

Annex

Comprehensive description of methodology

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Scope of the research

Exchange of information on procedural challenges and possible good practice solutions requires an assessment and recommendations that span a range of Member States, and takes into account their different procedures and circumstances. One of the major strengths of this research project was its comparative nature. By comparing and contrasting different approaches to practice and their outcomes in different Member States, the project has enabled conclusions to be drawn, and recommendations and guidance provided at EU level.

Given the limited resources and time available for this research, it was decided to examine the impact of certain key provisions of the APD in selected Member States. Therefore, in agreement with the state authorities, 12 Member States were selected for inclusion in this comparative research project: Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Greece, Italy, the Netherlands, Slovenia, Spain and the United Kingdom.

These States were selected for inclusion in the research based on a number of aims: achieving a geographical spread of Member States throughout different regions of the EU; addressing Member States with caseloads of varying nature and size (but which cover a significant proportion of the applicant caseload in the EU, with around 50% of all applications in the EU in the first part of 2007); and a range of legal and institutional systems, with resultant differences in procedural approaches.

With regard to the temporal scope of this research project, the national research and analysis primarily took place over a six month period between November 2008 and April 2009.¹ As such, this report provides a snapshot of national legislation and practice during the period of national research; and does not convey any changes which might have taken place in legislation and practice over a longer period of time. However, two significant pieces of asylum legislation entered into force in Greece and Spain in July and November 2009 respectively and these are addressed in the analysis of legislation. This report, which draws together the analysis of state legislation and practice in chapters focussing on the selected themes and APD provisions, was drafted in the period August 2009 to February 2010 on the basis of national research findings.

The thematic scope of this research entailed an overview and analysis of the transposition in national legislation and implementation of the following specific provisions of the APD:

¹ With the exception of the national research in Bulgaria which was completed in May 2009; and the conduct of national research in Germany which extended beyond this period.

- Requirements for a decision by the determining authority (Articles 9 & 10)
- Opportunity for a personal interview (Article 12)
- Requirements for a personal interview (Article 13)
- Status of the report of a personal interview in the procedure (Article 14)
- Procedure in case of withdrawal or abandonment of the application (Articles 19 & 20)
- Prioritized and accelerated procedures (Article 23)
- Inadmissible and unfounded applications (Articles 25 & 28)
- The concept of first country of asylum (Article 26)
- The safe third country concept (Article 27)
- The safe country of origin concept (Articles 30 & 31)
- Subsequent applications (Articles 32 & 34)
- Border procedures (Article 35)
- The right to an effective remedy (Article 39)

UNHCR prepared specific ‘Guiding Questions’ on all the above-mentioned issues and these defined the thematic scope of the research.

The issue of guarantees for unaccompanied children did not fall within the thematic scope of this research. Nevertheless, in the context of researching the above-mentioned themes of focus, some very limited information regarding the treatment of applications by unaccompanied children are set out in brief in this report where relevant.²

The APD does not deal with those procedures governed by Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (henceforth the ‘Dublin II Regulation’). Therefore, this research did not specifically focus on the conduct of Dublin II procedures. However, to the extent that some aspects of Dublin II procedures are not governed by the Dublin II Regulation, some of the issues arising from and recommendations flowing from this research may be relevant.

Research methods

Twelve National Project Officers were commissioned (one in each Member State) to undertake the research under the supervision of a Project Coordinator who ensured a joint methodology and comparable outputs for each Member State.

² This derives primarily from desk research undertaken by UNHCR, and from information provided by national stakeholders.

A common methodology for this research was applied across the 12 Member States of focus in order to facilitate as far as possible the gathering of comparative data. However, as will be seen, within these common terms of reference for the research, some adaptations were made in order to take into account, for example, national variations in the organization and conduct of asylum systems; and national differences in the numbers and profile of applicants for international protection.

In line with the project's aim to not only provide an overview of the 12 Member States' transposition of the APD in law, but to give an insight into the implementation in practice of certain aspects of asylum procedures, a mixed methods approach was employed for this project. The four research methods utilised to gather information on the key issues were:

1. Desk-based documentary research and analysis of legislation, administrative provisions and instructions, other existing data and relevant literature;
2. The selection and audit of first instance written decisions and case files;
3. The observation of personal interviews of applicants; and
4. Interviews and consultation with national stakeholders.

The approach taken to each of these research methods is described below.

Desk-based research

UNHCR reviewed relevant primary and secondary resources in all 12 Member States. These included:

- the relevant national legislation (both asylum and administrative as necessary), explanatory memoranda and any pending draft legislation;³
- any relevant and available procedural or administrative regulations, provisions, and instructions;
- any manuals and guidelines made available by the authorities or publicly available which define the way in which various relevant aspects of the asylum procedure should be conducted;
- annual reports of the determining authority;⁴
- official statistics pertaining to asylum procedures;
- any relevant precedent-setting case-law;⁵ and

³ It should be noted that at the time of UNHCR's research, there was significant draft legislation under consideration in Belgium, Finland and Greece.

