Section 3
Requirements for a decision by the determining authority

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Section 3
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Introduction

The Charter of Fundamental Rights of the European Union sets out every person's right to good administration, including the "*obligation of the administration to give reasons for its decisions*".[1] This is relevant and particularly important with regard to decisions on international protection taken by state determining authorities in the asylum procedure.

The APD sets out explicitly in Article 9 (1) the requirement that all decisions on applications for asylum are given in writing. However, the APD only requires that the reasons, in fact and law, be stated in the decision "*where the application is rejected,*"[2] and not even then if the applicant is granted a status which offers the same rights and benefits under national and EU law as refugee status under the Qualification Directive.[3]

The APD does not define the meaning of 'rejected'. UNHCR notes that an application may be rejected on its merits following substantiation of the application by the applicant and examination of the application by the determining authority. However, in accordance with Articles 19 and 20 APD, a Member State is also permitted to reject an application on the grounds of explicit or implicit withdrawal, or abandonment of an application, notwithstanding the fact that the application was not substantiated by the applicant. Elsewhere in this report, UNHCR has expressed its view that, in the latter circumstance, a decision to discontinue the examination should be taken rather than a decision to reject.[4] Nevertheless, UNHCR's research revealed that practice diverges across the 12 Member States of focus with some Member States taking a decision to discontinue and others taking a decision to reject depending on the circumstances. It is also unclear from the terminology whether Article 9 (2) APD applies to decisions of inadmissibility taken in accordance with Article 25 (2) APD. A decision to consider an application inadmissible, and therefore not examine whether the applicant qualifies for refugee status or subsidiary protection status, is not a 'rejection' of the application as such. Nevertheless, it is a negative decision which requires that reasons be stated and should be interpreted as falling within the scope of Article 9 (2) APD.

When an application is rejected, both Articles 9 (2) and 10 (1) (e) APD also require that the written decision provides information on how to challenge the negative decision.

[1] Article 41 (2) of the Charter of Fundamental Rights of the European Union (2000/C 364/01).
[2] Article 9 (2) APD.
[3] Although in these latter cases, the reasons for not granting refugee status must be stated in the applicant's file to which the applicant must have access upon request.
[4] See section 7 on the withdrawal or abandonment of applications.

Regrettably, this important guarantee is however undermined by another provision, which provides an exception.[5]

Further requirements regarding the notification of the decision to the applicant are set out in Article 10 of the APD on guarantees for applicants for asylum.

UNHCR cautions against determining authorities prioritising the desire for expediency over the need for sound and well-reasoned written decisions. UNHCR has consistently expressed its view that good quality decisions in the first instance lend greater credibility to the fairness and efficiency of the asylum system overall, including the appeals system. With regard to negative decisions, the applicant needs to know the reasons in fact and law so that s/he can take an informed decision as to whether to exercise any right of appeal; and a well-reasoned decision will inform the specific grounds upon which any eventual appeal should be based. A sound and well-reasoned first instance decision will also help to ensure that any appeal can be decided efficiently without infringing principles of due process or fairness. With regard to positive decisions, a reasoned decision would also assist with possible decision-making at a later stage concerning any application to renew the validity of a residence permit or any potential application of the cessation clauses. Moreover, in relation to both positive and negative decisions, well-reasoned decisions contribute towards the transparency of decision-making and efforts to monitor and improve quality and consistency both nationally and across the European Union. This is crucial as the European Union strives to establish a Common European Asylum System.

In this research project, UNHCR reviewed the status of transposition of Article 9 in the national legislation, regulations and administrative provisions of the Member States of focus. Moreover, UNHCR audited 1,155 decisions across the 12 Member States of focus in order to assess the structure and content of the decisions.[6] UNHCR also found that in some Member States, the reasons for the decision may be stated only very briefly in the decision notified to applicants, but greater detail on the reasons for the decision may be contained in a separate document in the case file. UNHCR found that such documents were not automatically sent to applicants or, if any, to their legal representatives with the notified decision. In some States, however, a request to access this information could be made following notification of the decision. For the purposes of this research,

[5] Article 9 (2) APD provides an exception stating that "*Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with this information at an earlier stage either in writing or by electronic means accessible to the applicant*".

[6] These decisions related to applications lodged after 1 December 2007 (with the exception of 15 decisions audited in Bulgaria, 35 decisions audited in Greece, and 4 decisions audited in Spain) and included both positive and negative decisions in accordance with specific selection criteria. Details on the breakdown by Member State and the selection criteria employed, including the countries of origin to which the decisions related, are set out in the section on methodology (Annex to Part 2, on the CD-ROM containing this report).

UNHCR also viewed such documents, where available, in relation to the decisions audited. This audit was supplemented by reviews of guidelines and templates for decisions where these existed in the Member States surveyed; and interviews with stakeholders in each Member State of focus. UNHCR also reviewed the status of transposition and implementation of Article 10 (1) (d) and (e) APD regarding notification of the decision. UNHCR's findings are set out in the pages which follow.

Provision of decisions in writing

Article 9 (1) APD provides that "*Member States shall ensure that decisions on applications for asylum are given in writing*".

All Member States of focus in this research have transposed or reflected Article 9 (1) APD in national legislation, regulations or administrative provisions: namely Bulgaria[7], the Czech Republic[8], Finland[9], France[10], Germany[11], Italy[12], the Netherlands[13], Slovenia[14], Spain[15] and the United Kingdom.[16] The requirement is implicit, rather than explicit, in the legislation of Belgium[17] and Greece.[18]

[7] Decisions are individual administrative acts in the meaning of Article 21 of the Administrative Procedures Code. The valid form for such is the written form regardless of their nature, if no explicit provision *a contrario* exists (Article 59 of the Administrative Procedure Code). No explicit provision *a contrario* exists.

[8] Section 67 (2) CAP states that "*Decisions shall be issued in writing*."

[9] General rules regarding the nature of administrative decisions, including decisions taken in the asylum procedure, are to be found in the *Hallintolaki* (Act on Administrative Conduct 434/2003, as in force 23.4.2009). Guiding norms are laid down in sections 43 to 49 of this Act. Section 43 states that "*an administrative decision must be given in writing. The decision can be given orally, if this is strictly necessary because of the urgency of the matter. An oral decision must immediately also be given in writing, together with guidelines for corrections and appeal*."

[10] Article R. 723-2 *Ceseda* which states that "*The applicant is informed of the decision made by the Director General of the OFPRA by registered letter*" and Article L.723-3-1 *Ceseda* which states "*The OFPRA sends the asylum applicant a written notification of its decision*."

[11] Section 31 (1) Sentence 1 APA: "*The decision of the Federal Office shall be issued in writing*". Section 39 APA also states "*A written administrative act shall be accompanied by a statement of grounds. This statement of grounds must contain the chief material and legal grounds that led the authority to take its decision. The grounds given in connection with discretionary decisions should also contain the points of view which the authority considered while exercising its powers of discretion.*"

[12] Article 9 of the d.lgs. 25/2008 which states that "*decisions on applications for international protection are given in writing*."

[13] Article 42 Aliens Act in conjunction with Article 1:3 General Administrative Law Act which states that a decision means a written decision of an administrative authority constituting a public law act.

[14] Article 8 (basic procedural guarantee), indent 4 of the IPA: ''*In the procedure under this Act, each applicant shall enjoy the following guarantees: s/he shall receive a decision in writing from the competent authority within the time limit stipulated by this Act, in a language s/he understands.*" Article 210 (4) AGAP stipulates that every decision shall be issued in writing, even if it was given orally.

[15] Article 55(1) APL: ''*The administrative acts shall be in writing unless its nature requires or allows a different and more adequate way of expression and proof.*''

[16] Paragraph 333 of the Immigration Rules HC395: "*Written notice of decisions on applications for asylum shall be given in reasonable time. Where the applicant is legally represented, notice may instead be given to the representative. Where the applicant has no legal representative and free legal assistance is not*

UNHCR's audit of case files confirmed that decisions in writing were given on both positive and negative decisions in all the Member States surveyed.

The requirement to state reasons in fact and law for the decision

Article 9 (2) APD states:

"*Member states shall also ensure that, where an application is rejected, the reasons in fact and in law are stated in the decision …*".

A majority of the Member States surveyed have legislative or other provisions that transpose or reflect the requirement under Article 9 (2) APD to state reasons in fact and law in, at least, negative decisions, namely: Belgium,[19] Bulgaria,[20] the Czech Republic,[21] France,[22] Germany,[23] Greece,[24] Italy,[25] Slovenia,[26] Spain[27] and the United Kingdom.[28]

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available, he shall be informed of the decision on the application for asylum and, if the application is rejected, how to challenge the decision, in a language that he may reasonably be supposed to understand.''

[17]The Law of 11 April 1994 concerning the publicity of administrative acts and Article 32 of the Belgian Constitution gives persons the right to receive a copy of an administrative document in which they have a personal interest.

[18] Article 7 (3) of PD 90/2008 is now replaced by Article 2 PD 81/09 which states that "*where the application is rejected, the reasons in fact and law shall be stated in the decision*." The legislation is not explicit with regard to the written nature of the decision. Note that only paragraph 3 of Article 7 PD 90/2008 has been replaced by Article 2 of PD 81/09. Paragraphs 1 and 2 of Article 7 remain valid. Article 7 (1) PD 90/2008 is implicit with regard to the written nature of the decision since it states that "*If the precise address of the applicant is unknown, the document (of the decision) shall be sent to the municipality of the location of the authority where the applicant first applied for asylum*."

[19] Administrative acts by administrations within the meaning of Article 1 of the Law of 29 July 1991 concerning the formal motivation of administrative acts should be distinctively motivated in accordance with Article 2 of the Law of 29 July 1991. The motivation should state the considerations in fact and law upon which the decision is based and the motivation should to be sufficient (Article 3 of the Law of 29 July 1991). The Aliens Act also specifically refers to the obligation of the CGRA to motivate its decision. According to Article 57/6, § 2, as well as Article 62 of the Aliens Act the decision of the CGRA should be motivated with reference to the individual circumstances of the case.

[20] The general provision of Article 59 of the Administrative Procedure places an obligation on the deciding administrative body to include the grounds for the individual act in fact and in law. This formal requirement is formally satisfied as verified by the case files audit.

[21] Section 68 (3) CAP: "*The reasoning shall contain reasons for a statement or statements in the decision, grounds for the issuance thereof, considerations directing the administrative body in its evaluation and its interpretation of legal regulations, and information on how the administrative body handled the proposals and objections of participants and their response to the grounds for the decision."*

[22] Article L. 723-3-1 *Ceseda* states that "*negative decisions should be reasoned in fact and in law*".

[23] Even though the respective legal provision (Section 31 (1) 2nd Sentence APA) does not distinguish between negative (rejected) and positive decisions, in practice, only rejections are motivated. However, this is not based on the requirements of the Directive, but the general rules of administrative procedure which provide that: *''No statement of grounds is required:[…] when the authority is granting an application or is acting upon a declaration and the administrative act does not infringe upon the rights of another; [….].''* (Section 39 (2) No. 1 Administrative Procedure Act). Since the Federal Commissioner for

The relevant legislation in Finland[29] and the Netherlands[30] does not explicitly require that the reasons be stated in fact and in law, but instead more generally requires that reasons be stated.

While the Member States of focus in this research have transposed or reflected Article 9 (2) APD in domestic law, the structure and content of decisions in practice varies markedly. UNHCR considers that in a number of Member States of focus, the requirements of Article 9 (2) APD have not been implemented effectively in practice. There are wide divergences in the extent to which decisions set out the material facts of the claim; reference the evidence assessed and the standard of proof applied; assess the credibility of the material facts; and apply the criteria for international protection under

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Asylum Affairs has been abolished, an institution having the power to appeal against decisions granting protection, such an appeal against a positive decision is no longer foreseen by German law. The Internal Guidelines for the Asylum Procedure [under: "Decision" 1.1b) as well as the handbook (Handbook for Adjudicators "Decision", 2.1.2, page 7) explicitly refer to this fact without mentioning the APD. Neither Article 9 (2) Sentence 2 to 4 APD nor Article 9 (3) APD have been transposed into German law.

[24] Article 7 (3) PD 90/2008: ''*Where the application is rejected, the reasons, in fact and in law, shall be stated in the decision.''*

[25] Article 9 of the d.lgs. 25/2008: *"The decisions on applications for international protection are given in writing. The decision which rejects an application contains the reasons in facts and in law and information on how to appeal a negative decision".*

[26] Article 214(1) of the AGAP:

''(1) Reasoning of the decision contains:

1. Explanation of requests of all parties and their allegations on facts;
2. Ascertained actual situation and relevant evidence;
3. Reasons crucial for assessment of every evidence;
4. Citation of relevant legislation supporting the decision;
5. In connection with ascertained actual situation - reasons, which lead to the decision, and
6. Reasons for which certain request of the party was not granted''.

[27] Article 54 (1) APL requires that "*The reasons in fact and law for the adoption of administrative acts shall always be briefly stated*.''. Article 89 (3) states that the "*resolution shall include the decision adopted, stating the reasons in fact and law in the cases foreseen in article 54*." Article 20 (1) (c) ALR regarding the admissibility procedure states that "*The inadmissibility decision shall state the reasons in fact and law and be individualized*.''

[28] Paragraph 336 of the Immigration Rules HC 395 state that "*Where an application for asylum is refused, the reasons in fact and law shall be stated in the decision and information provided in writing on how to challenge the decision*."

[29] Section 44 (3) of the Act on Administrative Conduct 434/2004 requires that a written decision includes information about "*the motivations for the decision and individualised information about what the individuals are entitled or obliged, or how the matter has otherwise been decided ..."* but this generic guiding norm does not explicitly distinguish between reasons in law and fact.

[30] According to Article 3:46 General Administrative Law Act, a decision should be based on proper reasons. According to Article 3:47 General Administrative Law Act, the reasons should be stated when the decision is notified and, if possible, the statutory regulation on which the decision is based shall be stated at that same time. According to the table of correspondence, Article 9(2) APD is transposed in Article 3:48 General Administrative Law Act. According to this Article the reasons do not have to be stated if it can reasonably be assumed that there is no need for this. If, however, an interested party asks within a reasonable period of time to be informed of the reasons, they shall be communicated to him as quickly as possible.

the Qualification Directive to accepted facts. There are also different or, in some cases, a lack of, systems in place to monitor the quality of decisions.

Motivation of negative decisions in practice

Beyond requiring stated reasons in fact and in law for the negative decision, Article 9 (2) APD does not prescribe further requirements regarding the reasoning for the decision. However, Article 8 (2) (a) APD does require that "*decisions are taken individually, objectively and impartially*" and, therefore, the written decision should be a reflection of this requirement and the decision should be reasoned in fact and law with reference to the individual facts and circumstances of the applicant.

With regard to negative decisions, the written decision should permit the applicant to know for what specific reasons, and on what specific grounds, his/her application for international protection has been denied.

Therefore, with regard to negative decisions on the merits, it is UNHCR's view that the written decision should state the material facts of the application. Moreover, the decision should set out sufficient details to permit the applicant to know the following:

- The evidence which was taken into consideration during the examination of the application and decision-making, including both evidence gathered independently by the determining authority and oral and documentary evidence provided by the applicant;

- Which aspects of the evidence were accepted and which evidence was considered to be insufficient, or was not accepted by the determining authority, and an explanation of why the evidence was rejected; and

- The reason why the accepted evidence does not make the applicant eligible for refugee status/subsidiary protection in accordance with the criteria in the Qualification Directive.

As such, a well-drafted negative decision will[31]:

- Correctly identify the material facts of the application.
- State all the evidence assessed and demonstrate appropriate consideration of all the evidence adduced in support of the application.

[31] "*Key criteria for assessing the quality of asylum decisions, jointly agreed UKBA/UNHCR minimum standards for a system of quality assurance in the UK first-instance asylum decision-making process*", December 2008, annexed to UNHCR, *'Quality Initiative Project: Sixth Report to the Minister'* (April 2009) available at: http://ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcrreports/

- Demonstrate the application of the correct burden of proof i.e. it does not indicate that unreasonable expectations were placed on the applicant to 'prove' his or her claim, and shows an awareness of the shared duty to ascertain and evaluate the facts of the application.[32]
- State and reference the objective country information used in the assessment of the application and apply that information appropriately to support conclusions reached.
- Assess the credibility of the material facts using appropriate methodology, and state clear conclusions as to the credibility of each material fact.
- State the standard of proof applied, and apply the benefit of the doubt appropriately.[33]
- Demonstrate the correct interpretation and application of the relevant legal criteria for qualification for refugee and, if relevant, subsidiary protection status to the accepted facts.
- Demonstrate that if any standard paragraphs or wording are used, these are relevant and appropriately tailored to the individual facts.

A decision which fulfils the above requirements will permit the applicant to take an informed decision as to whether to exercise any right of appeal and will highlight the specific grounds upon which any eventual appeal should be based.

In order to seek to evaluate implementation of Article 9 (2) APD, the methodology for this research included a sample audit of decisions made in all the Member States surveyed.[34] UNHCR audited a sample of 788 negative decisions i.e. granted neither refugee nor subsidiary protection status.[35] UNHCR recognises that such a relatively small sample does not provide a comprehensive empirical basis on which to evaluate and compare state practice. However, information obtained through the audit of decisions does provide useful indications of an individual Member State's practice.

[32] Paragraph 196 of UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating the Status of Refugees, revised 1992.

[33] Paragraphs 196 to 204 of UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating the Status of Refugees, revised 1992.

[34] In those Member States where more detailed reasoning for a decision is set out in a separate document in the case file, these were also reviewed.

[35] Belgium: 56 (included unfounded decisions and technical refusals), Bulgaria: 32 (9 of which taken in the accelerated 'filter' procedure. Excluded decisions to suspend or discontinue the procedure.), the Czech Republic: 60 (included rejected, manifestly unfounded, inadmissible and discontinued), Finland: 52, France: 45; Germany: 60; Greece: 201; Italy: 39 (excluded inadmissibility decisions), Netherlands: 36 (excluding 17 Dublin decisions reviewed), Slovenia: 58 (51 decisions in the accelerated procedure and 7 in the regular procedure), Spain: 107 (excluded 7 explicit and implicit withdrawal decisions which were reviewed), the UK: 42 (3 refused for administrative non-compliance, 6 refused as unfounded and 33 refused after full consideration). Note that, in Spain, 107 negative decisions were audited. Of these, 91 were negative decisions taken in the admissibility procedure. This is due to the fact that at the time of UNHCR's research, an admissibility procedure was conducted in which decisions on the merits of an application were taken in the admissibility procedure as well as decisions on admissibility. The other 16 negative decisions audited were taken in the regular procedure.

