Section 9
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Introduction

Article 23 of the APD stipulates that the examination procedure at first instance must be conducted in accordance with the basic principles and guarantees of Chapter II of the APD, and should be concluded as soon as possible, without prejudice to an adequate and complete examination.[1] The duration of an examination procedure in which all relevant issues are examined thoroughly will clearly vary, depending on a number of factors, including the particular issues raised by an application. Article 23 APD implicitly assumes, however, that generally it should be possible for the determining authority to take a decision within a limited time frame of around six months.[2]

Article 23 (3) APD states that Member States may prioritize or accelerate any examination.[3] The terms 'prioritize' and 'accelerate' are not further defined in the Directive and no definition has been proposed in the European Commission's proposal for a recast of the APD.[4] Therefore, for the purpose of this research, 'prioritize' is understood to mean when a Member State decides to give precedence to an application and examine it prior to the examination of other applications. 'Accelerate' is understood to mean when a Member State decides to conduct the examination of an application at greater speed than other applications so that a first instance decision is taken within a shorter timescale than in the general or regular procedure.[5]

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[1] Article 23 (1) and (2) APD.

[2] Article 23 (2) APD provides that "*Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall either: (a) be informed* ***of the delay****; or (b) receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected*." In this regard, it should be noted that the European Commission, in its proposal for a recast of the APD, has proposed that the Directive explicitly stipulate that "*Member States shall ensure that a procedure is concluded within 6 months after the application is lodged. Member States may extend that time limit for a period not exceeding a further 6 months in individual cases involving complex issues of fact and law*" (New Article 27 (3)): APD Recast Proposal 2009. The Commission's proposal for a recast of the Reception Conditions Directive also proposes that asylum-seekers should receive permission to work if their asylum claims have not been determined within a period of 6 months: European Commission, *Proposal for a directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (Recast),* COM(2008) 815 final 2008/0244 COD) {SEC(2008)2944, 2945}, 3 December 2008.

[3] Article 23 (3) APD states that "*Member States may prioritise or accelerate any examination in accordance with the basic principles and guarantees of Chapter II, including where the application is likely to be well-founded or where the applicant has special needs*."

[4] APD Recast Proposal 2009.

[5] The timescale may be shorter due to the fact that shorter time limits are imposed and/or due to the fact that the first instance accelerated procedure derogates from procedural steps applicable to the regular procedure.

In UNHCR's view, with regard to the acceleration of examinations, the first step towards reducing the duration of the asylum procedure is to ensure the quality of the first instance procedure. UNHCR strongly believes that Member States need to invest resources in the first instance examination in order to produce reliable good quality first instance decisions. This requires that the first instance examination procedure is implemented by sufficient numbers of trained specialist personnel, supported by qualified interpreters[6] and good quality, up-to-date country of origin information; and that the procedure encompasses all necessary procedural safeguards.[7]

Time is also an essential resource. The trained personnel must have the necessary time to conduct a thorough and complete examination of applications. This includes the necessary time to prepare the personal interview, the necessary time to conduct the interview(s) and draft a full interview transcript, and the necessary time to gather country of origin or other information, assess all the oral and documentary evidence and draft a well-reasoned and sustainable decision.

Applicants also require reasonable time to fulfil their obligation to provide any relevant documentary evidence, and reasonable time to prepare for the personal interview. It is in Member States' interests that their first instance decisions are based on all the available evidence.

Moreover, European Community law has established that:

"*detailed procedural rules governing actions for safeguarding an individual's rights under Community law (…) must not render practically impossible or excessively difficult the exercise of rights conferred by Community law*".[8]

As such, applicants must be given adequate time to exercise their rights to consult in an *effective* manner a legal adviser or other counsellor, and/or to communicate with a refugee-assisting organization.[9] Any acceleration of the examination must be in accordance with these general legal principles of Community law and must not render practically impossible or excessively difficult the exercise of the right to legal assistance under Article 15 (1) APD, or the fulfilment of any of the other principles and guarantees under Chapter II of the APD.

UNHCR recognizes and supports the need for efficient asylum procedures. This is in the interests both of applicants and Member States. However, Member States should not dispense with key procedural safeguards or the quality of the examination procedure to

[6] This should take into account the need to conduct gender-appropriate interviews, and age-appropriate interviews with regards to children.
[7] This includes that all applicants should have the opportunity of a personal interview unless they are certified as unfit for the interview. See section 4 on personal interviews for further information.
[8] Para. 47 of *Unibet* judgment and para. 5 of *Rewe* judgment, Case 33/76.
[9] Article 15 (1) APD and Article 10 (1) (c) APD.

meet time limits or statistical targets. Sacrificing key procedural safeguards and/or setting short time limits for the examination may result in flawed decisions which will defeat the objective of an efficient asylum procedure, as they may prolong proceedings before the appeal instance. Good quality first instance decision-making should alleviate the demands on the appeal instance.

UNHCR understands that some Member States wish to expedite the examination of applications which they assume to be clearly unfounded. It is UNHCR's position that national procedures for the determination of refugee status and subsidiary protection status may usefully include special provision for dealing in an expeditious manner with applications which are obviously without foundation. However, UNHCR considers that such acceleration could most effectively occur at second instance, through shorter but reasonable time limits for submitting appeals, without prejudice to their fair examination.[10] Applications which could be subject to such acceleration are those which are 'clearly abusive' or 'manifestly unfounded'. However, these terms must be defined and interpreted restrictively.

The APD appears to impose no restrictions on the grounds upon which the examination of an application can be prioritized or accelerated, provided the examination is in accordance with the basic principles and guarantees of Chapter II APD. Any application may be prioritized and any examination may be accelerated. This is stated explicitly in Article 23 (3) of the Directive.[11] In the light of the wording of Article 23 (3) APD, the long and expansive list of 16 permissible grounds for prioritization and/or acceleration, set out in Article 23 (4) APD, appear only illustrative. The use of the word "also" in Article 23 (4) APD, however, suggests that this may not have been the intention of the legislator.[12] UNHCR is concerned that the APD does not explicitly limit the circumstances in which an application may be examined in an accelerated manner to those applications which are obviously without foundation. Furthermore, provision should be made to ensure that certain applications may be exempted from prioritized and/or accelerated examination when this would undermine a fair and effective procedure, due to the special needs of the applicant.

The only condition established by Article 23 (3) and (4) of the APD is that any prioritized or accelerated examination must be in accordance with the basic principles and guarantees of Chapter II of the APD. However, UNHCR is seriously concerned that Chapter II of the APD permits Member States to derogate from a crucial and basic

[10] UNHCR ExCom Conclusion No. 30 (XXXIV) of 20 October 1983 on the problem of manifestly unfounded or abusive applications for refugee status or asylum. See also Parliamentary Assembly Resolution 1471 (2005) on accelerated asylum procedures in Council of Europe Member States.

[11] Article 23 (3) states that "*Member States may prioritise or accelerate **any** examination in accordance with the basic principles and guarantees of Chapter II, including where the application is likely to be well-founded or where the applicant has special needs.*"

[12] Article 23 (4) APD: "*Member States may **also** provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be prioritised or accelerated if:*"

guarantee of the asylum procedure – the personal interview – on a wide range of grounds. All of these grounds are explicitly stipulated as permissible grounds for the prioritization and/or acceleration of the examination procedure.[13]

Moreover, UNHCR is also concerned that excessively short time frames for the examination of an application may nullify and render illusory in practice some of the basic principles and guarantees of Chapter II of the APD, and severely constrain applicants' ability to fulfil their obligations under the Qualification Directive to submit all elements needed to substantiate the application for international protection.[14] They may also hinder applicants' ability to exercise their rights under the APD.

It should be stressed that, in accordance with Article 23 (2) of the APD, any acceleration should be without prejudice to an adequate and complete examination of the claim.[15] The curtailment of procedural guarantees - such as the right to be heard in a personal interview; and excessively short time frames which restrict applicants' ability to fulfil their obligations and exercise their rights, as well as the manner in which the determining authority fulfils its obligations - can result in an inadequate and incomplete examination of some applications.

UNHCR's research has found that law and practice on the prioritization and acceleration of examinations in the 12 Member States of focus are disparate and difficult to compare. With no definition in the APD of what constitutes an 'accelerated examination', the term 'accelerated procedure' simply implies that, at the national level, the examination is conducted within a shorter timescale than another or other procedure(s). At the supra-national European Union level, however, as will be seen, the label 'accelerated procedure' is attached to procedures that are so diverse in form and duration that the term becomes ambiguous and unhelpful.

All aspects of the examination procedure diverge across the 12 Member States, including the grounds for prioritization and/or acceleration, the authority that decides to prioritize or accelerate, the purpose of the accelerated procedure, the manner in which the examination is accelerated, the safeguards which apply, and the time frames within which decisions should be taken. Some accelerated procedures operate within very short time frames which render the exercise of rights and obligations by the applicant, and the conduct of a complete examination by the determining authority, extremely difficult. Indeed, in some States' accelerated procedures, an essential safeguard - the personal interview - may be omitted. This increases the potential for erroneous first instance decisions. In some Member States, the average duration of and

[13] Article 12 (2) (c) APD permits the omission of the personal interview on the grounds set out in Article 23 (4) (a), (c), (g), (h) and (j) APD.
[14] Article 4 of the Qualification Directive.
[15] Article 23 (2) APD states that "*Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination*."

safeguards applicable to the accelerated examination are comparable to the regular procedures of other Member States.

In some Member States surveyed, the acceleration of the examination appeared to be the norm[16] or risks becoming the norm rather than the exception.[17] In this context, the use of the terms 'accelerated' and 'regular' becomes an issue of semantics only.

Member States have to achieve a balance between, on the one hand, the need to examine an application for international protection efficiently and, on the other, the need to ensure that the procedure is capable of identifying those in need of protection in accordance with international law. UNHCR's findings regarding the extent to which some Member States are achieving this balance are set out in the following pages.

Overview of practice

At the time of UNHCR's research, all the surveyed Member States prioritized and/or accelerated the examination of some applications in certain varied circumstances.

However, it should be noted that since UNHCR's research, new legislation has entered into force in Greece.[18] Whilst this legislation has not amended the provisions on accelerated procedures contained in the previous legislation,[19] in practice, the accelerated procedure no longer operates and all applications are, at the time of writing, examined in one procedure. The evidence in this section of the report, therefore, relates to the legislative provisions under PD 90/2008 which has not been amended by the more recent PD 81/2009; and to the prior practice at the time of UNHCR's research in early 2009.

Similarly, new legislation has entered into force in Spain in between the time UNHCR conducted its research and the writing of this report.[20] This section of the report refers

[16] Greece: according to UNHCR Athens figures, from January to November 2008, 95% of applications were examined in the accelerated procedure. Slovenia: of the total of 65 reviewed decisions taken in 2008, 51 were taken in the accelerated procedure.

[17] In the Netherlands, there is a proposal to introduce a 'normal' eight day procedure. In 2009, in the parliamentary document with respect to the proposal for a new Aliens Act, dated 29 June 2009, 31 994 no. 3, the State Secretary of Justice stated on page 6 that prolonged procedures increasingly will be the exception, and expects that 40% of applications will be dealt with in the proposed eight day procedure. All asylum seekers would be interviewed, receive the intended decision and would have to provide corrections and additional information in the first four days of this proposed procedure. There would be a rest period of six days before this procedure, during which some research into the asylum claim would be conducted (e.g. fingerprinting and Eurodac search).

[18] PD 81/2009 entered into force on 20 July 2009.

[19] Article 17 (3) PD 90/2008.

[20] Law 12/2009 regulating the Right to Asylum and to Subsidiary Protection – henceforth referred to as the 'New Asylum Law' - entered into force on 20 November 2009.

to both the legislation and practice at the time of UNHCR's research, as well as the legislative amendments made by the New Asylum Law.

The following paragraphs seek to provide a snapshot of the prioritization and/or accelerated procedures in operation at the time of UNHCR's research.

Two of the Member States surveyed, Bulgaria and Spain, operated an initial 'filter' procedure through which nearly all applications were examined on their merits, and in which a decision was taken by the determining authority to reject the application, or discontinue the examination, or submit the application to a general or regular procedure. A positive decision to recognize refugee status (or to grant subsidiary protection status[21]) could not be taken in these procedures. However, neither of these procedures were purely admissibility procedures, as an application was assessed on its merits, and could be rejected on grounds beyond those stipulated as grounds for inadmissibility in the APD.[22] These procedures, therefore, operated as initial 'filter' procedures, to wean out applications which were considered to be manifestly unfounded or inadmissible. It is arguable that the examination of applications in these procedures is not 'accelerated' in that close to all applications in these Member States were examined in these procedures. This meant that there was no differentiation in the speed with which applications were examined, or in the procedural steps applied.

However, in Bulgaria, this 'filter' procedure is referred to, in national law, as an accelerated procedure.[23] The statutory time frame for the procedure is three days.[24] This is considerably shorter than the three (to six) months taken for the examination of applications in the general procedure. The only applications exempted from this accelerated procedure are those by unaccompanied children and beneficiaries of temporary protection.[25] As such, in 2008, 98.3% of all applications were examined in this accelerated procedure[26] and about 35% of these applications were decided in this

[21] With regard to Bulgaria. In Spain, under the former law, it was possible to declare an application inadmissible but nevertheless grant subsidiary protection status, although this occurred only rarely.
[22] Article 25 (2) APD.
[23] Section II: Accelerated Procedure, Chapter Six: Proceedings, LAR.
[24] This period starts after the Dublin II procedure in Bulgaria is completed, and the decision that Bulgaria is the responsible State enters into force (7 days after the decision has been issued, if it has not been appealed or, if appealed, the day the judicial appeal body confirms that Bulgaria is the responsible State). In those cases where Bulgaria accepts the decision of another Member State that Bulgaria is responsible, this term begins from the moment that the documentation relating to the applicant is received in accordance with Article 68 (2) LAR. In the case of a subsequent application, this period starts upon registration of the applicant.
[25] Article 71 (1) and (2) LAR. Article 71 (2) LAR has not yet been applied. In 2008, the number of applicants, out of a total of 746 applications, who were unaccompanied children, was 13. In 2009, out of the total number of 853 asylum applications, 8 were from unaccompanied minors.
[26] Official figures provided to UNHCR.

procedure instead of being admitted to an examination in the general procedure.[27] It should be noted that, at the time of UNHCR's research, the determining authority informed UNHCR that there was an unwritten policy that applications by Iraqis should not be rejected in the accelerated procedure, and should automatically be channelled into the general procedure for examination.[28] A personal interview is conducted in this accelerated procedure, and the reasons for the application for international protection are examined.[29] Applications may be rejected in this accelerated procedure on the ground that they are considered manifestly unfounded in accordance with national law,[30] or discontinued on inadmissibility or withdrawal grounds.[31]

At the time of UNHCR's research, Spain also operated a 'filter' procedure, referred to as the 'admissibility procedure', in which all applications were examined. The admissibility procedure was operated both at the border and in-country. At the border, the Asylum Law established a seven day procedure.[32] However, in practice, the procedure was quicker because the Implementing Regulation (ALR) established that an applicant at the border should be admitted to the territory if an initial decision had not been taken on the application within 72 hours. Thus, in practice, the overall procedure would take six days from the submission of the application. In-territory, a decision on inadmissibility had to be taken within 60 days of the application being formally submitted. Applications could be rejected as inadmissible in this procedure on grounds which extended beyond the scope permitted by Article 25 (2) of the APD,[33] and included grounds considered to be indicative of a manifestly unfounded application and grounds for exclusion.[34] Therefore, this was not strictly an admissibility procedure.

[27] According to the Report on the Activities of the State Agency for Refugees within the Council of Ministers for 2008, Part I, Section 2, p.2, 35% of applications in 2008 (excluding those by Iraqi applicants) were either discontinued or rejected in the accelerated procedure.

[28] Interviews with stakeholders in the Methodology Directorate.

[29] However, the sample questions for this personal interview are shorter than the sample questions for the personal interview in the general procedure.

[30] Article 70 (1), item 1 LAR in relation to Article 13 (1) LAR.

[31] Article 70 (1), item 2 LAR in relation to Article 13 (2) and Article 15 (1) LAR.

[32] Law 5/1984 of 26 March regulating the right to asylum and refugee status: four days for an initial decision by the determining authority, 24 hours within which the applicant could request a re-examination and two days within which the determining authority should issue a decision on the re-examination request.

[33] This provides that Member States may consider an application for asylum as inadmissible if (a) another Member State has granted refugee status; (b) a country which is not a Member State is considered as a first country of asylum; (c) a country which is not a Member State is considered as a safe third country; (d) the applicant is allowed to remain in the Member State concerned on some other grounds and as a result s/he has been granted a status with equivalent rights and benefits to refugee status; (e) the applicant is allowed to remain in the territory on another ground which protects against *refoulement* pending a decision on the status set out in (d); (f) the applicant has lodged an identical application after a final decision; (g) a dependant of the applicant lodges an application after consenting to be a dependant to another application and there are no facts relating to the dependant's situation which justify a separate application.

[34] Under Article 5.6 AL these grounds were: that the application falls within the exclusion clauses of the 1951 Convention; raises no grounds for recognition of refugee status; is identical to an application

Since UNHCR's research, Spain has passed new legislation which introduces both an admissibility procedure and an accelerated procedure at the border and in-country.

In accordance with Article 21 (2) of the New Asylum Law, an application which is lodged at the border (and by applicants in detention) will be examined in an accelerated procedure and, following an application interview, will either be admitted for further examination in the in-country regular procedure, or declared inadmissible,[35] or rejected on one of the following grounds:

- the application does not raise issues related to recognition of refugee status or the granting of subsidiary protection status;[36]
- the applicant is from a safe country of origin;[37]
- the applicant is excluded from international protection on exclusion grounds set out in national legislation; [38]
- the applicant is denied international protection on the grounds that s/he constitutes a danger to the security of Spain or s/he has received a final sentence for a serious crime and constitutes a threat to the community;[39]
- the applicant has made inconsistent, contradictory, improbable or insufficient representations or representations which contradict country of origin information, which has been sufficiently verified, and make his/her claim clearly unfounded as regards a well-founded fear of being persecuted or suffering serious harm.[40]

An initial decision in the accelerated border procedure must be adopted within four working days of the application. In the case of a negative decision, the applicant may request a re-examination of the application by the determining authority within two working days and a decision on any such request must be adopted within two working days.[41] The legislation provides that where the determining authority is minded to

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previously rejected; is based on facts, information or allegations which are openly false, improbable or no longer valid; or where Spain is not the responsible state under international treaties, first country of asylum, and safe third country.

[35] An application will be declared inadmissible, in accordance with Article 20 of the New Asylum Law, if the Dublin Regulation is to be applied; if Spain is not responsible for the examination of the application; if there is a first country of asylum or a safe third country; if the application is identical to a previous application lodged by the same applicant which has already been examined and rejected; if the applicant has lodged another asylum application stating different personal data; if or the applicant is a EU national.

[36] Article 25 (1) (c) New Asylum Law.

[37] Article 25 (1) (d) New Asylum Law.

[38] Article 25 (1) (f) New Asylum Law in conjunction with Article 8 (exclusion from refugee status) and Article 11 (exclusion from subsidiary protection).

[39] Article 25 (1) (f) New Asylum Law in conjunction with Article 9 (grounds for denial of asylum) and Article 12 (grounds for denial of subsidiary protection).

[40] Article 21 (2) New Asylum Law.