⁴ With regard to the implementation of procedures in the UK, UNHCR's Quality Initiative Reports were also reviewed. Since 2004, UNHCR has been working with the UK determining authority to achieve improvement in the overall quality of first instance decision-making in the Quality Initiative Project. The Quality Initiative Reports set out the project's findings and recommendations; and chart progress on the implementation of accepted recommendations. The six reports which have emerged from this project are available at www.ukba.homeoffice.gov.uk.

- information regarding training provision and any available training materials which are used for the purposes of training officials involved in interviewing, examining, assessing and taking a decision on applications for international protection.

This equipped the project's researchers with relevant background information about the status of transposition of the APD in national legislation, regulations and administrative provisions and the extent to which these have exceeded, adhered to or derogated from the minimum and basic principles, guarantees and standards set out in the APD. It should, however, be noted that occasionally sources of information were not accessible.⁶

Researchers also reviewed relevant secondary documentary resources, such as reports, commentaries, articles and critiques from reliable sources. These were used to assist in the identification of any problematic aspects of the asylum procedure, in relation to the issues of focus in this research, and to inform the implementation of the research methodology.

Researchers also familiarised themselves with the most up-to-date country of origin information available from the main reliable and impartial sources with regard to the relevant countries of origin of focus in this research. This was necessary in order to ensure that researchers had the necessary knowledge to assess in general terms whether Member States were utilising precise and up-to-date information from various sources as required by Article 8 of the APD.

Desk-based research and analysis of existing data was a primary focus of the early stages of the research between November and December 2008, but was conducted throughout the research period as necessary.

Selection and audit of case files and decisions

A distinctive and key feature of this comparative research project was its focus on assessing the implementation of the APD on the asylum procedure in practice, not just in law. Therefore, a main part of the research involved an audit and analysis of a selected sample of individual case files and decisions in the first instance asylum

⁵ Precedent-setting cases or significant cases which pre-dated 1 December 2007 could be used as part of the thematic analysis of an issue, but researchers verified that the precedent remained valid in spite of the entry into force of the APD.

⁶ For example, in the Netherlands, UNHCR requested, via INDIAC, IND work guideline 2009/4, dated 3 March 2009, regarding 'objective sources of information besides the reports of the Ministry of Foreign Affairs' (*Andere objectieve bronnen dan de ambtsberichten van de Minister van Buitenlandse Zaken*). According to INDIAC, these guidelines could not be disclosed to safeguard the processes of IND, international relations and national security.

procedures. In total, 1,090 case files⁷ and 1, 155 decisions⁸ were audited for this research.

Purpose

The aim of the audit was to gain an insight into practice in each of the Member States. It was assumed that the case file would contain, at least, an application, records of any personal interviews, reference to the country of origin information referred to or relied upon, and a copy of the written decision.⁹ The purpose of accessing case files was to audit the reports of any preliminary interviews and/or personal interviews, to review what country of origin information was contained therein or referenced, and to audit the content of the written decision.

The examination of this key documentation was to shed light on the implementation in practice of the following particular articles of the APD:

- (a) Article 8 (2) (a): Member States shall ensure that applications are examined and decisions are taken individually, objectively and impartially.
- (b) Article 8 (2) (b): Member States shall ensure that precise and up-to-date information is obtained from various sources, such as UNHCR, and such information is made available to the personnel responsible for examining applications.
- (c) Article 8 (2) (c): Member States shall ensure that the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.
- (d) Article 9: Member States shall ensure that decisions on applications are given in writing, and where rejected, state the reasons in fact and law and how to challenge a negative decision.
- (e) Article 14: Member States shall ensure that a written report is made of every personal interview, containing at least the essential information regarding the application.
- (f) Where the Member State makes a verbatim written report or audio recording of personal interviews, this shed some light on the implementation of Article 13 (3)

⁷ See below for a breakdown by Member State of the number of case files audited. Note that case files were not audited in Slovenia.

⁸ 1,090 decisions relating to the 1,090 case files audited in 11 Member States plus 65 decisions audited in Slovenia.

⁹ However, note that the audit of case files in Greece revealed that no country of origin information or references to country of origin information were contained in any of the 202 case files.

which requires that the person conducting the interview is sufficiently competent.

Access

It was recognised that national asylum systems, their administrative organization, available human resources, technological support systems, and applicable rules differ across the 12 Member States of focus in this research. This necessarily meant that, within the agreed broad guidelines for the research methodology, there were some national differences in the way the research was conducted.

At the very outset of this research project, UNHCR requested and obtained the consent of the competent asylum authorities to access the case files of applicants.¹⁰ However, in Slovenia, formal consent to access case files was given on 5 May 2009 which came too late for the purposes of this research.¹¹ Therefore, in Slovenia, UNHCR conducted an audit of first instance decisions only which UNHCR receives on a regular basis in accordance with national legislation and upon the applicant's consent.¹²

Any necessary security checks and clearances were completed by the competent authorities; and the terms and conditions of access, and the means of access were set out and agreed in co-operation with the competent authorities.