Furthermore, the fact that in some states, practically all decisions exhibited the same deficiencies, justifiably raises cause for concern. Moreover, in addition to information gathered through the audit of decisions and case files, UNHCR also evaluated other relevant sources such as internal and administrative guidelines, as well as decision templates and checklists where these existed.

The audit consisted of a detailed review of the structure and content of decisions in each country. However, the remit of the audit did not permit an in-depth analysis of whether the law had been interpreted and applied correctly to the facts in all cases.

Overall, information obtained through the audit of decisions causes UNHCR to question whether several states are actually meeting in practice the requirement to provide individualised reasons in fact and law following the refusal of an asylum application. The following paragraphs set out some of the specific concerns identified relating to practice in particular Member States.

An audit of 202 case files and decisions in Greece found that all but one[36] of the first instance decisions reviewed were negative, and contained a standard phraseology (not exceeding three paragraphs). The 201 negative decisions did not set out a summary of the material facts: did not reference any relevant country of origin information or other oral or documentary evidence considered; did not specify what aspects of any evidence gathered was considered to be credible or lack credibility; and did not apply any legal reasoning with regard to any facts. There was no other information in the case files which provided any evidence of the application of legal reasoning to the facts; and the facts, as stated in the application form, were severely limited.[37] The only difference between one decision and another was the name of the applicant, the named country of origin and the stated time limit for lodging an appeal. All 201 audited negative decisions stated:

"*We decide that the application for international protection is rejected as manifestly unfounded and X[38] is not recognised as a refugee nor as eligible for subsidiary protection status because the subjective and objective elements of the well-founded fear of persecution, necessary elements for the recognition of the refugee status according to Article 1 A 2 of the 1951 Geneva Convention, Article 17 of PD 90/2008 in combination with article 15 of PD 96/2008 are not met.*

In particular, from the presented elements, it cannot be justified that the applicant suffered or will suffer any individual persecution by the authorities of his country for reasons of tribe, religion, ethnic group, social group or political opinion. The applicant abandoned her/his country in order to find a job and improve his living

[36] The exception being case CF11RQ1.

[37] See UNHCR's concerns regarding interviews conducted in ADA in Greece in section 6 on interviews and interview reports.

[38] Name and nationality of the asylum applicant.

conditions.[39] *The applicant neither showed nor handed in any national passport or any other travel documents that could prove or certify her/his identity.*

Against this decision the applicant has the right to appeal before AB within thirty (30)[40] *days after the day of serving of the decision. In case of not appealing in the above time frame, the decision shall be final.''.*

Decisions audited in other states revealed similar deficiencies to varying degrees, although they can be differentiated from the situation in Greece, as fuller information and reasoning was nonetheless contained in the case file. However, UNHCR remains concerned that if full reasons in fact and law are not included in written decisions or are not attached to the decision, then this can frustrate the fairness and efficiency of the appeal process. It also negatively impacts on the transparency and accountability of decision-making and related efforts to improve this.

In France, on the basis of the decisions sampled, UNHCR observed that the written decisions notified to applicants were generally very short and, on average, only nine lines were dedicated to providing reasoning for the decision. Specific problems observed with regard to the written decisions included that while the decisions contained a summary of facts, these were not always stated in an individual or detailed manner, and often did not refer to the specific harm feared by the applicant upon return but simply stated that the applicant "*fears for his/her security*". It was also noted that sometimes the summary of facts in the decision omitted a specific fear of harm that had been stated by the applicant.[41] Cases were also apparent where decisions failed to mention all the documents provided by the applicant to support his/her claim,[42] and when they did, documents often had their authenticity denied without any accompanying explanation. Moreover, with regard to the reasons given for the negative decision, 33 of the 45 audited negative decisions simply stated that the application was rejected because the "*facts were not established*" ("*faits non établis*"). As such, it was not possible to deduce from the content of the decision which facts were established and which were not established, and why they were considered not established. For example, it was not clear in some cases whether an adverse inference had been drawn regarding an issue on which the applicant provided evidence; yet the issue was never

[39] In some decisions this phrase is used: "*It appears that the applicant abandoned her/his country in order to find a job and improve his living conditions.''*

[40] Or ten (10) days, depends on the procedure.

[41] E.g., in case file 3A (IRQ), the decision does not mention the fear of kidnapping of his daughter claimed by the applicant. In another case file, the decision mentions the applicant's allegations regarding a property dispute, but not the political threats claimed by the applicant.

[42] E.g., case file 19R (AFG), case file 8R (GEO), case file 44R (GEO), case file 54R (KOS), case file 43R (KOS), case file 35R (KOS), case file 16R (SLK), case file 20R (RUS), case file 60R (RUS). Furthermore, in the case file 35R (KOS), the decision states "*the applicant who claims to be a national from Kosovo*". This wording seems to imply that the protection officer doubts the nationality of the applicant, although an ID is produced and no comment is made about its authenticity.

canvassed in the personal interview, if any. As such, an applicant would not know, from the decision alone, that this issue is relevant, and requires addressing on appeal.

Instead, in France, the legal reasoning was often more developed in parts IX and X of the interview form (which is part of the case file of the determining authority, OFPRA). This part of the interview report is not systematically transmitted to the applicant with the decision.[43] Instead, the applicant has to request access to the whole interview report in order to access this information. Applicants are not informed of their right, which derives from common administrative law, to request the whole interview report. Generally, only lawyers and NGOs providing legal assistance are aware of this right. Moreover, UNHCR's audit of the interview forms revealed that the quality of reasoning was varied. In some cases it was not clear, even from the interview form, which facts were accepted and which were not, and why.

The audited written decisions relating to applications by applicants who are spouses contained very limited reasoning. With regard to the facts, the decisions simply stated "*the applicant's claimed reasons for fleeing are the same as her husband's*", without stating what those reasons were. And the reason for the negative decision was stated as "*her case is indissociable from that of her husband, whose application has been rejected today*.'' The information contained in the interview form was copied and pasted from the interview form of the husband and did not always correspond to the content of the spouse's interview.[44] Most of the written decisions on subsequent applications which were audited were poorly and stereotypically reasoned. Most of the decisions stated that the elements submitted by the applicant did not enable the establishment "*of the facts''*[45] or "*of the fear of persecution or serious threats''*[46] or that the "*new elements cannot be considered as founded.''*[47] No further reasoning was provided.[48]

In Italy, the audit of decisions indicated that decisions were generally very brief and made a short reference, though insufficient, to the individual facts of the application. In some cases, there was no specific reference to the individual facts. One example of an audited decision stated:

[43] The whole report is contained in the case file which is transmitted to the CNDA when the decision is challenged before the court.
[44] Case file 38R, case file 45R.
[45] E.g., case file 52R (AFG), case file 49R (SLK).
[46] E.g., case file 58R (DRC), case file 50R (PAK).
[47] case file 59R (SLK).
[48] It is a concern that all eight case files which were audited concerning subsequent applications were examined in the accelerated procedure and the applicants were not invited to a personal interview with no reason for the omission of the personal interview recorded in the case file. For further information see section 14 on subsequent applications.

"*The applicant does not submit arguments which can confirm the relevance of his/her individual position in the context of the general situation reported. The applicant reports circumstances which give rise to a doubt with regard to the credibility of his/her statements during the personal interview. The circumstances reported by the applicant cannot be considered sufficient to support and justify a fear of persecution under Article 1A of the 1951 Geneva Convention. There is no evidence that the applicant has suffered or that s/he risks suffering serious harm if returned to the country of origin."* And if subsidiary protection was also denied: "*There is no need for complementary forms of protection with respect to the specific personal situation of the applicant*."

From the written decision alone, it was not possible to ascertain whether the relevant criteria of the Qualification Directive with regard to refugee status and subsidiary protection status had been applied to the facts and the applicant could not know from the decision on what specific ground(s) the application had been rejected. Where the decision simply made a generic or brief reference to a lack of credibility, it could not be deduced from the decision why or which evidence submitted lacked credibility.[49] All case files contain a form, ''*proposal from the rapporteur*''[50] which indicates the reasons for the decision although these reasons are often not developed adequately. Any dissenting opinion by a member of the interview panel would be recorded and motivated in this form. Some CTRPIs also have a separate record of the minutes of the discussion by the panel or a brief assessment form. The contents of the case file, including the minutes of the panel discussion, are accessible to the applicant's legal representative upon request.

In Spain, none of the 113 negative decisions audited made any reference to the facts presented by the applicant on which the asylum claim was based. The legal reasoning provided in the decision relied almost exclusively on legally-specific standard paragraphs and did not apply the law to any facts.[51] Inadmissibility decisions were limited to indicating the ground(s) for inadmissibility which was/were considered as fulfilled, reproducing almost literally the wording of the Asylum Law or the standard modules on which case reports are based. [52] The decisions made no reference to any country of origin information or third country information which could have been taken into account in reaching the decision. Where subsidiary protection status was also denied, the audited decisions simply stated: "*Moreover, no humanitarian reasons and no*

[49] D/04/M/ALG/N, D/05/M/MAR/N, D/06/M/NIG/N, D/09/M/NIG/N, D/18/M/IRQ/N, D/26/M/NIG/N, D/30/M/NIG/N, D/31/M/NIG/N, D/37/M/NIG/N, D/38/F/NIG/N, D/42/F/NIG/N, D/50/M/SRI/N, D/63/M/PAK/N, D/64/M/PAK/N; D/52/M/AFG/N, D/65/M/GUI/N, D/73/F/NIG/N.

[50] The Rapporteur is the person who conducted the interview or the main interviewer when the interview is conducted by the panel collegially.

[51] 107 (inadmissibility and rejection decisions) and 6 (decisions to grant subsidiary protection which did not include reasons for the denial of refugee status).

[52] Note that at the time of UNHCR's research, an examination of the merits of an application was conducted in the 'admissibility' procedure, and applications could be rejected on their merits, on grounds extending beyond the admissibility grounds as provided for in Article 25 of the APD. See section 9 on prioritized and accelerated procedures for further information.

reasons of public interest apply in order to allow stay in Spain under Article 17 (2) of the Asylum Law". The audited case files contained a more detailed report on each case which set out some reasoning for the decision. However, an analysis of these case reports revealed that, particularly with regard to negative decisions in the admissibility procedure, all the requirements for a well-reasoned decision were not satisfied.

In several states (Slovenia, the Czech Republic, Finland, and Spain) the quality of decisions varied depending on the type of procedure in which the application was examined.

Thus, in Slovenia, decisions taken in the regular asylum procedure were found to generally fulfil the requirement to set out reasons in fact and law. However, the vast majority of asylum applications in Slovenia are decided in the accelerated procedure and not the regular procedure.[53] With regard to the accelerated procedure, a serious failure to set out reasons in fact and law was observed in cases certified as manifestly unfounded. The Supreme Court of Slovenia has ruled that in the accelerated procedure, the determining authority need only ascertain facts and circumstances proving the existence of reasons for rejecting an application as manifestly unfounded on grounds defined in Article 55 of the IPA.[54] The audit confirmed that where applications were rejected as manifestly unfounded in the accelerated procedure, the determining authority set out limited facts and copy pasted *verbatim* Article 55 (grounds for rejecting application as manifestly unfounded) and Article 23 (assessment of facts and circumstances) of the IPA, and underlined (or sometimes not) those indents which were considered valid for rejecting the application in question. (See Annex I to this section for typical audited decision with regard to the legal grounds for the decision taken in the accelerated procedure in Slovenia). The written decisions, therefore, contained a series of legally-specific paragraphs, with no link made between the facts as briefly set out and the legal provisions applied to deny status.

Similar inconsistency was also observed in the Czech Republic, despite legislation requiring the same standard of reasoning in the regular procedure and other procedures (border etc). Decisions taken in the regular procedure generally provided reasons in fact and law.[55] However, very little information was apparent in inadmissibility decisions (including subsequent applications), making it impossible to determine if an individualised decision had in fact been taken. In particular, a significant number of applications deemed to be manifestly unfounded did not clearly demonstrate that they had been subjected to a proper individual examination.[56]

[53] The audit found that only 7 of the 65 cases reviewed were dealt with under the regular procedure.
[54] Up 106/2008, 17 April 2008.
[55] 20 out of 61 audited decisions provided all relevant facts whereas only two cases provided no individualised facts at all.
[56] 10 out of 16 manifestly unfounded cases were found to be insufficient, including cases XO27, XO12, XO21, XO22, X007, XO17, XO64 and X007.

In recent years Finland has witnessed an improvement in the quality of written decisions, although the audit revealed indications of inconsistency and remaining problematic practices. While some decisions were well reasoned with clear and logical argumentation, other decisions were observed to fall below the threshold of what might be judged as good reasoning. In particular, decisions rejecting applications for international protection on grounds of credibility, 'safe country of asylum' or origin, or which considered the application manifestly unfounded for other reasons, tended to rely rather heavily on standard paragraphs.

In Bulgaria, the audit of decisions indicated that requirements in legislation are to a reasonable degree being satisfied in practice, at least in relation to setting out the individual facts of the application. Although decisions were in general individualised, some problems were indicated with respect to very brief legal reasoning and the use of standard paragraphs, particularly those relating to country of origin information.[57] It was also apparent that most decisions granting subsidiary protection status had very similar, if not identical, reasoning in law and wording in each case.

In Belgium, the audited negative decisions set out both the facts as presented by the applicant and the reasoning for the decision which was specific to the facts. The decisions did not rely heavily on standard paragraphs, which were only used to relate specific issues and were used appropriately and tailored to the facts of the application. Most audited negative decisions cited a lack of credible evidence.[58] The decisions were explicit as to what evidence was not considered to be credible, but the decisions did not state what evidence was accepted as credible. Negative decisions with regard to subsidiary protection status were either based on the ground that the evidence relating to the applicant's country or region of origin was not credible, or that the applicant came from a country or region which was not or no longer experiencing armed conflict within the meaning of the Aliens Act.[59] However, there were some shortcomings in the decisions audited, for example, poor referencing of applied country of origin information and a lack of reasoning as to why certain oral and documentary evidence was considered insufficient to affect the finding of a lack of credibility.

In the Netherlands, the audit indicated that in general, the negative decision does not set out all the grounds for the application as presented by the applicant or the detailed

[57] E.g., 39 out of 62 audited decisions concerned Iraqi applicants which (with few exceptions) included reference to the same COI, quoting a COI Report on Iraq by SAR and the Statement of the MFA on Iraq. This provided the basis of the decision, even though not individually tailored to the facts of the application. Furthermore, the most common ground for granting humanitarian status to Iraqis was the second suggestion of Article 9 (1) – torture or inhuman or degrading treatment or punishment - and the standard paragraph on COI was irrelevant or at least not well reasoned to support this ground.

[58] Of the 56 negative decisions audited, 38 were based on a lack of credibility.

[59] Article 48/3, §2 (c) of the Aliens Act (Article 15 (c) of the Qualification Directive). The application of the criteria of under Article 15 (a) and/or (b) Qualification Directive (or Article 48/4 of the Aliens Act) is exceptional, and none of the decisions included in the audit made a reference to these criteria, according case managers: interview of 19 & 20 March 2009.

reasons for denying status with regard to the facts. Instead, reference is made to the intended decision which forms part of the decision. In addition, detailed reasoning was contained in the so-called Minute (an internal IND document) which, during the period of this research, was available to the applicant on request, but was not supplied automatically with the decision. However, since 14 July 2009, the IND has changed its policy and no longer grants the applicant access to the Minute. The motive for the change in policy is, according to the policy instruction, based on Article 43 (e) of the Personal Data Protection Act (*Wet Bescherming Persoonsgegevens*), and the desire that the determining authority is not hampered in expressing its views or its reasoning by the knowledge that the applicant will have access to it.[60] Instead, a 'professional summary' should now be given to the legal representative upon request. Practice with regard to the content of the 'professional summary' could not be verified at the time of writing. Given the limited reasoning contained in the decision, UNHCR notes the importance that this 'professional summary' contains full reasons in fact and in law.

In Germany, the required form and structure of the written decision is explicitly set out for adjudicators in the handbook,[61] and specific guidance is given about the required content of decisions. Negative decisions encompass a decision on constitutional asylum,[62] on 1951 Convention refugee status as well as complementary forms of protection, i.e. subsidiary protection in accordance with the Qualification Directive, as well as two other forms of national protection.[63] UNHCR's audit of decisions verified that the reasoning begins with a statement of the facts that have been found relevant by the adjudicator in the individual case and a reference is made to the case file for further details.[64] Subsequently, with regard to each form of protection, the negative decision is stated, followed by the template regarding the respective legal requirements for each form of protection as well as the application of these legal requirements to the facts.[65] However, UNHCR's audit revealed the following findings which are considered problematic:

[60] IND-Workinstruction nr. 2009/11 of 14 July 2009.

[61] Handbook for Adjudicators "Decision", especially overview 2.4.5, "Structure of a decision", page 18. This form has been confirmed by the audit of case files.

[62] Not covered by the APD.

[63] Not covered by the APD.

[64] The facts as set out in the decisions had an average length of between half a page and three-quarters of a page. It is stipulated in the handbook that the relevant facts on which the decision is based on shall be given briefly and in a chronological order. They shall be designed in a strictly objective manner; undisputed facts shall be given in the indicative mode, disputable facts in the subjunctive form. Contradictions on which the decision is based have to be included, and submitted documents, plus their content, have to be listed. If references are made to cases of other family members or other asylum applicants, the respective reference numbers have to be cited, as well as the current stage of these proceedings. The portrayal of the fact should always end with a referral to the file (Handbook for Adjudicators "Decision", 2.4.2, "Determination of facts", page 13 and 14).

[65] UNHCR's audit, confirmed by the estimates of lawyers X2, revealed that the overall length of the reasoning runs from "four to ten pages" of which approximately two to ten lines of argumentation specifically relate to the individual facts.

(i) It was observed that there is a heavy reliance on the use of standard paragraphs.[66] Almost 80 % of the average decisions audited was composed of standard paragraphs,[67] with only about 16 % dedicated to the specific factual reasons concerning refugee protection,[68] and very often only one or two sentences dedicated to the factual assessment regarding complementary protection forms.[69]

(ii) Problems were also observed with regard to the content of the standard paragraphs. Many of the standard paragraphs referred to jurisprudence concerning cases of constitutional asylum. Given that the requirements of constitutional asylum and 1951 Convention refugee status differ in certain aspects, it is not self-evident that a specific aspect judged on under constitutional law would also apply to Convention refugee status. [70] Moreover, some of the decisions referred to were rather old,[71] and it was not clear from the templates themselves whether the interpretation of the courts in those decisions was still valid. In addition, the wording of some templates showed that the concept of constitutional asylum was used as the starting point for the examination of Convention refugee status.[72]

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[66] The predominant use of ready-made templates for the phrasing of decisions seems to divert attention from the specifics of the case and seems to result in an examination of the facts brought forward by the applicant in light of their 'compatibility' with the given standard paragraphs. One of the stakeholders (X3) stated the following in this regard: "*The templates are not tailored to the case, but the case to the templates*."