[41] These time limits also apply to applications by applicants held in internment centres for aliens (CIE).

reject the application on exclusion or security grounds, UNHCR can request an extension of the time limit of up to ten days (in practice an additional six days). The implementing regulation for the New Asylum Law will have to clarify this procedure.

With regard to applications which are submitted in-country, if, following an application interview, the application is declared admissible in the admissibility procedure[42], it will then be considered in either the regular or the accelerated procedure. The application will be examined in the in-country accelerated procedure if:

- the application is clearly well-founded;
- the applicant has special needs, particularly unaccompanied children;
- any of the five above-mentioned grounds in relation to the accelerated border procedure apply; or
- the application was presented after the one month time limit.[43]

In contrast with the approximately four to seven day accelerated border procedure, a decision has to be adopted within three months of the submission of the application in the in-country accelerated procedure. However, if an application is made by an applicant who is held in an in-country detention centre for aliens (CIE), the application is examined within the time limits established for the accelerated border procedure. By way of comparison, the New Asylum Law establishes that a decision in the regular procedure should be taken within six months of the application being lodged.[44]

The practice in the Netherlands is conceptually different to those described above. Following an initial interview with all applicants, the determining authority decides whether it considers that a decision can be taken on the application within 48 procedural hours,[45] instead of the six months allocated for a decision in the regular procedure.[46] If so, the application is examined within an accelerated procedure with strict timeframes for each procedural stage, and an overall timeframe of 48 procedural hours. If not, the application is channelled into the regular procedure. However, the determining authority adheres to a policy that most applications can be examined and decided upon within 48 procedural hours. Therefore, with the exception of applicants from countries to which categorical protection applies,[47] all applications are considered eligible for examination in the accelerated procedure, provided it is considered that a

[42] Refer above footnote no. 35.There is a one month time limit for applying under the in-country admissibility procedure.
[43] The time limit of one month is stipulated in Article 17 (f) of the New Asylum Law.
[44] Article 23 (3) New Asylum Law.
[45] Working hours for the 48 hours procedure are 8.00-18.00, so the procedure normally takes 5-6 days.
[46] Article 3:117 Aliens Decree.
[47] Aliens Circular C12/3 states that applications by applicants who are (without doubt) from countries to which the categorical protection policy is applied by the Dutch government should be examined in the regular and not the accelerated procedure.

quick decision can be taken. In 2008, 3,039 applications (21% of all applications) were examined in the accelerated procedure.[48]

Slovenia and the UK also allocate applications to the regular procedure or an accelerated procedure following a screening or application interview.

In Slovenia, following an application interview by the determining authority, a decision is taken to consider the application either in the accelerated procedure or the regular procedure. National law sets out numerous grounds, along the lines of those set out in Article 23 (4) APD, for channelling applications into the accelerated procedure.[49] The overwhelming majority of applications are submitted to the accelerated procedure.[50] There is no prescribed time limit for the accelerated procedure. The personal interview may be, and generally is, omitted in practice. In practice, a positive decision to grant international protection has never been taken in the accelerated procedure in Slovenia.

Similarly, in the UK, an application may be channelled into an accelerated procedure following a screening interview. However, the UK is the only Member State of those surveyed which operates distinct accelerated procedures conducted by separate units within the determining authority. It is also the only Member State of those surveyed that detains applicants whose applications are routed into the accelerated procedures. Following a screening interview, an application may be channelled into the regular procedure or one of two distinct accelerated procedures:

(i) the detained fast track (DFT) procedure; or
(ii) the detained non-suspensive appeal (DNSA) procedure.

Approximately 7% to 8% of total applications were examined in the DFT and DNSA procedures in 2007, although the proportion has increased in subsequent years.[51] The DFT and DNSA procedures have time frames of three[52] and six or ten working days[53] respectively.

[48] This represented a decrease as compared to previous years. See www.ind.nl. Of these, 10% resulted in the grant of a residence permit. Over the years, various members of Parliament have expressed the view that up to 40% of applications can be examined in the accelerated procedure; and a former Minister expressed the view that up to 80% of applications can be examined in the accelerated procedure.
[49] Article 55 IPA.
[50] Of the 65 reviewed decisions taken in 2008, 51 were taken in the accelerated procedure.
[51] Home Office Statistical Bulletin, UK 2007; Research, Development and Statistics Directorate, The Home Office, ISSN 1358 – 510 X ISBN 978 – 1- 84726-815-0; 21 August 2008. Total applications made in 2007 was 23,430. In 2007, 320 applicants were received at Oakington, 745 were received at Harmondsworth, and 520 were received at Yarl's Wood. Total fast track for 2007 is 1,585. i.e. 6.76% of all applications were detained procedures. Home Office Statistics for 1st Quarter 2008. ISBN 978 1 84726 675 0. Total applications Q1 2008 = 6,595. Oakington 90; Harmondsworth 245; Yarls Wood 120. Total 455. i.e. 7% of total applications. The UKBA confirmed the 8% figure in interview on 1 April 09.
[52] This is three working days for a first instance decision.

In seven of the Member States surveyed, there is no distinct accelerated procedure which operates parallel to a regular procedure or is conducted by a separate unit, but the examination of certain applications are prioritized and/or accelerated. These are Belgium, the Czech Republic, Finland, France, Germany, Greece[54] and Italy.

In Belgium, there are three distinct legal provisions which permit the examination of an application to be accelerated and each stipulates a different time frame:

(i) Article 52 Aliens Act sets out extensive grounds considered to be indicative of clearly unfounded or clearly abusive applications, and sets a shorter timeframe of two months within which a decision should be taken;
(ii) Article 52/2 Aliens Act sets a time frame of 15 calendar days for the examination of applications by persons detained at the border or in-territory, detained in prison, or considered to pose a danger to public order or national security. It also applies where the Minister of the Interior requests an accelerated examination in the context of a mass influx of applicants from a particular country; where it is suspected that there is a manifest improper use of the asylum procedure; or that a network of smugglers in human beings is active; and
(iii) Article 57/6, § 2, of the Aliens Act provides that the applications of EU nationals may be prioritized and examined within five working days if the statement of the applicant does not permit the conclusion that s/he qualifies for international protection.

Although in law there are extensive grounds upon which the examination of an application may be prioritized and accelerated, in practice, examination is accelerated principally when applicants are detained at the border or in-territory.[55]

In the Czech Republic, there are two distinct legal provisions which may result in the accelerated examination of an application:

(i) Section 16 ASA sets out grounds considered to be indicative of clearly unfounded or clearly abusive applications, states that a decision that an

[53] Decisions are issued on day 6 if the application is not 'clearly unfounded' and on day 10 – together with removal directions – if the application is considered clearly unfounded under NIAA 2002.
[54] This was the case at the time of UNHCR's research. Note that since the entry into force of PD 81/2009, it is reported that the examination of certain applications is no longer accelerated.
[55] There were no specific statistics available to UNHCR on the number of applications examined in an accelerated manner. This statement is based on information obtained through interviews with different officials within the determining authority, the CGRA, and the AO, which is responsible for the registration of applications. In 2008, 351 applications were made by applicants at the border, according to CGRA's asylum statistics, published on 8th January 2009, http://www.cgvs.be/nl/binaries/STAT-ASIEL%20CGVS%202008_tcm127-39640.pdf.

application is manifestly unfounded must be issued within a time frame of 30 days.[56]

(ii) Section 73 (4) ASA provides that when an application is submitted by an applicant at the border, and s/he is not allowed entry to the territory, the application should be examined within four weeks, otherwise entry to the territory must be granted.[57]

There were no published statistics available to UNHCR with regard to the Czech Republic, but UNHCR did have access to a list of all decisions taken on the basis of Section 16 ASA between 1 February 2008 and 31 October 2008. Of all the negative decisions taken in this period, 43.75% were taken following an accelerated examination in accordance with Section 16 ASA. This represents 22% of all decisions taken in the same period. Figures regarding the border procedure were not available.

In Finland, legislation stipulates that a decision shall be taken within seven calendar days of the minutes of the personal interview being completed, where the applicant is considered to come from a safe country of asylum (this includes the concept of both first country of asylum and safe third country) or a safe country of origin.[58] The examination of an application may also be accelerated when an application is considered to be manifestly unfounded under national law; and when it is a subsequent application which does not raise any new issues or evidence.[59] However, in these latter cases, there is no legal requirement that the decision be taken within a certain time frame. In 2008, the average time frame within which a decision was taken on all the above-mentioned grounds was 67 days, as compared to the average of 130 days for other decisions.[60] On the basis of the determining authority's official statistics for 2008, 13.7% of all decisions were taken following an accelerated examination.[61]

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[56] Section 16 (3) ASA states that "*A decision to reject an application due to its manifestly unfounded nature shall be issued not later than 30 days from the date of commencement of the proceedings on the granting of international protection*." This is 30 calendar days.

[57] Section 73 (4) ASA: *"The Ministry will decide on the application for international protection within 4 weeks of the date of the Declaration on International Protection made by an alien. Should the Ministry fail to decide within the given period, it will enable the alien to enter the territory without the decision and transport him/her into an asylum facility in the territory. The Ministry will make a decision on whether the alien is allowed to enter the Territory or not within five days since the date of the Declaration on International Protection. An alien a) whose identity was not established in a reliable manner, b) who produced falsified or altered identity documents, or c) for whom there is a well-founded assumption that s/he could threaten security of the state, public health or public order, will not be allowed to enter the Territory."* Note that this is a transposition of Article 35 (4) APD on border procedures.

[58] Section 104 of the *Ulkomaalaislaki* (Aliens' Act 301/2004, as in force 29.4.2009). However, note that the personal interview may be omitted on safe country of asylum grounds, and therefore this time frame cannot always be applied in practice.

[59] Section 103 (2) of the *Ulkomaalaislaki* (Aliens' Act 301/2004, as in force 27.4.2009).

[60] These times do not include the days (up to a month) required for the police or border guards to transfer a case to the determining authority. Also, note that the seven day time frame for decisions on safe country or asylum or origin grounds is commonly exceeded, due to delays in securing agreement from the

In France, the priority procedure (*procédure prioritaire*) is *de facto* an accelerated procedure in which the examination of applications is both prioritized and accelerated. According to national law[62], an application is examined in the accelerated procedure when the applicant has been refused a temporary residence permit, or had the permit withdrawn on the grounds that:

(i) the applicant is a national of a country to which Article 1C(5) of the 1951 Convention applies, or that of a safe country of origin;
(ii) the applicant is considered to constitute a serious threat to public order, public security or the security of the State;
(iii) the application is considered to be deliberately fraudulent, to constitute an abuse of the asylum procedures, or is considered to have been lodged solely to prevent a removal order which has been issued or is imminent.

Applications examined in the accelerated procedure should be decided by the determining authority within 15 days of receipt of the application from the *Préfecture*. Applications by applicants who are detained in administrative retention centres should be decided within an even shorter timeframe of 96 hours.[63] An increasing proportion of applications are examined in the accelerated procedure. In 2008, according to the OFPRA Activity Report, 30.7% of all applications submitted were examined in the accelerated procedure.[64] This represented a 26% increase compared to 2007.[65]

In Germany, examination of the following categories of applications is prioritized internally - but not accelerated - by the determining authority, the BAMF, on grounds set out in the internal guidelines of the BAMF:[66]

(i) applications submitted by persons already in detention or by persons having committed a crime;

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other relevant country to take back the applicant. Statistics for average processing times at the Immigration Services are available at http://www.migri.fi/netcomm/content.asp?article=3129 .

[61] Official translation available at www.migr.fi. A total of 1,995 decisions were taken in 2008, of which 84 were on safe country of origin grounds and 189 were considered manifestly unfounded (including subsequent applications). However, these statistics do not explicitly state the decisions taken on safe country of asylum grounds (first country of asylum), although such decisions were audited by UNHCR. These statistics do not include decisions taken on the basis of the Dublin Regulation.

[62] Article L.723-1 and L.741-4-2° to 4° *Ceseda.*

[63] Article R.723-3 *Ceseda*.

[64] Page 69 (annexes). This is 30.7% of the total flow ("*flux total*"), including both first and subsequent applications. 16.9% of initial applications were examined in the accelerated procedure, whereas 82.6% of subsequent applications were examined in the accelerated procedure. This rate is 50% in French overseas territories.

[65] The number of applications examined in the accelerated procedure was less than 10% in 2003; 16 % in 2004; 23 % in 2005; 30% in 2006, and 28% in 2007.

[66] Internal Guidelines for Adjudicators: "*Priority*" (1/1), Date: 12/08, p. 1.

(ii) applications considered to be manifestly unfounded;[67]
(iii) subsequent applications which are not considered to require the opening of a new asylum procedure; and
(iv) multiple applications.

The only accelerated procedure in Germany is the airport procedure. Entry to the territory of Germany can be denied at the airport if the BAMF rejects an application as manifestly unfounded within two days of submission of the application.[68] If a decision cannot be taken within this period, the applicant is admitted to the territory and the application is further examined in the regular procedure.[69]

In Greece, at the time of UNHCR's research in early 2009, applications for international protection were examined in an accelerated procedure when they were considered to be manifestly unfounded according to national law, or when the applicant was considered to be from a safe country of origin, or had come from a safe third country, as defined in national law. In the accelerated procedure, a decision had to be issued within 30 calendar days of the application, whereas decisions could be taken within six months in the regular procedure.[70] In 2008, the overwhelming majority of applications were examined in the accelerated procedure.[71]

In Italy, an application will be examined with priority when:

(i) the application is considered to be clearly well-founded;
(ii) the applicant is considered a vulnerable person under national law; or
(iii) the application is from an applicant who has been sent to a reception centre (CARA - reception centre for refugees and asylum seekers)[72] on the basis of Article 20, 2 (b), or (c) of Legislative Decree No. 25/2008, or to a detention

[67] No further explanation of this term could be found in the Internal Guidelines for Adjudicators. The term is further specified in Section 30 APA: *"(1) An asylum application shall be manifestly unfounded if the prerequisites for recognition as a person entitled to asylum and the prerequisites for granting refugee status are obviously not met. (2) In particular, an asylum application shall be manifestly unfounded if it is obvious from the circumstances of the individual case that the foreigner remains in the Federal territory only for economic reasons, or in order to evade a general emergency situation or an armed conflict."*
Further specific reasons are foreseen in para. (3) to (5).
[68] Section 18a (3), (6) No. 2 APA.
[69] If a decision were to be taken, within the two day time limit, to reject the application as simply 'unfounded', the applicant would also be admitted to the territory. S/he would receive a negative decision with the obligation to leave Germany, which could be subject of an appeal in the administrative court with suspensive effect. However, in practice, it is observed that all applications that are not rejected as manifestly unfounded within two days are admitted to the territory and the regular procedure.
[70] Article 17 (4) PD 90/2008.
[71] According to UNHCR Athens figures, from January-November 2008, 95% of applications were examined in the accelerated procedure.
[72] Except when this has been ordered in order to verify or check the personal identity of the applicant.

centre (CIE - identification and expulsion centre) on the basis of Article 21 of Legislative Decree 25/2008.[73]

In practice, the applications of applicants residing in 'informal' reception centres (non-CARAs) have also been prioritized in order to try and prevent disorderly protests against lengthy procedures.[74] The compatibility of this policy with the law has been questioned, and it is considered to result in the prolongation of the procedure for other applicants.[75]

When the applicant is detained in a CIE, the determining authority should conduct the personal interview within seven days of receipt of the documentation concerning the applicant (rather than 30 days in the regular procedure) and a decision should be issued within the following two working days (instead of three working days). No other time limits apply. The National Commission for the Right of Asylum (CNDA) does not maintain statistics on the number of applications that are prioritized or accelerated. However, a significant majority of asylum seekers in Italy are accommodated in a CARA upon arrival on the basis of Article 20, 2 (b) and (c) of Legislative Decree No. 25/2008. Their application is, therefore, in principle prioritized, as compared to the minority of applicants who are not accommodated in a CARA. For example, at one of the Territorial Commissions for the Recognition of International Protection (CTRPI)[76], which is located in the premises of a reception centre for asylum seekers (CARA), it is estimated that 95-98% of applications are, in principle, prioritized.[77] It is evident that even though a significant number of applications are *de jure* prioritized, as at this CTRPI, none of them are *de facto* prioritized.

Who decides to prioritize or accelerate the examination of an application?

With the exception of France, in all the Member States surveyed, any decision to prioritize and/or accelerate the examination of an application is taken by the determining authority.[78]

In France, the determining authority is OFPRA. However, the decision to prioritize and submit an application to the accelerated procedure is effectively taken by the Prefectures (*Préfectures*).[79] Before applying for international protection, all applicants

[73] Article 28 (1) d.lgs. 25/2008.
[74] As reported in the press in January 2009, when protests took place at the Red Cross reception centre in Massa.
[75] Stated in the opinion of the Department for Civil Liberties and Immigration of 3 March 2009 and in the circular letter of the National Commission for the Right of Asylum (CNDA, IT) of 31 March 2009.
[76] The determining authority.
[77] According to the UNHCR member of the said CTRPI.
[78] Note that in Bulgaria, all applications with the exception of applications by unaccompanied children and beneficiaries of temporary protection are automatically examined in the accelerated procedure.
[79] The *Préfectures* are responsible for the admission and residence of aliens in France, including asylum applicants. *Préfectures* are not the determining authority as defined by Article 4 (1) of the APD. They do not fall either under the definition of responsible authorities under Article 4 (2) of the APD (except for

must compulsorily apply for a temporary residence permit at the *Préfecture* closest to their domicile.[80] The *Préfectures* may refuse to issue a temporary residence permit if they consider that an applicant is from a safe country of origin; that the applicant constitutes a serious threat to public order or security; that the asylum application is deliberately fraudulent, or constitutes an abuse of the asylum procedures; or is solely lodged to prevent a removal order which has been issued or is imminent.[81] If the *Préfecture* issues a temporary residence permit, the application for international protection will be examined in the regular procedure by the determining authority. However, if the *Préfecture* refuses the application for a temporary residence permit on the grounds stated above, the application for international protection is channelled into the accelerated procedure (*procédure prioritaire)*. National law states that "*the OFPRA prioritizes the examination of applications made by persons to whom the temporary residence permit … has been refused or withdrawn*".[82]

UNHCR considers it problematic that an authority other than the determining authority is called upon to make such an assessment and effectively determine whether an application is examined in the regular or accelerated procedure. Guidelines to the *Préfectures* stipulate that the assessment of the abusive nature of an application should be based solely on the administrative and procedural context of the application.[83] Yet it is not possible, for example, to assess whether an asylum application "is *solely* lodged in order to prevent a removal order which has been issued or is imminent" without examining the reasons for the application for international protection. Furthermore, it is not possible to determine whether a subsequent application "constitutes an abuse of the asylum procedures" without examining the evidence presented with the new claim, together with the assessment of the previous application.[84]

Préfectures are required to attach a "*Fiche de saisine en procédure prioritaire*" to the application, specifying the ground upon which the temporary residence permit has been

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their role in processing cases according to the Dublin Regulation and, to a certain extent, for their role in taking decisions in the light of national security provisions). In the framework of this research, UNHCR was only able to interview one *Préfecture*, the *Préfecture* of Rhône (Lyon). The divergent practices of all the *Préfectures* are reviewed in detail in a report published by the NGO Cimade ("*Main basse sur l'asile. Le droit d'asile (mal) traité par les Préfets*", June 2007).

[80] Article L.741-2 and Article R.741-1 *Ceseda*. Since 2007, the delivery of temporary residence permits is conducted on a regional basis (one *Préfecture* does it for several *départements*). This was first experimented in some regions. Since 20 April 2009, it is applicable to the whole territory (except Paris and its region).

