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Section 5

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Introduction

The personal interview is an essential and crucial component of the procedure to determine whether a person is a refugee or qualifies for subsidiary protection status. It is UNHCR's position that all principal adult applicants must have the opportunity to present their application for international protection in a comprehensive manner in a personal interview with a qualified interviewer and, where necessary, a qualified interpreter.¹ In order to be effective, the personal interview must be conducted in a manner and in conditions which are conducive to and facilitate the most complete and accurate disclosure by the applicant of the reasons for the application for international protection.

Article 13 APD sets out the requirements for a personal interview.² In accordance with Article 13 (5) APD, these requirements also apply to any meeting conducted by a competent authority with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application.³

As such, in Spain, at the time of UNHCR's research, the interview which took place in the context of the 'admissibility' procedure where all applications for international protection were formally registered and examined, and following which a negative decision on the merits of the application could be taken, was considered to constitute such a meeting under the APD, and the requirements of Article 13 APD were considered to apply. Since then, the New Asylum Law entered into force in November 2009, which confirms that the formal registration of the application in the admissibility procedure will be done by means of a personal and individual interview.⁴ Similarly, in Slovenia, the application interview conducted by an inspector of the determining authority is also considered to constitute such a meeting, as consequent to this interview the application

¹ Executive Committee Conclusions No. 8 (XXVIII) of 1977 and 30 (XXXIV) of 1983. See also UNHCR Procedural Standards for Refugee Status Determination (RSD) under UNHCR's Mandate, 1 September 2005. See section of this report on the right to the opportunity of a personal interview for dependants and unaccompanied and separated children.

² Council Directive 2005/85/EC of 1 December 2005.

³ Article 13 (5) APD states that "[T]his Article is also applicable to the meeting referred to in Article 12 (2) (b)." Article 12 (2) (b) APD stipulates that the personal interview may be omitted where "the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application, in terms of Article 4 (2) of Directive 2004/83/EC" [the Qualification Directive]. Article 4 of the Qualification Directive relates to the assessment of facts and circumstances.

⁴ Article 17 (4) of 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.

may be submitted to an accelerated procedure in which the personal interview may be omitted.⁵

Some Member States conduct a preliminary or screening interview.⁶ The principal purpose of this is the registration of the application for international protection and the gathering of information and evidence relating to the profile of the applicant, i.e. his/her identity, age, family relationships, nationality, place(s) of previous residence, previous applications for international protection, travel route details, and travel documents. In practice, preliminary interviews can have an important bearing on the examination of the application for international protection and any eventual preparation and conduct of the personal interview. Data from the preliminary interview may provide the determining authority with background information and a basis on which to prepare the personal interview. It may also provide an opportunity to identify applicants with special needs and, therefore, inform decisions relating to the scheduling of the personal interview, and the assignment of the case to an appropriately qualified and trained interviewer. Moreover, decisions on whether to channel an application into an accelerated or regular procedure – where both procedures exist - may be taken on the basis of the information gathered in this preliminary interview.⁷ Furthermore, perceived contradictions, discrepancies or inconsistencies between the information provided in the preliminary interview and the personal interview must be addressed and assessed by the determining authority.

It is UNHCR's opinion that all basic requirements should also apply to screening or preliminary interviews. For example, guarantees relating to the competence and qualification of the interviewer, the selection and provision of qualified interpreters, conditions of confidentiality and the non-presence of family members should apply to screening or preliminary interviews. Given the purpose and significance of the preliminary interview, UNHCR believes that such preliminary interviews should be subject to all of the guarantees set out in Article 13 APD.

With regard to subsequent applications, some Member States conduct an interview or hearing with the applicant in the framework of a preliminary examination of the application.⁸ The purpose of this interview or hearing is to examine whether the subsequent application raises new elements or findings which relate to the applicant's qualification for refugee status or subsidiary protection status. Given the significance of

⁵ The Administrative Court of Slovenia has stated that the application interview is to be considered as a personal interview as long as the determining authority (inspector) raises concrete and detailed questions relating to the reasons for the application (U 129/2008, 6 February 2008, U 728/2008, 9 April 2008).

⁶ Belgium, Bulgaria, the Czech Republic, Finland, Italy, the Netherlands and the UK.

⁷ For example, in Finland, the Netherlands and the UK.

⁸ UNHCR observed three interviews relating to subsequent applications which take place in the accelerated procedure in Bulgaria. See section 15 of this report on subsequent applications for further information.

the preliminary examination, UNHCR suggests that the guarantees set out in Article 13 APD should apply to any such interview or hearing.

Recommendation

Preliminary interviews, the principal purpose of which is the registration of the application for international protection and the gathering of information and evidence relating to the profile of the applicant, should also be subject to the guarantees set out in Article 13 APD. Similarly, interviews or hearings which are conducted in the framework of a preliminary examination of a subsequent (repeat) application should also be subject to all the guarantees of Article 13 APD. This should be clarified in the APD.

The presence of family members during the personal interview

It is UNHCR's view that any preliminary interview and the personal interview with the principal applicant should not be conducted in the presence of family members unless there are compelling reasons to indicate that this would not be appropriate or constructive.⁹ Similarly, it is UNHCR's position that any interview of adult family members/dependants should be conducted separately and confidentially.¹⁰

Article 13 (1) APD provides that *"a personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present"*.

Only five Member States of focus in this research have fully and explicitly transposed or reflected Article 13 (1) APD in national legislation, regulations or administrative provisions. These are Germany¹¹, Greece¹², Italy¹³, Spain¹⁴ and the UK.¹⁵ In two Member

⁹ See Paragraph 4.3.13 of UNHCR Procedural Standards for RSD under UNHCR's Mandate, 1 September 2005.

¹⁰ Paragraph 3.2.6 of UNHCR Procedural Standards for RSD under UNHCR's Mandate, 1 September 2005. Some individuals who have experienced persecution or serious harm may not have disclosed the details of the harm to family members and may be reluctant to initiate an independent application or have a personal interview out of concern that the information they provide will be heard by or shared with their family members. This may be particularly relevant for individuals who have experienced gender-related persecution or sexual violence

¹¹ Section 25 (6) APA: *"The interview shall not be open to the public. It may be attended by persons who show proof of their identity as representatives of the Federation, of a Land, the United Nations High Commissioner for Refugees or the Special Commissioner for Refugee Matters at the Council of Europe. The head of the Federal Office or his deputy may allow other persons to attend."* The Handbook *"Interview"* (one of the so-called *"Quality Handbooks"*) explicitly advises that, as a rule, spouses should be interviewed separately (2.5.4 *"Separate interviews of spouses"*, page 13). According to the BAMF, this rule is also followed in practice, unless otherwise explicitly requested by the applicant.

¹² Article 10 (6) PD 90/2008.

¹³ Article 13 (1) d.lgs. 25/2008.

