

**Section 10**  
**Inadmissible and unfounded applications**

**Inadmissible applications**  
**Unfounded and manifestly unfounded applications**

## Section 10 Inadmissible and unfounded applications

### Inadmissible applications

Article 25 of the APD states that, in addition to cases in which an application is not examined in accordance with the Dublin II Regulation,<sup>1</sup> Member States are not required to examine whether the applicant qualifies as a refugee if his/her claim is considered inadmissible because of the following reasons:<sup>2</sup>

- (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 for the applicant, pursuant to Article 26;*
- (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 27;*
- (d) the applicant is allowed to remain in the Member State concerned on some other grounds and as result of this he/she has been granted a status equivalent to the rights and benefits of the refugee status by virtue of Directive 2004/83/EC;*
- (e) the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him/her against refoulement pending the outcome of a procedure for the determination of status pursuant to point (d);*
- (f) the applicant has lodged an identical application after a final decision;*
- (g) a dependant of the applicant lodges an application, after he/she has in accordance with Article 6(3) consented to have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant's situation, which justify a separate application.*

Table 1 below sets out, with reference to Article 25 (2) APD, the grounds in national legislation, regulations and guidelines for considering an application as inadmissible. The other two tables highlight respectively whether a special admissibility procedure exists (table 2) and whether national legislation, regulations or administrative provisions permit the omission of the personal interview in the examination of admissibility (table 3).

---

<sup>1</sup> Regulation (EC) No 343/2003.

<sup>2</sup> Article 25 (2) APD

<b>Table 1 - Art. 25 (2) APD: Inadmissibility grounds</b>	<b>Be</b>	<b>Bg</b>	<b>Cz</b>	<b>De<sup>3</sup></b>	<b>Es</b>	<b>Fi</b>	<b>Fr</b>	<b>Gr</b>	<b>It</b>	<b>NI</b>	<b>Si</b>	<b>UK</b>
(a) another Member State has granted refugee status;		√	√		√	√		√	√		√	√ <sup>4</sup>
(b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 26;		√ <sup>5</sup>	√		√	√		√ <sup>6</sup>	√		√	√
(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 27;					√	√ <sup>7</sup>		√ <sup>8</sup>			√	√
(d) the applicant is allowed to remain in the Member State concerned on some other grounds and as a result of this he/she has been granted a status equivalent to the rights and benefits of refugee status by virtue of Directive 2004/83/EC;		√ <sup>9</sup>									√	

<sup>3</sup> In Germany, apart from the procedure under the Dublin II Regulation<sup>3</sup>, no other procedure is explicitly designated as an admissibility procedure. However, other similar concepts are used for rejection. Applications can be deemed “irrelevant” (*unbeachtlich*) if the applicant had already found safety from persecution in another state and rejected, and the applicant can be returned within three months to that State or another State where s/he is safe from persecution. In cases that would fall under Art. 25 (2) (c) APD, no admissibility decision is taken; however, entry to the territory may be denied by the Federal Police (but this concept is of limited practical relevance because of the Dublin II Regulation). In cases falling under Art 25 (2) (f) APD, the application is considered in the framework of the procedure for subsequent applications. Since an identical application would not meet the criteria to conduct a further asylum procedure, the respective decision is taken and the application will not be examined on its merits.

<sup>4</sup> The application is likely to be treated as inadmissible under s33 and Schedule 3 of the Asylum and Immigration (Treatment of Claimants Etc.) Act 2004, enabling removal of the individual to a third country through the issuance, by the determining authority, of a certificate.

<sup>5</sup> Limited only to persons granted refugee status according to Art. 26 (a) APD.

<sup>6</sup> The first country of asylum should have granted international protection status or a residence permit *inter alia* protecting him/her from *refoulement*.

<sup>7</sup> In order to dismiss the application on this ground, the decision must be made within seven days of the date when the minutes of the interview were completed and the information on their completion was entered in the Register of Aliens.

<sup>8</sup> The safe third country should have granted international protection status or a residence permit *inter alia* protecting him/her from *refoulement*.