[81] Article L.741-4--2° to 4° *Ceseda* (unofficial translation into English).

[82] Unofficial translation of Article L.723-1 *Ceseda* « *[§2] L'office statue par priorité sur les demandes émanant de personnes auxquelles le document provisoire de séjour prévu à l'article L.742-1 a été refusé ou retiré pour l'un des motifs mentionnés aux 2º à 4º de l'article L.741-4, ou qui se sont vu refuser pour l'un de ces motifs le renouvellement de ce document ».*

[83] *Circulaire N° NOR : INT/D/05/00051/C du 22 avril 2005*.

[84] NGOs have alleged in the past that some *Préfectures* exceed their role, and assess evidence submitted in support of a subsequent application: Cimade, « *Main basse sur l'asile* » June 2007 and CFDA, « *Les demandeurs d'asile sans papiers : les procédures Dublin II et prioritaires »*, April 2006.

refused and the application routed into the accelerated procedure. Although these are not always well-reasoned, they may allow the determining authority to check the *Préfecture*'s decision to channel the application into the accelerated procedure.[85] However, OFPRA does not have any authority over the *Préfectures*. OFPRA can only share its view with the *Préfectures* and examine the application within the period it deems necessary for a complete examination, which may exceed the time lines of the accelerated procedure.[86]

Recommendation

UNHCR recommends that only the determining authority decide whether to prioritize and/or accelerate the examination of an application.

The information basis upon which a decision is taken to prioritize or accelerate the examination of an application

In some Member States, the information required to decide to prioritize and/or accelerate the examination depends on the potentially applicable ground for prioritization/acceleration.[87] For example, in some Member States, the examination of an application will be prioritized and/or accelerated when the applicant is in detention. This decision can be taken immediately by the determining authority upon receipt of relevant information about the detention (or otherwise) from a competent authority.[88] However, other grounds for prioritization and/or acceleration of the examination may only emerge at a later stage of the procedure - for example, on the basis of information gathered during the personal interview.[89]

In practice, in Slovenia and Spain, the decision to accelerate the examination of the application is taken on the basis of information gathered during the application

[85] For example, in audited Case File 51R (RUS) of the sample, the application was channeled into the accelerated procedure by the prefecture, while OFPRA considered that it should be examined under the regular procedure.

[86] Note that an applicant may challenge the decision of the *Préfecture* through the administrative tribunal which has the power to repeal the decision of the Préfecture, and order issuance of a temporary residence, and that the application officially be routed into the regular procedure. However, this legal remedy has no suspensive effect and, except when the case is referred to the court under an emergency procedure, the tribunal's judgment can take several months and even years.

[87] Belgium, the Czech Republic, Finland and Germany.

[88] For example, in Belgium such a decision would be taken by the determining authority following receipt of information contained in the registration form from the competent authority, the Aliens Office (AO). In Finland, the decision would be taken upon receipt of information from the police or border guards. In Germany, the examination of an application is prioritized by the BAMF when it is informed that the applicant is in detention. In Italy, this decision would be taken on the basis of an informal recommendation received from the reception centres and the *Questuras*.

[89] Belgium, the Czech Republic, Finland and Germany.

interview and any other evidence submitted or gathered prior to a decision being taken on which procedure is appropriate.[90]

In the Netherlands and the UK, the decision to prioritize and/or accelerate the examination is taken upon information gathered during an initial screening interview. The purpose of the screening interview is to establish nationality and identity, as well as to explore an applicant's travel route. Bio-data, fingerprints, photos, identity and travel documents will be obtained so that a EURODAC search can be carried out. The purpose of this interview is not to gather the detailed reasons for the application for international protection.[91] In the UK, however, the screening interview does allow for a brief indication of the basis for the application. Based on this limited information,[92] the determining authority may decide to channel an application into an accelerated procedure when it considers that a quick decision can be taken.

In France, as mentioned above, the decision to prioritize and accelerate the examination of an application is effectively taken by the *Préfecture* on the basis of the content of a form which must be completed in writing and in French by the applicant.[93] No assistance, in terms of a translator or interpreter, is provided by the state to applicants who cannot write in French. The form contains questions relating to nationality, identity, links with France and the travel route. The completed form does not provide any information on the reasons for the application for international protection. Yet, without knowing the reasons for the application for international protection, the *Préfecture*, which is not the determining authority, has the power to determine whether

[90] In Slovenia, according to Article 54 IPA, the competent authority can decide the application in the accelerated procedure if "*the entire operative event has been established on the basis of facts and circumstances from the first to the eighth sub-paragraph of Article 23 of this Act inasmuch as they have been presented."* Indent 1-8 of Article 23 states: "*When examining the requirements for international protection the official shall particularly consider the following:*

- *information and statement in the application;*
- *information collected during* ***the personal interview****;*
- *evidence produced by the applicant;*
- *documentation produced by the applicant particularly with respect to his age, origins, including the origin of relatives, identity, nationality, former countries and places of permanent residence, previous applications, travel routes, personal and travel documents as well as the reasons for filing the application;*
- *evidence collected by the competent authority;*
- *official information available to the competent authority;*
- *documentation acquired before filing the application;*
- *general country of origin information, especially the country's social and political situation as well as the adopted legislation."*

[91] Lower Court Rotterdam, 30 December 2009, awb, 09/44220.

[92] In the Netherlands, this concerns the country of origin and travel details.

[93] The application form for a temporary residence permit (*Formulaire uniforme de demande d'admission au séjour en France)* exists in 18 languages but must be completed in French without the services of an interpreter or translator. Applicants sometimes have a friend or relative to assist with the language. The *Préfecture* can also decide that the examination of an application should be accelerated during the examination of the application by OFPRA if it determines there is fraud or a threat to public order.

it considers the application for international protection to be, for example, abusive, dilatory or fraudulent.[94]

Guidelines have been issued to the *Préfets* which stress that the examination of the substance of the application for international protection falls within the exclusive competence of OFPRA, the determining authority, and the appeal tribunal (CNDA), and that the assessment of the abusive nature of an application should solely result from the administrative and procedural context of the application, and should be applied on a case-by-case basis.[95] However, as stated above, it may be impossible in fact to determine whether an application constitutes "an abuse of the asylum procedures" without examining the reasons for the application for international protection. For example, it is not possible to determine whether an application has been made solely to prevent the enforcement of a removal order, unless the reasons for the application for international protection are examined. According to NGOs, in practice, some *Préfectures* tend to consider in general that an application for international protection submitted by a person who is detained in an administrative retention centre is abusive or dilatory,[96] and that subsequent applications are "an abuse of the asylum procedures". Some *Préfectures* also appear to consider that an asylum application submitted a few days or weeks after entry into France is abusive.[97] To take such decisions on the basis of the administrative and procedural context only, may result in applications which are well-founded or not clearly unfounded being examined in an accelerated manner.[98]

In Italy, the decision to prioritize the examination of an application is taken on the basis of the limited information contained in the registration form[99] (and documentation attached thereto, such as the appointment of a guardian for a child, an age assessment certificate, etc.). This documentation is sent by the police departments (*questuras*) to the determining authority and, when available, the recommendation/referral letter from the social services in the identification and expulsion centre (CIE), reception centre (CARA or SPRAR), or from NGOs providing voluntary assistance to asylum-seekers. Clearly well-founded applications and applications by vulnerable applicant are prioritized on the basis of referrals from NGOs assisting asylum-seekers, or from the

[94] Article L.741-4--2° to 4° *Ceseda* (unofficial translation into English).
[95] Circulaire N° NOR : INT/D/05/00051/C, 22 April 2005. The text adds that the use of the accelerated procedure should not be systematic and should take into account the individual circumstances, even in the case of subsequent applications.
[96] According to the 2008 OFPRA Activity Report, applicants held in administrative retention centres represent 18% of cases which are examined under the accelerated procedures (1, 894 cases). 64% of applications are initial applications.
[97] Report « *Les demandeurs d'asile sans papiers : les procédures Dublin II et prioritaires* », CFDA, avril 2006.
[98] The recognition rate by OFPRA in the accelerated procedure is 11.1% according to the OFPRA 2008 Activity Report, page 30.
[99] Modello C3

psycho-social services present in the reception centres (CARA and SPRAR).[100] In order to ensure that such referrals are systematic and based on clear criteria, a specific provision is expected to be included in the implementing regulation for Legislative Decree 25/2008 which is being drafted at the time of writing. Applications that are prioritized because the applicant was sent to a reception centre (CARA) or to an identification and expulsion centre (CIE) on the basis of Articles 20 2 (b) and (c) and 21 of Legislative Decree No.25/2008 are in principle prioritized on the basis of the information forwarded by the police departments (*questuras*) to the Territorial Commission. This information should set out the grounds upon which the decision was taken to host the applicant in a CARA or to detain the applicant in a CIE. In practice, the grounds for the decision to accommodate in a CARA are not always clear and explicit, and this may have implications both for the prioritization of the examination and for any appeal. This could also be addressed if the implementing regulation being developed at the time of this research, which includes an explicit requirement to inform both the applicant and the Territorial Commission of the grounds for the decision to accommodate the applicant in a CARA.[101]

Opportunity to challenge the decision to prioritize and/or accelerate the examination

In Bulgaria, applications are automatically examined in the accelerated procedure. Therefore, there is no formal decision which can be challenged other than via appeal against a decision to reject the application as manifestly unfounded, or to discontinue the examination, following its consideration in the accelerated procedure.

In some Member States, applicants will not even be aware that their application is being examined with priority and/or in an accelerated manner, as no formal decision is taken to prioritize and/or accelerate the examination.[102] Indeed, it is often only evident from the decision on the application itself that the application was examined in an accelerated manner.[103] As a result, there is no formal decision which can be legally

[100] Several projects funded by the Ministry of Interior (supported by national ERF funds) and implemented in 2009-10 aim to improve mechanisms for identification and referral of vulnerable cases. These projects are coordinated by the Ministry of Interior and implemented by international organizations (UNHCR and the International Organization for Migration (IOM) with the Praesidium project), NGOs (Save the Children, CIR, ASGI), or public institutions (SPRAR, Public Health Sector).

[101] This is a recommendation which UNHCR has made to the Italian Government.

[102] The Czech Republic, with regard to decisions taken on the basis of Section 16 ASA; Finland and Germany with regard to the informal prioritization of some examinations; Greece, Slovenia and Spain with regard to applications examined in the accelerated border procedure (although applicants do have the opportunity to request a re-examination of the initial decision, which may include a challenge to the decision to accelerate the examination). In Spain, if the application is admitted to the procedure – whether at the border or in-country - s/he is notified whether admission is to the regular or the accelerated procedure. This constitutes notification and not a formal decision, and therefore cannot be appealed before the courts.

[103] For instance, decision 77 in Finland, where the fact that the decision stated that the application was manifestly unfounded was indicative of the fact that the examination had been conducted in an accelerated manner. However, there was no other record in the case file to indicate that the examination

challenged, except upon appeal following a negative first instance decision taken in the accelerated procedure.

In the Netherlands and the UK, a legal representative may request that a 'decision' to accelerate the examination be re-considered, but the decision is at the discretion of the case manager.[104] In the Netherlands, the legal representative has the possibility to submit his/her opinion after his/her client has been interviewed on the merits of the claim. S/he can request that the authorities do not take the first decision, and instead refer the application to the regular procedure in order to have more time to provide background information. However, given that the report of the personal interview is key, and later statements are not easily taken into account, referral of a case to the regular procedure may be of limited assistance.[105] In the UK, the 'acceleration' element of the detained accelerated procedure (rather than the 'detention' element) can be queried by the legal representative, either by asking for an adjustment to timescales within the detained fast-track procedure, or by requesting that their client's application be removed from the accelerated (detained) procedure entirely (and thereby placed in the 'regular' procedure).

In the Czech Republic, a decision by the determining authority not to allow entry into the territory (which results in an application for international protection being examined in the accelerated procedure under Section 73 ASA) can be challenged administratively with the determining authority, DAMP, one month after the decision was taken. Alternatively, it can be appealed to the administrative courts.[106] By contrast, it is not possible to challenge the decision to accelerate the procedure taken under Section 16 ASA (manifestly unfounded applications).

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had been accelerated. Similarly, in the Czech Republic, an applicant will only learn that the application was examined under Section 16 ASA once the decision is taken that the application is manifestly unfounded. This is also apparent in decisions in Slovenia.

[104] In the UK, see *Detained Fast Track Processes Operational Instruction on Flexibility in the Fast Track Process* (26 April 2005 – UKBA website) and the *Detained Fast Track (DFT) & Detained Non Suspensive Appeal (DNSA) – Intake Selection (AIU Instruction)* v.2. In UNHCR's fifth Quality Initiative report to the Minister in March 2008, UNHCR noted its concern that in just over one in seven of the cases it had reviewed, a request was made for taking the case from the DFT procedure which was not granted, and in a number of these cases inappropriate or inadequate reasons were given for refusing the request. In some cases there was no clear indication from the case file as to whether the request had been considered, or why it was refused: Paragraphs 2.3.68 and 2.3.70 of the fifth Quality Initiative report.

[105] Evidence which is not raised during the personal interview or in the submitted opinion of the legal representative, but is only raised at a later stage, may adversely impact the credibility.

[106] UNHCR obtained some evidence to suggest that the CC in Prague does not always manage to take a decision within the maximum four month period in which an applicant may be detained at the airport. A local NGO, whose lawyer commutes to the transit area of the international airport showed UNHCR, on 22 April 2009, a copy of two decisions in which it took nine and ten months respectively for the CC in Prague to take a decision (No. 5 Ca 53/2008-37 of 12 December 2008 and No. 10 Ca 35/2008-83 of 3 December 2008).

Similarly, in France, the decision of the *Préfecture* not to grant a temporary residence permit (which results in the application for international protection being examined in the accelerated procedure) is a formal decision which can be appealed before the administrative tribunal.[107] This legal remedy has no suspensive effect, except when the case is referred to the court under an emergency procedure ("*référé*"), and the judgement can take months or years.[108] The decisions of the *Préfectures* in principle should be reasoned and duly notified to the applicant.[109] In practice, however, this is not always the case. UNHCR audited 20 case files examined in the accelerated procedure. In most, there was a "*fiche de saisine de l'OFPRA en procédure prioritaire*" stating the decision of the prefecture regarding the request for a temporary residence permit. However, these decisions were not always well reasoned, and some were more detailed than others.

Procedural standards and safeguards in accelerated procedures

All asylum procedures must be able to identify effectively individuals with international protection needs. Given the inherent challenges in accurately assessing refugee claims within accelerated procedures, effective safeguards are required to ensure that all protection concerns are adequately and appropriately identified and met.

Article 23 (3) and (4) APD provide that any prioritization or acceleration of the examination of an application must be in accordance with the basic principles and guarantees of Chapter II of the APD. And in all the Member States surveyed, national legislation complies with the basic principles and guarantees of Chapter II of the APD.[110]

[107] In the Rhône *Département*, the court is systematically seized by applicants who were refused a temporary residence permit and whose application was therefore channeled into the accelerated procedure.

[108] Cf. Article L.521-1 *du code de justice administrative*. In this regard, the Administrative Court in Lyon (« *tribunal administratif* ») always considers that the emergency procedure should be applied. This tribunal tends to suspend the decision of the *Préfecture* refusing a temporary residence permit for applicants who are nationals of safe countries of origin, and/or who apply for asylum in the framework of a subsequent application, and to order the *Préfecture* to deliver a temporary residence permit to these applicants, which should be valid until the decision of the CNDA on appeal. Therefore this case law creates a suspensive remedy before the CNDA (*NB*: this case law comes from a first instance administrative tribunal. It does not rule on the substance of the case, it can be overturned by a higher administrative court and it has no binding effect on other administrative tribunals. Only a ruling from the Council of State (*Conseil d'Etat*) would set a precedent. Cf. *Tribunal administratif de Lyon, M. B.P, Ordonnance du juge des référés, 2 février 2007, N°0700354; Tribunal administratif de Lyon, Mme EC, Ordonnance du juge des référés, 3 avril 2009, N° 0901637; Tribunal administratif de Lyon, Mr. KC, Ordonnance du juge des référés, 3 avril 2009, N° 0901635).*

[109] This is the case in the *Préfecture* of Rhône, which has a longstanding tradition of motivating its decisions because of the strict control undertaken by the administrative court ("*tribunal administratif*"). This is however not the case in all the *Préfecture*s.

[110] Note that in practice there may be shortcomings in implementation which affect all applicants, but the impact on applicants whose application is examined in the accelerated procedure may be more acute due to the shorter time frame of the procedure. For further information, see other sections of this report generally.

However, UNHCR's concern is two-fold. Firstly, UNHCR considers that Chapter II of the APD does not guarantee all the effective safeguards required to ensure that all protection concerns are adequately and appropriately identified and met. Secondly, in practice, the context of accelerated procedures, where the timescales are shorter than the regular procedure, it is critical that the speed with which the procedure is conducted does not nullify or adversely hinder the exercise of rights and guarantees.

With regard to the first concern, UNHCR particularly regrets that Article 12 (2) (c) in conjunction with Article 23 (4) of Chapter II of the APD set out five circumstances in which a personal interview may be omitted, and the examination of an application may be accelerated.[111]

UNHCR considers that the personal interview is an essential component of and safeguard in the asylum procedure as it provides the applicant with what should be an effective opportunity to explain comprehensively and directly to the authorities the reasons for the application. It also gives the determining authority the opportunity to establish, as far as possible, all the relevant facts and to assess the credibility of the evidence. The right to the opportunity for a personal interview, in a language which the applicant understands, on the reasons for the application should be granted to all applicants, regardless of whether the examination is accelerated or not, unless the applicant is certified as unfit or unable to attend the interview owing to enduring circumstances beyond his/her control.[112]

[111] According to Article 12 (2) (c) APD, the following are grounds both to omit the personal interview and accelerate the examination of an application: Article 23 (4) (a) regarding applications which raise issues of minimal or no relevance to international protection; Article 23 (4) (c) regarding applicants considered to come from a safe country of origin or have arrived from a safe third country; Article 23 (4) (g) regarding applicants who are considered to have made inconsistent, contradictory, improbable or insufficient statements; Article 23 (4) (h) regarding subsequent applications which do not raise any relevant new elements, and Article 23 (4) (j), when it is considered that the application is merely in order to delay or frustrate a removal order.

[112] See section 4 for further information. See also UNHCR Executive Committee Conclusion No. 30 (XXXIV) of 1983 on the problem of manifestly unfounded or abusive applications for refugee status or asylum paragraph (e) (i), available at: www.unhcr.org/41b041534.html. See also Resolution 1471 (2005) of the Parliamentary Assembly of the Council of Europe on Accelerated Procedures in CoE Member States (para 8.10.2) available at: http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/eres1471.htm and "Guidelines on human rights protection in the context of accelerated asylum procedures" of the Council of Europe (adopted by the Committee of Ministers on 1 July 2009 at the 1062nd meeting of the Ministers' Deputies) paragraph IV (1) (d) available at: https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec%282009%291062/4.5&Language=lanEnglish&Ver=app6&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383 .

UNHCR notes that in some Member States, the procedural guarantees which apply **in law**[113] to the first instance procedure are the same for the examination of all first-time applications, regardless of whether the examination of the application is accelerated or not.[114] This is the case in Belgium, Bulgaria, the Czech Republic, France, Germany,[115] Italy, the Netherlands and Spain.[116] In particular, UNHCR notes with approval that national legislation in Belgium, Bulgaria,[117] Germany, Italy, the Netherlands and Spain provides that applicants whose applications are examined in an accelerated manner are given the opportunity of a personal interview.