[67] The templates either refer to legal requirements and therefore contain very legalistic language, or refer to the general situation in the country of origin.

[68] Constitutional asylum as well as 1951 Convention refugee status.

[69] Please note that the following refers to the assessment of the facts under the respective legal provisions for complementary protection. The decision nevertheless contained a determination of facts that had been found relevant in the specific case. No assessment of facts provided: e.g. 00AFG05; 00AFG06; 01ERT08; 01NIG01; 00NIG03. Length of assessment of facts 1 sentence: e.g. 01ERT09; 00IRN03; 00IRN04; 01IRN05; 00IRQ08; 01IRQ09; 01PAK09; 00RUS01; 00SOM08; 00LKA09; 00TUR01; 01TUR02; 00GHA03; 01GHA05; 01GHA06; 00GHA08; 00GHA10. Length of assessment of facts: two sentences: e.g. 01GHA02; 01GHA04. Length of assessment of facts ¼ page (nine to ten lines): e.g. 00AFG09; 01ERT04; 00IRN01; 01PAK08; 01RUS03; 00GHA01; 01GHA09. Length of assessment of facts ½ page: e.g. 00/1IRN09; 01SOM07; 01LKA10; 01GHA07. Moreover, that this is only an average and divergent practice is, e.g., clearly shown in case 00/1IRN10. More than half of the decision (7.25 of 13 pages) is dedicated to the facts and reasons specific to the case; the reasoning specific to the case with regard to refugee protection amounted to 5 pages.

[70] Only the template with regard to one of the national forms of protection (Section 60 (5) Residence Act) contains the remark "conferrable" after reference has been made to the jurisprudence of the Higher Administrative Court. However, the reason for this conclusion is not given.

[71] E.g. 1977, 1980, 1985, 1989, 1990, 1994.

[72] E.g., the standard paragraph on the requirements for 1951 Convention refugee status stipulates that "*initially, it has to be determined*" whether the person concerned faces "*political persecution*", thus, explicitly referring to the term used in German Basic Law instead of directly applying the relevant legal provision for Convention refugee status. Only the following statements refer to the differences of the two forms of protection.

(iii) The decisions often contained only an account of the facts as presented by the applicant rather than a conclusive analysis of which concrete facts were deemed to fulfill the respective criteria and which not, as well as which facts were considered credible or not, and for what reason.[73] In practice, despite the statement of legal criteria in the templates, a detailed and comprehensive application of the relevant legal criteria to the facts was rarely observed.

(iv) The assessment of the facts with reference to the legal grounds for qualification for subsidiary protection status was very brief. [74] Most strikingly, the German provision transposing Article 15 (c) QD[75] was hardly ever mentioned in the audited decisions and reviewed only very exceptionally.[76] This was the case even in cases where the country of origin was experiencing armed conflict.[77]

In the UK, the negative decisions audited usually related the acts feared by the applicant and the reasons for fearing persecution or serious harm, and if the case failed on grounds of credibility alone, this was stated. Formal refusal paragraphs were used in, for example, "non- compliance" cases. It was apparent from the audit that in general, each case had been examined individually and the reasons given in the decision were specific to the applicant. Applications that were rejected stated why they had not been accepted and provided reasons. The exception to this was where an application was considered inadmissible, for example on safe third country grounds. Decisions included standard paragraphs but in most cases these did not appear to be used inappropriately.

A negative decision on an application for international protection has a significant impact on the rights of the person affected. Full reasons in fact and law should, therefore, be given. From the research undertaken it is clear that there are problems with the content of asylum decisions in most of the Member States surveyed, and a

[73] See e.g., 00ERT05; 00NIG04; 01LKA05; 01SOM07; 00PAK01;00RUS09; 01IRQ05; 00IRN01.

[74] Positive decisions on subsidiary protection sometimes clearly differentiate between reasons for subsidiary protection under the EC QD and national reasons (e.g. 00ERT05) and sometimes do not differentiate in this way. E.g., see 01IRQ05; 01LKA05; 00TUR04, where protection under 60 (5) Residence Act is granted for reasons of a potential violation of the ECHR in the case of deportation whereas Section 60 (2) Residence Act (transposing the QD) is not reviewed.

[75] Section 60 (7) 2 Residence Act.

[76] See 01SOM07.

[77] Regarding Somalia, see 00SOM08 and 00SOM10; on Sri Lanka, see e.g. 01LKA05; Afghanistan, 00AFG05; 00AFG06; 00AFG08; 00AFG09; Iraq, see e.g. 00IRQ02; 01IRQ04; 00IRQ08. According to information provided by the BAMF, the instructions on particular countries of origin were amended following the ECJ judgment (*Elgafaji*) and subsequent jurisprudence of the Federal Administrative Court, and specific parts of certain countries are now designated as zones of armed conflict with a level of violence justifying the application of Article 15 (c) QD to any person residing in that zone. With regard to other countries, the existence of an armed conflict is denied (which bars the application of Article 15 (c) QD) or an individual assessment of the situation is called for to determine the existence of a risk particularly affecting the individual applicant.

systematic failure to properly set out the individual facts and evidence on which the decision is based or set out and apply legal reasoning. Decisions in several states surveyed included little more than references to generic sections of asylum legislation upon which the decision was based.

Recommendations

Given the findings of this study, which indicate the systematic failure of decisions in some Member States to provide individualized reasoning relating to law or fact, UNHCR recommends that initiatives be developed to further identify problems in particular states, and to provide appropriate remedial training. This should be taken forward as part of improved quality monitoring in all Member States. UNHCR recommends that objective, EU-wide standards for measuring the quality of asylum decisions should be established.

The decision should permit the applicant to know on what specific grounds the decision has been taken. Therefore, the decision should state the material facts of the application and sufficient details to permit the applicant to know the following:

- **The evidence which was taken into consideration during the examination of the application and decision-making, including both evidence gathered by the determining authority and oral and documentary evidence provided by the applicant;**
- **Which aspects of the evidence were accepted, and which were considered to be insufficient or not accepted, and why the evidence was rejected; the reason why the accepted evidence does not render the applicant eligible for refugee status or subsidiary protection status in accordance with the criteria set out in the Qualification Directive.**

Decision-makers should be allocated sufficient time to draft well-reasoned decisions.

Content of reasoning in notified decisions

As stated above, UNHCR considers that one criterion for assessing the quality of a decision is whether the decision states clearly which aspects of the evidence were accepted, and which were not, and why. As relevant, the decision should also demonstrate a correct understanding of all relevant legal concepts in accordance with the Qualification Directive, and apply these correctly to the accepted facts.

Another criterion is whether the decision refers to sourced, objective, relevant and up-to-date country information, and applies that information appropriately to support the conclusions reached.

A further criterion is whether the decision specifies the standard of proof which has been applied.

During its audit of decisions, UNHCR therefore focussed specifically on these issues. It should be reiterated that the relatively small sample of files audited renders any findings indicative only. However, some common trends were observed, relating to both good and bad practice, which warrant further attention as part of efforts to improve the quality of asylum decisions.

Application of the criteria under the Qualification Directive to the facts

A common trend identified through the audit of decisions in several states (Belgium,[78] France, Germany, the Netherlands and the UK) was that negative decisions were often made on credibility grounds and did not apply the criteria of the Qualification Directive to facts.

For example, in France, the great majority of negative decisions audited[79] were cases where the application was rejected on credibility grounds ("*faits non établis*"). However, in these instances, it was not possible from the written decision itself to understand what aspects of the facts were not established, and what aspects of the refugee definition or criteria for subsidiary protection status were considered to be fulfilled or not fulfilled.[80] Moreover, negative decisions were generally poorly reasoned with regard to the actors of persecution, the actors of protection, the internal flight alternative,[81] or persecution or harm feared on return.

Likewise, refusal in the Netherlands was often based on the so-called 'positively convincing' test (the POK-test) of credibility.[82] In such decisions, it simply stated that the applicant had not made a plausible case that his/her application was based on circumstances constituting a legal ground for protection.[83]

[78] 38 of the 56 negative decisions audited in Belgium were based on credibility grounds. Nine applications were rejected because the facts did not qualify the applicant for refugee or subsidiary protection status. Eight were 'technical refusals'. The reason for the negative decision in one case was unknown. Information from audit of case files (10 February – 6 March 2009).

[79] 33 decisions out of 45 negative decisions. None of the written rejections sampled were explicitly grounded on the exclusion clauses or on the application of the internal flight alternative.

[80] However, in the case file 46R (AFG), the decision refers to the absence of reasons for persecution and thus to the absence of fear for persecution from the Afghan authorities. In the case file 41 R (BOS), the decision refers to the absence of personal fear for persecution. In the case file 31 R (GEO), the decision refers to the absence of reasons for persecution and to the ability of the authorities to protect.

[81] The terminology used in Article 8 of the Asylum Procedure Directive is 'internal protection'.

[82] The audit revealed that six out of 19 substantive negative decisions were refused on the basis of POK, namely numbers 43, 51, 52, 66, 88 and 90.

[83] Such cases will be rejected according to Article 31 Aliens Act. However, generally, decisions in the Netherlands are not very detailed and there is in general no specific reference to the refugee definition. It is not the negative decision as such that refer to e.g. inconsistencies or contradictions. This kind of information is mainly to be found in the so-called Minute (now an internal IND document).

In the UK, several decisions referred to credibility being undermined as a result of the behaviour of the applicant which, under Section 8 of the Asylum and Immigration (Treatment of Claimants Etc) Act 2004, was considered to damage credibility, such as producing false documents[84] or failing to apply earlier.[85] In some cases, statements deemed to be incorrect resulted in dismissal of the credibility of the entire claim.[86] The written decisions audited did not generally in any systematic manner refer to Qualification Directive criteria.

In Germany, in about 75% of the cases where refugee protection was denied, decisions were based on the assessment that the applicant's presentation of facts was not credible.[87] In those cases, the adjudicator explained why the presentations were not credible overall or why certain facts were not believed.[88] However, in about one in six decisions, the rejection was based on the assessment that there was no risk of persecution, i.e. the standard of risk was not satisfied.[89] Even in those cases, the adjudicators frequently stated in their assessment that "*a danger of persecution has not been made credible.*" Despite this terminology, the relevant decisions in fact often found the standard of risk was not satisfied, based on the assessment of objective facts.[90] In the remaining cases (about 7 %), the reason for rejection was based on non-fulfillment of one of the other legal criteria for qualification for international protection.[91] Moreover, in some cases, the rejection was based cumulatively on different grounds. For instance, rejections based on credibility of (some of) the applicant's statements were sometimes additionally based on insufficient risk,[92] or on a failure to fulfill other legal criteria,[93] even if the facts as presented by the applicant were presumed to be correct.[94]

[84] DAF 31, DAF22, DAF35.
[85] DAF31.
[86] DAF27, DAF40, DAF32, DAF36, DAF42.
[87] In a sample of 42 negative decisions (rejection both of constitutional asylum and refugee status according to Section 60 (1) Residence Act), 32 of the rejections were based on the lack of credibility of the applicants' statements (76.2 %).
[88] This statement refers to the formal fact that an explanation had been given, but does not respond to the question whether the project evaluator has found the given explanation convincing.
[89] This pertains to 7 of the 42 cases sampled (16.7 %).
[90] See e.g., 00IRQ04; 01NIG08 (according to the decision, the applicant "could not make credible" that there is a danger of genital mutilation. However, the adjudicator bases this assessment on the general finding that such mutilation is only carried out on children until an age of three years.); 00LKA08.
[91] This pertains to 3 of the 42 cases sampled, 00NIG04 (danger of criminal prosecution does not constitute an act of persecution; danger emanating from non-state entities does not constitute persecution [sic]); 01NIG10 (being searched for by the police as a witness to a crime does not constitute persecution); 00ERT05 (criminal prosecution for non-compliance with the obligation to serve in the army does not constitute persecution).
[92] See e.g., 00IRN01; 00IRN03; 01SOM07; 01TUR02.
[93] See e.g., 00SOM08.
[94] 01RUS03 the standard of risk is not fulfilled, and the rejection is based additionally on the existence of an internal flight alternative.

UNHCR is particularly concerned that in Greece and Spain, there was no clear application of the criteria for qualification for refugee status and subsidiary protection status to the applicant's individual circumstances and facts in any of the decisions audited. This was also the case for most of the decisions audited in Italy.

Application of the standard of proof

The purpose of UNHCR's research in this project was not to assess the standard of proof applied by the Member States of focus and its compliance with international standards. Instead, the purpose was to examine whether the decision informs the applicant and his/her legal representative, if any, of the standard of proof applied, and whether the evidence submitted and gathered in the course of the procedure satisfied this standard. Where the evidence does not meet the standard, UNHCR considers that the decision should state clearly why.

In only two of the Member States surveyed, the audit of decisions revealed that decisions did refer explicitly to the standard of proof applied.

In Bulgaria, some audited decisions referred to Article 75 (2) of the LAR which states that "*When the applicant's statements are not supported by evidence, they shall be deemed reliable if the individual has made an effort to justify the application and has given a satisfactory explanation of the lack of evidence.*" These decisions, which concerned Iraqi nationals, stated that the facts as claimed by the applicant were deemed to be established in accordance with Article 75 (2) LAR and humanitarian status was granted.

In Germany, the audited decisions stated, as provided by a template: *"In so far as events outside the country of asylum are stated [by the applicant] for supporting the claim as evidence for the objective existence of a risk, generally the mere furnishing of prima facie evidence is considered sufficient. This is due to the difficulties regarding proof typical for the asylum procedure."*[95] In some cases, the decisions[96] additionally contained the more comprehensive template which comprises, *inter alia*, the following requirements set by the Federal Administrative Court: "*Considering the difficulties for refugees to prove*

[95] The handbook determines that the template concerning the definition of "to furnish *prima facie* evidence" has to be cited at the beginning of the facts. Furthermore, the following explanations are given: "The assertions must include a detailed and comprehensive demonstration of the grounds for persecution; i.e. they must not contain contradictions, and allow for the grant of political asylum if they were conceded as true. The applicants shall present those events, concerning the persecution and the respective escape they have experienced themselves, in a coherent manner, specifying precise details. If necessary, they must also to link these experiences with the general political situation and occurrences in their country of origin." (Handbook for Adjudicators "Decision", 2.4.3 page 16).

[96] See e.g. most of the decisions taken within the airport procedure: 00AP01; 01AP02; 00AP03; 00AP04 ; 00AP06; 00AP07; 00AP09; 00AP10; not contained in: 00AP05 and 00AP08.

persecution, the personal assertions of the applicant and their analysis are particularly important. The applicant's mere assertions of the facts can lead to the grant of asylum provided that – considering all other circumstances - they are credible in the sense that they lead to the full conviction of the truth - and not just the probability - of the individual circumstances causing the fear of political persecution."[97] Although the decisions superficially stated when the standard of proof was met, it was often not clear from the decision how this standard was applied to the evidence gathered; which evidence was considered to have satisfied this standard, which did not, or whether there was an absence of relevant evidence.[98] According to the appraisal of interviewed stakeholders,[99] the application of the standard of proof was seen as being very subjective and arbitrary,[100] or as setting very high standards, or even requirements that could not be satisfied.[101]

On the other hand, UNHCR's audit of decisions in the other Member States of focus revealed that most decisions did not explicitly state the applicable standard of proof. In some Member States, however, it could be deduced from the decision that a high standard of proof had been applied.

In Belgium, the audit of the case files, as well as the roundtables UNHCR held with NGOs and lawyers, suggested that some applicants are expected to obtain and submit documentary evidence, such as birth certificates, death certificates and marriage licences, which are likely to be impossible to obtain within the five-day time limit under national legislation for submitting further evidence. In the absence of relevant documentary evidence, it was clear from the case files that applicants must be able to answer correctly questions designed to test their credibility. For example, one case file revealed that the applicant claimed to be a Banjuni from one of the islands south of the coast of Somalia. The decision stated that the applicant was not credible because s/he failed to answer certain questions correctly and did not speak Somali. However, information in the case file showed that the applicant had answered a number of the questions correctly. It was not clear from the decision or the nature of the questions why more weight had been given to the questions answered incorrectly.[102] By contrast, another case file also concerned an applicant who claimed to be a Banjuni from an island south of the coast of Somalia. This applicant also failed to answer some of the questions correctly and did not speak Somali, but s/he was granted refugee status.[103]

[97] As stated in the judgments of the Federal Administrative Court of 16.04.1985 (BVerwGE 71, 180) and 21.07.1989 (NVwZ 1990, 171).
[98] See e.g., 00ERT05; 00NIG04; 01LKA05; 01SOM07; 00PAK01;00RUS09; 01IRQ05; 00IRN01.
[99] This concerns lawyers with many years of experience with asylum law cases.
[100] X1.
[101] X2, X3.
[102] Case files 79 and 80.
[103] Case file 31.

In the Netherlands, UNHCR's audit revealed that six out of the 19 substantive negative decisions were rejected on the ground that the application failed the 'positively convincing test' (the POK-test).[104] The test requires the applicant to make a plausible case that his/her application sets out circumstances which fulfill the criteria for the issue of a permit.[105] According to the Aliens Regulations, the applicant should be entitled, in principle, to the benefit of doubt where: s/he has submitted all elements at his/her disposal; provides a satisfactory explanation for the absence of elements; has applied at the earliest possible time; where his or her evidence is coherent and plausible, and not contrary to country of origin information; and where the credibility of the applicant has been established.[106] However, UNHCR's audit of case files and an interview with a legal adviser revealed that, in practice, if the applicant is undocumented and unable to submit documentary evidence relating to an element, such as the travel route taken, a higher standard of proof applies. Any doubt is deemed reason to reject the application.

In Slovenia, interpretation of the standard of proof is an evolving issue, including through rulings by the Constitutional Court[107] establishing a requirement to apply the 'the benefit of the doubt'. In May 2009, the Ministry of the Interior issued Guidelines on implementation of the IPA. However, the audit of first instance decisions suggested that in practice the 'benefit of the doubt' is rarely applied, and the standard of proof is higher than the 'balance of probability'. Indeed, on the basis of reviewed decisions it appears that in practice the so-called '*intime conviction*' standard is applied (the decision maker must come to a deep conviction that the allegations are truthful).