<sup>9</sup> In case the alien has been granted asylum or there is an open procedure for granting asylum with regard to the particular alien. Under national law, ‘asylum’ is a form of special protection granted by the President of the Republic of Bulgaria to aliens persecuted for their convictions or activities in protecting internationally recognized rights and freedoms.

Table 1 - Art. 25 (2) APD: Inadmissibility grounds		Be	Bg	Cz	De <sup>3</sup>	Es	Fi	Fr	Gr	It	NI	Si	UK
(e) the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him/her against <i>refoulement</i> pending the outcome of a procedure for the determination of status pursuant to point (d);			√									√	
(f) the applicant has lodged an identical application after a final decision;			<sup>10</sup>	√		√			√	√		√	√
(g) a dependant of the applicant lodges an application, after he/she has in accordance with Article 6(3) consented to have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant's situation, which justify a separate application.									√				
Others:	Lack of legitimate interest		√										
	Pending RSD procedure or appeal		√										
	Falling under the jurisdiction of another state authority		√										
	Lack of signature		√ <sup>11</sup>										
	State not responsible for the examination of the application under any international treaty it is party to					√							

<sup>10</sup> Article 25 (2) (f) APD has not been transposed. The fact that the applicant does not present any significant new circumstances relating to his/her personal situation or country of origin is to be considered as a ground for rejecting the application as manifestly unfounded. However, the nature of proceedings on subsequent applications within the accelerated procedure in practice is specific and one could conclude that filing an identical application after a final decision is *de facto* an inadmissibility ground.

<sup>11</sup> The requirement of a signature is a general requirement in Article 29 (2) of the Administrative Procedure Code. The IRR of SAR in its Art. 10(1), item 5, provides that the registration office of SAR checks for a signature in the asylum application.

<b>Table 1 - Art. 25 (2) APD: Inadmissibility grounds</b>		<b>Be</b>	<b>Bg</b>	<b>Cz</b>	<b>De<sup>3</sup></b>	<b>Es</b>	<b>Fi</b>	<b>Fr</b>	<b>Gr</b>	<b>It</b>	<b>NI</b>	<b>Si</b>	<b>UK</b>
	Protocol (No 29) on asylum for nationals of Member States of the European Union (1997)			√		√		√ <sup>12</sup>					
	The applicant has lodged a new application with other personal data					√							

<b>Table 2 - Special admissibility procedure</b>	<b>Be</b>	<b>Bg</b>	<b>Cz</b>	<b>De</b>	<b>Es</b>	<b>Fi</b>	<b>Fr</b>	<b>Gr</b>	<b>It</b>	<b>NI</b>	<b>Si</b>	<b>UK</b>
Existence of special admissibility procedure					√			√			√	√

<b>Table 3 - Derogation from principles and guarantees of chapter II</b>	<b>Be</b>	<b>Bg</b>	<b>Cz</b>	<b>De<sup>13</sup></b>	<b>Es</b>	<b>Fi</b>	<b>Fr</b>	<b>Gr</b>	<b>It</b>	<b>NI</b>	<b>Si</b>	<b>UK</b>
Omission of personal interview		√	√			√ <sup>14</sup>			√			√

<sup>12</sup> See the decision of the Conseil d'État N° 305226 of the 30 December 2009.

<sup>13</sup> Explicitly foreseen by law in cases dealt with under the provisions for subsequent applications (falling under Art. 25 (2) (f) APD).

<sup>14</sup> Section 104 of the *Ulkomaalaislaki* (Alien' Act 301/2004) stipulates that a decision applying the safe country of asylum or origin concepts [i.e. admissibility ground] must be taken within seven days of completion of the record of the personal interview, thus implicitly requiring that an interview should take place. However, UNHCR's interviews with the determining authority revealed that interviews are not conducted when it is considered that the applicant enjoyed protection in a safe country of asylum, is still protected there, and may be returned. The omission of the personal interview is based on an interpretation of Section 103(1) of the Aliens Act, which provides that an application for international protection may be dismissed if the applicant has arrived from a safe country of asylum. As the application may be dismissed and not examined on its merits, it is considered by the determining authority that an interview is not required.