In the Czech Republic, under national legislation, UNHCR could only access the case file of an applicant with the prior consent of the applicant unless there was a "*well-founded assumption that the applicant is no longer in the territory*". Some case files accessed by UNHCR concerned applicants who were no longer in the territory. With regard to the other case files accessed by UNHCR, all the respective applicants were contacted in advance at the addresses provided by the Department for Asylum and Migration Policies (DAMP) and the applicants consented to access.¹³

¹⁰ This related primarily to the determining authorities, but where relevant also any court of appeal.

¹¹ The audit of case files in the other Member States mainly took place in the period between January and April 2009.

¹² Article 14 of IPA: Role of the High Commissioner. In November 2008, UNHCR received 36 decisions and a further 29 decisions were received by the end of April 2009. These represented all the decisions taken by the determining authority in 2008 with the exception of decisions on the withdrawal or abandonment of applications and decisions taken in accordance with the Dublin II Regulation. Additionally, the researcher was familiar with the decisions of the Administrative Court and some Supreme Court decisions taken in 2008, having assisted in the review of 169 case files of the Administrative Court for UNHCR's Asylum Systems Quality Assurance and Evaluation Mechanism Project. This represented almost the entire asylum caseload of the Administrative Court for 2008.

¹³ National legislation provides that the state authorities shall allow UNHCR to contact applicants. Letters of request were sent to applicants in their language. 28 applicants granted consent to access their case file. A further 15 applicants either did not respond to the letter of request or did not consent to access.

UNHCR selected the case files for audit. Some determining authorities were able to provide UNHCR with spreadsheets listing applications/decisions, the nationality of the applicant(s), and where and when the decision was taken, thus allowing cases to be selected from the list by UNHCR according to the selection criteria. In other Member States, UNHCR submitted the selection criteria to the determining authority which in turn provided a list of the cases which matched the criteria, and UNHCR selected cases from this list. In the UK, the determining authority agreed that UNHCR could access a database containing all the decisions taken in the regular NAM procedures from December 2007 to September 2008. Some case files were, therefore, selected from this database.¹⁴

There were only two exceptions where the state authority selected case files for UNHCR. With regard to the border procedure only in France, the Ministry of Immigration selected and provided UNHCR with 10 case files. This was due to the fact that, at the time of UNHCR's research, the Ministry of Immigration was relocating offices and only a limited number of case files were physically accessible.¹⁵ In Germany, due to legal as well as time constraints, it was agreed with the determining authority (BAMF) that cases be selected and submitted by the BAMF according to the selection criteria provided by UNHCR.¹⁶

Some Member States operate a de-centralised asylum system with case files held at different locations. In other Member States, case files are held in one location. The requirements for access also occasionally differed depending on the procedure (e.g. border or in-country procedures). Moreover, when a decision has been appealed, the case file may be transferred to and be held by the relevant court or tribunal. Furthermore, in some Member States, reports of interviews and written decisions are available in electronic format. Rules regarding data protection also impacted upon how case files could be accessed. Therefore, the terms of reference for this research did not prescribe the exact means by which access should be granted to case files. As a result, in some Member States, copies were made, under certain terms and conditions, of the key documentation of selected case files. In other Member States, UNHCR accessed the actual case files. In some cases, both actual case files and copies (which were sent to a central location) were accessed to ensure that the audit encompassed

¹⁴ UNHCR did not have direct access to the official electronic case database, 'CID', but where further information on particular case files was required staff of the regional offices of the determining authority were co-operative and enabled access. Further case files were selected from the detained fast-track procedures in Harmondsworth and Yarl's Wood and from the TCU unit in order to include an insight into the procedures in safe third country cases.

¹⁵ These related to the first quarter of 2009.

¹⁶ In Germany, the audit of case files only commenced in mid-April 2009. National legislation stipulates: "*Decisions on asylum applications and other information, in particular the grounds for persecution given, may, unless presented in an anonymous form, be transmitted only if the foreigner himself has applied to the UNHCR or if the foreigner's consent is otherwise documented*": Section 9 (3) Asylum Procedure Act (APA).

case files processed in a variety of regional locations when travel could not be undertaken due to time and budget constraints.

Case files were audited on the premises of the determining authority in some Member States.¹⁷ Some case files were also audited at the premises of appellate bodies.¹⁸ In other Member States, copies of the contents of case files were made and audited on the premises of UNHCR.¹⁹

It should be noted that in Finland, UNHCR was informed and, therefore, aware that the case files accessed by UNHCR had been pre-screened by the determining authority in order to remove confidential documents from, for example, Finnish security police.²⁰

Selection of case files and written decisions

Due to the fact that all national asylum procedures differ in organisation, administration, and process; and the approach to compiling information on applications as well as presenting decisions also differs, it was not possible to use definitive criteria for the selection of case-files. Also, given the relatively short period of time available to undertake the audit of case files and, therefore, the limited number of case files that could be audited, the guidelines for selecting case files could not be too prescriptive as this would have hindered rather than facilitated the research.