In France, national legislation does not differentiate between the accelerated and regular procedures in terms of the procedural guarantees which apply in law. With regard to the personal interview, it may be omitted in law on four grounds which may apply regardless of whether the application is examined in the regular or accelerated procedures.[118] The fact that the application is examined in the accelerated procedure is not a ground, as such, for omitting an interview. However, one of the grounds in law for channelling an application into the accelerated procedure is that a temporary residence permit has been refused on the ground that the applicant is a national of a country to which Article 1 C (5) of the 1951 Convention applies.[119] This is also a ground for the omission of the personal interview.[120] Another ground for refusing a temporary residence permit and channelling an application into the accelerated procedure is that the application is considered to be deliberately fraudulent, or to constitute an abuse of the asylum procedures, or is considered to have been solely lodged to prevent execution of a removal order which has been issued or is imminent.[121] *Préfectures* exercise a wide margin of appreciation in their interpretation of this legal provision. The personal interview may be omitted by the determining authority on a further ground,

[113] However, note that enjoyment of these procedural guarantees may be hindered in practice by the time constraints of accelerated procedures. See below.
[114] This excludes the preliminary examination of subsequent applications.
[115] The airport procedure provides the same guarantees as the regular procedure, but in an extremely short time frame of two days, which applies with a view to a denial of entry on the ground of a rejection of the application as manifestly unfounded. If the deadline cannot be kept or another decision is envisaged, the application will be channeled into the normal procedure).
[116] Note that, as stated in Article 16 (2) of the New Asylum Law, legal assistance is mandatory for applicants whose applications are lodged at borders and at CIEs.
[117] Although a personal interview is conducted in the accelerated procedure in Bulgaria, it should be noted that the sample questions for the interview are much shorter than the sample questions for an interview in the general procedure.
[118] Article L.723-3 *Ceseda* provides that OFPRA may omit the interview where: a) the OFPRA is able to take a positive decision on the basis of elements available; b) the asylum seeker is a national of a country to which article 1C5 of the 1951 Convention is applied; c) the elements which substantiate the claim are manifestly unfounded; and d) medical reasons prevent the conduct of the interview.
[119] Article L.723-1 *Ceseda* in conjunction with Article L.741-4-2° *Ceseda.*
[120] Article L.723-3 *Ceseda.*
[121] L.741-4-4° *Ceseda.*

when the application is considered to be manifestly unfounded.[122] The term 'manifestly unfounded' is not further defined in French legislation or guidelines and, therefore, the determining authority has a wide margin of appreciation in law in deciding whether to omit the personal interview. Sinceapplicants have less time to complete their written application form in French in the accelerated procedure, and they do not receive the services of an interpreter or translator for this purpose, it is perhaps more likely that an application will be considered as manifestly unfounded and thus be examined without a personal interview.

Statistics from the determining authority OFPRA indicate that in the accelerated procedure, 55% of applicants are summoned to an interview, and 46% are actually interviewed.[123] According to the OFPRA Report, in 2008, 43% of the applications examined in the accelerated procedure were initial applications, while 57% were subsequent applications. The report maintains that, due to a change of policy, 100% of first-time applicants are now invited to a personal interview. This would suggest that, in recent practice, personal interviews were omitted when the application was a subsequent application.[124] However, during the period of the research, UNHCR audited three case files in which initial applications to OFPRA were examined without a personal interview because OFPRA considered the applications to be manifestly unfounded. Their subsequent applications were examined in the accelerated procedure, also without a personal interview.[125]

In some of the other Member States surveyed, applicants whose applications are examined in an accelerated first instance procedure may not enjoy all the same procedural guarantees as applicants whose applications are examined in a regular procedure. For example, in Finland, Greece, Slovenia and the UK, the personal interview may be omitted on certain grounds set out in law.[126]

In Finland, the grounds in law upon which a personal interview may be omitted are limited. If an applicant is considered to come from a safe (first) country of asylum or origin, a decision on the application should be made within seven days of the date when the minutes of the interview were completed.[127] However, the personal interview can

[122] Article L.723-3 *Ceseda* states that OFPRA may omit the interview where "(c) *the elements which substantiate the claim are manifestly unfounded*".
[123] 2008 OFPRA report.
[124] UNHCR's audit of 60 case files in France revealed eight case files concerning subsequent applications. All the subsequent applications in the sample were examined under the accelerated procedure and none of the applicants were invited to an interview: Case file 52R (AFG); Case file 58R (DRC); Case file 59R (SLK); Case file 49R (SLK); Case file 50R (PAK); Case file 51R (RUS); Case file 57R (TR); and Case file 48R (TR). See section 4 on personal interviews for further details.
[125] This may be due to the fact that the first procedure in these cases pre-dated the new policy to offer all first-time applicants a personal interview.
[126] See section 4 on personal interviews for further information.
[127] Section 104 of the *Ulkomaalaislaki* (Aliens Act 301/2004).

also be omitted on safe (first) country of asylum grounds.[128] In the absence of a personal interview, and therefore an interview transcript, it is not clear in such cases how the time limits for an accelerated procedure can be applied.

However, in Greece, Slovenia and the UK, national legislation provides wide scope for the omission of the personal interview, although this is not always reflected in practice.

In Greece, national legislation provides that "*applications for asylum shall be examined with the accelerated procedure when they are manifestly unfounded or when the applicant is from a safe country of origin … or from a safe third country*".[129] The grounds set out for considering an application manifestly unfounded mirror the grounds set out in Article 23 (4) APD.[130] However, since new legislation entered into force (PD 81/2009), the above-mentioned legislative provision, whilst still applicable, is reportedly no longer implemented. In accordance with national legislation, the personal interview may be omitted when the determining authority considers the application to be manifestly unfounded.[131] In practice, according to the determining authority, there is oral guidance that the interview is omitted only when an applicant claims to have left the country of origin exclusively for economic reasons, and their country of origin does not have disorderly conditions and/or is among those countries that do not produce refugees.[132]

In Slovenia, national legislation sets out 16 grounds upon which the competent authority "*shall reject an application in an accelerated procedure as unfounded*".[133] In 2008, 79% of all decisions reviewed by UNHCR were taken in the accelerated procedure.[134] By law, the personal interview may be omitted whenever the accelerated procedure is conducted,[135] and in practice, no interviews are held in that procedure. The Administrative and Supreme Courts have held that this does not constitute a breach of Article 12 (2) (c) APD on the ground that prior to the decision to submit the

[128] Section 103 (1) of the *Ulkomaalaislaki* (Aliens Act 301/2004). The determining authority informed UNHCR that in practice, the personal interview is omitted on first country of asylum grounds, and not safe third country grounds. This was confirmed by UNHCR's audit of case files. None of the audited cases concerning safe countries of asylum (audited cases 98, 99, 100, 102, 106 and 107) included interviews with applicants. In all of these cases the applicant had been granted protection status elsewhere.

[129] Article 17 (3) PD 90/2008.

[130] With the exception of Article 23 (4) (c) on safe country of origin and safe third country which are mentioned explicitly in Article 17 (3) PD 90/2008 as grounds for examination in the accelerated procedure.

[131] Article 10 (2) (c) PD 90/2008.

[132] Of the 202 case files that UNHCR audited in Greece, the interview was omitted in ten cases because the applicants, all Pakistani nationals, allegedly declared that they arrived in Greece for economic reasons. In all the other case files, an interview was conducted. However, note that UNHCR has very serious concerns regarding the quality of personal interviews in ADA, Athens. See section 4 for further details.

[133] Article 55 IPA.

[134] Statistics are not publicly available. UNHCR reviewed all decisions taken in 2008. Of the 65 reviewed decisions, 51 were decided in the accelerated procedure and 7 were decided in the regular procedure.

[135] Article 46 (1), indent 1 of the IPA states that "*the personal interview may be omitted: when the competent authority may decide in an accelerated procedure*".

application to the accelerated procedure, the determining authority conducts an application interview with the applicant. This is considered to constitute a meeting in terms of Article 12 (2) (b) APD which permits Slovenia to omit the 'personal interview'.[136]

In the UK, although national rules establish seven grounds upon which the personal interview may be omitted[137], published written policy states that the determining authority normally interviews each applicant before refusing an asylum claim substantively.[138] In practice, in the accelerated detained fast track (DFT) and detained non-suspensive appeals (DNSA) procedures, the applicant is offered the opportunity of a personal interview.

In addition to the omission of the personal interview, UNHCR's research also noted the following differentiated standards relating to the accelerated procedure in some Member States:

- The determining authority is only required to refer to country of origin information relating to general circumstances in the country of origin in the accelerated procedure. This is as opposed to more specific, detailed, in-depth and individual country of origin information, which must be taken into account in regular procedure, for example in Slovenia.[139] Moreover, if the general credibility of the applicant is not established, country of origin information does not need to be taken into account at all.[140]

- Decisions are taken by the interviewer in the accelerated procedure, rather than the Chair of the determining authority, in Bulgaria. Decisions taken in the accelerated procedure are not subject to the same quality control as in the general procedure.

Recommendations

All applicants for international protection should enjoy the same procedural safeguards and rights, regardless of whether the examination is prioritised, accelerated or conducted in the regular procedure.

All applicants for international protection should be given the opportunity of a personal interview. The personal interview should only be omitted when the determining authority is able to take a positive decision with regard to refugee status

[136] U728/2008, 9 April 2008 and U129/2008, 6 February 2008.
[137] Immigration Rules HC 395, paragraph 339NA. See Section 4 for further details.
[138] API, *Conducting the Asylum Interview.*
[139] Article 23 IPA.
[140] Article 22/4 IPA.

on the basis of the available evidence, or when it is certified that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control.

Article 12 (2) (c) APD should be amended and the references to Articles 23 (4) (a) (irrelevant issues), 23 (4) (c) (safe country of origin), 23 (4) (g) (inconsistent, contradictory, improbable and insufficient representations) and 23 (4) (j) (merely to delay or frustrate removal) should be deleted.[141]

Impact of time limits on procedural standards

As stated above, UNHCR is aware that the effectiveness of procedural guarantees and rights in law may be nullified or adversely hindered in practice by the speed with which the procedure is conducted. In accordance with EU law, the examination of the application must not be accelerated to such an extent that it renders the exercise of rights afforded by the *acquis*, including the APD, practically impossible or excessively difficult and, therefore, nullifies the effectiveness of legal guarantees.[142] Moreover, acceleration should not prejudice an adequate and complete examination of the application.[143] In the context of accelerated examinations, this may require Member States to take specific action to facilitate the exercise of rights and guarantees in order to ensure an adequate and complete examination.

UNHCR is concerned that in some Member States, in certain circumstances, the examination of applications is accelerated to such an extent that it renders excessively difficult the exercise of rights conferred by the APD.[144] Some stakeholders interviewed by UNHCR in this research have expressed the concern that very short time limits do not permit an adequate and complete examination of the application in accordance with Article 23 (2) APD.

Use of time limits

The overwhelming majority of the Member States surveyed have imposed time limits within which the accelerated examination or certain accelerated procedures should be conducted. The exception being the accelerated procedure in Slovenia which is not

[141] Deletion of this provision is suggested in recast Article 13(2) of the APD Recast Proposal 2009.

[142] European Community law has established that "*the detailed procedural rules governing actions for safeguarding an individual's rights under Community law (…) must not render practically impossible or excessively difficult the exercise of rights conferred by Community law*": Paragraph 47 of Unibet judgment and paragraph 5 of Rewe judgment, Case 33/76.

[143] Article 23 (2) APD.

[144] See, for example, *Implementation of the Aliens Act 2000: UNHCR's Observations and Recommendations*, July 2003 with regards to the accelerated procedure in the Netherlands. In 2007, the Committee against Torture also expressed its concerns with respect to the Dutch accelerated procedure in the Concluding Observations. In the UK, in its fifth Quality Initiative report to the Minister, (March 2008), UNHCR expressed concern that the speed of the DFT process may inhibit the ability of case owners to produce quality decisions.

subject to specific time limits. However, the comparison of time limits across the procedures in Member States is not straightforward.

The time limits run from different points in time, depending on the Member State, and sometimes depending on the procedure. For example, in the Czech Republic, the four-week time limit for the accelerated border procedure begins when the applicant declares an intention to apply for international protection. However, the 30 day accelerated procedure under Section 16 ASA begins when the formal application is made. In some other surveyed Member States, the time limit starts from the point in time when the determining authority formally receives the application.[145]

In Bulgaria, the three-day time limit begins the day after entry into force of the decision that Bulgaria is the state responsible to examine the application; or in the case of a subsequent application, the day after the application is registered.[146]

In the Netherlands, the 48 hour procedure begins with the preliminary interview regarding identity, nationality and travel route, which is conducted by the Aliens Police or, at Schiphol airport, by the Royal Marechaussee. According to Aliens Circular C10/1.2., this should commence not more than four hours after an applicant reports to start the examination of the application. However, it should be borne in mind that applicants can be asked to wait in one of the so-called Temporary Emergency facilities. At the time of UNHCR's research, applicants were held there for periods sometimes exceeding three months before they were able to report to lodge the application and start the examination procedure.

In the UK, time limits for the detained fast track (DFT) and detained non-suspensive appeal (DNSA) procedures initiate from the moment the applicant arrives at the detention centre and has an induction.[147]

In Finland, the seven-day time limit does not begin to run until the date the report of the personal interview is completed, and in Spain the time limits run from the moment

[145] Belgium, France, Greece and Italy. The Czech Republic, with regard to the 30 day Section 16 procedure according to Section 16 (3) ASA. Germany, with regard to the two day time limit for a denial of entry in the context of the airport procedure (Section 18 a (3), (6) No. 2 APA).

[146] This period starts after the Dublin II procedure in Bulgaria (which precedes the accelerated procedure) is completed, and the decision that Bulgaria is the responsible state enters into force (7 days after the decision has been issued, if it has not been appealed; or, if appealed, the day the judicial appeal body confirms that Bulgaria is the responsible state). In interviews, stakeholders stated that the approximate duration of the Dublin II procedure in Bulgaria is 10 days. In those cases where Bulgaria accepts the decision of another Member State that Bulgaria is the responsible state, this term begins from the moment that the documentation relating to the applicant is received in accordance with Article 68 (2) LAR.

[147] See *Asylum Instruction, 'Fast Track process Overview'*.

the application is formalized, which occurs after the application interview takes place and the completed application is signed by the applicant.[148]

Time limits are also expressed variably in procedural hours, working days or calendar days, depending on the Member State and applicable law.

In some Member States, there is one overall time limit for the conduct of the accelerated examination. In some of the Member States surveyed, in addition to the overall time limit, there are shorter time limits for specific procedural steps.[149] For example, in the Netherlands there are strict time limits for each procedural step.[150] In the regular procedure, the applicant is given a rest period of six days before the personal interview. This period does not apply, however, in the accelerated procedure, in which the personal interview should take place as soon as possible after the screening interview, subject to the two procedural hours of legal assistance provided after the initial screening interview and before the detailed personal interview.[151] In the regular procedure, following receipt of an intended decision to reject, the applicant has four weeks within which to submit any views or further evidence. In the accelerated procedure, the applicant has only three hours after receipt of the interview report, with legal assistance, to consider the report of the personal interview, to discuss the intended decision and submit any further views or evidence.[152]

In Spain, in accordance with the New Asylum Law, an initial decision in the accelerated border procedure (applied at borders and at internment centres) should be adopted in four working days. In the case of an initial negative decision, the applicant can, within two working days of notification, request a re-examination of the application. A decision on this request for re-examination should be adopted in two working days from the date the request for re-examination was lodged.

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[148] Article 21 (2) New Asylum Law, with regard to the border procedure (and applications lodged by applicants in internment centres), and Article 25(4) New Asylum Law (which refers to Article 24 (3) New Asylum Law) with regard to in-country applications.

[149] In France, the applicant must complete and submit the OFPRA application form within 15 calendar days of being notified of the refusal to issue a temporary residence permit. An applicant who is issued a temporary residence permit has 21 days within which to complete and submit the OFPRA application form: Article R. 723-1, al.4 *Ceseda*. According to the 2008 OFPRA Activity Report, *Préfectures* are flexible regarding the requirement that applicants have a 15 day time frame within which to transmit their application. In Belgium, additional evidence must be submitted within 24 hours of the personal interview if the applicant is detained, or within five days for other accelerated procedures.

[150] There are strict time periods for legal assistance, the detailed personal interview, the provision of supplementary or amended information and evidence, the intention procedure and the decision.

[151] Article 3.111 in conjunction with 3.112 (1) (b) Aliens Decree. At the time of this research, there was a proposal to reform these procedural time lines so that the initial screening interview is conducted on day 1, day 2 is reserved for the submission of any corrections to the report of the screening interview and to prepare for the detailed personal interview, and on day 3 the personal interview is conducted.

[152] Article 39 Aliens Act in conjunction with 3.115 (2) (a), 3.117 (3) and 3.118 (2) Aliens Decree, C15 Aliens Circular.

In some Member States, if a decision cannot be taken within the overall time limit or if the time limit is exceeded, the application is further examined within the time frames of the regular procedure.[153] As such, in the Czech Republic, if the time limit is exceeded when the applicant is detained at the border, s/he is allowed to enter the territory.[154] Similarly, in Germany, if an application in the airport procedure is not rejected as manifestly unfounded within the time limit of two days, the applicant is admitted to the territory and the application will be further dealt with in the regular procedure.[155] On the other hand, in the Netherlands, when the applicant is detained at the border, a decision to transfer the application into the regular procedure may result in the applicant being released from detention and accommodated in an open reception centre in-country; or the applicant may remain in detention.[156]

In some Member States, exceeding the time limit may mean that a certain decision may no longer be issued. For example, in the Czech Republic, exceeding the 30 day time limit means that the application cannot be rejected as manifestly unfounded.[157] In Finland, if the time limit in which to take a negative decision on safe (first) country of asylum or safe country of origin grounds is exceeded, the decision will be taken that the application is manifestly unfounded instead. That decision is not subject to a time limit, but has the same procedural consequences with regards to the enforcement of the decision and appeal rights.[158]

On the other hand, in other Member States, the time limits for the determining authority are merely indicative and not binding.[159] In Belgium, if the applicant is detained at the border and the time limit of 15 days is exceeded, detention continues. If after two months, no final decision has been taken on the application, the applicant is released from detention.[160] In France, the time limit for a decision by the determining

[153] Bulgaria, the Czech Republic, the Netherlands and Spain (New Asylum Law: at borders, if no decision is notified to the applicant within the established time frames, the application will be admitted to the regular RSD procedure. In the case of applications lodged at CIEs, the application will be admitted to the accelerated RSD procedure).

[154] Section 73(4) ASA.

[155] Section 18 a (3), (6) No. 2 APA.

[156] The relevant criteria are set out in Aliens Circular C12/2.2.1. It should be noted that there is no maximum duration of detention for aliens in Dutch law.

[157] Section 16 ASA.

[158] *Ulkomaalaislaki* (Aliens' Act 301/2004, as in force 28.4.2009) section 101 (3).