States, Article 13 (1) APD is not explicitly transposed or reflected, but there is an absence of legislation permitting the presence of adult family members during the personal interview. These are Bulgaria¹⁶ and the Czech Republic.¹⁷ However, in both these Member States, the norm that personal interviews are usually conducted without family members being present is not reflected in the case of accompanied children.¹⁸ In the case of accompanied children, the emphasis is reversed in national legislation, i.e. the interview is only conducted without the presence of the parent(s) when this is considered to be in the best interests of the child. In Germany, in the case of accompanied children, the interview takes place in the presence of the parent(s), unless this is not considered to be in the child's best interest.¹⁹ Similarly, in the UK, the rules regarding the presence of third parties during the personal interview differ for children. A parent, guardian, representative or other responsible adult who is independent of the Secretary of State must be present.²⁰

Notably, six Member States have not transposed Article 13 (1) APD. These are: Belgium, Finland, France, the Netherlands, and Slovenia²¹. However, at the time of writing, both Belgium²² and Finland²³ were debating draft legislation which would transpose Article 13 (1) APD. The Netherlands has claimed, in its table of national legislation corresponding to the APD, that Article 13 (1) APD is transposed by Article 3:2 General Administrative Law Act, but the latter does not mention the presence of family

¹⁴ Article 17.4 of the New Asylum Law states: *"The application will be formalised by way of a personal interview which will always be individual. Exceptionally the presence of other family members may be required if this is considered absolutely necessary for the adequate formalisation of the application."*

¹⁵ Immigration Rule 339NB.

¹⁶ Article 63a of LAR does not provide for the presence of family members.

¹⁷ Article 9 ASA provides for exemption from general provisions regarding the oral hearing in the CAP. The Act on Asylum does not however regulate who may be present at the oral hearing.

¹⁸ Section 29 (4) CAP in the Czech Republic and Section III, Article 101 of the IRR in Bulgaria which foresees the presence of the parent of an accompanied minor and "guardian/custodian or another close person" except where this would be to the detriment of his/her interests.

¹⁹ According to information by the determining authority. However, it needs to be kept in mind that according to Section 12 APA, a person *"who is at least 16 years of age shall be capable of performing procedural acts in accordance with [the APA]"*. This also pertains to the personal interview. Therefore, in cases of minors who are 16 or 17 years of age, the parent(s) are permitted to be present during the interview, if requested by the minor (Information provided by the determining authority to UNHCR).

²⁰ Immigration Rule 352.

²¹ The IPA does not legislate on the presence of family members during the personal interview. Article 181 of the AGAP provides that the authority may call to an interview persons besides the applicant who need to be heard.

²² At the time of writing, proposals for amendments to the Royal Decree of 11 July 2003 concerning the CGRA proposed that during the interview only the following persons be present: the case manager, the applicant, if required the interpreter, the lawyer and one person of trust. The proposal also stipulates that in case the CGRA considers it necessary for an appropriate examination of the application, the presence of family members during the personal interview will be accepted.

²³ Section 97 of Government Bill 86/2008.

members at interviews and UNHCR questions whether Article 13 (1) APD can be considered to be transposed by this particular piece of legislation.²⁴

Due to the time constraints on UNHCR's field research, and the more limited number of applications made involving family members, UNHCR was not able to specifically include the observation of personal interviews with family members in this research. Nevertheless, in Greece, in spite of the fact that the national law states that adult dependants should be interviewed separately,²⁵ UNHCR observed two personal interviews where family members were interviewed together.²⁶ In order to ensure compliance with Article 13 (1) APD, Member States should ensure that, whenever family members are interviewed together, this is necessary for an appropriate examination, and the reasons why it was considered necessary are recorded in the applicant's case-file.

Recommendations

Member States should ensure that the personal interview takes place without the presence of family members, unless the determining authority considers their presence necessary for an appropriate examination.

In cases where children (accompanied or separated) are interviewed, based on the Convention on the Rights of the Child, the child's best interests should be a primary consideration in deciding on the presence of family members, as well as guardians and/or legal representatives. The views of the child on this should be taken into account, in accordance with age and maturity.

Conditions of confidentiality

The confidentiality of the personal interview, and indeed all procedures, is essential to creating an environment of security and trust for applicants.²⁷ Article 13 (2) APD requires that personal interviews "*take place under conditions which ensure appropriate confidentiality*". This should be interpreted as applying both to the physical conditions in which personal interviews take place as well as to those persons who participate in or

²⁴ According to the table of correspondence, Article 13 (1) APD is transposed in Article 3:2 General Administrative Law Act which states that when preparing a decision the administrative authority should gather the necessary information concerning the relevant facts and the interests to be weighed.

²⁵ Article 10 (1) PD 90/2008 "A separate personal interview shall be conducted for each dependant adult." This has now been replaced by Article 3 PD 81/09 which states that "a separate personal interview shall be conducted for each dependant adult."

²⁶ Interview observation of a family from Iraq (IO48IRQ7), and interview observation of a family from Afghanistan (IO41AFG8).

²⁷ See UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, 1991, paragraph 200: "*it is, of course, of the utmost importance that the applicant's statements will be treated as confidential and that he be so informed.*"

are present during the personal interview.²⁸ In other words, all persons who participate in or are present during the personal interview should be under a duty of confidentiality regarding any information learnt or obtained about the applicant and the application. Moreover, the personal interview should be conducted in physical conditions which ensure that persons who are extraneous to the personal interview do not acquire any information – audible, visible or material – concerning the applicant or the application.

Three Member States of focus in this research have transposed Article 13 (2) APD in national legislation, regulations or administrative provisions. These are Greece²⁹, Italy³⁰ and the UK.³¹

Seven Member States of focus in this research have national legislation, regulations or administrative provisions on data protection and non-disclosure of information gathered in the course of the procedure. However, the legislation does not explicitly relate to the physical conditions in which personal interviews take place. These are: Bulgaria,³² the Czech Republic,³³ Finland,³⁴ Germany,³⁵ the Netherlands,³⁶ Slovenia³⁷ and Spain.³⁸

²⁸ Note that Article 41 of the APD on confidentiality states that “*Member States shall ensure that authorities implementing this Directive are bound by the confidentiality principle as defined in national law, in relation to any information they obtain in the course of their work.*” See section 8 of this report for further information regarding confidentiality in asylum procedures.

²⁹ Article 10 (7) PD 90/2008 which states that the personal interview shall take place under conditions which ensure appropriate confidentiality.

³⁰ Article 13 (1) d.lgs 25/2008 requires that the personal interview takes place in a closed session. This is interpreted as transposing Article 13 (2) APD. Article 14 (3) of the d.P.R. 303/2004 states that the determining authority must adopt appropriate measures to grant confidentiality of the data concerning the identity and the declaration of applicants. Article 37 d.lgs. 25/2008 states that “all persons involved in the procedures regulated by this decree have a duty of confidentiality concerning all information gathered during the procedures”.

³¹ Immigration Rule 339NB which states that the interview must take place under conditions which ensure appropriate confidentiality.

³² Article 65 LAR (Amended, SG No. 52/2007) requiring that information provided by the applicant during procedures is treated in compliance with the Law on Personal Data Protection; and Article 29 of the Statute of SAR prohibiting the determining authority’ employees from disclosing official information or data concerning applicants for international protection.

³³ Section 19 ASA which refers to the protection of data gathered by the determining authority and Section 15 (3) CAP regarding the obligation of authorized officials to observe the duty of non-disclosure of facts learnt in the procedures. According to the Head of Asylum Procedure Unit, all employees of the determining authority must have security clearance; interview on 7 April 2009.

³⁴ Section 24 (24) in the *Laki viranomaisten toiminnan julkisuudesta* (Act on the Openness of Government Activities 621/1999, as in force 10.6.2009) states that all documents and information about refugees or asylum seekers are classified. Tapes of interviews are filed together with case files and marked with the date of disposal 5 years from the date of the interview. This was observed by UNHCR in the audited case files. The Act on Administrative Conduct 434/2003 provides that the legal adviser cannot without consent from the applicant reveal classified information that the applicant has entrusted to him/her or that s/he has obtained from other authorities. This also applies to interpreters and translators.