Generally, in most states surveyed, the audit of case files and decisions did not indicate what standard of proof was applied by decision-makers, let alone whether this had been applied appropriately or consistently. In some respects, the absence of a clear standard of proof was the most striking finding identified on this issue. This was the case in Bulgaria,[108] the Czech Republic, Finland,[109] France,[110] Greece, Italy,[111] Spain and the UK.[112]

[104] Case files 43, 51, 52, 66, 88 and 90.
[105] Article 31 (1) Aliens Act.
[106] Article 3.35 Aliens Regulations.
[107] In case Up-1525/06, 21 June 2007 and Up-1458/06, 19 October 2006, the Constitutional Court for the first time said that benefit of the doubt has to be applied in asylum cases: *"… in the concrete case, asylum application of asylum seekers has been rejected in the accelerated procedure. In this procedure the MOI can reject the application without even verifying the existence of reasons for protection. Namely, the authority has to verify only existence of circumstances defined in the Asylum Act, proving that the application is manifestly unfounded. Nevertheless, also in the accelerated procedure, the authority must fully ascertain the actual situation. For reasons due to the nature of the asylum procedure and possible consequences for asylum seeker in case of rejected applications, the benefit of the doubt has to be applied."*
[108] Except in decisions granting humanitarian status, when no documentary evidence has been presented by the applicant.
[109] Finnish legislation does not make any reference to the standard of proof to be used in the asylum procedure. In individual cases, some references can be found, but there is no general standard that can be identified within the limits of the current study.

Use of Country of Origin Information (COI)

It is of serious concern to UNHCR that the determining authorities in two of the Member States of focus in this research, Greece and Spain, systematically fail to refer at all to any COI used in decisions to refuse protection status. With regard to Spain, reference to COI can be found in the case reports of applications examined in the regular procedure. This is infrequently the case when a decision is taken on the application in the admissibility procedure.[113] The determining authorities in a further two Member States, France[114] and Italy,[115] appeared explicitly to refer to the use of COI in only a small minority of decisions. In both countries, however, reference to COI was sometimes apparent from the case file although not included in the decision notified.[116]

Similarly, in Belgium, the decisions audited did not state the information relied on or refer directly to sources. The decisions simply state that "*the information known to the CGRA of which a copy has been added to the administrative case file.*" As such, this information can only be obtained by the applicant requesting the administrative case file. While this reveals what COI has been used, there is no proper analysis of its bearing

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[110] In France most of the audited decisions did not state the standard of proof applied and negative decisions stated simply that the "*facts are not established.*" However, two positive decisions explicitly applied the 'benefit of the doubt': case file 29 A (AFG) and 30A (AFG).

[111] In Italy none of the audited decisions referred to the standard of proof used.

[112] Although in the UK, the standard of proof is outlined in the Asylum Process Guidance 'Considering the Asylum Claim' (downloaded 20 April 2009), it was not referred to specifically in many cases audited, and it was not clear whether the test stated in the guidance formed part of the decision- maker's assessment.

[113] Note that at the time of UNHCR's research, an examination of the merits of an application was conducted in the 'admissibility' procedure and applications could be rejected on their merits, on grounds extending beyond admissibility grounds in the APD. See also section 9 on prioritized and accelerated examination of applications.

[114] In France, only 5 of the 60 case files audited contained explicit reference to COI used. All 60 applications were decided on the merits.

[115] In Italy, only four decisions audited referred specifically to COI sources: In the decision D/25/M/AFG/S and D/32/M/IRN/S, UNHCR guidelines were briefly quoted; in decision D/49/F//KIR/U, a US State Department report was briefly quoted; and in decision D/49/M/ETI/N an Amnesty International report was briefly quoted.

[116] In France in particular it was observed that the contents and the details of the questions asked during interviews generally showed a relatively good knowledge by decision-makers of the situation in the country of origin. However, this was not substantiated by references to COI in the file and/or in the decision. In case file 6R (GEO) and case file 44R (GEO), the decision itself refers to precise and up-to-date country information, and the file contains several COI documents. In case file 16 R (SLK) some precise COI sources are mentioned in the file and used in the credibility assessment but do not appear in the decision itself. In case file 46R (AFG) one article is included in the file but is not mentioned in the decision itself. In case file 7A (GEO) and case file 25 A (TR) one article is included in each file (positive decisions). In case file 17A (SLK) references are made in the case file to "information possessed by the OFPRA" but this information is not included in the case file. In these rare cases, the information and/or references appear to suggest a careful assessment of its relevance to the case in question. However, the cases of explicit use of COI are so limited in the sample (only 5 case files out of 60, i.e. less than 10 %) that it is difficult to say that more than one source of country of origin information was used in order to justify the decision to refuse protection status.

on various elements of the applicant's claim. The decisions in other states surveyed (Finland and the Czech Republic) typically only made very generalised references to COI, rendering it hard to assess whether COI had been used appropriately with regard to the facts of the individual case under examination.

In the Czech Republic, COI was frequently referred to in general terms (*''according to the information available in the case-file...*''), but without specific reference to the individual reports. This was the case in 16 decisions audited.[117] There were also instances observed of COI referred to in the decision, but not included in the case file.[118] In 19 decisions COI was cited specifically, with reference to the reports in the case file.

While in Finland a trend has been observed towards increasingly detailed references to COI in decisions,[119] practice remains inconsistent. In some audited decisions standard phrases, such as "*according to sources available to the determining authority*" or "*in accordance with information obtained by the determining authority*", rendered it impossible to know whether first or second hand sources were used, which sources were used or how many sources were used. In other decisions, both sources of COI and their contents were quoted directly in the text, making it easier to understand the argumentation.[120]

In general terms, the following can be said about the use of COI in the audited German decisions rejecting applications:

- Negative decisions did not always reference COI.[121]
- If COI was mentioned, this was predominantly done in the form of standard paragraphs which stated the source of information.[122]
- Reports of the German MFA[123] were the main source of information, although others were also cited. This included, *inter alia*, German court decisions[124] and

[117] X001, X002, X005, X011, X013, X024, X027, X030, X033, X034, X035, X043, X044, X063, X065, X067.
[118] X003, X007, X063.
[119] E.g., training on COI is increasingly given in certain divisions of the determining authority.
[120] Case 115.
[121] Audited decisions without stating COI, e.g.: 00GHA03; 01GHA05; 01GHA0700GHA10, 01ERT04; 01NIG01; 00NIG03; 00NIG04; 00SOM08; 00SOM10; 00RUS04.
[122] The length of COI mentioned in the decisions varies widely. COI is contained in the handbooks on specific countries of origin which are issued by the BAMF's IZAM (*Informationszentrum Asyl- und Migration*). The IZAM is assigned to collect comprehensive and up-to-date information on the situation in the countries of origin. For this purpose, publicly-available information, as well as that from restricted sources, is gathered and saved in the information system MILo. IZAM's advisory expert forum, *inter alia*, is composed of judges, lawyers, UNHCR and representatives from non-governmental organizations. Additionally, each adjudicator has internet access and the possibility to address questions to the IZAM, which decides whether it can answer the question alone, or whether external services have to be used.
[123] In more concrete terms: In one of the samples comprising 16 decisions stating COI in form of templates, only one decision did not explicitly refer to the MFA report, and referred only to court decisions: 00NIG08. Two of the decisions stated as sole source the MFA report (01IRN05; 01IRQ09). In 11 decisions several court decisions were additionally cited; and 9 decisions stated more than three different kinds of sources, even up to 11(00AFG05; 00AFG06) or 13 different sources (00LKA08). Even though the

newspaper articles,[125] but also reports from NGOs[126]. Moreover, information provided by the MFA to courts in individual cases, internet pages,[127] reports from international organisations, European institutions,[128] and other sources were cited.[129]

- Some decisions audited referred to COI without citing the source of the information; this also related to information which was decisive for the determination of refugee status.[130] This might be explained by the fact that information contained in the so-called COI- guidelines ("*HKL-Leitsaetze*") may not be quoted in the decisions.[131]

In some states surveyed (Bulgaria, the Netherlands and the UK), there were indications to suggest reliance by decision-makers on a limited number of usually state-sponsored sources. In Bulgaria, the audited decisions cited SAR COI Reports, but these Reports do not contain references to the primary sources, which were also not cited in the decision.[132] In the Netherlands, from the audit of case files, it appeared that in the large majority of cases, the decision only contained a reference to country reports of the Ministry of Foreign Affairs and country-specific policy in the Aliens Circular. Only occasionally were audited decisions observed to refer to other sources, often where these had been raised by the applicant's legal representative.[133] The exception to this relates to country information from the UK Home Office or the US State Department. In the UK, many decisions referred only to UK official Country of Origin Information reports, Operational Guidance Notes or Country Guidance cases, although there were other cases where decision makers referred to news reports or websites.

MFA reports are for official use only, legal representatives can have access to these reports in individual cases (Information submitted by the BAMF).

[124] These were cited frequently in decisions.

[125] E.g. "*Sueddeutsche Zeitung*"; "*Nuernberger Nachrichten*"; ''*Das Parlament*"; ''*Die Welt*"; ''*FAZ*".

[126] E.g. Annual Report from Amnesty International; Swiss Refugee Council.

[127] E.g. www.defenselink.mil; http://web.krg.org.

[128] E.g. UNHCR, UNAMA ; EU Commission's Status Report.

[129] E.g. foreign news(papers): BBC News, Sunday Observer; specialized institutes: "*Deutsches Orient-Institut*", "*Institut fuer Nahoststudien*"; expert's reports on specific matters provided to courts; COI report of the UK Home Office.

[130] See, e.g., the following decisions in which the belowmentioned facts are stated in the decision without any source: 00IRQ02 (violence in Baghdad has declined, in particular, between Sunni and Shiites groups); 01SOM07 (information on the political situation; situation of women in the society; clan affiliation), 01ERT05 (information on military service in Eritrea).

[131] Handbook for Adjudicators, "Decision", 2.4.8, p. 22. Like other COI relied upon, the *HKL-Leitsaetze* are also not contained in the case file, and are not accessible for the legal representative.

[132] Some decisions referred to Statements of the Ministry of Foreign Affairs (two such Statements on Iraq).

[133] This explicit reference to other sources was the case in only three out of the 90 audited case files, namely numbers 22, 47 and 71.

Use of templates and guidelines

The majority of determining authorities under focus in this research make at least some use of templates and/or guidelines to assist decision-makers in structuring their decisions. Templates are used by decision-makers in Belgium[134], Bulgaria, the Czech Republic, Germany,[135] the Netherlands,[136] and the United Kingdom. Guidelines are additionally available in the UK and the Netherlands.

In Bulgaria, the templates used are not very detailed or prescriptive, and leave substantial discretion to decision-makers concerning the content, structure and style of decisions.

Other states (Belgium, the Czech Republic, Germany, the Netherlands and the UK) employ more detailed templates. In the UK, decision makers have a 'stock letters template'. Standard wordings are also available. Three formal refusal paragraphs are frequently used for the refusal of humanitarian protection, where refusal includes non-compliance with procedural requirements and the formal rejection of human rights-based claims.[137] In the Czech Republic templates are available for all types of decisions (including positive, negative, manifestly unfounded, and inadmissibility decisions). These templates are periodically revised in order to mirror the current legislation. The templates dictate the structure of decisions, i.e. what to state first (content of the application; content of interviews, legal assessment of asylum and subsidiary protection, plus date, names of parties, and the decision). In Germany, as mentioned above, 80% of a decision is composed of standard country- or legally- specific paragraphs. Decision-makers are bound to employ the legally-specific paragraphs in their decisions.

Although forms are used in Italy, they do not ostensibly regulate the structure or content of decisions and, for example make no prescribed reference to the inclusion of facts or COI. In Finland, no templates are used, but decision-makers are given examples of earlier decisions. In France, there are no clear guidelines on the structure of decisions or explanation of the facts, nor on how to set out the application of relevant legal criteria to the facts and support findings with clear reasons and references to country of origin information.

UNHCR believes that a decision check-list is a useful tool to aid decision-makers in drafting decisions. The check-list should require decision-makers to clearly establish the facts of the claim for international protection before applying to those facts the relevant refugee and, if rejected, subsidiary protection criteria, as well as other relevant legal principles. The check-list can also assist decision-makers to work through each legal

[134] Interview with operational coordinator of the CGRA, 25 February 2009.
[135] The case file audit revealed that the templates are always used to structure decisions.
[136] The case file audit revealed that the template is always used to structure decisions.
[137] Asylum Process Guidance "Reasons for Refusal letter", downloaded 20 April 2009.

criterion, and require them to support their findings with clear reasons, including reference to relevant country information.

Some templates and ready-made standard paragraphs may be useful as time-saving devices that help to ensure the consistency and comparability of decisions. However, their use should not take the place of individualised assessment and reasoning. Where used, they should always be applied appropriately to the facts of the case.

Recommendations

UNHCR recommends that:

An EU-wide decision check-list be developed to guide the structure and content of decisions. UNHCR is willing to assist with the development of such a check-list.

Drafting individual decisions, based on the check-list, should be a compulsory component of any initial training programme for decision-makers.

Determining authorities should not rely unduly on standard paragraphs and templates in drafting decisions.

Sequence of decision and provision of reasons, when refugee status is refused but subsidiary protection granted

Under the Qualification Directive, Member States are obliged first to assess whether an applicant qualifies for refugee status before proceeding to examine eligibility for subsidiary protection status.[138] Under Article 9 (2) APD, it is implicit that Member States are required to set out reasons for the refusal of refugee status, even where subsidiary protection status is granted, unless the latter confers the same rights and benefits under national and Community law as those attached to refugee status. In such cases, decisions need only be recorded on the applicants' files and made available on request.[139]

UNHCR's audit of decisions revealed that the structure of decisions in the majority of states surveyed addressed the decision on refugee status before subsidiary protection status: Belgium,[140] Bulgaria[141], the Czech Republic, Finland, France[142], Germany[143], and

[138] Article 2 states that *'''Person eligible for subsidiary protection' means a third country national or a stateless person who does not qualify as a refugee …"*

[139] Article 9 (2) APD states that "*Member States need not state the reasons for not granting refugee status in a decision where the applicant is granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC. In these cases, Member States shall ensure that the reasons for not granting refugee status are stated in the applicant's file and that the applicant has, upon request, access to his/her file.*"

[140] E.g., case file numbers 35, 41 and 96.

the UK. This was also the case for decisions taken in the regular procedure in Slovenia, although some decisions observed in the audit were not sufficiently grounded. However, in Slovenia, most decisions are rejected in the accelerated procedure, which means that no in-merit assessment is conducted, and alleged reasons for applying for international protection are not examined or reflected in the decision. The decision only states whether there are reasons to reject the application as manifestly unfounded.[144]

In Italy, the audited decisions generally contained two paragraphs, first addressing qualification for refugee status, and then qualification for subsidiary protection status. However, when subsidiary protection status was granted, there were cases where the reasons for the denial of refugee status comprised one sentence simply stating, for example, "*the circumstances reported by the applicant cannot be considered appropriate to support and justify a fear of persecution under Article 1A of the Geneva Convention of 1951*."[145]

Similarly, in Spain, it was observed that eligibility for refugee status was addressed first, followed by subsidiary protection status. However, the decisions relied almost exclusively on standard paragraphs. For refusal of complementary protection, no reasoning was provided, and the following standard paragraph was included in each audited decision: "*Moreover, no humanitarian reasons and no reasons of public interest apply in order to allow stay in Spain under Article 17 (2) of the Asylum Law*."

The lack of reasoning systematic in the audited Greek decisions prevented an evaluation of the sequencing or basis of any assessment of eligibility for either status.

Where subsidiary protection status is granted (which does not offer the same rights and benefits as refugee status), the reasons for not granting refugee status were stated in

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[141] Explicitly required in national legislation: Article 73 LAR (amended and supplemented, SG No. 31/2005, amended, SG No. 52/2007): Status applications shall be reviewed by the State Agency for Refugees and reasons for granting refugee status shall be examined first. If refugee status is not granted, the need for humanitarian status to be granted shall be considered.

[142] This was evident from the information contained in the case files. There was only one case of subsidiary protection being granted (case filele 3A (IRQ)) among the 15 positive decisions sampled. The reasoning in the case file is sequential: 1) criteria of the Geneva Convention are not fulfilled; 2) criteria of subsidiary protection (generalized violence) are fulfilled. Nevertheless, the written decision states first that subsidiary protection is granted, and then it states that refugee status is rejected (with a short motivation: "*the applicant does not establish that she has personal fears for persecution in the meaning of Article 1A of the Geneva Convention*").

[143] As required by the Handbook for Adjudicators, especially 2.4.5 "Structure of the decision".

[144] See above.

[145] D/08/M/NIG/S, D/12/M/AFG/S, D/20/M/SOM/S, D/22/M/SOM/S: state only that there is no persecution; D/36/M/IRQ/S: no reason stated with regard to denial of refugee status; D/79/M/TUR/S, D/80/M/TUR/S, D/81/F/ERI/S, D/82/F/ERI/S, D/83/F/ERI/S, D/84/M/SOM/S, D/86/M/SOM/S, D/87/M/SOM/S: only states that alleged elements "are not suitable for" the recognition of refugee status.

decisions audited in Belgium,[146] the Czech Republic,[147] France,[148] and Germany.[149] However, in some states which formally fulfilled this requirement, the reasoning provided was inadequate. For example, in Bulgaria and Italy, where subsidiary protection status was granted following a rejection of refugee status, UNHCR audited decisions in which only generic reasons for the refusal of refugee status were provided.

The current research identified that this issue is especially significant in the context of the asylum procedure in the Netherlands, which provides for a single uniform status, with the same material rights and benefits for all those granted any form of protection.[150] As such, in the Netherlands, the exception under Article 9 (2) APD is applied. If subsidiary protection status is granted[151], the written decision does not provide reasons in fact or law for not granting refugee status. At the time of UNHCR's research, the reasons in fact and law for denial of other protection statuses were only reflected in an internal document, the Minute.[152] This could be requested by the applicant or his legal counsellor, but was not supplied automatically with the decision. Since 14 July 2009, the IND instead produces a 'professional summary' which should, in principle, be available to the legal representative upon request once the decision has been notified. If the legal representative does not request the 'professional summary',

[146] In case file number 35, 41 & 96 the applicants were granted subsidiary protection status after the assessment for qualification for refugee status. Moreover, in case files concerning applicants from countries were there could possibly be an armed conflict within the meaning of Article 15 (c) of the Qualification Directive, such as Iraq, Afghanistan, Somalia, Turkey & Chechnya, the decisions showed first the assessment for qualification for refugee status and second the assessment of qualification for subsidiary protection status. The assessment of qualification for subsidiary protection status would usually refer back to the lack of credibility of the applicant established during the assessment for the qualification for refugee status and/or otherwise establish that there was no armed conflict in the country or region of origin of the applicant.

