispute, and, where relevant, the connection with international search measures, extradition, and migration status. Only such a structure prevents the defense from collapsing either into naive denial of the accusation or into equally naive belief in automatic asylum.

## **2. WHY A FRAUD ACCUSATION DOES NOT SETTLE THE ISSUE OF INTERNATIONAL PROTECTION**

In international law, the title of an offense is not the decisive criterion. For asylum and related protection mechanisms, what matters is not only how the state labels the conduct, but also the factual nature of the case, whether there is a risk of persecution, what consequences await the person after transfer, and whether criminal qualification is being used as a more convenient language for resolving a private, corporate, or politically sensitive conflict. UNHCR makes clear in its guidance on exclusion clauses that the assessment of a serious non-political crime does not stop at the formal heading of the accusation, but requires analysis of the gravity, nature, and context of the alleged conduct.

This is particularly important in fraud cases because they often lie at the border between genuine criminal deception and disputes over contractual interpretation, allocation of risk, non-performance of obligations, corporate trust, or authority within a business structure. International protection is not meant to replace the criminal court or to decide the commercial dispute on the merits. But it is required to examine whether criminal language is being used in such a way that the person loses not only property or reputation, but also access to a fair trial, liberty, and protection against transfer to a dangerous jurisdiction. That is why the label “fraud” cannot function as a universal key to denying protection.

### **3. ARTICLE 159 OF THE CRIMINAL CODE OF THE RUSSIAN FEDERATION AND ITS INTERNATIONAL LEGAL SIGNIFICANCE**

The official text of Article 159 of the Criminal Code of the Russian Federation defines fraud as the theft of another's property or the acquisition of the right to another's property by means of deception or abuse of trust. The wording itself already shows that the provision is closely connected with property relations, trust, representations made between parties, and the evaluation of actual conduct within transactions and other dealings. For that reason, cases under Article 159 often require particularly careful distinction between genuine criminal fraud and disputes which are outwardly described in the language of deception, but in substance concern performance of obligations, control over an asset, or allocation of business risk.

From the standpoint of international law, this does not mean that Article 159 is inherently suspect. It means only that its legal structure requires especially careful contextual evaluation. Where the criminal accusation rests on complex contractual relations, disputed authority, investment decisions, corporate conflict, or one-sided and in absentia construction of an accusatory narrative, international bodies will inevitably look not only at the legal wording of the offense, but also at the fairness of the proceedings, the possibility of defense, and the risk following return or extradition. It is this combination that makes fraud cases particularly sensitive in asylum, non-refoulement, and extradition review.

### **4. ASYLUM, EXCLUSION CLAUSES, AND THE LIMITS OF AUTOMATISM**

The 1951 Convention does not protect every person without exception. UNHCR explains that Article 1F contains exclusion clauses that may deprive a person of the benefits of refugee status, including in connection with a serious non-political crime. At the same time, UNHCR is equally clear that exclusion must be interpreted cautiously and restrictively. The Handbook and Guidelines state that this category does not cover minor crimes and must not be applied mechanically. In other words, international law is deliberately structured so as to prevent the crude formula: "there is a criminal charge, therefore there is no protection."

In fraud cases, this creates a double task for the defense. On the one hand, exclusion issues cannot be ignored, especially where the state will argue that the alleged fraud amounts to a serious non-political crime. On the other hand, the state is not entitled to assume that any fraud allegation automatically triggers exclusion. There must be a genuine analysis of the character of the alleged conduct, its gravity, the degree to which it is substantiated, its context, its relation to human rights concerns, and the overall profile of the prosecution. In cases where the criminal accusation is disputed, instrumentalized, or closely linked to a corporate or political conflict, that evaluation becomes especially important.

In EU law, the same logic is embedded in Regulation (EU) 2024/1347. The Regulation sets out qualification rules for international protection, including rules on exclusion, while at the same time preserving the binding character of non-refoulement. As a result, even where refugee exclusion is in play, the matter does not simply end. It shifts to another legal plane: from refugee status analysis to the question whether the transfer itself is permissible.