## **Unfounded and manifestly unfounded applications**

Article 28 (1) of the APD states that, without prejudice to Articles 19 and 20 (on withdrawal or abandonment of the application), Member States may only consider an application for asylum as unfounded if the determining authority has established that the applicant does not qualify for refugee status pursuant to Directive 2004/83/EC (the Qualification Directive).

Article 28 (2) APD states that, in the cases mentioned in Article 23 (4) (b) APD and in cases of unfounded applications for asylum in which any of the circumstances reported below and listed in Article 23 (4) (a) and (c) to (o) APD apply, Member States may also consider an application as manifestly unfounded, where it is defined as such in the national legislation. These are:

*(a) the applicant, in submitting his/her application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he/she qualifies as a refugee by virtue of Directive 2004/83/EC;*

*(b) the applicant clearly does not qualify as a refugee or for refugee status in a Member State under Directive 2004/83/EC;*

*(c) the application for asylum is considered to be unfounded:*

*(i) because the applicant is from a safe country of origin within the meaning of Articles 29, 30 and 31, or*

*(ii) because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 28(1);*

*(d) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision;*

*(e) the applicant has filed another application for asylum stating other personal data;*

*(f) the applicant has not produced information establishing with a reasonable degree of certainty his/her identity or nationality, or it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality;*

*(g) the applicant has 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 referred to in Directive 2004/83/EC;*

*(h) the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin;*

*(i) the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so;*

*(j) 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;*

*(k) the applicant has failed without good reason to comply with obligations referred to in Article 4(1) and (2) of Directive 2004/83/EC or in Articles 11(2)(a) and (b) and 20(1) of the APD;*

*(l) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented him/herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry;*

*(m) the applicant is a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law;*

*(n) the applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation;*

*(o) the application was made by an unmarried minor to whom Article 6 (4) (c) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.*

It is important to note that in Slovenia, in apparent breach of Article 25 (2) of the APD, in the accelerated procedure the determining authority does not have to conduct an assessment of the merits and examine whether an applicant qualifies for refugee status if one of the grounds listed in Article 55 IPA is fulfilled.<sup>15</sup> The

---

<sup>15</sup> Article 55: (Reasons to reject the application in the accelerated procedure) *“The competent authority rejects the application in the accelerated procedure as manifestly unfounded if:*

- the applicant came to Slovenia exclusively for economic reasons;*
- on filing the application the applicant presented only facts that are insufficient, irrelevant or can be neglected for the examination of his entitlement to international protection by virtue of this Act;*
- it is obvious that the applicant does not meet the requirements for international protection set out in Articles 26 and 28 of this Act;*
- the applicant falsely presented the reasons he refers to particularly if his statements are inconsistent, contradictory, non-credible and contrary to the information on his country of origin under the eighth sub-paragraph of Article 23 of this Act;*
- without any well founded reason the applicant did not express an intention to file the application in the shortest possible time but had ample opportunity to do so;*
- the applicant filed his application with the purpose of postponing or precluding his deportation from the country;*
- the applicant refuses the dactyloscopy and does not want his photograph to be taken;*
- the applicant substantiated his application using false identity or counterfeit documents or concealed important information or documents about his identity or nationality (citizenship);*

application may be rejected as manifestly unfounded in the accelerated procedure on a ground other than the fact that the applicant does not qualify for refugee status. The practice has been upheld by the Supreme Court which took a position that an application can be rejected as manifestly unfounded when only one of the reasons defined in Article 55 of the IPA is established. Surprisingly, this position has been affirmed also by the Constitutional Court.<sup>16</sup> This practice is problematic, when the initial procedure for the submission of an application is not conducted in line with minimum standards for a personal interview and the decision does not reflect that an analysis of the merits of the claim has been conducted.

Table 4 below sets out, with reference to Article 28 (2) APD, the grounds in national legislation, regulations and guidelines for considering a claim as manifestly unfounded (marked with “v”).