[147] This was observed e.g. in cases audited: X011 and X043. Section 28 (1) ASA states that *"(1) International protection shall be granted in the form of asylum or subsidiary protection. If the Ministry establishes, while making its decision, that the reasons for granting asylum have been fulfilled … it shall grant asylum preferentially*." This is interpreted as a requirement to state the reasons for not granting asylum when subsidiary protection is granted.

[148] Along with a decision outlining reasons for rejection of refugee status, the applicant generally receives an accompanying letter informing him/her that s/he is granted subsidiary protection, that s/he should go to the *prefecture* to receive a residence permit, that s/he is not granted refugee status according to the 1951 Convention, and that this negative decision can be challenged.

[149] Some cases have been identified (e.g. 00IRN03, 00IRN04, 01NIG01, 00NIG03) in which the explanation for the rejection of subsidiary protection only consists of a referral to the assessment of the need for refugee protection, and its denial. This suggests that the different grounds for protection were not adequately taken into account.

[150] A residence permit will be granted on different grounds, as enumerated in Article 29 a, b, c, d, e, and f Aliens Act. If e.g. a residence permit is granted under Article 29b Aliens Act, this implies a rejection of a permit under Article 29a Aliens Act.

[151] Article 29 (1) (b) Aliens Act.

[152] See below – sub-section on positive decisions. Note that the Minute is, since 14 July 2009, replaced by a 'professional summary'.

the grounds for the rejection of the other statuses will only be made available if and when protection is withdrawn.

In UNHCR's view, the applicant should be given the opportunity to respond immediately to a decision not to grant refugee status or subsidiary protection. If informed about rejection grounds only years after the application, this reduces the possibility for rebuttal of the decision, and weakens the applicant's legal position. UNHCR considers that the grounds for refusal of refugee and/or subsidiary protection status should thus be notified automatically and in full to the applicant, regardless of whether a form of status is conferred bringing equivalent rights and benefits.

In the Czech Republic, although humanitarian asylum (Section 14 ASA) and asylum for the purpose of family reunification (Section 13 ASA) both confer the same rights and benefits as refugee status, negative decisions on refugee status set out reasons.[153] Similarly, in Finland, subsidiary protection status accords the same rights and benefits as refugee status, yet the denial of refugee status is usually reasoned in the decision. However, it is worth noting that some of the decisions audited in Finland revealed extremely limited or no reasons in fact and in law for the rejection of refugee status, but considerably more reasoning with regard to qualification for subsidiary protection status.[154] One decision which concerned an applicant from Somalia contained no reasoning for the decision not to grant refugee status, and simply stated in conclusion that the circumstances did not amount to persecution. The applicant was granted subsidiary protection status.

Recommendations

Member States should ensure that where refugee status is refused, the reasons in fact and in law for the refusal are stated in the decision. This should be regardless of whether another form of protection status is conferred that accords equivalent rights and benefits.

Member States should ensure that where an application for international protection is rejected with regard to both refugee status and subsidiary protection, the reasons in fact and in law for the rejection of each status are stated clearly and sequentially in the decision.[155]

[153] Though the audit revealed that the reasoning was not always clear or complete.
[154] E.g., decision 3 concerning Somalia and decision 62 concerning Iraq.
[155] A proposal to amend the APD to this effect has been put forward by the EC. See proposed recast Article 10 (2): APD Recast Proposal 2009.

Motivation of positive decisions

Motivation of positive decisions to grant refugee status or subsidiary protection status is not required under Article 9 (2) APD, and of the Member States surveyed by UNHCR, is provided only in Finland,[156] Slovenia[157] and Bulgaria.[158]

While Belgian legislation requires that decisions of the CGRA are motivated, positive decisions are not motivated in practice.[159] The case manager does motivate the decision, but this legal reasoning is contained in an *evaluation fiche* in the administrative case files, which is considered a preparatory document and, therefore, not a public document which can be accessed by the applicant.[160] UNHCR audited the *evaluation fiches* of the positive decisions sampled and found that they were clear with regard to which aspects of evidence were accepted and which were not, as well as issues of doubt. The reasons for finding the evidence credible or giving the applicant the benefit of doubt were stated. However, the legal analysis with regard to qualification for refugee status was limited, and did not apply all the relevant criteria of the Qualification Directive to the facts.

As mentioned above, the current research identified that this issue is especially significant in the context of the asylum procedure in the Netherlands which provides for a single uniform status, with the same material rights for all those granted any form of protection.[161] A positive decision states the legal ground on which the permit is granted, but it is not motivated with regard to the reasons in fact and law, and the decision does not include reasons for the rejection of other grounds for protection. Since 14 July 2009, according to a policy instruction, reasons for the grant of the permit should in principle be stated in a 'professional summary' which should be available to

[156] The *Hallintolaki* (Act on Administrative Conduct), sections 43 to 44, requires all decisions to be given in writing, and for the decisions to include also their reasons. These norms apply to all decisions, irrespective of their nature, and are followed in practice. Hence, also positive decisions are given in writing and are reasoned. Reasons are given both in fact, with reference to the individual case at hand, and in law. As with other decisions, the quality of reasoning, length and style of the decision may vary among decision-makers.

[157] This is an obligation under Article 214 of the AGAP.

[158] Article 59 (1) of the Administrative Procedures Code requires that all administrative acts issued in writing set out the grounds in fact and law on which the decision is based. The audited decisions for granting refugee status formally contained reference to the reasons in fact and in law. They followed the standard structure of decisions, but were very brief. The audited decisions for granting refugee status were half a page to a little more than a page. Three of four audited cases files on decisions for granting refugee status did not enclose COI Reports and the decisions made no reference to such.

[159] Article 57/6, § 2, of the Aliens Act.

[160] Interview with Commissioner-General, 27 April 2009.

[161] A residence permit will be granted on different grounds, as enumerated in Article 29 a, b, c, d, e, and f Aliens Act. If e.g. a residence permit is granted under Article 29b Aliens Act, this implies a rejection of a permit under Article 29a Aliens Act.

the legal representative upon request once the decision has been notified.[162] However, at the time of writing, the practice could not yet be verified.

In Spain, the reasons for granting status are contained in the case report which is contained in the case file, and is accessible to the applicant once the decision has been adopted. However, as mentioned above, UNHCR has found shortcomings in the reasoning in these case reports.

From the UK case file audit, it was observed that where refugee status or humanitarian protection was granted, there was a file note which also gave reasons for this decision. However, these reasons were not issued to the applicant.

Likewise in Germany, while positive decisions on refugee protection are not motivated, the reasons in fact and law are given in brief in an internal note in the applicant's file.[163] This internal note is not automatically accessible to the applicant, but on request by his/her legal representative. According to the internal guidelines, the note shall comprise the statement of facts relevant for the decision as well as the decisive grounds underlying it.[164] The length,[165] composition and content of the internal notes vary,[166] but in all cases reviewed, contained the factual ground(s) on which the recognition was based.[167]

Although states are not legally required to give reasons for positive decisions under the APD, UNHCR considers that this would represent good practice, particularly where this information is in any case retained in a different format on the file. This would contribute towards the transparency of decision-making and efforts to monitor and improve quality and consistency. It would also assist with possible decision-making at a

[162] IND-Workinstruction nr. 2009/11 of 14 July 2009.
[163] Different rules apply with regard to subsidiary protection.
[164] Internal Guidelines for the Asylum Procedure, 1.1 b), page (3/5), cf. also Handbook for Adjudicators "Decision", 2.1.2 page 7.
[165] In most audited cases, the internal note is ¼-¾ of a page long, and longer only in exceptional cases.
[166] The reasoning for a positive decision on a particular ground for subsidiary protection is usually limited to a statement that the specific situation of the applicant prompts the application of a certain ground of protection, but this has been sufficient for understanding the reason for granting protection, e.g. 00ERT05; 01IRQ05; 00NIG04; 00RUS09; 00TUR04.
[167] One very good example concerns a case (11NIG02) in which the adjudicator in the internal note comprehensively dealt with all issues that led to the decision. Over two pages, the statement of facts was portrayed, and the following four pages were dedicated to the legal and factual considerations of the particular case, including: the grounds for persecution, agents of persecution (non-state agents), availability of protection, the standard of risk, the specific standard of proof and how it was met. For each piece of COI, the various sources were clearly given. In three cases reviewed, a positive decision was based on factual grounds other than those presented in the interview (11ERT01, 11ERT03, 10ERT10). Nevertheless, the results in these decisions seem to be correct since considerable reasons for a well-founded fear were presented. The reasons brought forward by the applicant were not however those reflected in the internal note.

later stage concerning any application to renew the validity of a residence permit, or any potential application of the cessation clauses.

Recommendations

As a matter of good practice, UNHCR encourages Member States to state in writing the reasons for a grant of either refugee status or subsidiary protection status, and to make these available to the applicant at the time of the decision.

Monitoring of the quality of decisions

Quality monitoring or auditing is an important way of supervising and evaluating the quality and consistency of decision-making. Regular review of a meaningful sample of decisions allows for an assessment of whether standards are being met by decision-makers throughout the determining authority, regardless of whether the procedure is centralised or de-centralised. Such monitoring also assists in identifying training and operational policy guidance needs. Objective oversight is also important to ensure that the system of quality control functions appropriately, and to verify adherence to quality standards.

UNHCR notes that only two of those states surveyed (Germany and the UK) have a dedicated quality audit function as part of their asylum system. Most of the Member States of focus in this research have some form of supervision system in place to monitor the quality of first instance decisions. However, these are often of a relatively informal nature, and UNHCR considers it questionable whether decisions are being subjected to adequate scrutiny in all Member States.

In several states, at the time of UNHCR's research, (the Czech Republic, France, Finland, Greece, the Netherlands, Slovenia[168] and Spain) decisions were simply reviewed and checked internally by one other person, either a colleague or supervisor.

Thus in the Czech Republic every decision is read by the Head of the Asylum Procedure Unit.[169] Similarly in France, there is no external mechanism of quality control of written decisions but at an internal level, the protection officer who interviews the applicant and assesses the case writes a proposal for a decision which is referred to his/her superior, who signs the decision after possible amendments and further checks. The decision can also be referred to a higher level if necessary, and the Secretary General of the OFPRA may also conduct random checks. The improvement of decision-making is a

[168] At the time of this research, a joint UNHCR Quality Initiative Project, sponsored by the EU, was being implemented with the aim to embed an internal quality control system within the Ministry of Interior.
[169] Interview with the Head of the Asylum Procedure Unit, 7 April 2009 in Prague.

stated priority of OFPRA.[170] A similar practice exists in Finland, where decisions taken by the decision-maker are reviewed and signed by the Department Manager, but there are no formal quality control mechanisms as such.

In Greece, according to ADGPH, the Director of Aliens' Directorate of the Greek Police Headquarters and the Head of the Asylum and Refugees Department are responsible for 'quality control', since they receive the case file, view the interview record form and sign all decisions.[171] There exists the possibility of an element of independent oversight by the Greek Ombudsman, who has the authority to intervene in cases involving public bodies and to investigate individual administrative actions, and can make recommendations and proposals to the public administration.[172]

In Italy, there is no official external mechanism of quality control of written decisions. Internally, however, all cases are assessed and decided by a panel of four members, including a UNHCR representative. Moreover, the Territorial Commissions which are located in ten cities in Italy are coordinated by a National Commission that has responsibility by law to monitor trends of the Territorial Commissions. It should also ensure coordination, including through visits to the Territorial Commissions and centralized coordination meetings.

In Slovenia, every decision is read by the Head of the International Protection Status Section, and then signed by the Head of the International Protection Division. Occasionally another decision maker may be consulted to help resolve a complex issue.[173]

In Spain, there is no systematic quality control of decisions. Decisions are drafted by eligibility officials and signed by the General Director for Asylum with whom final responsibility lies. Cases which raise complex issues, or where there are differences of opinion with UNHCR, will be discussed with the Head of the Unit or even with the General Sub-Director for Asylum (OAR Director).[174]

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[170] Interview with Head of Legal Department of the OFPRA and Interview with Secretary General of the OFPRA. One of the qualitative objectives of the three year "Contract of objectives and means" ("*Contrat d'objectifs et de moyens*") which has recently been signed is to monitor and analyze specific country case-loads in order to take necessary coping measures.

[171] Interview with the Head of ARD in ADGPH.

[172] The Greek Ombudsman has made several recommendations regarding the asylum procedure. In the most recent and relevant for asylum decisions, the Greek Ombudsman recommends precise and personalised reasoning and advises that an explanatory note in applicant's language should be attached to decisions (See Greek Ombudsman. 2008. "*Epidosis aporiptikon apofaseon ke askisi prosfygis'' [The service of negative decision and the submission of appeal].* Athens: Greek Ombudsman).

[173] The Head of the International Protection Status Section emphasised Slovenia's participation in the ERF-funded joint UNHCR Quality Initiative Project, currently being implemented with the aim of establishing internal quality control systesm within the Ministry of Interior.

[174] Note that UNHCR has an advisory role prior to the adoption of the decision by the determining authority.

In the Netherlands, at present, the only form of quality control[175] is a collegiate check. This means that every decision is checked by another official[176].

Although still only having an internalised supervisory system, Belgium and Bulgaria can be distinguished from the states above due to the nature of their supervisory systems, which are relatively more formalised and comprehensive in scope.

In Belgium, to ensure quality and efficiency, certain structures have been developed within the CGRA. The case managers at the CGRA are assigned to a geographical section which has a head of section as well as designated supervisors. Every supervisor oversees approximately four case managers on average. After the personal interview and the examination/analysis of the case file, a draft decision or *evaluation fiche* is prepared by the case manager in charge of the examination of the application. The draft decision or *evaluation fiche*, as well as the entire case file, are then sent to the supervisor who has responsibility to monitor quality and quantity of the work of each individual case manager.[177] After the draft decision has been corrected and approved by the supervisor, the decision is sent to the Commissioner-General or one of the deputy commissioners to sign. The Commissioner-General and deputies additionally undertake quality checks. Case files involving unusual or particular problems are sent to the Commissioner and the deputies with an explanatory note. In addition, the Commissioner-General and the deputies organise meetings with each geographical section every four months to review reports on the results of the section, operational issues, cooperation with other services (e.g. CEDOCA) and the results of individual case managers.

In Bulgaria, with regard to decisions taken in the regular procedure, SAR has in principle implemented a very strict and thorough supervision system. According to regulations, the opinion of the interviewer is coordinated with his/her direct supervisor (the Head of the Proceedings and Accommodation Department) and the Director of the RRC.[178] The approved opinion is transferred to the Central Administration where it is allocated to a legal adviser from the Directorate of Methodology of Proceedings and Procedural Representation (Methodology Directorate). The legal adviser may require further examination of specific aspects of the case if necessary. If no changes are required, then the legal adviser drafts the text of a decision. In the case of disputes between the interviewer and the legal adviser, the personal file of the applicant is transferred to the

[175] However, according to the Project manager pilot 'quality of services, asylum', another quality mechanism will be introduced, namely a system called Kondor, taken over from the SVB (social insurance bank).
[176] According to the IND, it may be not the strongest instrument of control since the mutual relationship between colleagues plays an important role.
[177] Interviews with case managers 19 & 20 March 2009 and interview with operational coordinator of the CGRA, 25 February 2009.
[178] Article 93 (3) of IRR.

field Deputy Chairperson who rules on the matter and gives explicit instructions.[179] After the decision is drafted, it shall be approved by the Director of the Methodology Directorate, and thereafter the field Deputy Chairperson of SAR. Either may require amendments to the decision.[180] After the decision has been approved, it is to be signed by the Chairperson of SAR and is given to him/her together with the personal file of the applicant. UNHCR considers this system to constitute a good practice for decisions taken in the regular procedure. However, in Bulgaria in 2008 approximately 35% of negative decisions were taken in the accelerated procedure.[181] These decisions are taken by the interviewers at SAR who are only given the possibility to consult on their decisions with legal advisers of the respective RRC, or with their direct supervisors.[182] Taking into consideration the short time frame for decision (three days), the opportunity for quality control in accelerated procedures is therefore limited in practice. [183]

The UK and Germany differ from the other states surveyed, in that they have, in addition to internal legal and administrative supervision, dedicated and specialist quality control functions.

In the UK there is a Quality Audit and Development Team (QADT) which undertakes audits of case files. Fifteen auditors work in the QADT, plus a small administrative support unit. The Quality Audit and Development Team aims to ensure consistency and has developed quality assessment tools.[184] Periodic reports are produced.[185]

The German determining authority (BAMF) described to UNHCR the internal quality control as follows. According to the BAMF, there is a system of internal legal and technical supervision. To further facilitate a high standard of quality, internal "quality promoters" (i.e. a member of staff in the branch offices) carry out random examinations of decisions. They act as advisors for the adjudicators, inspect interviews and decisions and serve as a link between the branch offices and headquarters of the BAMF in Nuremberg. Moreover, a special unit for quality control was established at BAMF headquarters in 2004. Its task is to assure and manage a high standard of quality by means of:

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[179] Article 97 of IRR.
[180] Article 98 of IRR.
[181] *Report on the Activities of the State Agency for Refugees within the Council of Ministers for 2008* (not public). Note that applications from Iraqi nationals are not included in this figure.
[182] Article 77 (2) of the IRR.
[183] However, a recommendation to introduce a control mechanism in the accelerated procedure, made under the ERF-funded joint UNHCR Asylum Quality Assessment and Evaluation Mechanism Project, was accepted in principle.
[184] The National Audit Office report HC 124 paragraph 2.11.
[185] E.g., the National Audit Office report at 2.12 states that the audit for April 2008 found consistent themes, such as: "*over 20 per cent of case owners fail to identify in the decision letter the asylum applicant's future fear as part of the basis of claim*": The Controller and Auditor General, the Home Office, Management of Asylum Applications by the UK Border Agency, the National Audit Office; HC 124 Session 2008-2009, 23 January 2009, www.nao.org.uk.

- Analysis of decisions
- Development and documentation of procedural standards
- Review and evaluation of asylum proceedings concerning compliance with instructions
- Detection, evaluation and analysis of deficiencies
- Further development of quality assurance mechanisms and quality management (e.g. visits to the branch offices)
- Participation in international projects concerning quality of procedures (e.g. ASQAEM,[186] EAC).