## **5. NON-REFOULEMENT AS THE KEY BARRIER TO TRANSFER**

This is the central block in fraud cases. Article 3 of the Convention against Torture expressly prohibits the expulsion, return, or extradition of a person to another state where there are substantial grounds for believing that the person would be in danger of torture. The Committee against Torture has also emphasized that the assessment must be individualized and forward-looking. That means that even where a state considers the accusation serious, transfer remains prohibited if the post-transfer risk is real and substantial.

The same logic operates in European law. Article 19 of the Charter of Fundamental Rights of the European Union expressly prohibits removal, expulsion, or extradition to a state where there is a serious risk of the death penalty, torture, or inhuman or degrading treatment. The current ECtHR Guide on Article 3 likewise confirms that states may not transfer a person to a country where there is a real risk of treatment contrary to Article 3 of the Convention. As a result, in fraud cases the state must examine not only the formal basis of search or extradition, but also detention conditions, the risk of violence, the reality of a fair trial, and the wider context of the prosecution.

The practical consequence is decisive: even where refugee status is complicated by possible exclusion clauses, the prohibition on transfer may remain fully operative. That is why fraud cases cannot be litigated only as “will asylum be granted or not.” They must also be litigated as anti-refoulement cases. Quite often, that is the dimension that ultimately becomes decisive.

## **6. FAIR TRIAL, ARBITRARY DETENTION, AND ABUSE OF CRIMINAL QUALIFICATION**

General Comment No. 32 emphasizes that the right to a fair hearing and equality before courts serves as a safeguard of the rule of law. In fraud cases, this is critical because the accusations are frequently built on complex factual material: contracts, accounting records, managerial powers, relationships of trust, and the interpretation of intent and consequences. In such a context it becomes especially easy to replace analysis of the actual facts with a convenient accusatory construction, and to cover the weakness or contestability of the civil-law core with allegations of “deception” or “abuse of trust.” The greater the complexity, the stricter fair trial guarantees must be.

This is closely connected to arbitrary detention. A fraud charge does not by itself make detention arbitrary, but international standards do not permit arrest and pre-trial detention to be used as leverage where the accusation is disputed, the defense is restricted, and the procedural guarantees are weak. In the context of international protection, this is particularly important: if a fraud case is accompanied by indications of in absentia proceedings, lack of effective defense, pressure on lawyers, or the use of detention as a coercive tool, the matter moves beyond the simple existence of a criminal charge and becomes a question of rights-based risk assessment.

## **7. THE POLITICAL, CORPORATE, AND QUASI-PRIVATE-LAW CONTEXT OF FRAUD CASES**

Fraud cases are particularly convenient for instrumentalization precisely because, on the surface, an accusation of fraud sounds “ordinary” and “non-political.” In practice, however, it may serve very

different outside purposes: redistribution of assets, pressure in a corporate conflict, exclusion from business, suppression of a public position, or neutralization of an opponent under criminal form. International mechanisms insist on examining context for exactly that reason. If criminal proceedings for fraud arise after a rupture in corporate relations, a conflict involving state-linked interests, politically sensitive activity, or an attempt by the person to defend property rights, the defense must show not only the weakness of the accusation, but also the external function served by that accusation.

This does not mean that every case under Article 159 should automatically be described as political. It means that international protection review must be capable of seeing when an apparently ordinary criminal form conceals a different kind of conflict in substance. That is what mature legal assessment looks like. Any other approach would be far too convenient for states: call the dispute fraud and declare the international conversation over. Fortunately, international law occasionally interferes with that sort of lazy fantasy.

## **8. A PRACTICAL MODEL OF DEFENSE**

A strong defense in fraud cases must be constructed across at least four dimensions. The first is the criminal-law dimension: deconstruction of the factual theory of the accusation, exposure of its contractual or corporate core, the weakness of individualization, evidentiary problems, and defects in fair trial. The second is the asylum and qualification dimension: analysis of whether there are grounds for international protection and whether exclusion clauses may present serious obstacles. The third is the anti-refoulement dimension: separate proof of post-transfer risk under the Convention against Torture, the ECHR, and EU law. The fourth is the extradition and migration dimension: work on the risk of international search, detention, and removal before the substance of the case is fully examined.