At the time of writing, three Member States had not transposed Article 13 (2) APD in national legislation, regulations or administrative provisions. These are: Belgium, France and Spain. However, in Belgium, at the time of writing, a draft regulation was being debated which would transpose Article 13 (2) APD.³⁹

UNHCR believes that applicants should be informed, at the earliest possible stage of the procedure, and in a language they understand, of the confidentiality of the asylum procedure, including the personal interview. Before initiating the personal interview, the interviewer should assure the applicant that all the information disclosed in the course of the interview will be treated as confidential by the competent authorities and all those present during the interview.⁴⁰ On the basis of UNHCR's observation of personal interviews and audit of the written records of personal interviews, in seven Member States of focus in this research, the interviewer routinely informed the applicant of the confidentiality of proceedings at the outset of the interview: the Czech Republic,⁴¹ Finland,⁴² France, Italy, Netherlands, Slovenia⁴³ and the UK. This occurred

³⁵ The determining authority (BAMF) has a Commissioner for Data Protection (cf. Section 4f of the Federal Data Protection Act), for ensuring compliance with the Federal Data Protection Act and other provisions on data protection (e.g. Sections 7 and 8 APA; Sections 86 to 91e Residence Act).

³⁶ Article 2:5 General Administrative Law Act provides that anyone who is involved in the performance of duties of an administrative authority who in the process gains access to information, which s/he knows, or should reasonably infer, to be of a confidential nature, and who is not already subject to a duty of confidentiality by virtue of his office or profession or any statutory regulation, shall not disclose such information unless s/he is by statutory regulation obliged to do so or disclosure is necessary in consequence of his/her duties and this applies to institutions and persons belonging to these or working for these, involved by an administrative authority in the performance of its duties, and to institutions and persons belonging to these or working for these performing a duty assigned to these by or pursuant to an Act of Parliament. Also, C11/3.1 Aliens Circular states that the information provided by the applicant should be treated confidentially and no information should be given to third parties. The Data Protection Act (*Wet bescherming persoonsgegevens* (Wbp)) is also applicable.

³⁷ Article 47 (5) IPA states that *"Prior to opening the personal interview, all those present shall be warned of the confidentiality of the procedure under this Act, and of the provisions of the act governing the protection of personal data."* Also, Article 128 IPA and 130 IPA on data protection are relevant.

³⁸ Law 15/1999 for the Protection of Personal Data and Article 16.4 of the New Asylum Law states that *"all information regarding the procedure, including the application itself will be confidential"*.

³⁹ The proposed amendments to the Royal Decree of 11 July 2003 concerning the CGRA stipulates that the personal interview shall take place under conditions which ensure appropriate confidentiality.

⁴⁰ The applicant should be assured that information will not be shared with the authorities of the country of origin or any other third parties without the applicant's express direction and consent. The scope and conditions of any disclosure of information to third parties should be explained.

⁴¹ This is a legal requirement under Section 19 (2) ASA whereby the determining authority must inform the applicant about its obligation to protect personal data. Interpreters are obliged to observe confidentiality under Act No. 36/1967 Coll. on experts and interpreters, and those who are appointed on an *ad hoc* basis are also reminded of their duty by signing a promise at the interview. UNHCR observed in some cases that the interpreter was reminded by the interviewer of the duty of confidentiality (Y002 and Y003).

⁴² This was carried out in all audited interviews, and prior to the interview, the interviewer requested all participants to confirm that they had understood their obligations in this respect.

only occasionally in the other Member States.⁴⁴ Notably, this did not occur in any of the interviews UNHCR observed in Germany⁴⁵, nor at the ADA in Athens, Greece.⁴⁶

Member States should take all feasible steps to ensure that waiting areas and interview rooms preserve the right of applicants to confidentiality. In waiting areas, staff should avoid calling the names of applicants in the presence of other applicants and instead alternative methods should be used in these areas.⁴⁷ The interview room should be completely private so that the interview proceedings are not audible or visible to persons who are not involved in the interview. Interview rooms should have adequate partitioning walls, doors and windows. The doors should be shut, windows obscured as necessary and a notice prohibiting entry and disturbance should be placed on the door when the interview room is in use. Only those persons involved in the personal interview as permitted by law should be present. Similarly, where a video or telephone link is used during the personal interview, all necessary steps should be taken to preserve confidentiality.

On the basis of UNHCR's observation of interviews, UNHCR noted positively that six Member States ensured, in practice, that personal interviews were conducted under physical conditions which ensured confidentiality: the Czech Republic, Finland, France, Germany,⁴⁸ the Netherlands, and Slovenia. In these Member States, the personal interviews that UNHCR observed took place in private rooms with the door closed and no windows through which proceedings and those present could be observed. Furthermore, only those persons involved in the personal interview were present.

⁴³ This is a legal requirement. Article 47(5) IPA states that "*Prior to opening the personal interview, all those present shall be warned of the confidentiality of the procedure under this Act, and of the provisions of the act governing the protection of personal data.*" Also, this was observed in all interviews that UNHCR attended.

⁴⁴ In Belgium, some case managers did not do this in the interviews that UNHCR observed. In Bulgaria, this was observed in only some of the interview records audited in the case files but was not done in the interviews that UNHCR observed. In Spain, this was done in the interviews UNHCR observed, but note that this information was not always given before the conduct of the personal interview: case files no. 1101140, 1101141, and 1101142.

⁴⁵ Information on the confidentiality of the proceedings is not mentioned in the BAMF-leaflet for applicants "*Important Information*". Furthermore, according to information provided by the BAMF in a phone conversation on 16 November 2009, information on the confidentiality of the proceedings forms neither part of the standardized oral instructions given to the applicant at the outset of the personal interview nor is it contained in the so-called "control-sheet", which is signed by the applicant after the personal interview.

⁴⁶ This is where the majority of interviews in Greece are conducted, and UNHCR observed 49 interviews. However, it did occur at the 3 personal interviews UNHCR observed at SDAA and SDS.

⁴⁷ See paragraph 3.1.5 of UNHCR Procedural Standards for RSD under UNHCR's Mandate, 1 September 2005.

⁴⁸ Note that in the framework of this study, all interviews were observed in the BAMF branch office in Berlin.

In Belgium, although the personal interviews UNHCR observed were held in private hearing rooms, some of the case managers left the doors of the hearing room open. The door was only closed when there was too much noise in the hall ways. Clearly, all interviewers should ensure that personal interviews take place in closed rooms.

In the UK, the personal interviews observed also took place in private closed rooms. However, two personal interviews were observed which took place in a room connected by an open door to an adjoining room where crèche workers looked after the applicant's children. The children came and went between the two rooms during the interviews, and it was possible for the crèche workers to hear the content of the interview.⁴⁹ Where childcare is provided, confidentiality issues need to be carefully considered.

UNHCR's main concerns with regards to the confidentiality of the conditions in which personal interviews take place, relate to the conduct of personal interviews in ADA in Greece, Spain and some of the Territorial Commissions (CTRPis) in Italy. In these Member States, UNHCR observed interviews which took place in conditions which breached Article 13 (2) APD.

UNHCR observed 49 personal interviews at the ADA in Athens, Greece. It was clear that no steps were taken to ensure the confidential conditions of interviews. Three to four interviews were conducted simultaneously in one large noisy room measuring approximately 20 x 10 metres. The room contained the four desks of the interviewers and about 13 more desks belonging to other police officers responsible for fingerprinting and interpreters of the Department. There were approximately 30 persons present in the room whilst interviews were being conducted.⁵⁰ People were moving around for fingerprinting and other procedural matters. On occasions, the noise was so loud that communication between the applicant and the interpreter or the interpreter and the interviewing police officer was difficult.