[159] Belgium, France and Italy. However, in Belgium, in the explanatory statement of the Law of 2006, amending the Aliens Act, it was made clear by the Government that exceeding these time limits may cause a backlog which would oblige the Commissioner-General to develop a management plan to address the backlog; and a failure to meet time limits would be taken into account in the evaluation of the work of the Commissioner-General and all staff. In Spain, with the New Asylum Law, if the three month time limit for a decision in the in-country accelerated procedure is exceeded, no specific consequence in established in law or guidelines. It is too early to draw any conclusion on practice at the time of writing.

[160] According to information obtained by the NGOs CIRE and Vluchtelingenwerk Vlaanderen, there exists an unofficial 'gentleman's agreement' between the AO and the CGRA to grant entry to the territory to those applicants whose application requires examination for longer than two months, especially where

authority on the application is also indicative.[161] However, if the applicant is held in an administrative retention centre, the maximum duration of detention is 32 days.[162] Similarly, in Italy, the time limit for a decision by the determining authority on the application is also indicative. If the applicant is detained in a CIE and the first instance decision is not taken within the relevant time limit, detention is prolonged for a maximum period of six months.

Bearing in mind all the variances noted above, UNHCR has noted that the legally stipulated time frames of accelerated procedures vary widely across Member States.

For example, in Spain, with regard to the in-country accelerated procedure, a decision should be adopted within three months of the application being lodged.[163] The in-country accelerated procedure for applicants in Belgium who are not detained is two calendar months, and the average accelerated procedure in Finland takes 67 days.[164]

The accelerated procedure is approximately one month in the Czech Republic,[165] which was also the duration of the accelerated procedure in Greece when it operated.[166]

In France, by contrast, the in-territory accelerated procedure for applicants who are not detained is 15 days.[167] This is also the time frame for examination of the applications of those in detention in Belgium.[168]

Some time frames for the examination of applications are extremely short. The airport procedure in Germany has a time frame of two days.[169] The detained fast track

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complex cases or vulnerable persons are involved. NGOs are concerned that this is a discretionary and *ad hoc* arrangement. See Note on the evaluation of the asylum procedure distributed during the hearing in the Senate, 24 March 2009.

[161] However, note that if the applicant is held in an administrative retention centre, and s/he fails to submit the OFPRA application form within five days, this time limit is not indicative and his/her application can be declared inadmissible.

[162] Article L. 552-1 and L 552-7 *Ceseda.*

[163] Article 25 (4) of the New Asylum Law.

[164] Statistics for average processing times at the Immigration Services are available at http://www.migri.fi/netcomm/content.asp?article=3129.

[165] Section 16 (3) ASA states that "*A decision to reject an application due to its manifestly unfounded nature shall be issued not later than 30 days from the date of commencement of the proceedings on the granting of international protection*." This is 30 calendar days. With regard to the border procedure, Section 73(4) ASA states that *"The Ministry will decide on the application for international protection within 4 weeks of the date of the Declaration on International Protection made by an alien."*

[166] Article 17 (4) PD 90/2008.

[167] In practice, the median duration for the examination of initial applications in the accelerated procedure is 21 days, and four days for subsequent applications: OFPRA Activity Report 2008, p. 12.

[168] Article 52/2, § 2, 1° of the Aliens Act - administratively detained asylum seekers; and Article 52/2, §2, 2° - asylum applicants in prison. In Belgium, AO takes about 10 days to transfer an application to the CGRA, which then has 15 days within which to take a decision in the accelerated procedure for detained applicants. This time limit is however not binding. On average, the process takes about three weeks.

procedure in the UK has a time scale of three working days, and the accelerated procedure in Bulgaria also has a three-day time frame.[170] The accelerated procedure in the Netherlands has a time frame of 48 procedural hours, which equates to approximately five working days. The accelerated procedure for those in detention in France is 96 hours,[171] nine days in Italy, and six or ten days for those in the detained non-suspensive appeal (DNSA) procedure in the UK. In Spain, the timeframe for the accelerated procedure conducted at the border and for applicants who are held in detention centres is four working days, extendable up to a maximum of eight working days if a request for re-examination is made. Belgium also has a five-day procedure for applications by EU nationals.[172]

UNHCR recognizes that with regard to applicants who are detained, it is not in their interests that the examination of their application is prolonged if this extends the duration of their detention.[173] Nevertheless, UNHCR recalls that persons who are detained may be persons in need of international protection. As mentioned below with regards to the grounds for acceleration of the examination, the national legislation of some Member States permits the accelerated examination of an application simply on the ground that the applicant is detained, or when the applicant is detained at the border.[174] These grounds for accelerating the examination are clearly unrelated to the

[169] This is the time within which the determining authority should issue a decision that an application is manifestly unfounded if it wishes to deny the applicant's admission to the territory.

[170] Although note that this begins seven days after the decision in the Dublin II procedure which stakeholders estimated takes approximately ten days. Therefore, approximately 17 days from the date the applicant is registered. However, this is not applicable for subsequent applications.

[171] Article R 723-3 *Ceseda*.

[172] Article 57/6, 2° of the Aliens Act: if the statement of the applicant does not raise issues which are relevant to qualification for international protection.

[173] In the case of border procedures that derogate from Article 35 (1) APD (which requires that border procedures are conducted in accordance with the basic principles and guarantees of Chapter II), a decision must be taken within four weeks; otherwise the applicant must be granted entry to the territory in order for the application to be processed in accordance with the other provisions of the APD: Article 35 (4) APD.

[174] Belgium: Article 52/2 Aliens Act sets a time frame of 15 calendar days for the examination of applications by persons detained at the border or in-territory or detained in prison. The Czech Republic: Section 73 (4) ASA which provides that when an application is submitted by an applicant at the border and s/he is not allowed entry to the territory, the application should be examined within four weeks, otherwise entry to the territory must be granted. This is a transposition of Article 35 (4) APD on border procedures. Italy: Article 28 (1) d.lgs. 25/2008 provides that when the applicant is detained in a CIE, the determining authority must issue a decision on the application within 9 days of receipt of the documentation concerning the applicant (rather than 30 days). In Spain, the New Asylum Law applies the border procedure to applications lodged by applicants held in internment centres. (Note that according to Spanish law, aliens who are placed in internment centres are under so-called 'administrative detention' and not regular detention, and are referred to as 'interned persons' instead of detainees, meaning that they are not under the same legal regime. Under the 'administrative detention' regime, they are only held in the internment centres for expulsion/ return purposes, for a maximum of 60 days, after which they are set free if return cannot take place. People held in regular detention that apply for asylum have their application examined in the in-country asylum procedure). In Germany, only so-called *retention* at the airport triggers a deadline of two days from the submission of a claim for a rejection as manifestly

merits of the application itself, which may be strong. Moreover, in France, the applications of persons who are detained in administrative retention centres are routinely considered to be an abuse of the asylum procedure, without reference to the reasons for the application and, therefore subject to a 96 hour accelerated examination.[175]

All applicants, including those in detention, must have an effective opportunity to substantiate their application in accordance with Article 4 of the Qualification Directive, to obtain relevant documentary evidence, if any, and to consult effectively with a legal adviser or other counsellor. Moreover, the determining authority requires time to prepare the personal interview, conduct the interview, gather country of origin or other information, assess all the relevant evidence and draft a well-reasoned decision.

The extremely shortened time frame of some accelerated procedures may mean that applicants whose applications are examined in an accelerated manner are significantly disadvantaged, as compared to applicants whose applications are examined within the regular time frames. The following were highlighted as adverse factors by interviewees:

- **Less time to submit application form to determining authority.** For example, in France, according to national law, a person who is detained must complete and submit a written asylum application form in French within five days of being informed of their right to apply for asylum. Otherwise, any application will be considered inadmissible.[176] Those persons in-country who have not been issued a temporary residence permit, whose applications must therefore be examined in the accelerated procedure, must complete and submit the application form in French within 15 calendar days.[177] They must do this without the services of an interpreter being provided by the state. Applicants in-country who have been issued a temporary residence permit (so that the application is to be examined in the regular procedure) have 21 days within which to submit the written application form to the determining authority.

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unfounded if entry to the territory is to be denied (Section 18a APA). The examination of applications by applicants otherwise in detention is not accelerated but simply prioritized according to the internal guidelines of the BAMF (cf. Internal Guidelines for Adjudicators: Priority (1/1), Date: 12/08, p. 1.).

[175] This is based on the *Préfectures*' interpretation of Article L.741-4-4 *Ceseda.*

[176] *Loi du 26 novembre 2003* and *Décret No 2006-617 du 30 mai 2005 relatif à la rétention et aux zones d'attente.* According to Article L. 551-3 *Ceseda*, when a foreigner arrives at the administrative retention centre, s/he receives the notification of the right to apply for asylum. S/he is informed in particular that his/her asylum application will not be admissible during his/her period in retention if it is not formulated within five days of notification.

[177] 15 calendar days from the date of notification regarding the non-issue of a temporary residence permit. According to the Préfecture of Rhône, if the applicant fails to meet the 15 day deadline either the *Préfecture* would take a decision to oblige the applicant to leave the territory or it would deliver another application form for "humanitarian reasons" to enable the applicant to apply for international protection.

- **Less time to prepare for interview.** For example, in 12 out of 16 audited case files in accelerated procedures in the Czech Republic, the personal interview took place on the same day as the application was lodged.[178] This is particularly the case at the airport where applicants are informed of the interview the same day it takes place. In Germany, in the airport procedure, there is a deadline of two days for a decision on the application if entry is to be denied, so the interview must be carried out before the expiry of this deadline. The law speaks of carrying out the interview "without undue delay".[179] In the Netherlands, applicants have just two hours with a lawyer before the personal interview. In the regular procedure, by contrast, applicants have a six day rest period before the personal interview takes place. In the UK, the personal interview takes place on the day after arrival at the detention centre in the detained fast track procedure.

- **Less time within which to contact and consult a legal adviser.** For example, lawyers interviewed by UNHCR in Belgium stressed that their appointment is often too late to provide legal assistance to applicants in the accelerated border procedure, and that they face practical difficulties finding a suitable interpreter at late notice.[180] Of the 19 audited case files concerning the accelerated border procedure at Brussels airport, in only three instances was a lawyer present at the interview with the applicant.[181] In Germany, access to a lawyer is guaranteed in the airport procedure only after the personal interview.[182] Consequently, there is no organizational support to access a lawyer before the interview[183] which should take place before the deadline of two days has expired. UNHCR was also informed that applicants in detention in France and Italy have little practical opportunity to contact and consult effectively with legal advisers, notwithstanding their right to do so in accordance with Article 15 (1) APD.

- **More difficulty in conducting a gender-appropriate interview.** For example, the short three day time frame for the detained fast track (DFT) procedure in the UK and the 96 hour procedure in France means that the interview date cannot be

[178] This was observed in practice, despite the fact that under Section 59 of CAP a summons to any action in the proceedings which requires the presence of an applicant (i.e. including a summons to an interview) must be in writing and delivered to the applicant sufficiently in advance, normally not later than five days in advance.

[179] Section 18a (1) 4 APA ("*unverzüglich*").

[180] This relates to the interpreter services provided by the Local Bureau of Legal Assistance to facilitate communication between lawyers and their clients.

[181] On the basis of the audit, it was not possible to determine why the applicants in the 16 cases did not have a lawyer present, and it was not possible to determine whether they benefited from legal assistance.

[182] Section 18 a (1) 5 APA.

[183] According to an NGO report, for asylum-seekers arriving at Duesseldorf Airport, provision is made for assistance to be provided by an employee of an NGO before the interview; this mechanism is not applied at other airports. Cf. Leidt, Skerutsch, *Erläuterung zum Asylverfahrensgesetz – vorgerichtliches Verfahren*, German Red Cross 2008, p. 18, footnote 19.

postponed, if required, in order to satisfy a request for an interviewer and interpreter of the same sex.[184] In the UK DFT procedure, applicants cannot refuse to comply with the interview summons on the ground that the interview is not gender-appropriate.

- **Less time for the applicant to gather and submit additional evidence**. For example, applicants whose applications are examined in the accelerated procedure in the Netherlands only have three hours following receipt of the interview report in which to provide any additional evidence. In the regular procedure, applicants have four weeks. In the UK detained fast track procedure, a decision-maker can extend the timescale on a discretionary basis if it is considered that the further evidence an applicant proposes to provide is central or critical to the issues on which the decision is likely to turn. By contrast, applicants have five days after the interview in the regular procedure within which to submit additional evidence.[185] Applicants in Belgium who are detained have 24 hours within which to submit any further evidence, and other applicants whose applications are examined in an accelerated manner have five days.

- Some stakeholders in the UK have stated that the accelerated procedures are too quick to allow applicants an effective opportunity to disclose traumatic experiences.[186]

- **Less time for the determining authority to gather and assess the evidence.** For example, UNHCR's audit of case files in the Czech Republic observed that there was less country of origin information in the case files of applications which were examined in the accelerated procedure.[187] In Greece, where most applications were examined in the accelerated procedure at the time of UNHCR's research, there was no evidence from the case files, decisions or observation of interviews that country of origin information was used in the assessment of applications for international protection. In the UK's detained fast track procedure, decision-makers have only one day within which to gather and assess the necessary country of origin or other information.[188] In the course of this research, UNHCR conducted interviews with interviewers and decision-makers of the determining authorities. A number of those interviewees expressed concern about the time

[184] In France, such a request is rarely satisfied in any procedure, mainly for practical reasons.
[185] See Operational Instruction on *Flexibility in the Fast Track Process.*
[186] Bail for Immigration Detainees, *Briefing Paper on the detained fast track – February 2009*; Independent Asylum Commission, *Deserving Dignity: Third Report of Conclusions and Recommendations, July 2008.*
[187] In five case files, there was no COI in the case file, and UNHCR considered that the application raised issues which required the gathering and assessment of COI: X010, X012, X017, X028, and X064. In two cases, there was only one source of COI and UNHCR considered that the application warranted reference to further sources of COI: X019 and X035.
[188] See Operational Instruction on *Flexibility in the Fast Track Process.*

limits in which they have to conduct the examination, which, they felt, constrained their ability to investigate thoroughly the issues.

- **Less time for the determining authority to draft the decision.** An emphasis on speed risks compromising the quality of assessment and decisions.[189]

Moreover, stakeholders reported that shortcomings in the asylum process generally, which affect all applicants, tend to be accentuated when the examination of the application is accelerated.[190]

Recommendation

The examination of the application must not be accelerated to such an extent that it renders the exercise of rights, including those afforded by the APD, excessively difficult or impossible. Where Member States set time limits for procedural steps, these should be of a reasonable length which permits the applicant to pursue the claim effectively, and the determining authority to conduct an adequate and complete examination of the application.

This recommendation applies also to applicants in detention or in border or transit zones, who must have an effective opportunity to substantiate their application in accordance with Article 4 of the Qualification Directive, obtain relevant evidence, and to consult effectively with a legal adviser.

Impact of reception conditions on procedural guarantees in accelerated procedures

It must also be noted that different standards in the reception of applicants whose applications are examined in an accelerated manner may have an adverse impact on procedural guarantees.

In France, applicants whose applications are examined in the accelerated procedure do not receive a temporary residence permit[191] and therefore do not benefit from the

[189] See section 3 for further information. In the UK, in its fifth Quality Initiative report to the Minister, (March 2008), whilst noting some examples of good practice, UNHCR noted that the findings from the QI audit indicated that Detained Fast Track (DFT) decisions often failed to engage with the individual merits of the claim. Decisions made within the DFT procedure were often based on incorrect application of refugee law concepts and adopted an erroneous structural approach to asylum decision-making. UNHCR expressed concern that the speed of the DFT process may inhibit the ability of case owners to produce quality decisions. In Germany, certain shortcomings in the airport procedure potentially linked to the high time pressure were criticized in a report published by an NGO, see I. Welge, *Hastig, unfair, mangelhaft – Untersuchung zum Flughafenverfahren* gem. § 18a AsylVfG, 2009, p. 220 et seq.

[190] For example, delays in the provision of information, a lack of competent and specialised lawyers, weak communication systems between the determining authority, applicant, legal advisers and reception centres.

same reception conditions in-territory as applicants whose applications are examined in the regular procedure. They have no access to social benefits[192] (financial benefits[193] and accommodation centres[194]) and to the regular social security scheme.[195] This has an adverse impact upon their ability to exercise procedural rights as compared to applicants whose applications are examined in the regular procedure. For example, without a right to accommodation in the reception centres for asylum seekers, they do not benefit from the information, guidance and assistance which are provided to applicants in these centres.[196] They often receive very little notice of the date of their personal interview because notification is sent by post.[197] Furthermore, as they do not receive any financial support, they may not have the money to fund their travel to attend the personal interview at OFPRA in Paris.[198] Travel costs to Paris for applicants in the regular procedure to attend the personal interview are paid by the state. As such, there is inequality in the treatment of applicants in the regular and accelerated procedures. According to NGOs, this different treatment combined with shorter time limits, adversely affects the ability of applicants in the accelerated procedure to complete their OFPRA application forms in French and provide supporting documentation, and to prepare for and attend the personal interview.[199]

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[191] They do however have the right to remain in France until notification of the decision of the OFPRA (cf. Article L.742-6 *Ceseda*). This is in compliance with Article 7 of the APD which states that the right to remain shall not constitute an entitlement to a residence permit.

[192] However according to a recent decision from the Council of State (*Conseil d'Etat, Décision du 16 juin 2008, n°300636*), all asylum seekers, whatever the procedure (regular or accelerated) which is applied to them should benefit from the ATA (*Allocation Temporaire d'Attente*), until the OFPRA decision (the present case concerned a national of a "safe country of origin", but the legal reasoning is the same for all grounds upon which applications are processed under French accelerated procedure).

[193] ATA (*Allocation Temporaire d'Attente*).

[194] In a CADA (*Centre d'Accueil pour Demandeurs d'Asile*).

[195] CMU (*Couverture Maladie Universelle*).

[196] Applicants whose applications are examined in the regular procedure reside in specialized reception centres (CADA: *Centre d'Accueil pour Demandeurs d'Asile*) which provide social and legal guidance to applicants. Some "*départements*" (counties) do not have reception facilities for asylum seekers while others have facilities for all foreigners, and others have specific 'reception platforms' ('*plateformes d'accueil*') for asylum seekers which fulfill different tasks.

[197] In practice, given the short time period for summoning the applicant for an interview, it happens that some applicants do not receive the letter in due time (cf. Cimade, "*Main basse sur l'asile*"; June 2007).

[198] Unless they are detained in an administrative retention centre, in which case they are escorted to Paris for the personal interview, or have a video-interview if detained in Lyon's administrative retention centre or Mayotte.

[199] In particular, the CFDA (*Coordination Française pour le Droit d'Asile*) which gathers the following member agencies: ACAT (*Action des chrétiens pour l'abolition de la torture*), Act-Up Paris, Amnesty International – French section, APSR (*Association d'accueil aux médecins et personnels de santé réfugiés en France*), CAEIR (*Comité d'aide exceptionnelle aux intellectuels réfugiés*), CASP (*Centre d'action sociale protestant*), Cimade (*Service oecuménique d'entraide*), Comede (*Comité médical pour les exilés*), ELENA, FASTI (*Fédération des associations de soutien aux travailleurs immigrés*), France Libertés, Forum Réfugiés, FTDA (*France terre d'asile*), GAS (*Groupe accueil solidarité*), GISTI (*Groupe d'information et de soutien des immigrés*), LDH (*Ligue des droits de l'Homme*), MRAP (*Mouvement contre le racisme et pour l'amitié entre les peuples*), Association Primo Levi (*Soins et soutien aux victimes de la torture et des violences politiques)*,

UNHCR has consistently emphasized that appropriate reception conditions for asylum-seekers are essential to ensure a fair and effective examination of protection needs.[200]

Impact of detention on procedural guarantees in the accelerated procedure

Some of the Member States surveyed examine applications in an accelerated manner when the applicant is detained.[201] In France, the applications of persons who are detained in administrative retention centres are routinely considered to be an abuse of the asylum procedure and, therefore subject to a 96 hour accelerated examination.[202]

In the UK, an applicant whose application is submitted to the accelerated procedures is detained.[203] The detained accelerated procedures in the UK have been criticized for their failure to comply with the terms of Article 18 (1) APD which states that Member States shall not hold a person in detention for the sole reason that s/he is an applicant for asylum. Nevertheless, the detained accelerated procedures have successfully withstood challenges to their legality brought before the national courts[204] and before

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Secours Catholique (Caritas France), SNPM (*Service national de la pastorale des migrants*), SSAE (*Service social d'aide aux émigrants*).