The key mistake of the defense is to try to win such a case on only one line. If one argues only innocence, one may lose the transfer issue before the facts are ever properly examined. If one argues only asylum, one may underestimate the exclusion problem. If one argues only non-refoulement, one may lose the arguments about the corporate or political context. That is why fraud cases require a layered strategy: criminal deconstruction, international protection, procedural urgency, and, where necessary, interim logic such as Rule 39 or analogous urgent measures where the risk of transfer is imminent.

## **9. CONCLUSION**

International protection in fraud cases, including those under Article 159 of the Criminal Code of the Russian Federation, cannot be built on the primitive formula “economic charge equals no protection.” International law requires a much more complex assessment. Exclusion issues must be examined separately, non-refoulement separately, fair trial separately, and the context of possible instrumentalization separately. Only such a multi-layered model corresponds to the real structure of fraud cases, which often combine property, corporate, criminal, and international elements at the same time.

The main practical conclusion is brutally straightforward: a fraud accusation does not relieve the state of its duty to think. Not about torture risk, not about fairness of proceedings, and not about the real nature of the conflict. And if the state attempts to use the word “fraud” as a universal indulgence from its international obligations, the task of the defense is precisely to dismantle that intellectual laziness into legal elements.

## APPENDIX A. TERMINOLOGY

### Article 159 of the Criminal Code of the Russian Federation

A provision of Russian criminal law defining fraud as the theft of another's property or the acquisition of the right to another's property by means of deception or abuse of trust.

### Exclusion clauses

The exclusion provisions of Article 1F of the 1951 Convention, which in certain circumstances deprive a person of the benefits of refugee status, including in connection with a serious non-political crime.

### Non-refoulement

The prohibition of expulsion, return, or extradition of a person to a place where there is a real risk of torture, persecution, or another grave violation of fundamental rights.

### Fair trial

The set of guarantees of equality before courts and the right to a fair hearing under Article 14 ICCPR, as developed in General Comment No. 32.

### Rule 39 interim measures

Urgent interim measures of the European Court of Human Rights used where there is a risk of irreparable harm before the case is examined on the merits.

## APPENDIX B. MATRIX FOR ASSESSING INTERNATIONAL PROTECTION IN FRAUD CASES

Criterion	How it appears	Legal significance
Formal fraud qualification	The case is framed as fraud, including by reference to Article 159 of the Criminal Code of the Russian Federation	Does not automatically exclude international protection
Serious non-political crime issue	The state relies on refugee-status exclusion	Requires a separate and strict Article 1F analysis
Risk of torture or inhuman treatment	Transfer would expose the person to danger under CAT / Article 3 / Article 19 Charter	Blocks extradition, expulsion, or return
Fair trial defect	In absentia proceedings, weak defense, inability to contest the case	Strengthens anti-refoulement and protection arguments
Corporate or private-law context	The case is linked to assets, debt, control, or a business dispute	Increases the likelihood of abuse of criminal qualification
Imminent transfer risk	There is a risk of extradition, removal, or detention	Requires urgent procedural measures

These criteria follow from the combined logic of the Refugee Convention, CAT Article 3, Article 19 of the Charter, Article 3 ECHR practice, and fair trial standards under the ICCPR.

# OFFICIAL SOURCES

1. **Criminal Code of the Russian Federation, Article 159** - official definition of fraud.
2. **UNHCR, Note on the Exclusion Clauses** - official approach to Article 1F and serious non-political crime.
3. **UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status** - guidance on exclusion clauses and the limits of their application.
4. **Convention against Torture, Article 3** - prohibition on expelling, returning, or extraditing where there is a torture risk.
5. **CAT General Comment on Article 3** - standard of individualized risk assessment.
6. **EU Charter, Article 19** - prohibition on removal, expulsion, or extradition where there is a serious risk of the death penalty, torture, or inhuman treatment.
7. **Regulation (EU) 2024/1347** - qualification framework for international protection and the structure of exclusion and non-refoulement.
8. **Regulation (EU) 2024/1348** - EU procedural framework for international protection.
9. **Human Rights Committee, General Comment No. 32** - fair trial and equality before courts and tribunals.
10. **OHCHR, Right to a Fair Trial and Due Process** - practical guidance on fair hearing and defense rights.
11. **ECtHR Guide on Article 3** - prohibition on transfer where there is a real risk of prohibited treatment.
12. **ECtHR Rule 39 / Interim Measures materials** - urgent protection against irreparable harm before transfer.