So, the following represents the general guidelines and considerations which guided the selection of case files for audit.

1. Each researcher was required to select and audit a minimum of 60 case files. The actual number of case files audited in each Member State differed as stated below. This was due to a number of factors, including the fact that the amount of information gathered and recorded in an average case file in each Member State, and the content of written decisions differed from state to state.²¹
2. The information audited from the case file related only to the first instance procedure, i.e. at least, records of any screening and/or personal interviews, country of origin information relied upon or referenced, and the written decision. In some Member States, the case files also included the application, any relevant documentation submitted by the applicant, any forms completed

¹⁷ Belgium, Czech Republic, Finland, France, Greece, Italy, the Netherlands, Spain and the UK.

¹⁸ Regional Court in Ostrava, City Court in Prague and at Regional Court in Prague in the Czech Republic; Helsinki District Administrative Court in Finland; the CNDA in France, and the Administrative Court in Slovenia.

¹⁹ Bulgaria, Czech Republic and Germany.

²⁰ For example, in Finland.

²¹ Note that exceptionally, 202 case files were audited in Greece. This was due to the fact that very limited information was contained in the case files.

by the applicant, correspondence, medical reports, language analysis reports, EURODAC results, and other documentation (and any translations) relating to the examination procedure.

3. In most of the Member States surveyed, the reasons for a positive decision granting a status are not stated in the decision and the reasons stated in the decision for a negative decision are limited. Instead, fuller reasoning may be provided in a separate document which UNHCR reviewed when available.²²

Case files were randomly selected according to the following criteria:

- a. Only case files relating to applications lodged after 1 December 2007 and upon which a decision had been taken in the first instance were selected.²³ 1 December 2007 is the date by which, in accordance with Articles 43 and 44 APD, Member States were required to transpose and comply with the provisions of the APD which are of focus in this research project.²⁴
- b. The case files selected represented applications examined in all procedures in operation in the Member State, for example, the regular procedure, accelerated

²² The determining authority (CGRA) in Belgium gave UNHCR access to the confidential so-called 'yellow folders', with regard to those cases in which a positive decision had been taken. The 'yellow folder' is an evaluation form in which the decision-maker motivates a positive decision for review by his/her superior. Access to the 'yellow folders' permitted UNHCR to make a more informed evaluation of the way decision-making takes place. In Germany, the so-called 'internal note' (comprising of one page), containing the reasoning for a positive decision was provided. In the Netherlands, the so-called minute, which contains the reasoning for the decision, was missing from a number of the case files audited and due to the timeframe for the research and logistical reasons, it was not possible for UNHCR to access the missing minutes.

²³ There were a few exceptions. Of the 62 case files audited in Bulgaria, 15 case files concerned applications lodged before 1 December 2007. This was necessary in order to audit case files which fulfilled the other agreed criteria and was considered acceptable due to the fact that there had been no significant amendments to the Law on Asylum and Refugees (LAR) after 29 June 2007. All the 15 case files audited concerned applications which were lodged after 29 June 2007 and decisions were taken in the period between December 2007 and April 2009. In Greece, of the 202 case files audited, 35 case files related to applications lodged before 1 December 2007. This was due to the fact that the examination procedure in Greece can take more than 9 months to complete and many of the applications lodged after 1 December 2007 had not received decisions at the time of UNHCR's research. In Greece, UNHCR did audit 167 case files relating to applications lodged after 1 December 2007 and on which a decision had been taken by the determining authority. In Spain, a total of 124 case files were audited. Of these case files, 120 related to applications lodged after 1 December 2007, but 4 case files related to applications lodged before 1 December 2007. These 4 case files related to cases of implicit withdrawal. No other applications lodged after 1 December 2007 raised issues of implicit withdrawal and could be selected within the timeframe established for the research.

²⁴ In Italy, only case files relating to applications lodged after March 2008 were audited, as this is when the applicable national law transposing the APD entered into force (d.lgs. 25/2008). As mentioned above, UNHCR was not able to access case files in Slovenia. Instead, UNHCR audited decisions which were taken after 4 January 2008 which is the date the International Protection Act (IPA) transposing the APD entered into force.

procedure and border procedure (to the extent that these existed in the respective Member States) in a ratio which broadly mirrored the overall numbers of applications examined in the respective procedures according to the most recent published statistics.²⁵

- c. The case files selected represented both decisions to grant status and decisions not to grant status in a ratio which broadly mirrored the most recently published recognition rates.
- d. The case files selected related to applications concerning the following six countries of origin: Afghanistan, Iraq, Pakistan, Russian Federation, Somalia, and Turkey. These were amongst the 10 main countries of origin of applicants in the EU (as a whole) for 2007.²⁶ In addition, researchers in each Member State selected case files relating to applicants from a further four countries of origin from which a significant number of applicants in their Member State originate.