According to the BAMF, the main instruments of quality assurance are internal instructions and guidelines (also with regard to COI). Handbooks for adjudicators contain quality requirements concerning issuing of a decision in relation to legal as well as formal and stylistic aspects. Information on the case law of the higher courts is provided regularly and workshops[187] are held, especially concerning new legal developments, countries of origin and specific groups of persons (e.g. unaccompanied children, traumatised applicants, victims of gender-specific persecution). Abstracts of decisions must be presented to the head of division or the quality promoter, before the decision is forwarded to the applicant.[188] Thereby, it can be assessed if the quality standards as well as the guidelines have been complied with. Moreover, at six monthly intervals, the decision-making practice of the BAMF as well as that of the administrative courts is systematically evaluated with a view to achieving a greater degree of consistency. Finally, communication with UNHCR, administrative courts and other organisations constitute a means of indirect quality control.[189]

[186] In Germany, the ERF-funded joint UNHCR Asylum Systems Quality Assurance and Evaluation Mechanism (ASQAEM) Project focuses thematically on the asylum procedures concerning unaccompanied minors and separated children. The project conducts, *inter alia*, an independent and objective gaps analysis and evaluation of the asylum interviews and the decision making process (incl. appeals before the courts) of applications for international protection of the above mentioned group of persons.

[187] E.g. from 26-28 October 2009, for the first time a conference for all adjudicators was held in the BAMF headquarters in Nuremberg.

[188] The internal guidelines furthermore state the duty to present decisions for review before delivery to the applicants, *inter alia*, in sensitive cases (e.g. gender-related persecution, unaccompanied children, torture, danger of suicide etc.) and in cases in which a positive decision is intended by the adjudicator. The guidelines also explicitly mention that adjudicators are bound by instructions. Cf. also Internal Guidelines for the Asylum Procedure, under: "Duty of presentation" (1/2), (2/2) and under "Decision", 1.3 "Duty of presentation" (4/5); Handbook for Adjudicators "Decision", 2.6 "Duty of presentation before submission", page 25.

[189] The forum of experts which meets at the BAMF warrants particular mention. It supports quality management concerning the practices of the "IZAM" ("*Informationszentrum Asyl- und Migration*") – a part of the BAMF which gathers information on refugee law and policy, in particular by collecting country information.

Recommendations

UNHCR recommends that Member States which do not have asylum decision quality evaluation or monitoring systems should consider developing these, drawing on the models developed and applied with positive outcomes in other countries. The ongoing exchange of experiences among Member States, including in the context of UNHCR's Quality Initiative projects, should be expanded.

UNHCR will encourage the EASO, in collaboration with Member States and other stakeholders, to examine closely the scope, potential benefits and possible approaches to quality mechanisms and exchange of good practice among Member States. UNHCR is ready to contribute to that process.

Quality assessment, at all levels, should focus on identifying areas where practical steps can be taken to fill gaps in knowledge, skills or capacity. This can include training, development of guidelines, templates and other tools which could assist the preparation of structured, well-reasoned and legally sound written decisions.

Provision of decision for dependants

Article 9 (3) APD provides that "*For the purposes of Article 6 (3), and whenever the application is based on the same grounds, Member States may take one single decision, covering all dependants.*"

Member States are not obliged to issue one single decision covering all dependants, and a number of Member States surveyed have opted not to transpose Article 9 (3) APD where their existing practice is to issue an individual decision for all adult dependants. This is the case in Belgium, France,[190] Germany, Italy, the Netherlands,[191] and the UK.[192] Other Member States have only transposed and implemented Article 9 (3) APD partially by allowing a single decision to be made concerning dependent minors. This is the case

[190] French law does not provide for an application to be made by an applicant on behalf of dependant adults (and has not transposed Article 6 (3) APD). Each adult must make an application on his/her own behalf.
As far as accompanying minors are concerned (i.e. children below 18 years who accompany one parent who applies for asylum), regardless if the child arrived in France with his/her parent(s) or afterwards, the child does not lodge an individual application, s/he is registered in his/her parent(s)'s file and his/her case is indissociable from the case of his/her parent(s). In case his/her parent(s) is/are recognized as refugee(s), when the child is 18 years old (or between 16 and 18 years old if s/he wants to work), s/he has to lodge an individual application if s/he wants to continue to be protected by the OFPRA. The protection will be automatically renewed without any interview.

[191] In the Netherlands a decision is taken on each individual application, including whenever the application is based on the same grounds.

[192] The transposition note states that no action is required in relation to Article 9 (3) APD.

in Bulgaria,[193] the Czech Republic,[194] and Slovenia.[195] Only Greece[196] and Spain[197] of the Member States surveyed have fully transposed Article 9 (3) APD.

Recommendation

UNHCR considers as good practice the issuance of individual decisions for each applicant, including for each dependant. This is particularly important in the case of dependant minors.

Notification of written decision

The basic guarantees regarding notification of written decisions are set out in Article 10 (1) (d) and (e) APD:

''10 (1) With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants for asylum enjoy the following guarantees:

(d) they shall be given notice in reasonable time of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum;

(e) they shall be informed of the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counselor, and when free legal assistance is not available. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 9 (2).''

[193] LAR includes no special provision as to the transposition of Article 9 (3). The only implementation of Article 6 (3) of the APD in the procedures in Bulgaria is for dependent minors (children up to 14 years of age). An application may be made only on behalf of a minor child by the parent who accompanies him/her. This rule is further developed in the IRR, Chapter 6. A single decision will be issued if the applications are submitted together. After the audit of case files for this research was completed, UNHCR encountered one decision on an application by an accompanied minor which was separate from the decision of the parent applying on his behalf. UNHCR was informed that this was the current practice, but as it was an isolated case, it would require further analysis.

[194] Article 9 (3) is only partially transposed to the extent that minors must be represented by their statutory representatives (parents) as provided by Section 34 (1) CAP but it does not follow that a single decision should be issued although in practice this is the case.

[195] Article 9 (3) APD is transposed by virtue of the subsidiary application of the Article 130 (1) of the AGAP (joined cases). Under Article 130 (2) the parties have the right to object to this.

[196] Article 7 (4) of PD 90/2008: ''*Whenever the application is lodged also on behalf of the dependant members of the applicant who claim the same grounds for protection, the determining authority may take one single decision, covering all dependants.''*

[197] Article 27 (3) ALR regulates the adoption of one single decision covering all family members, spouse included.

UNHCR's research has found that there are a number of divergences between Member States in both legislation and practice as to how these guarantees are effected. It recorded some instances where national provisions fall short of requirements under the Directive, as well as cases of good practice and standards higher than those contained in the Directive. It should be stressed that the manner of decision notification, the provision and quality of language support and information on how to appeal all play a significant role in determining whether, following receipt of a refusal decision, an applicant is able to understand the decision and is able, in reality, to instigate an effective legal remedy.

Time frames for notification of a decision

The first sentence of Article 10 (1) (d) APD requires that all applicants "*shall be given notice **in reasonable time** of the decision by the determining authority on their application for asylum*".

The Directive does not define what constitutes a "*reasonable time*" between the taking and notification of a decision.

UNHCR understands that the time taken to notify an applicant and/or the legal representative will be affected by a number of factors, including whether the determining authority or another authority is responsible for notification. The time frame for notification of the decision will also be affected by the mode of notification and the place of residence of the applicant. For example, some Member States notify the applicant in person and, therefore, a meeting is scheduled which brings together an official of the determining authority, the applicant, an interpreter (if necessary) and possibly also a legal representative. This has many advantages in terms of ensuring that the decision, the reasons for the decision and the consequences of the decision are explained to the applicant in a language s/he understands. It may however require more time to organise than in those Member States which simply notify the applicant of the decision by post.

Few of the Member States surveyed have transposed this provision or regulate time limits under national legislation.

This requirement has been transposed into German asylum law by inserting the word for "*without delay*" (*unverzüglich*) into the provision requiring notification.[198] In Greece, legislative provisions require that the decision on the asylum application shall be taken and served to the applicant "*as soon as possible*."[199] In Italy there is a requirement that

[198] Section 31 (1) Sentence 2 APA. Note however that this word is missing from the English translation made available by the MOI on its website.
[199] Article 8 (1) (d) of PD 90/2008.

the applicant is informed of the decision in "*a short time frame*" [200] and the UK has replicated the term ''*in reasonable time*'' in its legislation.[201]

Two Member States have defined time limits. In Spain, the general time limit established in the common administrative procedure for notification is ten (working) days from the date the decision was adopted.[202] Within the admissibility procedure, failure to notify the decision within the time frame will result in the application being transferred to the regular procedure. In Bulgaria, by law, the decision should be served in person within 14 days of the issue of the decision; and if not, the notice should be sent.[203]

Other states surveyed have no express time frames in legislation, but average durations have been noted in practice where these were recorded in case files or otherwise on the basis of information gathered from interviewees. It is worth noting here that, as a matter of good practice, Member States should record the date when a decision is taken and the date of notification of the decision, and this should be contained in case files.

Belgian legislation does not specify the time frame for the notification of the decision, but UNHCR's audit of case files showed that in practice, notification of the decision was usually sent to the applicant within one to four days of the decision being taken. The practice in Bulgaria varies between one and three days for service in person to applicants accommodated in reception centres, to approximately two weeks for those notified by post.

In the Czech Republic, decisions are delivered in person by the determining authority at a scheduled meeting in the presence of an interpreter if necessary. From the audit of case files, the average time frame for notification was observed to be about 13 days, ranging from one day in four cases to 150 days in two cases, the latter extreme delays caused by organizational difficulties with finding a Somali interpreter. In Finland, the time frame for the service of decisions can vary between one week and two months in practice.

The BAMF in Germany informed UNHCR that their software system initiates the automatic printout of a decision and cover letter once the decision has been taken. As a result, written decisions are issued on the day the decision is taken (or at the latest the following day) and delivered by mail to the legal representative (or applicant) two days later. In the airport procedure, the decision is delivered to the applicant on the same day the decision is taken.

[200] Article 10 (4) of the d.lgs. 25/2008.
[201] Paragraph 333 of the Immigration Rules HC 395.
[202] Article 58 (2)APL.
[203] Article 76 (3) LAR.

In Italy, it is not the determining authority but the local *Questura* (police department) that delivers the decision in person. Stakeholders interviewed have observed time periods varying from a few days to two months in the notification of decisions.[204]

In the UK, the time frame for delivery of the decision depends on the procedure within which the application is examined. For example, in the accelerated detained procedures, the decision is usually delivered in person within one or two days of being taken, and in the regular New Asylum Model (NAM) procedure, the decision is usually notified within one to four weeks.[205] In some UK regions, decisions taken in the regular NAM procedure are served at a meeting specifically arranged for that purpose.

In the Netherlands, applicants should be notified of the decision within 48 procedural hours in the accelerated procedure or the application is transferred into the regular procedure, but there are no provisions regulating time frames between the taking and notification of decisions in the regular procedure, and no records are kept as to how long this takes in practice. Similarly, the MOI in Slovenia does not record the period between the decision being taken and notified, so it was not possible to assess compliance with the APD.

From the above, it would not appear that there are widespread problems concerning delays between the taking and the service of refusal decisions, although in some Member States delays of up to two months were reported. Clearly decisions should be communicated promptly. Therefore, it would be preferable for some Member States to better regulate the timing between taking and service of a decision, and to monitor and ensure good administrative practice in this regard.

Moreover, UNHCR considers it particularly important that States ensure that a decision must be served a sufficient time before corresponding removal action is taken, in order to guarantee that the applicant has adequate advance notice and is able effectively to exercise any right of appeal. UNHCR was concerned to note that interviewees in Finland referred to instances where service of the decision was only effected after the applicant had been transferred from the detention centre to the airport for deportation.

Recommendation

UNHCR recommends that Member States define reasonable time limits to govern the period between the taking of a decision and the service of a decision on an applicant. Such limits should be exceeded only in exceptional and well-justified circumstances. Administrative case files should record compliance with these requirements.

[204] It should be noted that the determining authority has to send the decision to the *Questura* and then the *Questura* has to summon the applicant in order to deliver the decision in person.
[205] Asylum Process Guidance "*Implementing Substantive Decisions*" downloaded 20 April 2009.

Where imminent removal action is intended following a negative decision, it is imperative that the timing of service of the decision takes account of the circumstances of the applicant, and provides reasonable notice for the applicant to ascertain and safeguard any appeal or other rights.

Member States should establish administrative practices which ensure that the time frame between the taking of the decision and notification of the decision can be monitored.

Manner of notification

The APD does not prescribe the manner of notification of the decision. UNHCR's review of state practice found that Member States may employ different methods, depending on the procedure; and/or depending on the place of residence of the applicant; and/or depending on whether the decision is to be notified to the applicant and/or legal representative. Some Member States deliver the decision in person to the applicant in a scheduled meeting at the premises of the determining authority or reception centre; some deliver it to the applicant in person at his/her address and some send the decision by post to the applicant and/or the legal representative.

Article 10 (1) (d) APD provides Member States with discretion whereby *"if a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum."*

Some of the Member States of focus in this research have legislation in place which permits notification to the legal representative instead of the applicant in prescribed circumstances (Germany, Greece, the Netherlands, Slovenia and the UK.)[206] However, in practice, of the Member States surveyed, this option is generally only exercised by the determining authorities in Germany[207] and the Netherlands (with regard to the regular procedure only).

Most of the Member States surveyed notify the applicant. A number of those have adopted good practice by serving the decision both on the applicant and his/her legal representative, if any (Belgium, Bulgaria,[208] the Czech Republic,[209] the Netherlands in

[206] Immigration Rules HC 395 Paragraph 333.

[207] The cases in which a legal representative has been appointed (in writing) follow in this regard the rules set by general administrative law.

[208] In the rare cases that the applicant is legally represented, the legal representative may be sent a notification as well.

[209] Although Section 20(2) ASA state: *"(…) A power of attorney may not be granted to receive a decision made by the Ministry in the matter of international protection",* this is only applicable to an *ad hoc* power of attorney to receive the decision, and not to the power of attorney given by the applicant to the legal representative for the whole procedure according to the Supreme Administrative Court (SAC) in its decision of 29 April 09, 7 AZs 21/2009. The SAC held that the determining authority is obliged to respect a

the accelerated procedure, and Slovenia[210]). In the UK, the manner of notification depends on the procedure within which the application is examined and practice can also vary by region. The decision may be sent to the legal representative and also given to the applicant at a specially arranged meeting,[211] or may be sent to the applicant's last known address[212] or, in the absence of an address, to the representative.[213]

Legal provisions and practice vary between Member States, as can be seen in the following table.

	Notified to applicant	Notified to lawyer
Belgium	√	√[214]
Bulgaria	√	√[215]
Czech Republic	√	√
Finland	√[216]	
France	√	
Germany	√[217]	√[218]

fundamental principle arising from the institution of legal representation regarding delivery and is obliged to notify not only the applicant but also his/her legal representative of the decision.

[210] Constitutional Court held that "*it is very important that decisions of the authorities are in time issued to both – asylum seeker and his counselor*", Up-338/2005, 26 May 2005.

[211] Asylum Process Guidance "*Implementing Substantive Decisions*" downloaded 20 April 2009.

[212] In the Case Resolution Directorate, according to Asylum Process Guidance "*Implementing Substantive Decisions*" downloaded 20 April 2009.

[213] Asylum Process Guidance "*Implementing Substantive Decisions*" downloaded 20 April 2009.

[214] Article 7 in conjunction with Article 24 of the Royal Decree of 11 July 2003 concerning the CGRA requires that notification of the decision is given to the appointed legal adviser.

[215] There is no obligation for SAR to simultaneously provide the legal representative with a copy although this usually happens in practice in the rare cases in which the applicant is represented: information obtained in interviews with stakeholders.

[216] In exceptional cases, where the applicant has left Finland before the decision is made, e.g., in cases of withdrawal, the decision may be given to the legal representative.

[217] The applicant receives the decision if there is no appointed legal representative in which case Section 31 (1) Sentence 3 (1st part) APA states "*If no representative has been appointed for the procedure, a translation of the decision and the information on legal remedy in a language the foreigner can reasonably be assumed to understand shall be enclosed."*

The word "decision" in the aforementioned sentence of the English translation of the provision provided by the MOI on its website is not correct in so far as the German version speaks of the "*Entscheidungsformel*", meaning "decision formula" / "Tenor" / "operative provisions" , i.e. those sentences at the beginning of the written decision informing the applicant which form of protection has been granted and/or has not been granted; and in case none of the different forms of protection has been granted, also the notification announcing deportation in case the foreigner does not leave the country voluntarily.

The applicant may also receive the decision according to Section 31 (1) Sentence 4 APA: "*If the asylum application is rejected only pursuant to Section 26 a [referring to constitutional asylum] or Section 27a [referring to Dublin-cases] , the decision together with the deportation order under Section 34a shall be delivered to the foreigner himself."* In this case, an authorized legal representative should also receive a copy of the decision in accordance with Section 31 (1) Sentence 6 APA, however, in practice, according to a legal representative (X2), the legal representative frequently receives the copy after deportation has

	Notified to applicant	Notified to lawyer
Greece	√[219]	
Italy	√	
Netherlands	√[220]	√
Slovenia	√[221]	√
Spain	√[222]	
United Kingdom	√	√[223]

Several Member States require service in person and strict recording that this has been effected in practice. In Bulgaria, all decisions are served on the applicant in person and this is certified by both the applicant and the interpreter.[224] The whole text of the decision is read to the applicant (including the reasoning and how to appeal) with the assistance of an interpreter if necessary. Similarly, in the Czech Republic, the applicant is invited at a determined date and time to receive the decision in person, in the presence of and with assistance of an interpreter if necessary.[225]

taken place, so that the person concerned cannot be legally assisted. However, as those cases refer either to constitutional asylum or Dublin-cases, they are not directly covered by the APD.

[218] As authorization usually is given in writing, Section 8 (1) Sentence 2 Law on Service in Administrative Procedure applies and accordingly, the decision is only given to the legal representative. That this is actually also done in practice has been confirmed by the BAMF in its response to UNHCR.

[219] Article 8 (1) (d) PD 90/2008 states that the "*decision may also be served to the applicant's attorney or legal representative* ***instead of*** *the applicant*." However, in practice, according to four interviewees, the decision is given to the applicant. The legal representatives have the right to receive the decision in the applicant's absence but only if they have power of attorney.

[220] In the regular procedure the decision is only given to the applicant's legal representative unless the legal representative is unknown. In accelerated procedures it is served on both adviser and applicant.

[221] Although Article 49 of the IPA (service of documents) only requires service on the legal representative, in practice it is always additionally served on the applicant. UP-338/2005, 26 May 2005, Official Gazette No. 56/2005, CC stated that "*the asylum seeker is in a foreign country, where he is not acquainted with the legal system, does not speak the language of this country, which can render it impossible to enforce his right to asylum. According to Article 9 of the Asylum Act, the asylum seeker has the right to a refugee counselor which enables him to effectively protect his rights in the asylum procedure. Thus, it is very important that decisions of the authorities are in time issued to both – asylum seeker and his counselor*."