In two of the CTRPis visited in Italy, UNHCR also witnessed the simultaneous conduct of three separate personal interviews in one large room.

In Spain, at the OAR in Madrid, application interviews are held in the Public Information Unit. They take place in what are called "cabins" which are open cubicles separated by panels which do not reach the ceiling and have no door. In the five interviews UNHCR observed, there was constant noise from outside the cabins and the interviews occurring in other cabins could be heard.⁵¹ At times, the noise levels were such that it was not possible to understand what the applicant or the interpreter was saying.

⁴⁹ GLA int4.3.09; GLA int18.3.09.

⁵⁰ These were interviewing police officers, interpreters, interviewees and other police officers who were fingerprinting applicants following their interview.

⁵¹ Cases No. 0501001, 0401009, 0501010, 1001020 and 0201037.

Disruptions were also frequent in the form of telephone calls which were answered by the interviewers, and other persons constantly entered the cabin to ask the interviewer questions or to take something from the cabin. In Barcelona, the interviews observed were held in a through-room where a photocopying machine was located.⁵² The photocopying machine was constantly used by persons unrelated to the interview and people continually passed through the room. In Melilla, UNHCR observed a personal interview which was held in a room where - apart from the persons involved in the interview (applicant, interviewer, interpreter and lawyer) – five other people were present dealing with other issues. The applicant had a cold and was aphonic (voice hindered by damage to vocal tract), and the interviewer had to ask the rest of the people in the room to be quiet because he could not hear the applicant.⁵³

Recommendations

Member States must ensure that all personal interviews are conducted in physical conditions that ensure confidentiality i.e. in private rooms, and in the presence of only those persons who are permitted by law to attend. The interview proceedings should not be audible or visible to persons who are not involved in the interview.

UNHCR recommends that Article 13 (2) APD be interpreted as applying to initial or screening interviews. Such interviews should also be conducted in conditions which ensure confidentiality.

UNHCR recommends that Article 13 (2) APD be interpreted as applying to any interview which is held in the context of a preliminary examination of a subsequent (repeat) application. Such interviews should also be conducted in conditions which ensure confidentiality.

Member States must ensure that all necessary steps are taken to ensure the confidentiality of proceedings, when a video or telephone link is used for the purpose of conducting the personal interview.

At the outset of the personal interview, the applicant should be assured of the confidentiality of the interview and all persons present should be reminded of the obligation to adhere to the principle of confidentiality.

Conditions conducive to an effective personal interview

Article 13 (3) APD requires Member States to take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present

⁵² Cases No. 0601142 and 0101143.

⁵³ Case No. 1101140.

the grounds for their applications in a comprehensive manner.⁵⁴ There are a number of steps which should be taken by Member States in order to ensure compliance with Article 13 (3) APD. This section begins with the two specific steps explicitly stated in Articles 13 (3) (a) and (b) APD, regarding the competence of the interviewer and the competence of interpreters.

Competence of interviewers

The personal interview is an essential part of the examination of the application for international protection. The task of the interviewer is hugely challenging and complicated, and s/he bears a heavy burden of responsibility. S/he has to conduct a personal interview which establishes, as far as possible, all the facts relevant to determining whether a person is a refugee or qualifies for subsidiary protection status according to law. This requires interviewers to have both specific knowledge and specific skills. This also requires an understanding of applicants' particular circumstances and any special needs.⁵⁵

Article 13 (3) (a) APD requires Member States to “*ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant’s cultural origin or vulnerability, insofar as it is possible to do so*”. In this regard, Article 8 (2) (c) APD is also relevant as it requires that the personnel examining applications has the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.

UNHCR is of the view that the above two mentioned provisions of the APD mean that, at a minimum, Member States should ensure that interviewers⁵⁶:

- have knowledge and understanding of the applicable national and international refugee and human rights law, and are able to apply these laws and legal principles to elicit and establish the relevant facts;
- have knowledge and understanding of any relevant administrative provisions and guidelines;
- have knowledge of and are able to use appropriate interviewing and questioning techniques to ascertain the facts relevant for the application of the law;

⁵⁴ Article 13 (3) states that “*Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner.*”

⁵⁵ See paragraph 190 of UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, 1991.

⁵⁶ See paragraph 4.2.1 UNHCR Procedural Standards for RSD under UNHCR’s Mandate, September 2005.

- are competent to recognise and take account of factors such as the applicant's age, gender, culture, education and any other vulnerabilities for the purposes of the interview;
- are competent to research (if there are no specialised staff to do this), evaluate and apply objective country of origin information, and other information in order to elicit and establish the facts;
- are able to conduct interviews working effectively through interpreters and are able to manage the conduct of interpreters;
- have strong interpersonal skills and are able to establish conditions and conduct themselves in a way that is conducive to effective communication;
- are impartial and objective;
- have good written communication skills and are able to ensure a complete record of the personal interview.

Transposition of Article 13 (3) (a) APD

Four Member States of focus in this research have transposed or reflected Article 13 (3) (a) APD in their national legislation, regulations or administrative provisions. These are Belgium,⁵⁷ Greece⁵⁸ and Slovenia.⁵⁹ In Spain, Article 13 (3) (a) APD is reflected insofar as

⁵⁷ Article 2 of the Royal Decree of 11 July 2003 concerning the CGRA states that the case managers should at least hold a degree that gives them access to functions with the state authorities at level 1 (university degree) and Article 3 of the Royal Decree of 11 July 2003 concerning the CGRA states that the case managers receive basic training as well as advanced training on the 1951 Convention, Human Rights Conventions and national legislation with regard to international protection. The case managers also receive training in interviewing asylum applicants, intercultural communication and basic needs of vulnerable asylum applicants. The proposal for amendments to the Royal Decree of 11 July 2003 concerning the CGRA states that the case managers at the Office of the CGRA should at least hold a degree that gives them access to functions with the state authorities at level A (university degree) and should have appropriate knowledge of the applicable standard regarding asylum cases and refugee law. The case manager in charge of the personal interview of the unaccompanied minor should have the necessary knowledge of the special needs of (unaccompanied) minor applicants.

⁵⁸ Article 10 (8) (a) PD 90/2008 states that *"persons who conduct the interview must be sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability. It is particularly necessary that the above mentioned officials be trained concerning the special needs of women, children and victims of violence and torture."*

⁵⁹ Article 47 (6) of the IPA in connection with Article 7(2) of the IPA (basic principles): *"(6) The official shall conduct the personal interview under conditions which allow the applicant to present the grounds for his/her applications in a comprehensive manner. The manner of conducting the personal interview shall be adapted to the applicant's personality, and shall be such as to take account of personal and general circumstances, including the applicant's cultural origin and eventual membership of vulnerable groups. (2)*

recent national legislation requires that the person who conducts the personal interview has received training and has acquired the necessary capacities to perform his/her duties.⁶⁰

In the Czech Republic, this provision is partially reflected to the extent that legislation requires that the interview is conducted by a qualified person.⁶¹ In Italy, Article 13 (3) (a) APD is also partially transposed to the extent that the law requires that one member of the interview panel is a UNHCR representative. And in the UK, Article 13 (3) (a) APD is partially transposed insofar as it requires interviewers to be knowledgeable about asylum and refugee law, but it does not require them to be competent regarding personal and cultural circumstances.⁶²

Five Member States of focus in this research have not transposed or reflected Article 13 (3) (a) APD in their national legislation, regulations or administrative provisions. These are Bulgaria, Finland,⁶³ France, Germany⁶⁴ and the Netherlands.⁶⁵

Recommendation

Member States must ensure that national legislation, regulations or administrative provisions require that interviews are conducted by qualified interviewers, who have knowledge of the relevant international and national laws, and have been trained to conduct interviews in the context of asylum procedures, and are competent to take into account the personal and general circumstances surrounding the application.