[200] See relevant Conclusions of UNHCR's Executive Committee, in particular ExCom Conclusions No. 93 "Conclusion on reception of asylum-seekers in the context of individual asylum systems", No. 44 "Detention of refugees and asylum-seekers" and No. 47 "Refugee children", No. 105 "Conclusion on Women and Girls at Risk", No. 107 "Conclusion on Children at Risk", all available at http://www.unhcr.org/refworld/type/EXCONC.html.

[201] Belgium, the Czech Republic and Italy. Belgium: Article 52/2 Aliens Act sets a time frame of 15 calendar days for the examination of applications by persons detained at the border or in-territory or detained in prison. The Czech Republic: Section 73 (4) ASA which provides that when an application is submitted by an applicant at the border and s/he is not allowed entry to the territory, the application should be examined within four weeks; otherwise entry to the territory must be granted. An accelerated procedure does not apply to applicants detained in in-country detention centres. Italy: Article 28 (1) d.lgs. 25/2008 provides that when the applicant is detained in a CIE, the determining authority must issue a decision on the application within 9 days of receipt of the documentation concerning the applicant (rather than 30 days). In Spain, the New Asylum Law applies the border procedure to applications lodged by applicants held in internment centres. (Note that according to Spanish law, aliens who are placed in internment centres are under so called 'administrative detention' and not regular detention, and are referred to as 'interned persons' instead of detainees, meaning that they are not under the same legal regime and are only in the centres for expulsion/ return purposes with a maximum of 40 days after which they are set free if return cannot take place. People held in regular detention that apply for asylum have their application examined in the in territory asylum procedure). In the Netherlands, asylum seekers arriving at Schiphol airport whose requests are handled in the accelerated procedure are detained at the airport.

[202] According to the 2008 OFPRA Activity Report, applicants held in administrative retention centres represented 18% of the applications examined in the accelerated procedure. Statistics from the same report indicate that 72% of applicants held in retention centres are invited to an interview and that the actual rate of interviews for this category in the accelerated procedure is 57%.

[203] With reference to the detained fast-track (DFT) and detained non-suspensive appeals (DNSA) procedures.

[204] *R (ex p Refugee Legal Centre) v SSHD* [2004] EWCA Civ 1481.

the European Court of Human Rights.[205] The UK Government has recently chosen to opt out of the proposed recast Reception Conditions Directive in part because opting in would have made it harder for the determining authority to operate the detained accelerated procedures.[206] The issue remains contentious. In the UK, applicants are in detention throughout the detained fast track procedures. Children can be detained with their parents. The determining authority reported to the Children's Commissioner in England and Wales that 991 children were detained across the detention estate during 2008.[207]

The detention of asylum-seekers is, in the view of UNHCR, inherently undesirable.[208] This is even more so in the case of vulnerable groups such as children.

Applicants' enjoyment of the procedural guarantees and rights conferred by the APD and national legislation may be even further impeded when the applicant is detained. Interviewees highlighted in particular that access to NGOs and legal advisers may be severely curtailed,[209] and that detainees experience severe constraints on their ability to gather elements in support of their application.

According to the NGO Cimade,[210] applicants who are detained in certain administrative retention centres in France sometimes face insurmountable practical difficulties.[211] The application form for asylum is not always handed out in due time by staff in the detention centres; and some centres prohibit the possession of pens which are regarded as dangerous objects. The application form must be completed in writing in French within five days without the services of an interpreter provided by the state.[212] Sometimes the application form is completed in the language of the applicant and Cimade endeavours to find an interpreter who agrees to work for free and within the very short mandatory deadlines in order to provide a written summary in French.[213]

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[205] *Saadi v UK* 13229/03 European Court of Human Rights 29.1.08.

[206] Letter from Lin Homer, Home Office to UNHCR dated 6.3.09.

[207] 11 Million: *the arrest and detention of children subject to immigration control,* Report following the Children's Commissioner for England and Wales' visit to Yarl's Wood Immigration Removal Centre; 2009.

[208] See EXCOM Conclusion No. 44 (XXXVII) and UNHCR *Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers*, February 1999.

[209] NGOs may only visit detention centres on specific days and/or only in response to a specific referral.

[210] Cimade is a specialized NGO whose mandate is to provide legal assistance to foreigners held in administrative retention centres. Until 2008, Cimade was the only NGO present in administrative retention centres. This mission should be shared with other NGOs in the near future.

[211] See Cimade 2007 Annual report on the administrative retention centres and its report "*Main basse sur l'asile"*, June 2007.

[212] The 5 day time limit begins when the foreigner begins his/her detention. According to the most recent circular (*Circulaire du 31 décembre 2008*) this period should be counted in full days ("*jours francs*").

[213] According to the Government, in its reply to the Hammarberg Report, the written application form constitutes only one element in the claim and the applicant can provide more details when s/he is summoned to the personal interview with OFPRA. However, it should be noted that by law, OFPRA can omit the personal interview on the basis of the application form if it is considered to be manifestly unfounded.

According to Cimade, applicants are not informed of their rights and obligations during the procedure. OFPRA has 96 hours within which to examine the application, and if not omitted, summon the applicant for a personal interview in Paris under police escort,[214] conduct the interview, assess the evidence with reference to country of origin information and write a reasoned decision. If the applicant wishes to appeal a negative decision by OFPRA, the appeal does not have suspensive effect.

Following a visit to France from 21 to 23 May 2008, Thomas Hammarberg, the Council of Europe Commissioner for Human Rights[215] raised concerns regarding the asylum procedure as applied to applicants detained in administrative retention centres and considered that the "*entire asylum procedure at holding centres is clearly so summary that the implicit presumption is that applications are unjustified*".[216]

Recommendation

In the context of accelerated procedures, Member States need to take specific action to facilitate the exercise of rights by and ensure guarantees for persons in detention in order to ensure an adequate and complete examination.

Good practice example on legal assistance:

On arrival at a closed centre in Belgium, applicants are asked if they already have a lawyer or if they would like to exercise their right to free legal assistance.[217] If they opt for the latter, according to a report published in November 2008,[218] it may take anything

[214] Unless the applicant is detained in the administrative retention centre in Lyon and Mayotte where video interviews are conducted.

[215] Cf. CommDH(2008)34, Strasbourg, 20 November 2008, Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008. Recommendations were also made by the CPT in its report published on 10 December 2007. The United Nations Committee against Torture has also raised some concerns about this procedure.

[216] Following a more recent visit to the Netherlands, Commr Hammarberg concluded that asylum seekers arriving by plane are routinely subjected to border detention during and immediately following the accelerated asylum determination procedure at the Schiphol Application Centre. If further investigations are deemed necessary beyond the 48-hour accelerated procedure and in certain other circumstances, asylum seekers may face continuous border detention, lasting on average almost 100 days (including investigation, objection and appeal procedure), and in some cases as long as 381 days. This includes people who have suffered traumatic experiences, including victims of trafficking, unaccompanied minors and people who fall under the Dublin Regulation. In the view of the Dutch government, the administrative detention of asylum seekers is designed to guarantee a fair and speedy determination of their asylum claims. However, there is no evidence supporting that it achieves this aim: Paragraph 51, report of 11 March 2009.

[217] Article 62-66 Royal decree 2 August 2002 establishing the regime and organization of detention centres.

[218] "*Recht op recht in de gesloten centra*" ("Right to right in the closed centres"), produced by eight Belgian refugee-assisting NGOs, describing access to legal assistance in closed centres. The report

from several hours to four to five days to appoint a lawyer for an applicant. It is, therefore, worth highlighting as an example of good practice that the Social Service of the closed Centre 127 (at the border) in Belgium has cooperated with the Local Bureau of Legal Assistance (Brussels) to adjust and accelerate procedures for the appointment of lawyers, to enable social assistants at the closed centres in all cases to appoint a lawyer for an applicant from updated lists of available lawyers furnished by the Local Bureau. The automatic appointment of lawyers providing free legal advice in detention in this way is a positive step in which should be rolled out to other closed centres and open reception centres in Belgium.

Right of appeal following a decision taken in the accelerated procedure

The right to an effective remedy is discussed in greater detail in section 16. However, it is worth stating briefly here that UNHCR's overview of the national legislation of the Member States of focus has shown that, following some negative decisions taken in the accelerated procedure, appellants may not enjoy the same safeguards or procedural standards on appeal as appellants who have received a negative decision taken in the regular procedure. Furthermore, the time limit within which an appeal should be lodged may be significantly shorter than the time limit for appeal following a negative decision in the regular procedure. For example:

	Regular Appeal Procedure (days)	Time limit following certain negative decisions in accelerated procedure
Bulgaria	14[219]	7[220]
Czech Republic	15[221]	7[222] or 15[223]
Germany	14[224] or 7[225]	3[226]

recommended that the system of automatic appointment of lawyers should be rolled out in other Belgian centres, namely Centre 127 bis, Vottem, Bruges and Merksplas.

[219] Decisions relating to Articles 34 (3) LAR (family reunification), 39a (2) LAR) (family reunification as regards beneficiaries of temporary protection), 75 (1) Items 2 and 4 LAR (refusal to grant refugee and/or humanitarian status), 78 (5) LAR (withdrawal or discontinuation of status) and 82 (2) LAR) (discontinuation of temporary protection) may be appealed in a period of 14 days following service of the decision. For any decisions under LAR where time limits are not specified, general administrative rules will apply, which provide for a 14-day time limit (Article 149 (1) of the Administrative Procedures Code). These are not working days; however if the term ends on a non-working day, the first working day following this is considered the final day.

[220] Decisions relating to Article 51 (2) LAR (rights of the alien during proceedings) and Article 70 (1), items 1 and 2 LAR (negative decision or discontinuation in the accelerated procedure) must be appealed within a time limit of 7 days. This also applies to decisions under the Dublin procedure.

[221] Section 32 (1) ASA provides that an appeal against decisions on applications must be lodged within 15 days from delivery of a decision.

[222] Under Section 32 (2) ASA, a seven-day time limit is an exception from the general 15-day time limit for decisions which b) were served on an alien in a detention centre; or c) decisions dismissed as inadmissible usually on Dublin grounds or if a subsequent application.

[223] The 15 day time limit applies in accordance with Section 32 (1) ASA if the decision is one of merely 'unfounded'.

	Regular Appeal Procedure (days)	Time limit following certain negative decisions in accelerated procedure
Italy	30[227]	15[228]
Netherlands[229]	28	7[230]
Slovenia[231]	15	3
Spain	60[232]	2 and 60[233]
United Kingdom[234]	10[235]	2[236]

[224] Section 74 (1) 1 APA.

[225] As set out above, the decision is not taken in an accelerated procedure, but a qualified rejection as irrelevant or manifestly unfounded prompts an acceleration by shortened deadlines for appeals (Sections 74 (1) 2, 36 (3) APA).

[226] This applies to rejections as manifestly unfounded in the airport procedure. This is the deadline for an application for an interim measure for granting leave to enter and preliminary protection against deportation, Section 18a (4) APA. The deadline for the submission of the main application for appeal is disputed (see Marx, *Commentary on the Asylum Procedure*, 7th edition, 2009, Section 18a, paragraph 177); in practice, it is advisable to submit the main application together with the application for an interim measure since the latter is an accessory to the first. The reasoning of the appeal may be submitted within another four days if such an extension of the deadline is applied for (see Federal Constitutional Court, official collection, vol. 94, 166, at 207). Theoretically, a rejection as simply "unfounded" may also be taken in the airport procedure within the deadline of two days which would not lead to a denial of entry. However, this situation is not relevant in practice.

[227] If the applicant is not placed in a reception centre (CARA) or identification and expulsion centre (CIE). (Article 35 (1) of the d.lgs. 25/2008).

[228] Article 35 (1) of the d.lgs. 25/2008. This time limit applies if the applicant was sent to a reception centre (CARA) or Identification and Expulsion Centre (CIE) on the grounds stipulated by Article 20 (2) (a, b and c) d.lgs. 25/2008, i.e. when identification is necessary because the applicant is undocumented, when the applicant has applied for international protection after s/he was stopped by the police having evaded or attempted to evade border controls, or having been stopped by the police in conditions of irregular stay; and by Article 21 (1) (a ,b and c) d.lgs 25/2008 i.e. when the applicant is in the conditions stated in Article 1F of the 1951 Convention, the applicant was previously condemned in Italy for a serious crime, or the applicant had been issued with an expulsion order. Clarification regarding the application of the grounds should be provided in the forthcoming implementing regulation for legislative decree 25/2008.

[229] Article 69 (1), (2) and (3) Aliens Act 2000.

[230] In practice, an appeal should be lodged within 24 hours.

[231] Article 74 (2) IPA: *"Against the decision issued in a regular procedure, the action may be brought within 15 days after the receipt of the decision. Against the decision issued in an accelerated procedure, the action may be brought within three days after receipt of the decision."*

[232] For appeals against applications made on the territory, there is a time limit of two months including decisions taken in the regular procedure (this also applies for appeals made at diplomatic missions abroad).

[233] Following refusal at the border, and prior to appeal to the courts, there is the possibility of an administrative re-examination (not an appeal) that has to be lodged within two working days of the notification of the inadmissibility/rejection decision. After a second negative decision, the applicant has two months to lodge an appeal to the judges of the Administrative High Court. The applicant will during this time not be detained at the border. In practice, s/he will be expelled and will have to lodge the eventual appeal through the relevant Spanish diplomatic mission abroad.

[234] These time limits relate to appeals to the Asylum and Immigration Tribunal as set down in the AIT (Procedure) Rules 2005.

[235] Section 7 (1) (b) AIT (Procedure) Rules 2005: 10 days for non-detained cases in the regular pocedure.

[236] Secton 8 (1) AIT (Fast Track Procedure) Rules 2005: two days for the detained fast track procedure.

UNHCR's research has also found that a significant number of the Member States surveyed do not afford automatic suspensive effect in appeals against negative decisions taken in the accelerated procedure. This is the case in Finland,[237] France,[238] Germany,[239] Greece,[240] Italy,[241] the Netherlands,[242] Spain[243] and the UK.[244] UNHCR considers the lack of automatic suspensive effect problematic in light of the shortcomings it has observed in first instance accelerated procedures in some Member States.

In Bulgaria, there is a right of appeal with suspensive effect following a negative decision in the accelerated procedure. The appeal must be lodged before an Administrative Court with one judge presiding rather than the Supreme Administrative Court with a panel of three judges as following a negative decision in the general procedure.[245]

Recommendation

Applicants whose claims are examined in accelerated procedures must nevertheless have access to an effective remedy against a negative decision. This requires, among

[237] Section 200 (1) of the Aliens Act 301/2004 on grounds of safe country of asylum or origin which are the same grounds upon which the procedure may be accelerated.
[238] They thus can be removed before the CNDA has taken a decision on their claim. Since 1 January 2007, *Préfectures* can decide to apply an OQTF ("*Obligation de Quitter le Territoire Français"*). This new measure combines both a refusal of residence permit and a removal order. This removal order is enforceable after a one-month delay. This order can be challenged before the administrative court which may decide before the CNDA has decided upon the asylum application. It is important to note that there is no priority or accelerated procedure at CNDA level (See details in section 16 on effective remedies).
[239] Section 75 APA. This relates only to a decision that the application is 'manifestly unfounded'.
[240] Note that in Greece automatic suspensive effect is not afforded to any appeals after the entry into force of PD 81/2009 (which amended PD 90/2008 and abolished the second instance appeal procedure). Before the amendment of PD 90/2008, any appeal against a negative decision (regardless of the procedure) had automatic suspensive effect (Article 25 (2)). See section 16 on effective remedies for further details.
[241] According to Article 35 (7) and (8) d.lgs. 25/2008, automatic suspensive effect is not afforded to appeals by applicants who are resident in a CARA on the basis of Article 20, comma 2 (b) or (c) of d.lgs 25/2008; or applicants detained in a CIE on the basis of Article 21 of d.lgs 25/2008; or applications declared manifestly unfounded. Applicants who are detained in a CIE have their applications examined in an accelerated first instance procedure.
[242] Article 82 (2) Aliens Act.
[243] However Article 29 (2) of the New Asylum Law has reinforced some guarantees in the sense that it establishes that if, when lodging a judicial appeal against any administrative decision in the asylum procedure, a request for suspensive effect is made, it will automatically be dealt with as a request for an urgent precautionary measure – Article 135 of the Law on the Administrative Jurisdiction - which implies automatic provisional suspensive effect until a decision on the urgent precautionary measure is adopted within three days.
[244] The appeal available following a decision in the Detained Fast Track procedure has suspensive effect unless the case is certified as 'unfounded' which thereby precludes an in-country right of appeal. Section 94 of the Nationality, Immigration and Asylum Act 2002 provides for the certification process.
[245] In addition, the decision of the SAC is subject to a cassation appeal.

other things, a reasonable time limit in which to submit the appeal, as well as at least the opportunity to request suspensive effect, where this is not automatically granted.

Grounds for prioritization and/or acceleration of the examination

The APD appears to impose no restrictions on the grounds upon which the examination of an application can be prioritized or accelerated. Any examination may be prioritized or accelerated according to Article 23 (3) APD.[246] In the light of Article 23 (3) APD, the long and expansive list of 16 optional grounds for prioritization or acceleration, set out in Article 23 (4) APD, appear only illustrative. However, the use of the word "also" in Article 23 (4) APD hints at the fact that this was not the intention of the legislator. Article 23 (4) APD states: "*Member States may **also** provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be prioritized or accelerated if …*". Article 23 (4) APD then sets out 16 (non-exclusive) grounds on which Member States may provide for a prioritized or accelerated procedure.[247]

The consequences of this lack of clarity in the APD regarding whether there are any restrictions on the grounds for prioritization or acceleration is reflected most obviously in the national legislation of two of the Member States surveyed: the Netherlands and the UK.