Within the above selection criteria, the selection of cases was random. However, researchers aimed to ensure that selection methods would not produce misleading results by commission or omission. As such, researchers sought to ensure that case files were sampled from:

- Different regional locations within the Member State (if applicable).²⁷
- Different locations where applications may be lodged (if applicable).²⁸
- Different language sections within the Member State (if applicable).²⁹
- A range of examining or interviewing officers.

Occasionally, case files were specifically and additionally selected because they raised a particular issue of relevance to the research which had not emerged within the random selection, for example, safe third country concept, first country of asylum concept etc.

²⁵ Note that in the Spanish admissibility procedure which operated at the time of UNHCR's research, only formal decisions of inadmissibility were taken. Applications which were deemed admissible were channeled into the regular RSD procedure without a formal decision.

²⁶ 2007 was chosen as the reference year as this was the last year for which complete figures were available before commencement of the research. However, it is noted that these countries, with the exception of Turkey, were also among the top ten countries of origin in 2008 and 2009.

²⁷ For example, case files were audited from the following regional centres. Bulgaria: Sofia and Banya, Nova Zagora; Czech Republic: Zastávka u Brna, Havířov, Vyšní Lhoty, Poštorná, Bělá pod Bezdězem, Kostelec nad Orlicí, and Praha Ruzyně; Italy: Bari, Gorizia, Rome, Turin and Trapani; the Netherlands: Schiphol, Zevenaar, Rijsbergen, Ter Apel and Den Bosch; UK: NAM offices of Glasgow, Liverpool and Leeds; and Harmondsworth, Yarlswood and the TCU unit.

²⁸ This was a relevant criterion for the sampling conducted in Czech Republic (where sampling was first based on whether the application was lodged in Vyšní Lhoty, at the airport, in hospital, in detention or in prison); Germany (covering 21 out of 22 branch offices, Nuremberg (HQ) and the airport at Frankfurt/Main) and Spain.

²⁹ In Belgium, UNHCR sought to audit a proportionate number of case files from the Flemish and French speaking sections of the CGRA.

It should be noted that case files concerning unaccompanied children were not audited.³⁰

Confidentiality

The anonymity of applicants for international protection and their applications was maintained at all times during this research. UNHCR ensured the confidentiality of all records, took all reasonable steps to prevent any disclosure and adhered to national legislation on data protection during this research.³¹

Assessment

Auditing of case files was primarily carried out in the period between January and April 2009.³² Analysis was based mainly on a review of, as appropriate, the application, any records of personal interviews (including any screening interview), country of origin information gathered or referenced, and the written decision. A Decision Assessment Form was prepared by UNHCR to assist in the audit of the written decisions and to ensure parity of information gathered across the 12 Member States. Evidence gathered informed responses to the thematic guiding questions which defined the scope of the issues covered by this research.

Researchers in cooperation with the asylum authorities ensured that the selection and audit of case files did not hinder or delay the ability of the applicant to appeal a negative decision.

Caveat

UNHCR recognises that the sample of case files audited is very small compared to the numbers of applications examined in the period covered by UNHCR's research. Such a relatively small sample does not provide a comprehensive empirical basis upon which to evaluate and compare state practice. However, information obtained through the audit of case files and decisions provided useful indications of an individual Member State's practice. Moreover, UNHCR verified its findings in interviews with a wide range of national stakeholders, including personnel of the determining authorities. Furthermore, in addition to information gathered through the audit of decisions and case files, UNHCR also evaluated other relevant sources such as internal and administrative guidelines.

³⁰ With the exception of the Czech Republic where a few case files audited concerned applications by unaccompanied children.

³¹ For data protection reasons, UNHCR kept a confidential record of the assessment of each case-file, and gave each case-file assessment an assigned case number (not the actual case reference number) which has been used for the purpose of references in this report. In some Member States, UNHCR's researchers signed a confidentiality protocol or letter: for example, in Belgium and the Netherlands.

³² In Bulgaria, this was conducted between March and May 2009 and in Germany, this was primarily carried out between mid April and July 2009.

Due to the size of the sample and the need to fulfill the criteria stated above, it was not possible to include additional criteria with regard to the specific issues that applications raised. This, in any case, would not have been possible in those Member States which do not use such indicators in their archives or databases. In spite of this, researchers assessed that the case files audited covered a wide range of issues and covered the most common issues as verified in interviews with national stakeholders. In some cases, UNHCR did select specific case files which raised particular issues in order to address a gap in data collected.

UNHCR also recognises that the requirement to audit applications lodged after 1 December 2007 and upon which a decision had been taken by April 2009 may have meant that applications raising complex issues subjected to lengthier investigation may not have fallen within the criteria for selection.

Observation of personal interviews

The third research method employed was the observation of personal interviews of applicants. UNHCR observed 185 personal interviews across the 12 Member States³³ and listened to the audio recording of a further two interviews in Spain.