The procedure under this Act can be conducted only by officials with adequate knowledge in the field of asylum law."

⁶⁰ The New Asylum Law foresees in its third additional provision that *"the State Administration will seek that all public officers and other persons with responsibilities towards international protection applicants, refugees and subsidiary protection beneficiaries, have the adequate training. To this effect, training programmes will be developed to allow the public officers to acquire the necessary capacities to carry out their duties"*.

⁶¹ Section 23 (4) ASA provides that *"the interview with an applicant for granting international protection shall be conducted by a qualified person."*

⁶² Immigration Rule 339HA.

⁶³ The determining authority applies its own internal policy.

⁶⁴ The Asylum law does not contain rules in this regard. The determining authority has internal rules.

⁶⁵ According to the Government table of correspondence, Article 13 (3) APD is transposed in Article 3:2 General Administrative Law Act. However, this does not set out any requirement concerning the competence of the interviewer and simply states that when preparing a decision an administrative authority should gather the necessary information concerning the relevant facts and the interests to be weighed.

Qualifications and training of interviewers

In UNHCR’s view, the recruitment and retention of highly qualified and skilled interviewers and decision-makers is essential for an effective procedure and sustainable first instance decisions.

UNHCR recommends that a university degree in a related field is the desirable minimum educational qualification for the recruitment of interviewers and decision-makers.⁶⁶ UNHCR also believes that **before carrying out personal interviews**, interviewers should receive comprehensive and specialist training which includes, as a minimum:

- International refugee and human rights law, and the applicable national laws, regulations and administrative provisions;
- Research on country of origin information (COI) (if there are no specialized staff to do this), evaluation and application of COI and other evidence;
- Identification of applicants with special needs;
- Interviewing and questioning techniques, including age, gender, cultural, educational and trauma sensitivity;
- Working effectively with and managing interpreters;
- Issues of confidentiality, impartiality, and objectivity;
- Creating conditions conducive to communication and appropriate conduct;
- Structuring the personal interview, establishing the relevant facts and the assessment of credibility.

UNHCR researchers asked the determining authorities in the Member States of focus whether any specific qualifications are required for recruitment to the role of interviewer and what initial training is planned for and provided to new recruits prior to them becoming operational and conducting personal interviews. The following table provides a summary of the information obtained:

	Qualifications required	Formal & compulsory specialist training curriculum	Duration of specialist training	Formal on-the-job mentoring	Other comments
Belgium	University degree ⁶⁷	√	3-4 weeks	5 months	Personnel are expected to work independently under supervision after 6 months.
Bulgaria	University degree	No	N/A	2 months in practice ⁶⁸	A recommendation has been made by the ASQAEM Project and accepted in principle to regulate training by legislation and provide for initial and regular training programmes.

⁶⁶ Paragraph 4.2.1 UNHCR Procedural Standards for RSD under UNHCR’s Mandate, September 2005.

⁶⁷ Refer to footnote 57.

⁶⁸ This is not a formal requirement.

	Qualifications required	Formal & compulsory specialist training curriculum	Duration of specialist training	Formal on-the-job mentoring	Other comments
Czech Republic	University degree	No	N/A	10 working days	After 10 days mentoring and observation, interviewer works independently under supervision.
Finland	University degree ⁶⁹	√	14 days	Information unavailable	<i>Ad hoc</i> training sessions are offered after the initial training phase.
France	University degree ⁷⁰	√	14 days	4-6 months	Duration of mentoring period is not predetermined
Germany	University degree or degree in administrative matters of a university of applied science (“ <i>Fachhochschule</i> ”)	No	N/A ⁷¹	At least 3 months	Prerequisites for working as interviewer are firstly, the observation of interviews of more experienced staff, followed by the conduct of interviews under supervision and the confirmation by a supervisor, that the person concerned has gained the relevant knowledge and capability.
Greece	Police officer grade	No	N/A	No	There is a period of 1-2 months during which new recruits observe more experienced officers. ⁷² <i>Ad hoc</i> courses are offered by external organisations.
Italy	Depends on interviewer ⁷³	No	N/A	No	Regular training courses are organised by the CNDA (IT) with input from UNHCR. New appointees to the Territorial Commissions are mentored by other members, including UNHCR.
Netherlands	Higher vocational education	√	70 days ⁷⁴	√	The training programme incorporates experience in the workplace. Personnel are expected to work independently after 2 years.
Slovenia	Higher vocational education	No	N/A	10 months ⁷⁵	Traineeship period.
Spain	Depends on interviewer ⁷⁶	No	N/A	√ ⁷⁷	Mentoring at OAR is basically the observation of experienced interviewers for a short period of time. Although there is no fixed time, personnel are expected to be operationally independent after 3 months.

⁶⁹ In practice, decision-makers are required to have a degree. Decision-makers conduct interviews. Decision-makers are also required to have a command of Finnish, Swedish and English and an ability to communicate in writing and orally. This information is based on an interview with the Immigration Services.

⁷⁰ Protection officers have also passed a competitive examination “*concours*”.

⁷¹ There is special training for staff dealing with cases of: unaccompanied minors, victims of gender-specific persecution, trauma or torture (“*Sonderbeauftragte*”).

⁷² Interviews with S1, S3, S4 and S14.

⁷³ The interviewing panel is composed of two senior officials of the Ministry of Interior and a representative of UNHCR who have a university degree, however, there is no specific academic qualification required of the other panel member who is a representative of the local administration.

⁷⁴ This relates to the KLC (national knowledge and learning centre) training programme in Utrecht and the figure is an estimate as the course is tailored to individual needs. Ter Apel and Zevenaar are also developing training programmes mainly to encourage the self-learning capacity of personnel. In Zevenaar, the initial training period is one year.

⁷⁵ Trainee has to study the relevant national and international legislation and case law themselves during this period.

⁷⁶ Those at OAR doing the personal interview (meeting) to complete the application require a school diploma or equivalent vocational diploma. Admissibility and eligibility officials who conduct interviews at

	Qualifications required	Formal & compulsory specialist training curriculum	Duration of specialist training	Formal on-the-job mentoring	Other comments
UK	Depends on interviewer ⁷⁸	v	25 days ⁷⁹	1 month	After the training course and the one month on-the-job mentoring and supervision, personnel are expected to be operationally independent.

Most Member States of focus in this research do not require interviewers to hold a specific qualification in refugee and/or human rights law or to have relevant experience upon recruitment.⁸⁰ The minimum educational qualification required varies from a university degree of any discipline in some Member States to no minimum educational requirement.

In this context, given the role of the interviewer and the legal requirement that interviewers are knowledgeable with regard to a highly specialized area of law and are competent to conduct interviews taking into account a number of factors, UNHCR is extremely concerned to note that three Member States provide no formal and compulsory specialist training for all interviewers and decision-makers upon recruitment. In Greece, Italy, and Spain⁸¹, it was reported that there is no initial formal and compulsory training programme for new interviewers and decision-makers upon recruitment.