In the Netherlands, the only criterion for a decision to accelerate the examination of an application is whether it is possible to assess and take a decision on the application within 48 procedural hours.[248] As such, all applications (except those applicants to whom categorical protection policy applies[249] and unaccompanied minors under the age of 12) are eligible for examination in the 48 procedural hour process, if the determining authority considers that a decision can be taken within that timeframe. Similarly, in the UK, the only criterion for a decision to examine an application in the accelerated (DFT) procedure, and one of the two criteria to route an application into the accelerated (DNSA) procedure, is whether a "quick decision" may be made.[250] There is a general

[246] Article 23 (3) APD: "*Member States may prioritize or accelerate any examination in accordance with the basic principles and guarantees of Chapter II, including where the application is likely to be well-founded or where the applicant has special needs*".
[247] See full text of Article 23 (4) APD, annexed to section 2.
[248] Aliens Circular C10/1.1.
[249] Aliens Circular C12/3: Those applicants for whom return to the country of origin would, in the opinion of the Minister, constitute an exceptional hardship in the context of the overall situation there. At the end of May 2009, there was a categorical protection policy only for the Ivory Coast and part of Sudan. The categorical protection policy with respect to Central and South Somalia was lifted at the beginning of May 2009. The State Secretary has announced the abolition of the categorical protection policy in general in different Parliamentary documents, e.g., in a letter of the State Secretary of Justice dated 11 December 2009, Parliamentary Documents 2009-2010, 19 637 , nr. 1314.
[250] This is also a ground for routing an application into the accelerated, detained non-suspensive appeal (DNSA) procedure, together with the criterion that the applicant must come from a safe country of origin

assumption that the majority of asylum applications are ones on which a quick decision may be made, unless there is evidence to suggest otherwise. Cases where a quick decision *may* not be possible *may* include where further material evidence is required, or where necessary translations cannot be obtained in the normal indicative time scales for the DFT or DNSA processes.[251]

The interpretation that Article 23 (4) APD sets out only illustrative grounds for prioritization or acceleration is also clear in the national legislation of a number of Member States, which require that applications by persons who are detained in-country are examined in an accelerated manner. [252] This is not a ground set out in Article 23 (4) APD. Moreover, this ground for accelerating the examination is not necessarily related to the merits of the application itself. The mere fact that an applicant is in detention when s/he applies for international protection is not necessarily indicative of a manifestly unfounded or even an unfounded application. An applicant in detention may be a refugee or qualify for subsidiary protection.

Given that accelerated procedures deviate from the time frames which are normally considered necessary to complete an adequate assessment of an application, UNHCR considers that limited grounds for accelerating an examination should be clearly and exhaustively defined in the APD and national legislation.

At present, UNHCR is deeply concerned that the explicit illustrative grounds set out in Article 23 (4) APD are wide-ranging and include grounds which are totally unrelated to the merits of the application.[253] They also include grounds which, if interpreted literally, fail to take into consideration the circumstances of applicants for international protection.[254] Moreover, some of the stated grounds do not take into account the fact

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or 'NSA country' under Section 94 (4) of the NIA Act 2002. At the time of writing, there were 24 listed safe countries of origin. The grounds for processing a claim in the detained fast track (DFT) and the DNSA procedures are not prescribed by law but are contained in Home Office Guidance, the AIU instruction "*DFT and DNSA – Intake Selection",* 21.07.08. See http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/.

[251] The AIU (Asylum Intake Unit) instruction "*DFT & DNSA – Intake Selection*", approved by B. Thompson, Deputy Director, Performance Directorate, 21.07.2008, Policy section, accessed via UKBA website 5.01.2009.

[252] Belgium, Italy (with regard to applicants detained in identification and expulsion centres on the basis of Article 21 of d.lgs 25/2008) and Spain (with regard to those applicants held in internment centres). See above sub-section on detention.

[253] For example, Article 23 (4) (i) APD which permits the acceleration of the examination of an application when the applicant has failed without reasonable cause to make his/her application earlier, having had the opportunity to do so; and Article 23 (4) (l) APD which permits acceleration of the examination of the application when the applicant entered the territory of the Member State unlawfully or prolonged the stay unlawfully and, without good reason, has either not presented him or herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry.

[254] For example, Article 23 (4) (f) APD: "*the applicant has not produced information establishing with a reasonable degree of certaintly his/her identity or nationality*" and Article 23 (4) (g): "*the applicant has*

that an applicant who does not qualify for refugee status may nevertheless qualify for subsidiary protection status. This is crucial if such protection needs are assessed in a single procedure.

Many of the grounds stated in Article 23 (4) APD are transposed or reflected as grounds for the prioritization or accelerated examination of applications in the national legislation of the Member States surveyed: Belgium,[255] the Czech Republic,[256] Finland,[257] Greece,[258] France,[259] Germany,[260] Slovenia[261] and Spain.[262]

In some Member States, the grounds are more broadly defined in national legislation than in the APD. For example, in Finland, the examination of an application may be accelerated when it is considered to be 'manifestly unfounded'. In response to criticism, in 2007, the determining authority in Finland launched an internal review of the interpretation and application of the concept of 'manifestly unfounded'. This review resulted in new guidelines and a consequent drop in the numbers of applications being declared manifestly unfounded. Similarly, in Germany, one of the grounds for the prioritization of the examination of an application is when the application is considered to be 'manifestly unfounded'.[263]

Moreover, in France, one of the grounds for refusal of a temporary residence permit (which results in the application being channelled into the accelerated procedure) is that "*the asylum application […] constitutes an abuse of the asylum procedures*".[264] This is a broad definition which may, in practice, be interpreted to encompass a vast range of circumstances. In fact, with reference to this ground, certain Prefectures routinely

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made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having been the object of persecution".

[255] Article 52 Aliens Act, Article 52/2 Aliens Act and Article 56/7, § 2, of the Aliens Act.

[256] Section 16 ASA.

[257] Sections 103(2) and 104 of the Aliens' Act (Ulkomaalaislaki) 301/2004, as in force 29.4.2009.

[258] Article 17 (3) and Article 24 (1) of PD 90/2008.

[259] Article L.741-4-2° to 4° *Ceseda* sets out the grounds upon which the Prefectures can refuse a temporary residence permit and therefore the application is channelled into the accelerated procedure. According to the Ministry of Immigration in an interview of 26 March 2009, the three limitative grounds set out in Article L.741-4-2° to 4° *Ceseda* encompass 11 of the grounds explicitly stipulated in Article 23 (4) APD.

[260] Sections 29, 29a, 30, 71 APA.

[261] Article 55 IPA.

[262] Article 25 (1) of the New Asylum Law with regard to border and internment centre applications, and Article 21 (2) of the New Asylum Law with regard to in-territory applications.

[263] The term is further specified in Section 30 APA: *"(1) An asylum application shall be manifestly unfounded if the prerequisites for recognition as a person entitled to asylum and the prerequisites for granting refugee status are obviously not met. (2) In particular, an asylum application shall be manifestly unfounded if it is obvious from the circumstances of the individual case that the foreigner remains in the Federal territory only for economic reasons or in order to evade a general emergency situation or an armed conflict*".

[264] Article L.741-4-4°.

consider that first applications for international protection by persons who are detained, and subsequent applications, are an abuse of the asylum procedure.[265]

The table below sets out, with reference to Article 23 (4) APD, the grounds in national legislation, regulations and guidelines for the prioritization or acceleration of the examination of applications. The table excludes the Netherlands and the UK because both States have a single criterion which simply relates to whether a quick decision can be taken.[266] The table also excludes Bulgaria, as its three day accelerated procedure is a 'filter' procedure through which nearly all applications are examined.[267] The column on Spain relates to the provisions of the New Asylum Law which was not in force during the period of UNHCR's research in Spain. Note that in the border procedure, application of these grounds leads to accelerated rejection of the application and in the in-country procedure, they lead to admission of the application to the accelerated RSD procedure.

[265] Administrative retention centres and premises are places where foreigners awaiting removal may be held. At the end of 2007, there were 24 administrative retention centres (CRA, « *Centres de Rétention Administrative* ») in France, with a reception capacity of 1 700 persons. When there is no CRA close to the place where the person is arrested, Prefectures have created administrative retention premises (LRA, "*Locaux de Rétention Administrative* »). Foreigners can be held in these premises for a 48 hour maximum duration before being transferred, if needed, to a CRA. According to the NGO Cimade, which provides legal assistance to foreigners in the CRAs, these decisions to accelerate the examination of applications by applicants in CRAs can concern foreigners who have just arrived in France and who did not have enough time to submit their application, or who expected to gather more elements to substantiate their claim or who wished to submit their application in another country. On the other hand, according to the Ministry of Immigration, foreigners who apply for asylum while they are detained in a CRA are persons who, when they are arrested for illegal stay in France, had been present on French territory for a long time and had not presented themselves to the authorities to apply for asylum during this time; or persons who lodge a subsequent applications while they are held in the CRA after one or more negative decisions from the OFPRA or CNDA (cf. reply of the French government to the Hammarberg Report). In this regard, it is important to note that according to the 2008 OFPRA Activity Report, 64% of applications by persons held in CRAs which are channeled into accelerated procedures concern initial or first applications. This means that only 36% relate to subsequent applications.

[266] In the UK, with regard to the DFT procedure, this is the only criterion; and one of only two criteria for the DNSA procedure.

[267] The only applications exempted from the accelerated procedure are those by unaccompanied children and beneficiaries of temporary protection.

Art. 23 (4) APD grounds	Be	Cz	Es[268]	De	Fi	Fr	Gr[269]	It	Si
(a) raised issues of no or minimal relevance	√	√	√		√	√	√		√
(b) clearly not a refugee	√	√	√		√	√	√		√
(c) (i) safe country of origin		√	√		√	√	√		√
(c) (ii) safe third country		√			√		√		
(d) presents false info or withholds info	√	√			√	√	√		√
(e) another application stating other personal data	√					√	√		√
(f) identity or nationality uncertain	√	√			√		√		√
(g) inconsistent, contradictory, improbable or insufficient statements	√	√	√ (border)		√	√	√		√
(h) subsequent application and no new elements	√			√[270]	√	√	√		
(i) application could have been made earlier	√		√ (in-country)			√	√		√
(j) application merely to delay or frustrate removal	√	√			√	√	√		√
(k) failure to comply with procedural obligations	√					√	√		√
(l) unlawful entry and delay in applying		√					√		√
(m) danger to national security	√		√			√	√		√

[268] Unless otherwise stated in the table, the grounds are applied to both in-country and border procedures (where they exist).

[269] This relates to the provisions of Article 17 (3) PD 90/2008, although at the time of writing it was reported that the determining authority no longer implements this legal provision.

[270] With regard to subsequent applications, there is a general provision allowing for the omission of a hearing, Section 71 (3) 3 APA.

Art. 23 (4) APD grounds	**Be**	**Cz**	**Es**[268]	**De**	**Fi**	**Fr**	**Gr**[269]	**It**	**Si**
or public order									
(n) refusal to provide fingerprints	√						√		√
(o) subsequent application by previously dependant unmarried minor							√		
Other nationally stipulated grounds							√		
Applicant has made another application or multiple applications	√			√[271]					
Applicant does not inform that has made application in another country	√								√
Applicant is detained	√		√[272]	√[273]				√[274]	
Applicant is detained at the border	√	√	√	√[275]			√		
Applicant has committed a crime			√[276]	√[277]					

[271] Informal priority is given to the examination of applications submitted by applicants who have submitted multiple applications according to the BAMF internal guidelines, cf. *Internal Guidelines for Adjudicators: P*riority (1/1); this prioritization does not imply any reduction of procedural guarantees.

[272] This relates to those detained in internment centres for aliens (CIEs) only.

[273] Informal priority is given to the examination of applications submitted by applicants who are in detention according to the BAMF internal guidelines, cf. *Internal Guidelines for Adjudicators: Priority* (1/1); this prioritization does not imply any reduction of procedural guarantees.

[274] This relates to applications by applicants who are detained in an identification and expulsion centre (CIE) under Article 21 (1) of the d.lgs. 25/2008 on grounds that (a) their application fulfils the criteria of Article 1 F of the 1951 Convention (the exclusion clauses); or (b) the applicant has been convicted of a crime under the criminal procedure code or crimes relating to drugs, sexual offences, assisting illegal immigration/emigration, prostitution, or the exploitation of prostitution or employment of minors in irregular activities; or (c) the applicant has been issued with an order of expulsion or return.

[275] Applications submitted by applicants at the airport are examined in the accelerated two-day airport procedure. Whilst German legislation refers to 'accommodation' at the airport premises, UNHCR considers that confinement at the airport, including transit zones, albeit for two days, amounts to a deprivation of liberty in line with the case law of the European Court of Human Rights.

[276] The applicant has received a final sentence for a serious crime and constitutes a threat to the community: Article 25 (1) (f) in conjunction with Article 9 and Article 12 New Asylum Law.

[277] Informal priority is given to the examination of applications submitted by applicants who have committed a crime according to the BAMF internal guidelines, cf. *Internal Guidelines for Adjudicators: Priority* (1/1); this prioritization does not imply any reduction of procedural guarantees.

Art. 23 (4) APD grounds	Be	Cz	Es[268]	De	Fi	Fr	Gr[269]	It	Si
Exclusion clauses apply			√						
Positive injunction right of the Minister[278]	√								
EU national who is clearly not a refugee	√								
First country of asylum					√				
Applicant resides in a reception centre								√[279]	
Applicant tried to illegally enter another country or entered another country and was returned									√
Application is considered to be manifestly unfounded				√[280]					

[278] Article 52/2 § 2, 3° of the Aliens Act permits the Minister of the Interior to instruct that certain categories of applications are examined in an accelerated manner. The Belgian government considers that it might use this right in the case of a mass influx of asylum applications by applicants from a certain country or region where there is suspicion that there is a manifest improper use of the asylum procedure, or that a network of smugglers of human beings is active.

[279] This relates to an application by an applicant who has been ordered to reside in a CARA under Article 20 (2) d.lgs. 25/2008 as amended by Article 1 (1) (d) d.lgs. 159/2008 on the grounds that (b) s/he has applied for international protection after being arrested for evading or attempting to evade border controls or immediately thereafter; and (c) s/he has applied for international protection after being arrested for illegal residence.

[280] The examination of applications which are considered to be manifestly unfounded should be prioritized according to the BAMF internal guidelines, cf. *Internal Guidelines for Adjudicators: Priority* (1/1), Date: 12/08. Many of the reasons mentioned in the table can be found in the German law as grounds for rejecting a claim as manifestly unfounded (Section 30 APA). Since this leads to shortened deadlines only after a decision has been taken, the respective information has not been included into the table. However, the content of Section 30 APA should not go unmentioned: *"(1) An asylum application shall be manifestly unfounded if the prerequisites for recognition as a person entitled to asylum and the prerequisites for granting refugee status are obviously not met.*
(2) In particular, an asylum application shall be manifestly unfounded if it is obvious from the circumstances of the individual case that the foreigner remains in the Federal territory only for economic reasons or in order to evade a general emergency situation or an armed conflict.
(3) An unfounded asylum application shall be rejected as being manifestly unfounded if
1. key aspects of the foreigner's statements are unsubstantiated or contradictory, obviously do not correspond to the facts or are based on forged or falsified evidence;
2. the foreigner misrepresents his/her identity or nationality or refuses to state his/her identity or nationality in the asylum procedure;

One of the fundamental concerns is that the APD permits Member States to accelerate the examination of applications in a wide range of cases and that these grounds are not interpreted restrictively by some Member States.

By way of example, Article 23 (4) (i) of the APD states that an examination procedure may be accelerated if "*the applicant has failed without reasonable cause to make his/her application earlier, having had the opportunity to do so*". In Slovenia, this is reflected in a national legal provision which states that an application can be examined in the accelerated procedure if the applicant did not file an application as soon as possible.[281] UNHCR's audit of decisions in Slovenia revealed a significant number of applications which were rejected in the accelerated procedure on this ground. They included:

(i) a case where the applicants applied for asylum one day after arrival, having consulted a refugee advisor;[282]
(ii) a case where the application was submitted three days after the applicant was accommodated in the Centre for Foreigners;[283]
(iii) a case where the application was submitted five days after the applicant was accommodated in the Centre for Foreigners, and the applicant claimed to have tried to apply at the border but was not "heard";[284] and
(iv) a case where the application was submitted one week after arrival in Slovenia.[285]

It also included numerous cases where the applicant was intercepted whilst travelling through Slovenia.[286] Moreover, this provision has been applied extra-territorially.

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3. S/he has filed another asylum application or asylum request using different personal data;
4. S/he filed an asylum application in order to avert an imminent termination of residence although s/he had had sufficient opportunity to file an asylum application earlier;
5. S/he grossly violated his obligations to cooperate pursuant to Section 13 (3) second sentence, Section 15 (2) nos. 3 through 5, or Section 25 (1) above, unless s/he is not responsible for violating his obligations to cooperate or there are important reasons why s/he was unable to comply with his obligations to cooperate;
6. S/he has been forcibly expelled pursuant to Sections 53 and 54 of the Residence Act; or
7. the asylum application has been filed on behalf of a foreigner without legal capacity under this Act, or is considered under Section 14a to have been filed after asylum applications by the parent(s) with the right of custody has been incontestably rejected.
(4) Furthermore, an asylum application shall be rejected as manifestly unfounded if the requirements of Section 60 (8) first sentence of the Residence Act or of Section 3 (2) apply.
(5) An application filed with the Federal Office shall also be rejected as manifestly unfounded if, due to its content, it does not constitute an asylum application in the sense of Section 13 (1)."
[281] Article 55, indent 5 of IPA.
[282] Case No. 11-2008.
[283] Case No. 32-2008.
[284] Case No. 20-2008.
[285] Case No. 7-2008.

Applications have been rejected in the accelerated procedure on this ground where it was considered that an applicant could have applied for protection in a third country. The following was cited in decisions audited:

"*Since the applicants were travelling to the Republic of Slovenia through Bosnia and Herzegovina and stayed there for two days, and through the Republic of Croatia, they could have applied for asylum already there*";[287] and "*the applicant did not present any founded reasons for not applying for asylum in one of countries through which he was travelling*."[288]

Article 23 (4) (j) APD provides that an examination procedure may be accelerated if "*the applicant is making an application **merely** in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal*". This requires the determining authority to ascertain whether this is the **only** reason for the application; or whether, by contrast, there are any other relevant reasons for the application. However, in Slovenia, this provision is reflected in national law as a requirement that an application is filed as soon as possible; and if not, the application is deemed to be a means to delay or frustrate a removal.[289]

UNHCR audited a number of case files in which the application had been examined in an accelerated manner and found that these applications were not clearly unfounded.

For example, in Belgium, an application will be examined within an accelerated 15 day time frame by law when submitted by an applicant detained at the border. Such applications may be meritorious. In 2008, 351 applications were submitted at the border of which 100 received a positive decision (either refugee status or subsidiary protection status).[290] UNHCR's audit of case files concerning applications submitted at the border revealed applications raising complex issues such as homosexuality in Iran and PKK affiliation in Turkey.[291] However, the audit also revealed that in these cases, the determining authority exceeded the indicative 15 day time limit for the accelerated border procedure.[292]

In France, applications by persons detained in administrative retention centres are routinely considered to constitute an abuse of the asylum procedure and are examined in an accelerated 96 hour procedure. Even though the application may be well-founded,

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[286] Case No. 10-2008; No.12-2008; No. 29-2008, No. 31-2008.
[287] Case No. 26-2008, 27-2008 and 19-2008.
[288] Case No. 33-2008 referring to Croatia, Bosnia and Herzegovina, and Montenegro.
[289] Case No. 16-2008, 20-2008, 22-2008, 23-2008, 26-2008, 28-2008, 29-2008, 30-2008, 31-2008, 32-2008, 36-2008.
[290] This is a recognition rate of 28.4%.
[291] Case files nrs. 11, 13, 14, 17, 18 and 100.
[292] Decisions were taken within 3 to 4 weeks.

as previously mentioned, applicants face sometimes insurmountable obstacles in submitting a fully evidenced application in the accelerated procedure.