[222] By law, the decision can be sent to the legal representative or NGO that provided advice, according to Article 28 ALR and Article 59 APL, but in practice it is served on the applicant in person only, according to interviewed stakeholders. UNHCR's audit of case files confirmed this, as a copy of the decision signed by the applicant upon receipt in person was witnessed in case files. Article 28 of the New Asylum Law introduces the possibility of notification through publication in the Citizens' website and in the OAR's website if personal notification has failed, and provided that the principle of confidentiality set out in Article 16 (4) of the New Asylum Law is respected.

[223] Paragraph 333 of the Immigration Rules HC 395 states that notice may instead be given to the representative. For cases within the Case Resolution Directorate, decisions are sent to the last known address. In the absence of an address the notice can be sent to a representative.

[224] Section 76 (2) LAR.

[225] Section 24a ASA, which states: "(1) *An exact copy of the written decision shall be delivered to the participant in the proceedings at the place and time determined in the written invitation to receive the decision. The signature of an authorized person on the exact copy of the decision may be replaced with the clause "Signed in person" or with the abbreviation thereof, i.e. "v. r.", and the clause "Person responsible for correctness of the copy" with specification of the name(s), surname and signature of the person responsible for preparation of the written decision. (2) Should the applicant for international protection*

In Spain, at the time of UNHCR's research, in the in-country admissibility procedure and the regular procedure, decisions were usually served in person when the applicant reported to the competent authority.[226] In the border admissibility procedure, notification was always carried out in person. In the UK, the manner of notification depends on the procedure in which the application was examined. In some UK regions, applicants whose applications were examined in the regular NAM procedure are notified of the decision and how to appeal at a dedicated meeting with the case manager, and at which an interpreter is present and relevant information provided. This meeting does not take place in all cases, however, and this study did not observe any such meetings.

In France, the decision is served by registered letter with acknowledgement of receipt. If the applicant is held in an administrative retention centre, the decision is served upon the applicant in a closed envelope by the manager of the centre.[227]

As mentioned above, Germany and the Netherlands regularly notify the legal representative only in prescribed circumstances. In the Netherlands, during the regular procedure, the decision is only given to the applicant's legal representative unless the legal representative is unknown. In that case, the decision is given to the Aliens Police.[228] In the accelerated procedure, the decision is simultaneously given to the applicant and his/her legal representative.[229] In Germany, in cases of persons having a legal representative,[230] the written decision is issued in German only and sent to the legal representative.[231] In cases of applicants who are not represented by a lawyer, the decision is sent to the applicant[232], also containing a translation of the operative

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fail to appear to receive the decision on the day specified in the invitation, in spite of having been delivered the invitation, the day specified in the invitation for receipt of the decision shall be deemed to be the day of delivery of the decision to the applicant for international protection."

[226] Article 59 APL requires that notification must be done in any means that allows recording of its receipt by the applicant or his/her legal representative.

[227] Article R. 723-2 *Ceseda* (''*Notification par voie administrative''*).

[228] IND-Brochure about the asylum procedure.

[229] Aliens Circular C18/3.

[230] Who has been authorized in writing, which usually is the case.

[231] In these cases the common rules with regard to the issuance of such kind of decisions apply, especially Section 8 (1) Sentence 2 Law on Service in Administrative Procedure: "*It [the decision] shall be addressed to him/her [the representative] in case of written authorization.*" Such a decision is issued in German only.

[232] Section 31 (1) Sentence 3 (1st part) APA: "If no representative has been appointed for the procedure, a translation of the decision and the information on legal remedy in a language the foreigner can reasonably be assumed to understand shall be enclosed […]." The word "decision" in the aforementioned sentence of the English translation of the provision provided by the BMI on its website is not correct in so far as the German version speaks of the "*Entscheidungsformel*", meaning "decision formula" / "Tenor" ['operative provisions'], i.e. those sentences at the beginning of the written decision informing the applicant which form of protection has been granted and/or has not been granted and in case none of the different forms of protection has been granted also the notification announcing deportation in case the foreigner does not leave the country voluntarily.

provisions ("*Tenor*") of the decision as well as a translation of the information on legal remedies. However, the reasons for the decision are not translated.

UNHCR welcomes the fact that some of the Member States surveyed serve notice of refusal decisions on both the applicant and his/her lawyer where represented.

To avoid any prejudice to the applicant or risk of appeal deadlines being missed, service of the decision should be undertaken in a manner permitting this to be objectively recorded and verified (i.e. either in person or through recorded delivery). Moreover, UNHCR notes with approval good practice, for example, in Bulgaria, the Czech Republic and under the United Kingdom's New Asylum Model (NAM) procedure in some regions, whereby an interview is arranged by the case manager to notify the applicant of the decision, and with the assistance of an interpreter, to explain the reasons and provide information on how to appeal in the event of a negative decision.

Recommendation

UNHCR recommends that service of negative decisions should be objectively verifiable, either through service in person or by recorded delivery signed for by the applicant or legal representative.

As a matter of good practice, and in support of an efficient and fair procedure, a meeting may be scheduled with the applicant following a decision on his/her asylum application, so that the reasons for refusal and information on how to appeal can be conveyed orally in the presence of an interpreter.

Notification of the decision in a language understood by the applicant

Article 10 (1) (e) APD requires Member States to inform asylum applicants of the ''*result*'' of the decision on their application in a language that *"they may reasonably be supposed to understand.''* This applies unless they are represented by a legal adviser or free legal assistance is available, in which case this requirement can be waived.

UNHCR has already expressed its reservations with regard to the wording of this provision and urged Member States to ensure that applicants are informed of the decision, including the reasons for the decision, in a language they understand, not in a language which they may reasonably be supposed to understand.[233] Furthermore, with regard to the waiver, it obviously cannot and should not be assumed that a legal adviser or any organisation providing free legal assistance can communicate with the applicant in a language s/he understands. Therefore, Article 10 (1) (b) APD, regarding the right to

[233] UNHCR: *Annotated Comments On The Amended Proposal For A Council Directive On Minimum Standards On Procedures In Member States For Granting And Withdrawing Refugee Status*, 2005: http://www.unhcr.org/43661ea42.html.

receive the services of an interpreter, should apply whenever the State relies upon a legal adviser or an organisation providing free legal assistance to inform the applicant of the decision, and where appropriate communication cannot be ensured without such services.

Almost all Member States of focus in this research have transposed or reflected the minimum requirement of the APD in national legislation, regulations or administrative provisions, namely: Bulgaria,[234] Finland,[235] France,[236] Germany,[237] Greece,[238] Slovenia,[239] and the UK.[240] In the Czech Republic, Article 10 (1) (e) APD is transposed by the general provision requiring interpretation throughout proceedings,[241] and in practice every applicant is informed of the decision through the presence of an interpreter.[242]

[234] Article 76 (1) of LAR*: ''A copy of the decision of the Chairperson of the State Agency for Refugees shall be served on the alien seeking protection. The contents of the decision, as well as the rights and obligations arising from it, shall be announced to the alien in a language s/he understands.''*

[235] Section 203 of the Aliens' Act 301/2004 states that "*The person concerned has the right to be notified of a decision concerning him or her in his or her mother tongue or in a language which, on reasonable grounds, he or she can be expected to understand. A decision is notified through interpretation or translation*." Official translation available at www.migri.fi.

[236] Article R. 213-3 *Ceseda* states that "*the foreigner is informed about the negative or positive outcome of this decision in a language which s/he can reasonably be expected to understand*."

[237] Explicitly transposed in the framework of the 2007 Transposition Act (Bundestag printed papers, 16/5065, re Section 31, page 217) by the insertion of Section 31 (1) Sentence 3 (1st part) APA: ''*If no representative has been appointed for the procedure, a translation of the decision and the information on legal remedy in a language the foreigner can reasonably be assumed to understand shall be enclosed.''*

[238] Article 8 (1) (e) of PD 90/2008: ''*They shall be informed of the result of the decision on the asylum application in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor and when free legal assistance is not available. The information provided shall include information on how to challenge a negative decision.''*

[239] Article 8 (basic procedural guarantee), indent 4 of the IPA: "*s/he shall receive a decision in writing … in a language s/he understands*." Article 10 (3) of the IPA states "*The applicant shall be informed of the content of the written decision in a language s/he can understand*. *The only papers to be translated into the language the asylum applicant can understand shall be the operative part of the decision and a brief summary of the explanation of the grounds that contain essential elements on which the decision is based, and legal instructions.*"

[240] Paragraph 333 of the Immigration Rules HC395: "*Where the applicant has no legal representative and free legal assistance is not available, he shall be informed of the decision on the application for asylum and, if the application is rejected, how to challenge the decision, in a language that he may reasonably be supposed to understand*.''

[241] ASA Section 22 (1): ''*A participant in the proceedings is entitled to use his/her mother tongue or a language in which s/he is able to communicate during the course of the proceedings. For this purpose, the Ministry shall provide the participant, at no charge, with an interpreter for the entire course of the proceedings.''*

[242] However, some instances have been observed which call into question whether the full reasons for the decision are always interpreted to the applicant.

Belgium,[243] Spain and the Netherlands[244] have not directly transposed Article 10 (1) (e) APD in national legislation, but have opted to notify the applicant's legal representative of the decision or to rely on free legal assistance which is available to the applicant.

Italy has not properly transposed the APD minimum requirement. The relevant provision in Italian legislation states that "*all communications concerning the procedure for the recognition of international protection are given to the applicant in the first language chosen by him/her or, if this is not possible, in English, French, Spanish or Arabic, depending on the applicant's preference*.'' [245] UNHCR does not consider that this subordinate option to choose between four languages is sufficient, as there is no reason to assume that the applicant necessarily understands any one of them. Moreover, according to the same paragraph in the Italian law, the assistance of an interpreter speaking the language of the applicant or another language s/he understands is assured only "*in all steps of the procedure concerning the filing and the examination of the application*" - and not for a possible translation of all the official documents communicated.

In most Member States surveyed, UNHCR found that it is usual that the decision is provided only in the host states' language, and interpretation is either provided orally when serving the decision in person or through a legal adviser. Some states provide a written translation of a summary of the decision and others provide accompanying generic information leaflets in a variety of languages.

UNHCR notes positively that Bulgaria has in place a higher standard than the minimum required under the Directive, in that the text of the decision is read to the applicant, and further explanations on the rights and obligations arising from it, are provided via an interpreter in a language the applicant understands, and is not only reasonably expected to understand.[246]

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[243] In accordance with Article 51/4 Aliens Act, the language of the decision and the language of the notification is the same language as the language of the examination i.e. either Dutch or French. According to Article 7 in conjunction with Article 24 of the Royal Decree of 11 July 2003 concerning the CGRA, notification of the decision is also sent to the appointed lawyer. Article 90 Aliens Act referring to Article 668 of the Judicial Code guaranteeing free legal aid to asylum seekers is also relevant.

[244] Applicants in the Netherlands enjoy free legal aid and the assistance of an interpreter throughout the procedure. See the Act with regard to free legal aid of 23 December 1993 *(''Wet houdende regelen omtrent de door de overhead gefinancierde rechtsbijstand'').*

[245] Article 10 (4) of the d.lgs. 25/2008.

[246] Article 76 (1) of LAR: ''*The contents of the decision, as well as the rights and obligations arising from it, shall be announced to the alien in a language s/he understands.''* Article 108 (2) IRR regarding general procedures states also "*Where the alien has no command of Bulgarian, the decision shall be served in the presence of an interpreter. The interpreter shall read the decision to the alien and shall attest the translation by signing."*

Slovenia has similarly retained higher legislative standards requiring that the applicant shall receive the decision *"in a language s/he understands."*[247] In practice, the applicant is given the decision in Slovene together with a written translation of the operative part of the decision - a brief summary of the explanation of the grounds that contain essential elements on which the decision is based, and legal instructions.[248] If a written translation of the decision cannot be made, according to Ministry of Interior, the applicant is informed orally, with the assistance of an interpreter, and in a language which the applicant understands, of the result of the decision and how to challenge a negative decision.[249] The decision in Slovene is also given to the legal representative.

A number of Member States provide the services of an interpreter to communicate the decision to the applicant. In both Bulgaria and Finland, the decision is usually translated orally rather than in writing and free of charge to the applicant. Occasionally problems have been caused by a lack of specialist interpreters for rarer languages (or in more remote parts of the country) which has resulted in the introduction of video-link or telephone interpretation.

In the Netherlands, the applicant is informed of the decision by the legal adviser with the assistance of an interpreter via the telephone.[250]

UNHCR is very concerned with regard to Greek practice. Respondents from the determining authority[251] claimed in interviews that police officers responsible for delivering decisions to applicants do so with interpreter's assistance, in order to inform the applicants orally and free of charge. However, there were indications that this was usually not the case in practice. [252] Another interviewee not associated with the authorities maintained that most of the time, "*when applicants receive the decision, they come to the Greek Council for Refugees (GCR) or another NGO because they do not know what the paper they have been given is about. Almost all of our cases allege that police officers do not inform them and just tell them in English 'go to GCR."*[253] This is problematic, given that applicants are not guaranteed access to free legal assistance in Greece and refugee-assisting organizations are extremely under-resourced.

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[247] Article 10 of the IPA.

[248] Written translations can be provided in Albanian, Serbo-Croatian (sic), Bosnian, Turkish, Kurdish, Russian, Arabian, Farsi, Urdu, Hindu, Punjabi, Romanian, Moldavian, Chinese, Mongolian, Tamil, Lingala, Telegu, Kannada, English, French and all other EU languages.

[249] In the course of this research, UNHCR did not observe an oral notification.

[250] L. Slingenberg 2006, p.40. According to the Aliens Circular C15/2.2 and asylum applicant should be given additional time to comment on an intended negative decision if an interpreter is not available at the time of notification.

[251] Interviews with S1, S3 and S4.

[252] However, good practice has been observed at the Asylum Office of the Security Department of Athens Airport where the applicant is properly informed of the decision and receives a list of NGOs that offer legal assistance. This can be distinguished form practice at other locations (Source: Interview with S6).

[253] Interview with S8.

In Italy, there should, in principle, be an interpreter available at the local *Questura* (police department) where the applicant receives the decision, but in practice this is not assured.

UNHCR has observed that in Spain there is a reliance on lawyers and organisations providing free legal assistance to explain the decision to the applicant. There is no provision in Spanish law regarding the possibility of notification in any language other than Spanish. However, in practice, an interpreter is always provided for notification of decisions at the border, and sometimes also at OAR in Madrid as well as some Aliens Offices and police stations elsewhere (if they are available). Nevertheless, the common practice is to recommend that the applicant, upon receipt of the decision, contact a lawyer or a specialized NGO in order to be informed of the decision and its reasons.[254] In Spain there is by law free legal assistance available throughout the asylum procedure, thus constituting an exception to the requirement under Article 10 (1) (e) APD. Some NGOs have their own interpretation services, which are normally funded by the State, or they may request the free interpretation services from specialized NGOs which are normally also state-funded.

UNHCR is concerned about the situation in some states where, notwithstanding transposition of Article 10 (1) (e) APD, in practice the decision is not necessarily fully or adequately translated to applicants. This often occurs where there is an accompanying absence of free legal assistance.

Interviewed stakeholders in Germany emphasised that those applicants who do not have a legal representative, and therefore only receive the operative provisions and information on legal remedies in a language they understand, have problems understanding why a particular decision has been taken.[255] Most fundamentally, given the wording of the decision which contains very technical references to the law, it is often impossible for an applicant to understand what he or she was granted or refused by the decision.[256]

As mentioned above, in Germany, if a legal representative has been appointed, the decision is issued in German only. Applicants who are not represented by a lawyer receive the decision in German together with a translation of the operative provisions of the decision as well as a translation of the information on legal remedies. According to the BAMF, the translation is provided in "*a language the applicant understands.*"[257] Further assistance to inform the applicant of the reasons for the decision, oral translation or another kind of support for illiterate applicants is not foreseen in the German asylum system and also not provided in practice by the BAMF. Applicants have

[254] Information obtained from interviews with stakeholders (OAR, lawyers and NGOs).
[255] X1, X2.
[256] X2.
[257] Note Section 31 (1) Sentence 3 APA speaks of "*a language the foreigner can reasonably be assumed to understand.*"

to arrange for the translation of the decision themselves, and relatives, friends or social workers are requested for help.[258] NGOs with particular counseling services for refugees and asylum seekers may help.[259] In cases of applicants who are represented by a legal representative, the latter has to procure translation/ nterpretation services.[260]

Similarly, although France has recently introduced colour-coded model letters with translated statements in 18 languages setting out whether the applicant has been rejected (yellow), granted refugee status (pink) or subsidiary protection status (green), the information translated is extremely brief and minimal stating only, in case of refusal: "*Your application for asylum has been rejected. You have the possibility to lodge an appeal against that decision with the National Court of the Right of Asylum within a month from this notification*." As such, an applicant who does not read French will have no understanding of the reasons for the negative decision.[261]

The research undertaken would suggest that where a decision is served by post rather than in person (with an interpreter,) and/or where there are doubts as to whether legal representation is available in practice, it becomes questionable, or at least harder to verify, that the requirements of Article 10 (1) (e) APD are met in practice. UNHCR therefore supports good practice whereby in addition to the provision of translated written reasons, the applicant is notified orally of the reasons for the decision in the presence of an interpreter. This should be complemented by the provision of free legal assistance at all stages of the procedure. UNHCR also welcomes good practice (whereby in addition to a full oral translation and/or explanation through a legal adviser), at least a written translation of the decision is provided to the applicant in his/her own language, as is the current practice in Slovenia for example.

Finally, UNHCR reiterates its position that information should be conveyed in a language that the applicant "*understands*" and not merely *"is reasonably supposed to understand".* UNHCR notes with regret that only two of the twelve states surveyed apply this higher standard.

Recommendation

UNHCR recommends that Member States provide a complete written translation of the decision, and/or the provision of a written translation of the summary of the decision, along with oral interpretation of the decision in its entirety.

All information must be provided to the applicant in a language s/he demonstrably does understand, and not merely one s/he is reasonably supposed to understand.

[258] Answer submitted by a refugee lawyer (X1).
[259] X2.
[261] Note that the applicant may not have access to an NGO providing legal and social assistance.

Article 10 (1) (b) APD should be amended to provide that all applicants receive the services of an interpreter as necessary when informed of the decision on the application.