In Greece, in spite of national legislation implementing the APD, the necessary steps have not been taken to implement the law fully in practice. The police officers who were conducting the personal interviews during the period of this research were not required to have any knowledge of asylum and refugee law and the other relevant personal and general circumstances pertaining to the interview upon recruitment to the role of interviewer; and they did not acquire this knowledge and relevant skills through planned training upon recruitment and *prior* to conducting interviews. In order to ensure compliance with Article 13 (3) (a) and Article 8 (2) (c) APD, urgent steps must be

Madrid (Barajas) airport and in the regular procedure have a university degree. Outside Madrid, requirements relating to qualifications vary for other competent authorities who conduct interviews.

⁷⁷ At the OAR in Madrid, new personnel spend a short period observing more experienced colleagues. The staff of aliens offices and border police who conduct interviews (meeting to assist applicant with completion of application) do not undertake any specific training prior to conducting interviews.

⁷⁸ There is a commitment to Higher Executive Officers (HEO) having a university degree or long service. In practice, Executive Officers (EO) can conduct interviews and make decisions under the general supervision of HEOs. Recruitment at EO level is dependent on personal experience and there are no minimum education requirements.

⁷⁹ It was 55 days during 2008 and this included a substantial element of self-study which has now been removed from the training period.

⁸⁰ Although in France, according to OFPRA, in practice most protection officers do possess this knowledge on recruitment.

⁸¹ With regard to personnel conducting application interviews outside Madrid

taken to ensure that all interviewers are trained and acquire such knowledge and skills upon recruitment and *prior* to conducting interviews

In Italy, neither national law nor administrative provisions require the members of the CTRPIs, i.e. the interviewers, to have the requisite knowledge and skills to fulfil the requirements of the APD, although it is required that one member of the interviewing panel, which also assesses each individual case, is a representative of UNHCR who does have the requisite knowledge and skills to fulfil the requirements of the APD.⁸² The CNDA (IT), in cooperation with UNHCR, has organized training courses for interviewers over the last 18 months.⁸³ This has included one three-day training course for the members of the more recently-established CTRPIs. However, the provision of training would be immeasurably improved by the provision of a compulsory and extended training programme for all new members of the CTRPIs upon recruitment and prior to conducting personal interviews. It is essential that adequate steps are taken to ensure that all members of the CTRPIs acquire such knowledge and skills upon recruitment and *prior* to conducting interviews in order to ensure compliance with the APD.

In Spain, national law does not reflect the requirements of the APD in this regard and the personnel of the competent authorities conducting personal interviews outside Madrid are not required to have the relevant knowledge and skills. No steps have been taken to ensure that they acquire such knowledge and skills through planned training upon recruitment and *prior* to conducting interviews. It is essential that training is extended to all interviewers throughout Spain.

Only five Member States provide compulsory and formal training for newly recruited interviewers and decision-makers (Belgium, Finland, France, the Netherlands and the UK). In these Member States, newly recruited interviewers and decision-makers only become independently operational after a period of initial formal training followed by a period of mentoring. However, the duration of the formal training period varies from 14 days in one Member State to 70 days in another, and the duration of the period of mentoring varies widely too.

The remit of this research did not permit UNHCR to look in detail at the training programmes of these Member States nor the methodology applied. Only the

⁸² It should be noted that, as an organization which nominates a representative to be a member of the CTRPIs, UNHCR ensures that in fact all its representatives have the requisite knowledge and skills to conduct personal interviews and, in practice, its representatives seek to provide mentoring and guidance to other members of the CTRPIs.

⁸³ A two-day training course in February 2008; a three-day training course for new members in June 2008; a three-day training course for all members in March 2009, and a two-day training course on inclusion at one of the CTRPIs. It is our understanding that the feedback from these courses based on the evaluation by participants was positive.

determining authorities in France,⁸⁴ the Netherlands⁸⁵ and the UK were able to provide UNHCR with the outlines of their training programmes. The determining authorities in Belgium and Finland did not have an established uniform training programme for all interviewers which they could share with UNHCR.

In contrast, a number of determining authorities have not established bespoke formal training programmes for newly recruited interviewers and instead organize 'training' on a more *ad hoc* basis, often relying solely on mentoring by supervisors and on the job observation (Bulgaria, the Czech Republic,⁸⁶ Germany⁸⁷, Slovenia and Spain⁸⁸). The content and quality of such training will clearly vary, depending on the competence of the staff member who is mentoring.

UNHCR is concerned that there are serious shortcomings in the provision and quality of training in some Member States. The lack of training or the limited initial training provided in some Member States is insufficient to ensure that interviewers acquire the necessary skills and knowledge to fulfil this hugely challenging and complicated role, and must be improved. Good quality initial and continuous training is crucial to enhancing the quality of procedures and raising the quality of decisions across the EU.

⁸⁴ According to a copy of the 'model training programme for new recruits' which was given to UNHCR, the subject matters cover: 1) the OFPRA and the asylum procedure; 2) Nationality case loads and activities of the Geographic Divisions of the OFPRA; 3) Support services such as the legal department, the information and documentation department, the human resources department, the interpretation department of OFPRA; 4) the CNDA.

⁸⁵ The training provided in the Netherlands is extensive, but uniformity of the training provision has not been achieved because there are a few training programmes.

⁸⁶ Interview with Head of Asylum Procedure Unit, Czech Republic, 7 April 2009.

⁸⁷ The on-the-job training of at least three-months is compulsory and carried out under supervision of an experienced staff member.

⁸⁸ Only with regards to employees at OAR.

Recommendations

UNHCR recommends that all Member States develop and deliver a compulsory specialized training programme for every newly recruited interviewer upon recruitment and prior to conducting personal interviews, in order to ensure compliance with Article 13 (3) (a) and Article 8 (2) (c) APD.

Interviewers should receive initial training which includes, as a minimum:

- International refugee and human rights law, and the applicable national laws, regulations and administrative provisions;
- Access to/research into country of origin information (COI), evaluation and application of COI and other evidence;
- Identification of applicants with special needs;
- Interviewing and questioning techniques, including age, gender, cultural, educational and trauma sensitivity;
- Working effectively with and managing interpreters;
- Issues of confidentiality, impartiality, and objectivity;
- Creating conditions conducive to communication and appropriate conduct;
- Structuring the personal interview, establishing the relevant facts and the assessment of credibility.

There should also be some form of external quality assurance for the training.

UNHCR recommends that there should be greater uniformity of the content of training delivered across the Member States. To this end, UNHCR suggests that the EU develop and adopt guidelines as regards training and qualification of interviewers. The European Asylum Curriculum, once finalized and translated, may provide a basis for the content and delivery of training.

UNHCR recommends that initial training programmes conclude with an objective assessment of competency and that only those persons who are assessed to be competent proceed to work as interviewers.

The initial training programme should be regularly reviewed and updated to take account of legal and policy developments.

UNHCR recommends that all determining authorities establish a programme of continuing training for interviewers in order to refresh skills and knowledge, and provide updates on recent developments.

Interviewers need to be updated on relevant international and national legislation and case-law and country of origin information. The determining authorities must ensure that they have systems in place to disseminate such information systematically and promptly to all interviewers.

Quality control and monitoring should be used as a means of identifying individual and collective training needs, and informing the ongoing training programme. Mentoring and supervision are an integral part of training. All new interviewers should be subject to an established programme conducted by trained mentors.