Purpose

The purpose of observing asylum interviews was to obtain an insight into the implementation of Article 13 of the APD which sets out the minimum requirements for a personal interview. In other words, to observe the conditions in which personal interviews were conducted, particularly with regard to:

- the steps that were taken to ensure appropriate confidentiality,
- the steps that were taken and techniques used to ensure that applicants were able to present the grounds for their application in a comprehensive manner,
- whether the person who conducted the interview was sufficiently competent to take account of both the personal and general circumstances relating to the application, and
- whether the interpreter appeared able to ensure appropriate communication between the applicant and the person who conducted the interview.

The purpose was not to criticise or monitor individuals. Instead, the aim was to gain an insight into how interviews were conducted and structured, and assess implementation of Article 13 of the APD.

³³ Belgium 10, Bulgaria 12, Czech Republic 14, Finland 10, France 17, Germany 16, Greece 42 (52 examination procedures were observed in total, in 10 questioning relating to the reasons for the application was omitted), Italy 20, the Netherlands 9, Slovenia 8, Spain 17, and UK 10.

Access

UNHCR only observed personal interviews with the consent of the applicant. With regards to each interview observed, the applicant (and his/her legal representative, if any) was informed about UNHCR's request to observe the interview, was informed why the researcher would be present, and was given the opportunity to consent to or decline UNHCR's attendance. All researchers ensured that they received the consent of the applicant before observing an interview. Determining authorities provided valuable assistance with this process. Some asylum authorities utilised a standard interview consent form which was signed by the applicant before the interview took place.³⁴

The asylum authorities ensured that the applicant was aware of the purpose of UNHCR's attendance, including that:

- UNHCR was purely an "observer" for the purposes of the research audit,
- UNHCR would not influence the decision-making process in any way or influence the outcome of the application,
- UNHCR would not intervene in any way during the conduct of the interview,
- UNHCR would not advise the interviewer or anyone else present on their conduct or any other matter,
- UNHCR would not sign the report of the interview where signatures are sought regarding the parties involved in the interview,
- UNHCR would abide by the rules of confidentiality, and
- Any of the parties involved in the interview had the right to request at any time either before or during the interview that UNHCR did not observe, or cease to observe, the interview for any reason, which need not be shared.

In all interviews observed, UNHCR abided by the above-mentioned conditions of observation. Moreover, in some Member States, the interviewer also had to and did consent to UNHCR's presence during the personal interview.³⁵

On occasions, interviews selected for observation were postponed or aborted after they had begun.³⁶

³⁴ For example, in Spain and the UK.

³⁵ Belgium, France and Germany. Furthermore, in Germany the same applied to the interpreter.

³⁶ For example, because the interviewer decided that an interpreter was required (the applicant had not requested one) or because the applicant felt unwell.

Selection

In most Member States, UNHCR selected interviews that it wished to observe from schedule lists provided by the determining authorities. Researchers sought to obtain the schedules of interviews as far in advance as possible in order to seek to obtain the necessary consents for observation as soon as is possible. In contrast, in France and the Netherlands, the determining authorities, on the basis of the selection criteria made available by UNHCR, proposed dates for the observation of interviews. Sometimes, in some Member States, the selection of interviews observed was dictated by the date on which the researcher visited the relevant location.³⁷ With regard to Slovenia, due to the relatively low numbers of applicants for international protection³⁸ and the fact that formal consent to observe interviews was given by the Ministry of Interior on 5 May 2009, UNHCR observed as many interviews as possible within the limited time frame which remained.³⁹

Researchers sought to observe interviews involving both male and female applicants. If possible, interviews which were selected for observation involved applicants from the the selected countries of origin.⁴⁰ However, the extent to which this was achieved was dependent on the schedules of interviews at the time that the research was carried out.⁴¹

UNHCR also sought to observe interviews conducted in the framework of different procedures i.e. admissibility procedure, regular procedure, border procedure, and accelerated procedure.⁴² Moreover, researchers sought to observe interviews in different locations within some Member States.⁴³ However, the limited travel budget

³⁷ For example, UNHCR did not select the three interviews observed at the Security Department of Athens Airport and the Security Department of Samos Island in Greece. Instead, these were the scheduled interviews which took place on the dates UNHCR visited these locations.

³⁸ According to UNHCR statistics, 240 applications for international protection were lodged in 2008.

³⁹ Field research in 11 Member States was completed at the end of May 2009. As such, in Slovenia, UNHCR observed 8 interviews (6 in the context of the submission of the application and 2 personal interviews) and one information session in which the applicant decided not to lodge an application for international protection.

⁴⁰ See below.

⁴¹ Note that in Greece, at the time of UNHCR's research, no interviews of applicants from Turkey had been scheduled by the determining authority.

⁴² Note that in those Member States where the decision to examine an application in the accelerated or regular procedures is taken after the personal interview, it was not possible to select interviews on this basis (for example, in the Czech Republic, Finland, Greece with regard to procedures at the time of UNHCR's research, and the Republic of Slovenia with regard to interviews conducted in the framework of the submission of the application). In the UK, all the observed interviews took place in the context of the regular NAM procedure.