- 
- *the applicant deliberately destroyed or expropriated his travel document, personal or identification document with a photograph that proves his identity or citizenship or any document containing a photograph that could prove his identity or citizenship;*
  - *the applicant deliberately destroyed or expropriated other documents (papers, tickets, certificates) that could be relevant for establishing his identity, citizenship or entitlement to international protection;*
  - *in spite of his assurance the applicant failed to produce documents and information under the fourth sub-paragraph of Article 23 of this Act within the agreed deadline;*
  - *the applicant filed another application with different personal data;*
  - *the applicant is coming from a safe country of origin under Article 65 of this Act;*
  - *the applicant can endanger public security or public order of the country by committing a criminal offence and has been for these reasons issued with an enforceable order to leave the country as a secondary punishment or the order has already been carried out but the deadline for the prohibition of entry into European Union has not yet expired;*
  - *the applicant concealed that he had filed an application before in another country particularly if he used a false identity;*
  - *the applicant tried to enter in another country illegally before the competent authority's decision and was apprehended by the police or entered in another country illegally and was returned to Slovenia.”*

<sup>16</sup> Up-240/2005, 21 April 2005, Up-794/2005, 20 October 2005, Up-1525/06, 21 June 2007, Up-2195/06-14.



Table 4 - Art. 28 (2) APD: Manifestly unfounded applications		Be	Bg <sup>17</sup>	Cz	De <sup>18</sup>	Es <sup>19</sup>	Fi	Fr <sup>20</sup>	Gr	It	Nl <sup>21</sup>	Si	UK <sup>22</sup>
(b) the applicant clearly does not qualify as a refugee or for refugee status in a Member State under Directive 2004/83/EC;		√	√	√	√ <sup>23</sup>		√		√	√		√	√
(c) the application for asylum is considered to be unfounded:	i) because the applicant is from a safe country of origin within the meaning of Articles 29, 30 and 31		√	√	√ <sup>24</sup>		√					√	√

<sup>17</sup> In Bulgaria, a claim can be considered as manifestly unfounded only if the claimant does not qualify for both refugee status and **subsidiary protection**.

<sup>18</sup> In addition to the reasons mentioned below, German law establishes another ground to reject an application as manifestly unfounded, if the application does not constitute an asylum application in the sense of the Asylum Procedure Act.

<sup>19</sup> In Spain, Article 28 (2) APD has not been transposed and is not applied in practice. The Spanish legislation does not define applications as manifestly unfounded. However, under Articles 21.2 (border procedure) and 25.1 (in-territory procedure) of the New Asylum Law, the situations listed in Article 23 (4) a, b, c (i), g and i lead to the channeling of the application into the 'urgent procedure'.

<sup>20</sup> In France, Article 28 (2) APD has not been transposed and is not applied in practice. Of note though is the fact that the notion of manifestly unfounded applications is used in the border procedure to determine whether an applicant should be granted or refused leave to enter France to apply for international protection; and the notion is also used as a ground for omitting a personal interview in the first instance asylum procedure. The term 'manifestly unfounded' is not defined in French law or regulations but is apparently based on the definition contained in the non-legally binding Council Resolution of 30 November 1992 on Manifestly Unfounded Applications for Asylum.

<sup>21</sup> In the Netherlands, Article 28 (2) APD has not been transposed and is not applied in practice.

<sup>22</sup> The term "clearly unfounded" is used in UK law, but the term "manifestly unfounded" is not. According to section 94 (2) NIAA 2002, any application for international protection may be certified as "clearly unfounded". It can be said that the term "clearly unfounded" roughly equates to the term "manifestly unfounded". However, it appears from the fact that the term "manifestly unfounded" has been used in UK legislation in the past, but not in the current legislation, that the decision not to use the term "manifestly unfounded", which is part of the language of international instruments, is deliberate. The definition of "clearly unfounded" has been set out in various decisions of the UK Courts. A generally accepted definition is that a clearly unfounded claim is one which is "so clearly without substance that it is bound to fail". An asylum application could therefore be deemed clearly unfounded under NIAA 2002 s94 (2) in a number of the situations set out in Article 23(4) APD, even though these grounds are not specifically provided for in section 94 (2) NIAA 2002.

<sup>23</sup> In addition, German law further specifies that an application is manifestly unfounded, if it is obvious from the circumstances of the individual case that the foreigner stays in the Federal territory only for economic reasons or in order to escape a general emergency situation or an armed conflict ("*kriegerische Auseinandersetzung*").