Training for interviewing children

Personal interviews of children, as with all aspects of the asylum procedure, should be conducted in an age-appropriate manner taking into account the maturity and emotional development of the child and any other special needs. It is UNHCR's position that personal interviews of children – whether they are accompanied, unaccompanied or separated⁸⁹ - should, therefore, be carried out by an interviewer who has special training and knowledge regarding the psychological and emotional development and behaviour of children.⁹⁰

Article 17 (4) (a) APD provides that *“Member States shall ensure that if an unaccompanied minor has a personal interview on his/her application for asylum ... that interview is conducted by a person who has the necessary knowledge of the special needs of minors.”* Moreover, Article 13 (3) (a) APD requires that Member States shall ensure that the person who conducts the interview is sufficiently competent to take account of the *“personal ... circumstances surrounding the application, including the applicant's ... vulnerability.”* Vulnerable applicants include children.

Member States, therefore, must ensure that the determining authorities conducting personal interviews have this specialized staffing capacity. Appropriate training, education and information should be provided to the personnel of the determining authority charged with conducting the personal interview of children. The training should include:⁹¹

- Relevant human rights norms, standards and principles, including the rights of the child;
- Understanding of the impact and consequences of persecution, serious harm and trauma on children;
- Understanding of the effect of the child's age and stage of development both at the time of the relevant facts and at the time of the personal interview on the child's recall of events and knowledge of conditions in the country of origin;
- Appropriate adult-child communication skills;

⁸⁹ Separated children are those separated from both parents, or from their previous legal or customary primary care giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members. Unaccompanied children are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

⁹⁰ Paragraph 4.3.7, UNHCR Procedural Standards for RSD under UNHCR's Mandate, September 2005 and UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997.

⁹¹ Based on the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime adopted by the UN Economic and Social Council in 2005 (Res. 2005/20) which can also be applied to processes in the field of immigration and refugee law in accordance with paragraph 6.

- Interview techniques that minimize trauma to the child while maximizing the quality of information received from the child;
- Skills to deal with children in a sensitive, understanding, constructive and reassuring manner; and
- Cross-cultural and age-related linguistic, religious, social and gender issues.

Only some determining authorities reported that they ensure that the personal interview of children is conducted by specially trained interviewers (Belgium,⁹² the Czech Republic,⁹³ Finland, Germany,⁹⁴ Netherlands⁹⁵ and the UK⁹⁶). In both Finland and the Netherlands, there is a specialized unit of personnel who have been specifically trained to deal with applications by unaccompanied children.⁹⁷ In Germany also, specialized staff who are specially trained to interview unaccompanied minors work in different branch offices.⁹⁸ There are also specific guidelines for the interview of children in Finland,⁹⁹ Germany,¹⁰⁰ the Netherlands,¹⁰¹ and the UK.¹⁰² Moreover, in the UK, training has been under review and a centrally managed asylum team has been preparing specialized training on children for interviewers and decision makers. The module has been delivered in some regions as of October 2009.

It is of concern that in the other Member States of focus in this research, UNHCR was informed that interviewers are not specially trained to interview children, although some of the interviewers in some Member States may have received some limited

⁹² There is a special co-ordinator in CGRA.

⁹³ According to information by the Head of Asylum Procedure Unit, interview of 7 April 2009 and e-mail response of 1 June 2009. UNHCR was not able to verify this information in the remit of this research.

⁹⁴ The so-called "*Sonderbeauftragte*" are explicitly trained to interview unaccompanied minors.

⁹⁵ C13/3.2 Aliens Circular stipulates that the interview of minors under the age of 12 should be conducted by a person who has received specialist training. However, note that the Netherlands has not transposed Article 17 (4) with regard to unaccompanied minors aged 13-18 as its administrative provisions only relate to unaccompanied minors under the age of 12.

⁹⁶ Immigration Rule 350, 351, 352, 352ZA and 352ZB

⁹⁷ In the Netherlands, this is the AMA-unit based in Den Bosch. Personnel in this unit have received specialized one week training on top of the regular training programme.

⁹⁸ According to the Internal Guidelines for the Asylum Procedure, all interviews of unaccompanied minors shall be conducted by specialized staff ("*Sonderbeauftragte*"), irrespective of being under or over 16 years of age, as all these persons by law are minors, even though the latter group is able to perform procedural acts in the framework of the asylum procedure (Section 12 APA). (Internal Guidelines for the Asylum Procedure, under: Adjudicators with special tasks, "2. Additional remark for '*Sonderbeauftragte*', (2/3)). With regard to the practice concerning issues of unaccompanied minors, please refer to the findings of the ASQAEM Project (implemented in Germany mainly in 2009) which had a special focus on the asylum procedures for unaccompanied minors and separated children.

⁹⁹ Yksintulleiden alaikäisten turvapaikkahakijoiden haastatteluohjeistus, Ulkomaalaisvirasto 2001.

¹⁰⁰ According to information provided by the determining authority, special guidance is given with regard to the conduct of interviews of children, however, no specific guidelines were submitted to UNHCR for this research.

¹⁰¹ Protocol entitled '*Interviewing unaccompanied minors under the age of 12*'.

¹⁰² API on Processing Claims for Children, 7.3.2007 updated 22.5.2009.

training.¹⁰³ In order to ensure compliance with Article 13 (3) (a) and Article 17 (4) (a) APD, the determining authority must ensure that all interviews of children are conducted by personnel with specialist knowledge and training.

Recommendations

All determining authorities should ensure that there is specific training on interviewing children and that sufficient numbers of interviewers are available, of both genders, who are specially trained to conduct interviews of children.

Determining authorities must ensure that all interviews of children are conducted by interviewers who have been specially trained and have the necessary knowledge regarding the psychological and emotional development and behaviour of children.

The APD should be explicit in providing that all interviews of children – not just unaccompanied children – are conducted by a person who has the necessary knowledge of the special needs of children.

Training for interviewing persons with special needs

Member States should ensure that they have mechanisms in place to identify and assist, at the earliest possible stage of the asylum procedure, applicants who are vulnerable or have special needs. With regard to the personal interview, this is essential to ensure that any necessary referrals and assessments are carried out promptly in order to determine whether applicants are physically and mentally fit for the personal interview and to inform any decision regarding the scheduling of the personal interview. Moreover, early identification of applicants with special needs is crucial in order to assign responsibility for the conduct of the personal interview to an appropriate interviewer who has the requisite specialized knowledge, training and experience. As such, it is important that the personnel of the competent authorities that conduct registration procedures or preliminary/screening interviews are trained to identify and refer as necessary applicants who may have special needs; and that there are sufficient trained personnel who are designated and qualified to conduct the preliminary or screening interviews of applicants with special needs.

However, it should be acknowledged that for a number of reasons, including shame or lack of trust, applicants may be hesitant to disclose certain experiences immediately. This may be the case, amongst others, for persons who have suffered torture, rape or other forms of psychological, physical or sexual violence. Special needs resulting from such experiences may therefore go undiscovered at the early stage of the procedure.

¹⁰³ For example, in Bulgaria, stakeholders informed that some of the more experienced interviewers have received training on interviewing children. In France, the Africa division has had specific training. In Italy, a three-day training course for new members of the CTRPIs included a unit on vulnerable groups.

Later disclosure of such experiences should not be held against applicants, nor inhibit their access to any special support measures or necessary treatment.