Provision of information on how to appeal[262]

Article 9 (2) APD requires all Member States to ensure that where an application is rejected, "*information on how to challenge a negative decision is given in writing.*" Moreover, Article 10 (1) (e) APD imposes a strict requirement that, together with the decision, applicants are given "*information on how to challenge a negative decision in accordance with the provisions of Article 9(2)",* in a language which they may reasonably be supposed to understand. However, the third paragraph of Article 9 (2) APD sets out an exception, stating "*Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with this information at an earlier stage either in writing or by electronic means accessible to the applicant*."[263]

The aim of these provisions is to guarantee that when the applicant receives a negative decision, s/he also knows, at that point in time and in practical terms, how to appeal the decision, to which specific appellate body and within what applicable time frame. Information which simply states the right to appeal or provides generic information rather than practical instructions on how to challenge the decision does not fulfil this requirement. These practical instructions must be specific to the applicant, and must be communicated, according to the APD, in a language that the applicant may reasonably be supposed to understand. As mentioned above, UNHCR urges Member States to provide this information in a language which the applicant actually understands. Moreover, Article 15 (2) and (3) APD requires that Member States ensure free legal assistance to applicants, upon request and potentially subject to conditions, in the event of a negative decision. Good practice would require that information on the right to free legal assistance and relevant contact details is also delivered with the decision and in a language which the applicant understands.

UNHCR's research found that a majority of Member States surveyed have transposed the requirement of Article 9 (2) APD in national legislation, regulations or administrative provisions. These are: Belgium,[264] Bulgaria,[265] Finland,[266] France,[267] Germany,[268]

[262] See also section 16 on right to an effective remedy.

[263] In accordance with Article 10 (1) (a) APD, this information should also have been provided, at least, in a language which the applicant may reasonably be supposed to understand.

[264] In accordance with Article 2 § 4 of the Law of 11 April 1994 concerning the transparency of administration, every document containing notification of an administrative decision or administrative act provides information on how to challenge the decision or act. The document should name the institution to which to appeal and the applicable time frames. Information on how to challenge asylum decisions specifically can be found in the information brochures provided for by the AO in accordance with Article 2

Greece,[269] Italy,[270] the Netherlands,[271] Slovenia,[272] Spain[273] and the United Kingdom.[274] In the Czech Republic there are provisions requiring communication of information on appeal rights under the general law regulating the procedures of all administrative bodies,[275] but as these do not refer to appeals before a court (where asylum appeals are heard), there is, therefore, legislative reliance on the third paragraph of Article 9 (2) APD by which information on how to appeal is provided at an earlier stage. Nevertheless, in practice, written decisions do contain a very brief statement in Czech on the right to appeal.[276] As observed by UNHCR, when decisions are served on applicants (in the

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of the Royal Decree of 11 July 2003 concerning the AO and on the website of the CGRA. The notification of the decision of the CGRA provides information on how to appeal the decision.

[265] The general provision of Article 59 Administrative Procedures Code applies.

[266] Section 43 of the Act on Administrative Conduct 434/2003 states that "*An oral decision must immediately also be given in writing, together with guidelines for corrections and appeal*."

[267] Article L.723-3-1 *Ceseda* states that "*Negative decisions should be reasoned in fact and in law and state all available remedies and respective deadlines*."

[268] Section 31 (1) Sentence 2 APA: "*It [the decision] shall contain a justification in writing and be delivered to those concerned, along with information on legal remedies."*

[269] Article 8 (1) (e) of PD 90/2008: "*They shall be informed of the result of the decision on the asylum application in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counselor and when free legal assistance is not available. The information provided shall include information on how to challenge a negative decision."*

[270] Article 9 of the d.lgs. 25/2008 provides that "*the decisions on applications for international protection are given in writing. The decision which rejects an application contains the reasons in facts and in law and information on how to appeal a negative decision.*"

[271] Article C18/3 Aliens Circular states that the negative decision should provide information on how to challenge the negative decision. All audited decisions contained a standard paragraph on how to challenge the decision and this information is also provided earlier in the information brochure which should given to the applicant by the Aliens Police.

[272] Article 210 (3) of the AGAP states that every decision shall contain information on how to challenge a decision.

[273] Article 89 (3) APL states that "*The resolution shall include the decision adopted, stating the reasons in fact and law in the cases foreseen in Article 54. They will also indicate the appeals that may be lodged against it, the administrative or judicial body to which the appeal has to be lodged and the time frame to do it, without prejudice to any other appeal which the individual deems necessary to be eventually lodged."* Moreover, Article 58 (2) APL states that "*It will include the complete text of the decision, indicating if it is a final act in the administrative procedure and the appeals that may be lodged against it, the administrative or judicial body to which the appeal has to be lodged and the time frame to do it, without prejudice to any other appeal which the individual deems necessary to be eventually lodged*."

[274] Paragraph 333 of the Immigration Rules HC395. "*Where the applicant has no legal representative and free legal assistance is not available, he shall be informed of the decision on the application for asylum and, if the application is rejected, how to challenge the decision, in a language that he may reasonably be supposed to understand.*" Paragraph 336 states "*Where an application for asylum is refused, the reasons in fact and law shall be stated in the decision and information provided in writing on how to challenge the decision*."

[275] Section 68 (5) & (6) CAP.

[276] Although provisions under ASA or CAP do not impose this obligation expressly, the information on appeal is given to applicants on several occasions in practice, and it is an integral part of every decision, which contains the following standard text concerning the appeal: *''Information on appeal: Action against this decision may be filed within 7/15 days from the date of delivery to the RC in the jurisdiction in which*

presence of an interpreter), they are informed of the address of the competent court and notified that the appeal should be filed in two copies and within a prescribed time limit.[277]

However, question marks remain about implementation and enjoyment of this right in practice in some Member States.

For example, in France, the written decision, which is posted to the applicant, is in French. Although France recently introduced standard-wording refusal letters translated into 18 languages, the information provided in the foreign language is very short and inadequate. A negative decision simply states "*Your application for asylum has been rejected. You have the possibility to lodge an appeal against that decision with the National Court of the Right of Asylum within a month from this notification*."[278] Information given about how to challenge a negative decision with reference to the *Ceseda* and essential practical information such as the address of the appellate authority (CNDA), while systematically printed at the back of each negative decision, is only provided in French. No information on the right to free legal assistance is provided at this stage either. No official oral translation free of cost is made available.[279] Furthermore, there is no specific assistance available for illiterate applicants. UNHCR considers that this does not fulfil the requirements of Article 10 (1) (e) APD.[280]

While Italian legislation requires information to be given on how to appeal a negative decision, in practice the applicant is only given formalistic information rather than precisely specifying the court in question or how or where to actually lodge the appeal.[281] The audited decisions stated only: "*The decisions of the Territorial Commissions can be appealed before the court territorially competent under Article 35 of the d.lgs. 25/2008.*" Furthermore, in several audited decisions, refusal notices did not

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you have your registered address on the day of filing the action. The filing of the action has / has no suspensive effect in line with Section 32 ASA."

[277] Delivery of decisions was observed in 4 out of 8 centres, specifically: three times in Zastávka u Brna, twice in Poštorná detention centre, once at Prague airport, once in Kostelec n. Orlicí. In all the cases observed the requirement to provide information was complied with in practice.

[278] In the case of a decision granting subsidiary protection status, the OFPRA sends a letter stating "*You have been granted the benefit of subsidiary protection pursuant to Article L.712-1 of the Code of Entry And Residence Of Foreigners And Right Of Asylum. However, you were not granted the refugee status provided for in the Geneva Convention of 28 July 1951. You have the possibility to lodge an appeal against that decision with the National Court of the Right of Asylum within a month from its notification.*"

[279] There is a similar problem at appeal level.

[280] Applicants may not have access to an NGO providing legal and social assistance and NGOs may not have the resources to provide this service. Information on how to appeal is contained in the written guide which is supposed to be distributed by *Prefectures* to applicants at the outset of the procedure, but this was not yet available in languages other than French at the time of UNHCR's research. Information on how to appeal is given orally at the end of the personal interview (if any) but this is brief.

[281] Refusal notices simply state literally and generically the provisions of Article 35 (1) of the d.lgs 25/2008.

specify time limits for appeal.[282] UNHCR considers that these practices do not fulfil the requirements of Article 9 (2) APD.

Although Greece has transposed guarantees concerning notification of the decision and information on how to challenge a negative decision, UNHCR is concerned that these are not ensured in practice.[283] The written decisions audited did not provide information "*on how to challenge a negative decision*" as required by the APD. Instead, they merely stated the applicant's right to appeal and the deadline for exercising the right. The last four lines of the audited written decisions stated, in Greek, "a*gainst this decision, the applicant has the right to appeal before the AB within thirty (30)*[284] *days after the day of serving the decision. In case no appeal is made within the above time frame, the decision shall be final."* This does not fulfil the requirement of Article 9 (2) APD. Moreover, as mentioned above, problems in practice mean that notification of decisions is provided without interpretation, leaving applicants essentially reliant on under-resourced NGOs to try to advise them on how to exercise appeal rights.[285] Such practice does not comply with Article 10 (1) (e) APD.

UNHCR therefore questions whether Articles 9 (2) and 10 (1) (e) APD are effectively complied with in practice in several states.

There is nevertheless good practice in a number of Member States, whereby decisions refusing refugee status and/or subsidiary protection are accompanied by a separate notice which informs applicants of how to appeal. For example, in Germany, a separate page is attached to the decision[286] which states the relevant administrative court responsible and sets out the time limit within which the appeal should be filed, its form and content, the time limit for submitting the facts and evidence on which the appeal is based, the consequences of failing to observe the time limit, whether the appeal has suspensive effect and, if not, whether it is possible to suspend deportation. The page is in German when the decision is delivered to the appointed legal representative but, according to the BAMF, is translated into a language the applicant understands when there is no appointed legal representative and the decision is delivered to the applicant

[282] The audit of case files revealed that time limits were not expressly mentioned in a number of the decisions examined: D/52/M/AFG/N, D/53/M/AFG/A, D/54/M/NIG/A, D/55/F/ERI/N, D/59/ M/TUR/S, D/60/ F/ETI/S, D/63/ M/PAK/N, D/64/ M/PAK/N, D/65/ M/GUI/N).

[283] As a result of these concerns a joint working group of UNHCR and the Ministry of Interior have proposed that an explanatory note in the applicant's language should be attached to negative decisions in order to assist the applicant to understand the decision and his/her appeal rights; "*Pros mia dikei ke apotelesmatiki diadikasia anagnorisis tou prosfeyikou kathestotos stin Ellada" [Towards a Fair and Efficient Refugee Status Determination in Greece); Report of Ministry of the Interior and UNHCR joint working group,* October 2008.

[284] Or ten (10) days, depends on the procedure.

[285] See previous sub-section on "Notification of the decision in a language understood by the applicant", notably as described in text referred to at footnotes 249-251.

[286] UNHCR's audit of decisions noted that the last sentence of the decision reads: "*The attached information on legal remedies is a component part of this decision*."

only. In the UK, a separate notice in English is attached to the decision which informs applicants how to appeal. Information sheets accompanying refusal decisions are available in 24 languages.[287] In some regions of the UK, where applications are examined in the regular NAM procedure, the decision and notice on how to appeal are given to applicants at a meeting which is booked specifically for this purpose with the presence of an interpreter if required. The purpose of the meeting is to explain to the applicant how to appeal. These meetings do not take place in all NAM cases, or in all UK regions, and this survey could not assess the extent to which they occurred in practice.

In Finland, all refusal decisions are served alongside guidelines on how to appeal translated into ten languages. Contact details are also provided for NGOs able to provide further advice.[288]

In Bulgaria, as well as being provided with the negative decision,[289] information is also provided when the applicant lodges his/her application for international protection, in the form of instructions on the procedure to follow.[290] Copies of this document are available in 13-14 languages.[291] The instructions include information on all relevant appeal possibilities. There is a standard question at the outset of the interview to confirm that the applicant has received and understands the instructions. In Slovenia, if the written decision is not in a language the applicant understands, the applicant is informed of the result of the decision and how to challenge a negative decision in a language which he understands orally. A record is made of this. Oral and written translations are always free of cost for applicants.[292]

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[287] Amharic, Arabic, Albanian, Chinese, Dari, Farsi, French, Kinyarwanda, Kurmanji, Lingala, Ndebele, Portuguese, Punjabi, Pashto, Romanian, Russian, Spanish, Shona, Swahili, Somali, Tamil, Turkish, Urdu and Vietnamese.

[288] In this regard it should be noted that appeal forms must be completed in Finnish or Swedish and therefore legal assistance is essential. Although generally available, this can cause problems in remote areas, particularly for cases under the accelerated procedure where appeal deadlines are shorter.

[289] The relevant court of appeal and the time limit within which to lodge the appeal, and on rare occasions, the right to a lawyer in principle are a part of the decision and are interpreted to the applicant. It was observed that the official who performs the serving of the decision also explains the procedure to the applicant.

[290] SAR, *Instructions on the rules for submitting an application for status, the proceedings to be followed, and the rights and obligations of the aliens who have submitted an application for status in the Republic of Bulgaria.* NGOs providing free legal assistance are enumerated in an attached list.

[291] Interviews with stakeholders, Head of Proceedings and Accommodation Department of RRC – Sofia.

[292] Article 10 of the IPA (right to an interpreter): *"(1) If the applicant does not understand the official language of the procedure, s/he shall be allowed to follow the procedure and participate in it in a language s/he can understand. The competent authority shall thus ensure the applicant follows the procedure through an interpreter.'*
(2) The applicant shall be provided with the interpreter upon receipt of the application, at a personal interview, in other justified cases, and by the decision of the competent authority when this would be required for understanding of the procedure by the applicant.
(3) The applicant shall be informed of the content of the written decision in a language s/he can understand."

Article 9 (2) APD permits states to derogate from the obligation to provide information on how to appeal in conjunction with notification of the decision where *"the applicant has been provided with this information at an earlier stage either in writing or by electronic means accessible to the applicant."* However, UNHCR was pleased to note that none of the Member States surveyed in this research appear to make exclusive reliance on this derogation.

UNHCR welcomes the fact that the majority of Member States of focus in this research have transposed the provisions requiring the delivery of information on how to appeal against a negative decision. However, the failure of some states to implement this in such a way that the applicant understands what s/he needs to do to exercise the right of appeal, reinforces the fact that there is still room for improvement in this regard. UNHCR endorses good practice observed in Bulgaria where information on how to appeal is given at the start of the procedure, confirmed at the interview stage and then provided again along with the refusal decision.

Recommendations

UNHCR recommends that the written information on how to appeal, which accompanies the decision, should be practical and not legalistic, stating clearly the relevant deadlines, the specific body to which the applicant should apply, the steps that need to be taken to do this, and whom to contact with regard to free legal assistance. It should explain whether an appeal has automatic suspensive effect, and if not, provide information on the requirements for requesting suspension of a removal order. Such information should also refer to the rules governing submission of subsequent (repeat) applications. This should be provided in a language that the applicant understands.

In order to ensure that an applicant is fully aware of relevant appeal rights, general information on the right to appeal, how to appeal and how to obtain free legal assistance should be provided at the start of the procedure in a language which the applicant understands.

Paragraph three of Article 9 (2) APD, permitting derogation on the basis of earlier provision of information in writing or by electronic means accessible to the applicant, should be deleted, or should not be applied by Member States.

Annex 1

Audited decision issued following examination in the accelerated procedure in Slovenia

An example, from the decisions audited, of a typical decision rejecting an application as manifestly unfounded. Underlining indicates those provisions which are considered relevant for the applicant.

Case No. 6-2008:

"Article 55 of the International Protection Act defines that the determining authority shall reject application as manifestly unfounded if the applicant entered the Republic of Slovenia exclusively for economic reasons (indent 1), the applicant, in submitting his/her application and presenting the facts, has only raised issues that are insufficient, insignificant, or of minimal relevance to the examination of whether s/he qualifies for international protection under this Act (indent 2), the applicant clearly does not qualify for international protection, as stipulated in Articles 26 and 28 of this Act (indent 3), the applicant presents false reasons to which s/he refers, in particular when the statements of the applicant are inconsistent, contradictory, improbable or contradict the information on the country of origin referred to in the eighth indent of Article 23 of this Act (indent 4), the applicant has failed without reasonable cause to make his/her application earlier, having had the opportunity to do so (indent 5), the applicant has made an application merely in order to delay or frustrate his/her removal (indent 6), the applicant refuses to have his/her fingerprints and photograph taken (indent 7), the applicant has founded his/her application on a false identity or forged documents, or has withheld relevant information or documents with respect to his/her identity and/or nationality (indent 8), the applicant has deliberately destroyed or disposed of the passport, any other official paper with a photograph that shows his/her identity or nationality, or another document with a photograph which may help establish his/her identity or nationality (indent 9), the applicant has deliberately destroyed or disposed of other documents (official papers, tickets, certificates) which might potentially be relevant for establishing his/her identity, nationality, or entitlement to international protection (indent 10), if the application has not, despite his/her assurance, submitted within a specified period the documentation and data referred to in the fourth indent of Article 23 of this Act (indent 11), the applicant has filed another application stating other personal data (indent 12), the applicant is from a safe country of origin as referred to in Article 65 of this Act (indent 13), the applicant's criminal offence may jeopardise national security or public order of the country, and s/he has been, due to the stated reasons, issued an instrument permitting enforcement to leave the country as an additional sentence, or the instrument permitting enforcement of leaving the country has already been enforced, and the time limit for prohibition of entry to the European Union has not yet expired (indent 14), the applicant conceals the fact that s/he filed a previous application in another country, in particular if s/he uses a false identity (indent

15), the applicant tried, prior to a decision taken by the competent authority, to enter illegally the territory of another country and was caught by the police, or already entered the territory of another country and was returned to the Republic of Slovenia (indent 16).

Article 23 of the International Protection Act defines that when establishing conditions for international protection, the determining authority shall take into consideration in particular data and statements from the application; information acquired during the personal interview; evidence submitted by the applicant; documentation submitted by the applicant, in particular regarding the applicant's age, background, including that of relevant relatives, identity, nationality, places where the applicant previously stayed, and the place of previous residence, previous asylum applications, travel routes, identity and travel documents, and the reasons for applying for international protection; evidence obtained by the competent authority; official data available to the competent authority; documentation obtained prior to submitting the application; general information on the country of origin, in particular on the social political situation and the adopted legislation;
specific information on the country of origin which is detailed, in-depth, and exclusively associated with the concrete case, which, however, may include also the manner of implementing acts and other regulations of the country of origin;
the fact that the applicant has already been subject to persecution referred to in Article 26 of this Act, or serious harm referred to in Article 28 of this Act, or to direct threats of such persecution or such harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated, or threats realised.

The determining authority may decide the application by accelerated procedure, if the actual state of affairs may be wholly determined on the basis of the facts and circumstances referred to in the first to eighth indents of Article 23 of this Act, until these are given."