⁴³ For example: In the Czech Republic, one interview was observed in the transit area of the international airport (border procedure), two were observed in detention centres (Bělá Jezová and Poštorná) and 10 in four different centres (Zastávka u Brna, Vyšní Lhoty, Kostelec n. Orlicí, and Havířov). In Finland, interviews were observed primarily in Helsinki and one interview was observed in Lappeenranta. In France, interviews were observed in Paris and in the waiting zone of Roissy-Charles de Gaulle airport (ZAPI 3). In

for and time constraints of this research project placed significant constraints on researchers ability to achieve this in all Member States.⁴⁴ In Spain, UNHCR also listened to two previously recorded interviews in the regular procedure.

UNHCR did not seek to observe any screening or preliminary interviews. However, it should be noted that although five interviews conducted in the Dublin II procedure were observed in Bulgaria, the national findings were based on the 12 interviews observed in the status determination procedures.⁴⁵ In the Netherlands, UNHCR also observed two initial interviews⁴⁶ and two “Dublin interviews”.

UNHCR did not seek to observe interviews with unaccompanied children. This was due to the fact that the presence of an “outside” observer during the interview of a child must be assessed to be in the best interests of the child. This is a decision which may involve lengthy consultations with the child’s representative, his/her legal representative and possibly social services. Understandably, following such deliberations, a decision can be taken that such observation is not in the best interests of the child. Therefore, given the short time-frame for the research phase of this project, it was decided that UNHCR would not seek to observe interviews involving children.

Assessment

Researchers used a standard Interview Assessment Form devised by UNHCR to help them record all the information required and to ensure parity of information recorded across the 12 Member States of focus. Researchers took full notes of the interviews and their observations. Researchers sought to observe and assess at least 10 interviews in each of the Member States of focus.⁴⁷ As mentioned above, in total 185 interviews were observed and two additional audio recordings of interviews were heard.

Greece 49 interviews were observed primarily at the ADA in Athens, one at the Security Department of Athens Airport and two at the Security Department of Samos. In Italy, interviews were observed in Bari, Gorizia, Rome, Turin and Trapani. In the Netherlands, one interview was observed at AC Schiphol and 8 at Zevenaar. In Spain, interviews were observed in Madrid, Melilla, Valencia and Barcelona. In the UK, interviews were observed in Glasgow and Liverpool. Note that in Belgium, interviews were only observed at the CGRA headquarters in Brussels. Due to practical and logistical problems, UNHCR was not able to observe interviews located at the closed centres.

⁴⁴ In Germany, interviews were only observed at the branch office in Berlin (as well as one interview which took place in police custody). It should also be noted that due to time constraints, UNHCR was unable to observe any interviews conducted by video-link in France.

⁴⁵ Some Dublin II interviews were observed in the Czech Republic. However it was determined that the Dublin II regulation did not apply and the applicants were thus interviewed in the asylum procedure.

⁴⁶ One at AC Schiphol and one at AC Zevenaar.

⁴⁷ The actual numbers are stated below. This was not achieved in the Netherlands and the Republic of Slovenia. In the Netherlands, 9 interviews were observed. The final interview could not be observed due to a number of circumstances. In Slovenia, 8 interviews were observed as the Ministry of Interior only granted actual access to interviews as of 14 April 2009. The research project period for the observation of

Caveat

UNHCR recognises that the total number of interviews observed represents a very small proportion of the interviews that were conducted at the time of UNHCR's research. As such, UNHCR's findings based on these observations are indicative only. However, the fact that in some states practically all interviews observed exhibited the same deficiencies, raises cause for concern. In addition, UNHCR verified its findings in interviews with personnel of the determining authority and lawyers, and the review of any guidelines on or checklists for the conduct of interviews.

Interviews and consultation with national stakeholders

The fourth research method employed was the interview of and consultation with national stakeholders. UNHCR interviewed or consulted 199 national stakeholders in the course of this research.⁴⁸

Purpose

The purpose of the interviews was to:

- Verify and check the analysis of practice based on desk-research, the audit of case files and the observation of personal interviews.
- Fill any gaps in information, analysis or to seek further clarification.
- Inform the assessment of good practice and/or any problems or concerns about the implementation of procedures.
- Inform the recommendations.

The interviews were semi-structured based on eliciting information relevant to the thematic guiding questions of focus.

Selection

Interviewees included:

- personnel of the determining authorities responsible for examining, assessing and taking a decision on the application for international protection;
- personnel of the competent authorities responsible for interviewing applicants for international protection, or taking decisions related to the asylum procedure, if different from above;

interviews was between January and April 2009 with the exception of Germany, where the interviews were observed in May 2009.

⁴⁸ The actual numbers of stakeholders interviewed are listed per Member State below.

- personnel responsible for providing country of origin and third country information;
- personnel responsible for providing training to the officials of the competent authorities;
- personnel in any quality assurance unit that might exist;
- legal representatives and advisers;
- NGOs;
- appeal judges; and
- interpreters.