<sup>24</sup> The asylum application of a foreigner from a safe country of origin shall be turned down as manifestly unfounded. However, the presumption of safety from persecution can be rebutted on the basis of the presentation of facts or evidence by the applicant. The case will be reviewed on its merits and a personal interview will be conducted.

Table 4 - Art. 28 (2) APD: Manifestly unfounded applications		Be	Bg <sup>17</sup>	Cz	De <sup>18</sup>	Es <sup>19</sup>	Fi	Fr <sup>20</sup>	Gr	It	Nl <sup>21</sup>	Si	UK <sup>22</sup>
	(ii) because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 28(1)		√	√			√ <sup>25</sup>						√
	(d) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision;		√	√	√		√		√			√	
	(e) the applicant has filed another application for asylum stating other personal data;				√				√			√	
	(f) the applicant has not produced information establishing with a reasonable degree of certainty his/her identity or nationality, or it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality;		√	√	√		√ <sup>26</sup>		√			√	
	(g) the applicant has 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 referred to in Directive 2004/83/EC		√	√	√	√ <sup>27</sup>	√		√			√	

<sup>25</sup> Only if the determining authority has not been able to issue a decision on the application within seven days from when the minutes of the interview were completed. If a decision is taken within the 7 day time-limit, the application may be dismissed as inadmissible. See above.

<sup>26</sup> The Aliens Act does not make reference to situation where the applicant has failed to produce information on identity or nationality. However, Section 101(2)(c) making reference to situations where the applicants impedes the establishment of his/her claim in other fraudulent manners as a ground for considering applications manifestly unfounded, must be seen as covering also situations referred to in Article 23(f) where the applicant has disposed of documentation.

<sup>27</sup> Article 21.2.b of the New Asylum law, establishes that applications which meet the conditions laid down in Article 23(g) will be processed in accelerated procedures if lodged at the border. However the expression “*which make his/her claim clearly unconvincing*” is substituted by the expression “*which make his/her application manifestly unfounded*” and it adds that applications will also be considered under this provision if the allegations contradict established country of origin information.

Table 4 - Art. 28 (2) APD: Manifestly unfounded applications	Be	Bg <sup>17</sup>	Cz	De <sup>18</sup>	Es <sup>19</sup>	Fi	Fr <sup>20</sup>	Gr	It	Nl <sup>21</sup>	Si	UK <sup>22</sup>
(h) the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin;		√						√	√			
(i) the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so;		√	√ <sup>28</sup>					√		√		
(j) 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;		√	√ <sup>29</sup>	√		√		√	√		√	
(k) the applicant has failed without good reason to comply with obligations referred to in Article 4(1) and (2) of Directive 2004/83/EC or in Articles 11(2)(a) and (b) and 20(1) of this Directive		√ <sup>30</sup>		√				√			√	
(l) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself/herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry;		√		√ <sup>31</sup>				√			√	
(m) the applicant is a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law;				√				√			√	

<sup>28</sup> This ground must be combined with the ground defined at letter j to declare a claim manifestly unfounded.

<sup>29</sup> Please see comment in footnote 29.

<sup>30</sup> Only Article 11 (2) (b) APD and to some extent Article 4 (2) of the Qualification Directive apply as grounds for establishing a claim to be manifestly unfounded

<sup>31</sup> The relevant German provision with regard to the latter part of Art 23 (4) (l) APD does not relate to the formal asylum application, but to the request for asylum with the police or an aliens authority.

<b>Table 4 - Art. 28 (2) APD: Manifestly unfounded applications</b>	<b>Be</b>	<b>Bg<sup>17</sup></b>	<b>Cz</b>	<b>De<sup>18</sup></b>	<b>Es<sup>19</sup></b>	<b>Fi</b>	<b>Fr<sup>20</sup></b>	<b>Gr</b>	<b>It</b>	<b>Nl<sup>21</sup></b>	<b>Si</b>	<b>UK<sup>22</sup></b>
(n) the applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation;		√						√			√	
(o) the application was made by an unmarried minor to whom Article 6(4)(c) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.				√				√				