In Greece, due to the extremely limited information contained in the audited interview reports and the lack of any other information in the case files, it was difficult for UNHCR to assess whether applications were appropriately channelled into the accelerated procedure. In all the reviewed case files, the police officer who conducted the personal interview proposed in a standard phraseology that the application should be examined in the accelerated procedure because it was manifestly unfounded and did not satisfy the requirements for the granting of refugee status. No other reasoning was provided. These included seven cases in which the applicants claimed to fear persecution by non-state actors,[293] a Syrian applicant of Kurdish origin who claimed to have suffered persecution on the grounds of his origin,[294] two applicants from Syria and Pakistan who claimed to fear persecution on account of their political activities,[295] an Iranian Zoroaster who alleged that he had been persecuted on account of his religion[296] and an Iranian homosexual who claimed to fear persecution on account of his sexual orientation.[297] With the exception of the last-mentioned case, in all the other cases, the examiner from ADGPH endorsed the proposal of the interviewer and recorded his/her recommendation in the case file, always with the same standard phraseology:

"*... 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 his/her country in order to find a job and improve his living conditions. There is doubt regarding the applicant's identity since s/he neither showed nor handed in any national passport or any other travel documents that could prove or certify his/her identity.*

For the above reasons it is recommended that the application should be processed with the accelerated procedure and be rejected since it does not fulfil the criteria of Article 1 (A) of the 1951 Geneva Convention and of article 15 of PD 96/2008."

Recommendations

The grounds for accelerating an examination, particularly in a procedure which may have reduced safeguards, should be clearly and exhaustively defined in the APD and national legislation. Grounds for examining claims in an accelerated procedure should be interpreted strictly and cautiously.

[293] CF77IRQ25, CF27AFG3, CF29AFG5, CF31AFG7, CF40AFG16, CF14SYR5 and CF25AFG1.
[294] CF13SYR4.
[295] CF16SYR7 and CF147PAK35.
[296] CF1IRN1
[297] CF9IRN9

The wide-ranging grounds expressed in Article 23 (4) should be significantly reduced.[298] In particular, grounds which are unrelated to the merits of the application should not be included in the list of criteria for examining a claim in an accelerated procedure. This includes grounds relating purely to non-compliance with procedural requirements, in cases where the applicant's circumstances may have made such non-compliance unavoidable, or where there could be a reasonable explanation for such non-compliance. This includes, among other things, failure to produce proof of identity, or failure to apply earlier.

Where an applicant is in detention, s/he should be afforded all safeguards necessary to ensure that s/he can pursue and support his/her claim, including through gathering and provision of evidence. The disadvantages faced by detained applicants in pursuing their claims should be taken into account.

Applications raising issues under the exclusion clauses

Parliamentary Assembly Resolution 1471 (2005) on accelerated asylum procedures in Council of Europe Member States recommended that applications raising issues under the exclusion clauses of the 1951 Refugee Convention be exempted from accelerated procedures.[299]

UNHCR's research has found that such applications are not exempted from accelerated examination by law in Belgium,[300] Bulgaria, the Czech Republic, Greece,[301] France,[302] the Netherlands and the UK. Indeed, the New Asylum Law in Spain establishes that this is a ground for the accelerated examination of the application.[303] However, in some

[298] In this regard, it is noted that the European Commission, in its proposal for a recast of the APD, has proposed deletion of the following sub-paragraphs of Article 23(4): (c) applicant clearly does not qualify as a refugee; (e) applicant has filed another application stating other personal data; (f) failure to produce information establishing identity or nationality; (i) failure without reasonable cause to apply earlier, having had opportunity; (k) failure without good reason to fulfil obligations to substantiate claim; (l) unlawful entry or prolonged stay without filing an application or presenting to the authorities; (m) applicant is danger to national security or public order; (n) refusal to have fingerprints taken; (o) application of a dependent minor has been rejected, with no new elements: APD Recast Proposal 2009.

[299] Paragraphs 8.9 and 8.11.

[300] The asylum authorities underlined that "accelerated" does not mean "a less careful examination". The examination will be as thorough as an examination in a regular procedure, but the time period in which it takes place will be shorter: telephone call on 23th of June 2009 with Legal Service of CGRA.

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

[302] Applications raising issues under the exclusion clauses can be examined in the accelerated procedure since the decision to channel an application into the accelerated procedure is made by the *Préfecture* without examination of the substance of the claim. In practice, it is likely that the OFPRA would take more time for the examination of the application and exceed the time limit for the accelerated procedure.

[303] UNHCR has raised serious concerns regarding this provision. UNHCR's comments to the final text of the Law Regulating the Right to Asylum and the Subsidiary Protection approved by the Plenary of the Congress on October 15 2009 stated: *"It is deeply worrying that according to Articles 21 and 25 of the new*

Member States, in practice, the prescribed time limits for the examination of the application would be exceeded if the application raised issues under the exclusion clauses, according to the determining authorities.

In Germany, an application raising issues under the exclusion clauses would prompt a prioritization of the examination of the application.[304] In addition, in case the person concerned is excluded, the case would be rejected as manifestly unfounded,[305] resulting in shortened deadlines for appeal.

In the UK, reference would be made to the War Crimes Unit which is a specialized unit within the determining authority.

In Slovenia, national legislation provides that an application should be rejected in the regular procedure as unfounded if the exclusion clauses apply.[306] There is no specific legislation on this matter in Finland, but according to stakeholders, a complex case raising the exclusion clauses would in practice be examined in the regular procedure.[307]

UNHCR considers it is essential that rigorous procedural safeguards be built into the procedures for dealing with any claim that raises exclusion issues.

Recommendation

UNHCR recommends that given the grave consequences of exclusion, exclusion decisions should in principle be dealt with in the context of the regular status determination procedure, and not in either admissibility or accelerated procedures, so that a full factual and legal assessment of the case can be made.

Well-founded applications

Article 23 (3) APD is explicit in stating that applications which are likely to be well-founded may be prioritized or accelerated. This is reflected in the national legislation of Greece,[308] Italy,[309] Slovenia[310] (although this has never been applied in practice) and

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Law, exclusion assessments can be made at the accelerated procedure stage, including in the border procedure, before a substantive assessment of inclusion criteria has taken place. The exclusion clause is to be examined during the substantive part of the asylum procedure, given the far-reaching consequences of its application and the need to balance it against the asylum-seeker's persecution claim."

[304] BAMF *Internal Guidelines for Adjudicators: Priority* (1/1), Date: 12/08, p. 1.

[305] Section 30 (4) APA.

[306] Article 53 IPA.

[307] Interview 9.12.2008.

[308] Article 8 (2) PD 90/2008 states that examination of an application may be prioritized when it may reasonably be considered to be well-founded.

[309] Article 28 of Legislative Decree No. 25/2008.

Spain.[311] It is not reflected in the national legislation of Belgium, Bulgaria,[312] the Czech Republic,[313] Finland, France, Germany,[314] the Netherlands[315] or the UK.

Recommendation

UNHCR welcomes provision for prioritised and/or accelerated examination of well-founded claims, which can lead to expeditious grants of status. UNHCR considers that this is in the interests of claimants and of states which seek to improve the efficiency of asylum procedures and outcomes.

Applicants with special needs

Article 23 (3) APD is also explicit in stating that when an applicant has special needs, the examination of his/her application may be prioritized or accelerated.

This is reflected in the national legislation of Greece[316] and Italy.[317] It is partially reflected in the national legislation of Slovenia, in that the examination of applications by unaccompanied children must be treated with priority.[318] In Spain, it has been reflected in the New Asylum Law to the extent that applications lodged in-country by

[310] Article 54 IPA: "*The competent authority can decide the application in the accelerated procedure if the entire operative event has been established on the basis of facts and circumstances from the first to the eighth sub-paragraph of Article 23 of this Act inasmuch as they have been presented*."
[311] Article 25 (1) (a) of the New Asylum Law provides that the urgent RSD procedure will be applied to manifestly well-founded applications lodged in country only.
[312] In Bulgaria, a decision to recognize refugee status or grant subsidiary protection status cannot be taken in the accelerated procedure. If an application is not manifestly unfounded or the procedure is not discontinued, a decision is taken to submit the application to the general procedure under Article 70 (1) LAR. Also, according to Article 71 (2) LAR, the accelerated procedure is not applicable when the application was submitted by an alien who has already been granted temporary protection.
[313] According to the determining authority DAMP, such applications would be prioritized in practice, but UNHCR's research was unable to confirm or refute this.
[314] With the exception of cases, in which constitutional asylum is granted: the omission of the hearing is possible in such cases, Section 24 (1) 4 APA.
[315] Note that in accordance with Aliens Circular C12/3 applications by applicants, who fall under the non-removal policy of categorical protection or for whom there is a moratorium on decisions or departure, must be examined in the regular procedure.
[316] Article 8 (2) PD 90/2008 states that examination of an application may be prioritized when the applicant belongs to a vulnerable group.
[317] Article 28 (1) d.lgs. 25/2008 requires the determining authority, the Territorial Commissions, to examine an application with priority when the applicant is considered a vulnerable person in accordance with Article 8 of the legislative decree of 30 May 2005, No. 140 [minors, disabled persons, old people, pregnant women, single parents with minors, persons who have suffered torture, rape or other serious acts of psychological, physical or sexual violence].
[318] Article 16 (1), indent 3 of IPA.

persons with specific needs, particularly unaccompanied children, should be examined in the urgent RSD procedure.[319]

However, it is not reflected in the national legislation of Belgium, Bulgaria,[320] the Czech Republic, Finland, France, Germany, the Netherlands, or the UK.

Some determining authorities informed UNHCR that, although there is no legal provision, in practice, some applications may be prioritized. The determining authority in Belgium stated that it always prioritizes the examination of applications by unaccompanied children and that applications by other applicants with special needs may be prioritized on humanitarian grounds.[321] This was supported by UNHCR's audit of case files in Belgium, which revealed two cases in which the determining authority was requested to and did prioritize the examination.[322] Similarly, UNHCR was informed by the determining authority in Bulgaria that when the authority has the capacity, the applications of persons with special needs may be prioritized in the framework of the general procedure.[323]

Prioritization may ensure that certain categories of claims are examined at an early stage, without the need for the applicant to wait for lengthy periods that may sometimes apply to other claims. This can bring positive benefits for applicants, provided that the prioritized examination includes all of the necessary guarantees to ensure a fair determination of the claim, including reasonable deadlines and opportunities for the applicant to prepare for interviews, gather and furnish evidence, and other steps. Prioritization may help ensure, for example, that applicants with special needs are not obliged to experience lengthy waiting periods due to backlogs or other administrative delays.

However, the special needs of some applicants may be such that it is wholly inappropriate to accelerate the examination of their applications. This may include persons with serious physical or psychological problems, those exhibiting symptoms of trauma, and separated children.

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[319] Article 25 (1) (b). Although Article 25(1) (b) does not define the term 'persons with specific needs', Article 46 stipulates that the specific situation of applicants and beneficiaries of international protection who are especially vulnerable, including unaccompanied minors, persons with disabilities, elderly people, pregnant women, single parent families with minors, victims of torture, rape or other severe forms of psychological, physical or sexual violence and victims of trafficking will be taken into account. It also includes those persons who, because of their personal characteristics, could have been victims of persecution on account of several of the reasons laid down in the present law.

[320] By law, applications by unaccompanied minors and juveniles are exempted from the accelerated procedure in accordance with Article 71 (1) LAR.

[321] Interview with the Commissioner-General on 27 April 2009.

[322] Cases 19 and 23.

[323] Article 30a of LAR refers to vulnerable persons as minor or juvenile persons, pregnant women, elderly persons, single parents with their minor or juvenile children, persons with disabilities and persons who were victims of serious psychological, physical or sexual harassment.

UNHCR believes that particularly vulnerable persons should have their applications exempted from accelerated procedures and their applications should instead be examined in the regular procedure, or a prioritized procedure with all necessary safeguards.[324] UNHCR's research has found that many of the Member States surveyed do not have legal exemptions from accelerated procedures in place for applicants with special needs: Belgium, Finland, France, Germany,[325] Greece, the Netherlands[326] and Slovenia. The exemption of applications by victims of torture or sexual violence from the accelerated examination in the airport procedure has frequently been called for in Germany, but has not been introduced in legislation or guidelines.[327]

A few of the surveyed Member States have made some legal provision to exempt certain applications from accelerated procedures.

In Bulgaria, applications by unaccompanied children and juveniles are exempted from the accelerated procedure and admitted directly to the general procedure.[328] But there is no legal provision relating to other applicants with special needs. Similarly, in France, unaccompanied children do not require a temporary residence permit from the *Préfecture* and their applications are not routed into the accelerated procedure in practice.[329] However, there is no legislative provision regarding other applicants with special needs.

In the Czech Republic, applications by unaccompanied children are also excluded from accelerated procedures[330] and a broader category of applicants with special needs is excluded from the accelerated border procedure.[331]

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[324] See also Parliamentary Assembly Resolution 1471 (2005) on accelerated asylum procedures in Council of Europe Member States which recommends that certain categories of persons be excluded from accelerated procedures due to their vulnerability and the complexity of their cases, namely separated children/unaccompanied minors, victims of torture and sexual violence and trafficking.

[325] There is neither an exemption of applicants with special needs from the airport procedure nor a prioritization of their applications in the normal procedure. However, unaccompanied minors, persons having suffered gender specific persecution or traumatized persons shall be heard by specially trained personnel (cf. *Internal Guidelines for Adjudicators: Adjudicators with special tasks* (1/3), Date 12/08.).

[326] With the exception that C13/2 Aliens Circular provides that the detailed personal interview of unaccompanied minors under the age of 12 should not, in principle, take place in an application centre.

[327] Cf. for instance, Marx, *Commentary on the Asylum Procedure*, Section 18a, para. 99 et seq. UNHCR, Representation for Austria and Germany, *Eckpunkte-Papier zum Flüchtlingsschutz anlässlich der Konstituierung des Deutschen Bundestages und der Deutschen Bundesregierung zur 17. Legislaturperiode*, October 2009, p. 6.

[328] Article 71 (1) LAR.

[329] Interview with *Préfecture* of Rhône; Interview with Ministry of Immigration.

[330] Section 16 (4) ASA.

[331] Section 73 (7) ASA: *"The Ministry will decide on the permit to enter the Territory for an alien who has made the Declaration on International Protection in the transit zone of an international airport and transport him/her into a reception centre at the Territory, if the alien is an unaccompanied minor, a parent or a family with handicapped minors or persons of full age, seriously handicapped alien, pregnant woman*

In the UK, there are administrative provisions setting out which applicants are unsuitable for detention for the purpose of examining their application in accelerated procedures.[332] However, these criteria set a very high threshold. The categories of people described in the 'suitability exclusion criteria' are:

- women who are 24 or more weeks pregnant;
- unaccompanied asylum-seeking children, whose claimed date of birth is accepted by the determining authority;
- those with a medical condition requiring 24-hour nursing or medical intervention;
- those presenting with physical and/or learning disabilities requiring 24 hour nursing care;
- those with a disability, except the most easily manageable;
- those presenting with acute psychosis, for instance schizophrenia, who require hospitalisation;
- those with an infectious/contagious disease which cannot be effectively and appropriately managed within a detained environment;
- those for whom there is independent evidence from a reputable organization that they have been a victim of trafficking;[333] and
- those in respect of whom there is independent evidence of torture.

If the claimed date of birth of an unaccompanied asylum-seeking child is disputed by the determining authority, who believe that the person is an adult, the application may be channeled into the Detained Fast-track procedures.[334] In the UK, UNHCR audited a case in which a disputed minor was assessed by the determining authority as being nineteen years old. The official guidance states that disputed minors should only be in the detained processes where there is strong evidence that they are over eighteen years of age or their physical appearance or demeanour very strongly indicate that they are significantly over 18 years of age.[335] The applicant's representative had arranged for an independent medical age assessment to be carried out, and requested that the case be taken out of the detained fast-track procedure so that the appropriate examinations could take place, failing which more time should be given for the age assessment to be completed. This was refused, as was the asylum application, and the applicant was

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or a person who has been tortured, raped or subject to any other forms of mental, physical or sexual violence."

[332] The AIU (Asylum Intake Unit) instruction "*DFT & DNSA – Intake Selection*", 21.07.2008, Policy section, accessed via the UKBA website 5.01.2009 lists the suitability exclusion criteria.

[333] Extract from the guidance: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/victimsoftrafficking.pdf?view=Binary.

[334] The AIU (Asylum Intake Unit) instruction "*DFT & DNSA – Intake Selection*", 21.07.2008, Policy section, accessed via the UKBA website 5.01.2009.

[335] *DFT and DNSA Intake Selection* (AIU instruction).

removed to Afghanistan.[336] UNHCR also audited a case of an unaccompanied child whose application was refused for non-compliance and his case was determined under accelerated procedures when it would have been more appropriate to discontinue the examination.[337]

Although, as stated above, many of the Member States surveyed have no legal provision to exempt applications by persons with special needs from accelerated procedures, some determining authorities informed UNHCR that applications may be exempted in practice. The determining authority in Greece informed UNHCR that, in practice, applications by unaccompanied children were exempted from accelerated procedures.[338] In Finland, in practice, applications by unaccompanied children are exempted from accelerated procedures.[339] In France, humanitarian considerations can be taken into account by the *Préfectures* in practice, in determining the procedure for the examination of an application.[340]

For example, in Italy, examination of an application by a vulnerable person is prioritized (not accelerated) on the basis of referrals or medical certificates. However, when the medical certificate recommends that the interview is postponed, the interview is postponed rather than prioritized. This practice, which has been supported by UNHCR, has happened in the case of victims of torture or persons who have suffered particularly serious trauma during the journey to Italy.[341]

With regard to Spain, in the case of unaccompanied children, although by application of Article 15 (4) ALR these cases should be prioritized, in practice it is not automatically done. It has to be said that, in many cases relating to unaccompanied children, the legal representative of the child, or the NGO providing legal assistance asks for the examination of the case to be slowed down instead of accelerated due to the nature of the special needs, and eligibility officials generally agree to do so. In other cases of applicants with special needs, this practice is also used. This was the case in one of the interviews observed in the regular RSD procedure. The application had been lodged in 2005 but due to the medical condition of the applicant, the assisting NGO asked for the case not to be further examined and decided upon until the applicant was able to be interviewed.[342]

It should also be added that procedures should be in place to identify and respond to those cases which are unsuitable for examination within accelerated procedures, due to

[336] DAF22.
[337] DAF51.
[338] Interview with the Head of ARD in ADGPH.
[339] Interview 8.12.2009.
[340] Information obtained from the *Préfecture* of Rhône.
[341] The European Commission has provided for the tabling of medico-legal reports in recast Article 17, APD Recast Proposal 2009.
[342] Case Nr. 0502102.

the nature of the special needs of the applicant. Personnel of the determining authority should act proactively to remove applications from the accelerated procedure if the applicant's vulnerability is such that s/he is hindered from fully substantiating the application within the time scales of the accelerated procedure.

Recommendation

Member States should legislate or provide guidelines to ensure that certain applications may be exempted from prioritised and accelerated examination due to the special needs of the applicant.

Statistics

UNHCR's research found that a number of Member States do not publish statistics on the numbers of and grounds upon which applications are examined in an accelerated or prioritized manner: Belgium,[343] Bulgaria, the Czech Republic, Greece, Italy, and Slovenia. In France, there are no statistics on the grounds upon which the *Préfectures* deny a temporary residence permit and consequently submit an application to the accelerated procedure, although plans exist to do this from 2010.

[343] There are no statistics on all the applications that are examined in an accelerated procedure. There are statistics regarding the applications examined at the border which constitute the majority of applications examined in an accelerated procedure.