All interviewees were fully informed as to the purpose of this research and consented to the interview and the use of information given for the purposes of this research.⁴⁹ The personal identities of interviewees have not been disclosed in this report.

It should be noted here that throughout the report, stakeholders interviewed or consulted in Greece are referred to by a reference number. The table below sets out the positions/organizations to which these refer.

S1	Head of the Asylum and Refugees Department (ARD) in the ADGPH	Greek Police
S2	Police Warrant Officer/Examiner of case files in ARD in the ADGPH	Greek Police
S3	Police Warrant Officer/Supervisor of interviewers in Asylum Department of the ADA	Greek Police
S4	Sergeant/Interviewer in Asylum Department of the ADA	Greek Police
S5	Interpreter in Asylum Department of the ADA	Greek Police
S6	Police Warrant Officer/Head of Asylum Office in SDAA	Greek Police
S7	Lawyer/UNHCR border monitoring	Greek Council for Refugees (GCR)
S8	Legal representative and adviser of asylum seekers	GCR
S9	Co-ordinator of GCR/trainer on asylum issues	GCR
S10	Protection Officer of UNHCR	UNHCR office in Athens
S11	Lecturer/representative of the Athens Bar Association (ABA) in Appeals' Board (AB)	University of Thessaloniki
S12	Associate Councilor in Council of State (CoS)	CoS

⁴⁹ Except, in the Czech Republic where some information was requested under freedom of information legislation (Act No. 106/1999 Coll., on Free Access to Information) which does not require declaration of the reason for the request or the use that will be made of the information.

S13	Lawyer in Samos island	-
S14	Sergeant / Head of Aliens' Office in SDS	Greek Police
S15	Researcher of Amnesty International (AI)	AI

Interviews were primarily conducted face to face but, when this was not possible, they were conducted over the telephone or by e-mail. A record was made of each interview. In addition, in some Member States, questionnaires were prepared and stakeholders provided information or provided additional information in response to these questionnaires.⁵⁰ UNHCR organised two roundtable meetings with NGOs and lawyers respectively in Belgium⁵¹ and occasionally, researchers attended relevant meetings which took place during the period of research.⁵²

This research did not include interviews by UNHCR of asylum applicants or appellants. Given their vulnerable situation, this project did not have the financial resources, human resources nor the time that would be necessary to arrange and conduct such interviews appropriately.

Research in figures

	Number of case files audited	Number of decisions audited	Number of personal interviews observed	Number of national stakeholders consulted			
				Personnel from competent authorities	Judges	NGOs and Lawyers	Other
Belgium	90	90	10	9	4	10	2
Bulgaria	62	62	12	8	4	1	2
Czech	67	67	14	10	3	3	0

⁵⁰ For example, in Bulgaria, based on arrangements made in meetings or over the telephone, some of the stakeholders agreed to fill in and send back questionnaires. This method applied to appeal judges from the Administrative Court of Sofia City, two interviewers in RRC – Banya, and interpreters. Also in Italy, a questionnaire was sent to all the UNHCR members in the CTRPIs (the determining authority). In Germany, stakeholders were consulted in the form of specific questionnaires which were further discussed via e-mail or over the phone. This method was given preference to ensure that stakeholders throughout the country were able to contribute to the research. Thus, it was aimed at gathering a broader variety of information, resulting in more balanced findings. Moreover, the submission of comprehensive questionnaires to the headquarters of the determining authority as well as the Federal Police provided the opportunity to involve all relevant divisions in a timely manner.

⁵¹ On 25 and 26 March 2009 respectively.

⁵² For example, for the purposes of this research, UNHCR attended as an observer a meeting of the *Tavolo Nazionale Asilo* (a network including the National Association of Italian Municipalities and some NGOs); a training meeting organised by the CNDA in cooperation with UNHCR for the members of the determining authority (CTRPIs) and a presentation of the report by the NGO *Consiglio Italiano per i Rifugiati: 'Services at Borders: a Practical Co-operation'*. UNHCR also attended a meeting of AC-lawyers in Zwolle, the Netherlands.

	Number of case files audited	Number of decisions audited	Number of personal interviews observed	Number of national stakeholders consulted			
				Personnel from competent authorities	Judges	NGOs and Lawyers	Other
Republic							
Finland	115	115	10	13	0	4	0
France	70	70	17	17	1	8	1
Germany	120	120	16	6	0	3	1
Greece	202	202	42	7	0	7	1
Italy	90	90	20	18 ⁵³	0	2	4
Netherlands	90	90	9	6	1	5	2
Slovenia		65	8	1 ⁵⁴	1	5	0
Spain	124	124	17	9	0	10	0
UK	60	60	10	6	0	4	0
TOTAL	1090	1155	185	199			

⁵³ 5 of the interviews included UNHCR staff in their capacity as members of the CNDA or CTRPI.

⁵⁴ Due to the particular time constraints relating to the field research in Slovenia and the fact that there is a relatively low number of state employees working in the determining authority, UNHCR interviewed a representative of the Ministry of Interior who consulted as necessary with appropriate colleagues.