Occasionally an applicant's special needs may not become apparent until the personal interview. Therefore, it is important to ensure that all personnel who conduct personal interviews are able to identify applicants who have special needs, and are able to take appropriate measures as necessary. Moreover, the determining authority should have designated interviewers who have the requisite specialized knowledge, training and experience to conduct the interview of applicants with special needs.

Article 13 (3) (a) APD requires Member States to ensure that the person who conducts the personal interview is sufficiently competent to take account of the applicant's vulnerability. This provision states that "*Member States shall ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's ... vulnerability, insofar as it is possible to do so*". It is UNHCR's view that applicants who may be vulnerable include¹⁰⁴:

- Victims of torture, sexual violence and persons suffering post-traumatic stress disorder;
- Women with special needs;
- Children under the age of 18;¹⁰⁵
- Elderly applicants;
- Applicants with a disability; and
- Applicants with mental or physical health problems.

Member States must ensure that the competent authorities designate and train sufficient staff to conduct the interviews of vulnerable applicants and ensure that the interview of an applicant with special needs is conducted by a trained and qualified interviewer.

UNHCR was informed by the determining authorities in Belgium¹⁰⁶, the Czech Republic,¹⁰⁷ Finland,¹⁰⁸ Italy,¹⁰⁹ Germany,¹¹⁰ the Netherlands¹¹¹ and the UK¹¹² that they

¹⁰⁴ Paragraph 3.4.1 of UNHCR Procedural Standards for RSD under UNHCR's Mandate, 1 September 2005.

¹⁰⁵ See above.

¹⁰⁶ In Belgium, Article 4 of the Royal Decree of 11 July 2003 concerning the CGRA provides that the case manager should take into account the specific circumstances of the case.

¹⁰⁷ According to Head of Asylum Procedure Unit, interview of 7 April 2009. Although, it was noted that at the time of the UNHCR research, there was no specialized staff to deal with vulnerable applicants at the inland reception centre (Vyšní Lhoty).

¹⁰⁸ Training on special needs is offered on a regular basis and on request by decision-makers/interviewers.

¹⁰⁹ The training courses organized by the National Commission each year since 2005 have included a session on the consequences of trauma and a specific training event on interviewing victims of torture and violence took place in spring 2009 with the participation of medical experts as trainers. Moreover, the

provide specific training for interviewers. By contrast, UNHCR was informed that there is no compulsory specialist training on applicants with special needs provided in Bulgaria,¹¹³ France, Greece,¹¹⁴ Slovenia and Spain.¹¹⁵

Recommendations

In order to ensure compliance with Article 13 (3) (a) APD, Member States must ensure that training on the identification of applicants who may be vulnerable or who have special needs is included as part of a compulsory initial training programme for all interviewers and that existing interviewers receive appropriate training.

Member States must also ensure that a sufficient number of interviewers are specifically trained to conduct the interview of applicants with special needs.

Specialist knowledge of countries of origin and cultural factors

Article 13 (3) (a) APD also requires Member States to ensure that the person who conducts the interview is sufficiently competent to take account of the applicant's cultural origin.¹¹⁶ This is important not merely to help the interviewer understand the context in which any alleged persecution or serious harm was perpetrated, but also for understanding the applicant's background, as well as his/her demeanour and communication in the personal interview.

UNHCR has been informed that in a few Member States, personnel of the determining authorities who are responsible for the examination of the application specialize in

National Commission has promoted and funded a project that provides for the creation and training of a network of experts in the public sector for the identification and certification of victims of trauma.

¹¹⁰ In addition to the specialized staff for unaccompanied children, there is specially trained staff for interviewing persons persecuted on grounds of gender as well as victims of torture and traumatized asylum-seekers. On its website the determining authority states that this staff requires considerable sensitivity as well as psychological skills and needs special personal support (www.BAMF.de).

¹¹¹ The KLC does offer an optional training module on trauma. Newly recruited IND civil servants receive initial materials on traumatized persons and sometimes an expert may be invited to give a lecture. Later, interviewers can opt to participate in a follow-up course.

¹¹² Although UNHCR is not aware of any specific training relating to issues of gender.

¹¹³ Note that training on applicants with special needs has been provided in the past.

¹¹⁴ This is not in compliance with national legislation. Article 10 (8) (a) of PD 90/2008 sets out a provision which demands that police officers who conduct the asylum interview be trained on special needs of women, children and victims of violence and torture.

¹¹⁵ *Ad hoc* training may have been undertaken by some interviewers in Bulgaria, France and Italy. And in the Netherlands, there is an optional module as part of the training programme but there are no specially trained staff on dealing with sexual violence.

¹¹⁶ "Member States shall ensure that a person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin".

particular countries and regions of origin. In Belgium, Finland and France,¹¹⁷ personnel are assigned to specific geographic units. As such, they receive specific training on the relevant countries of origin, and gain an in-depth familiarity with the relevant country of origin information which is periodically updated.¹¹⁸

In the Netherlands, interviewers do not specialize in particular countries or regions of origin, but UNHCR was informed by the determining authority (IND) that the KLC organizes so-called “theme-specific” days for example on regions of origin.

In Germany, UNHCR was informed by the determining authority that in practice, every adjudicator has specialist knowledge with regard to those countries s/he constantly deals with.¹¹⁹ This may lead to a specialization in a group of countries (for instance Ethiopia, Eritrea, and Somalia). Interviews of applicants from countries of origin where only a relatively small number of applicants originate from, are conducted by a few branch offices only, in order to ensure specialist knowledge of these countries of origin.¹²⁰

However, in the other Member States of focus, training with regard to specific countries of origin and cultural factors appears to be limited or non-existent at the time of writing.¹²¹

¹¹⁷ With the exception of personnel who conduct interviews at the border.

¹¹⁸ Eligibility and admissibility officials who conduct personal interviews in the regular procedure in Spain are also assigned specific countries of origin. However, this is not the case for officials who conduct the application interviews nor for the eligibility and admissibility officials who conduct the application interviews at Madrid Barajas airport.

¹¹⁹ The determining authority stated that the high quantity of applications does not allow for the specialization of adjudicators in one particular country. According to the BAMF, all adjudicators have thorough knowledge of the main countries of origin and almost all adjudicators conduct interviews of applicants from these countries. The lawyers consulted by UNHCR in the framework of this study, confirmed knowledge of the adjudicators on the respective countries of origin, however, all criticized the lack of sensitivity for cultural factors (X1, X2, and X3).

¹²⁰ However, concerns have been raised with regard to those persons who have registered with a specialized NGO as torture victims and therefore their applications are not further distributed to another branch office, but stay in the city where they have requested asylum, in order to ensure their medical treatment there. Thus, these persons might not be interviewed by a staff member with special knowledge with regard to his/her country of origin, but by someone who needs to acquire that knowledge.

¹²¹ In Bulgaria, according to the determining authority specialization by countries of origin has been in existence in the past; cultural factors were also included as part of different trainings. The practice was terminated in order to avoid any possible corruption, and in the Czech Republic following a decrease in the number of applicants, the previous staff specialization in particular countries of origin and specialized COI workshops have been suspended. Interviews with Employee A (18 February 2009), C (28 January 2009), D (22 December 2008), and E (13 February 2009).

Recommendations

In order to ensure compliance with Article 13 (3) (a) APD, Member States should ensure that the relevance of cultural factors for communication, including issues relating to the status of women, customs and education, and the demeanour of the applicant during the personal interview be an integral part of a compulsory initial training programme for all interviewers upon recruitment.

Member States should also offer ongoing training on specific countries and regions of origin through, for example, workshops and meetings for interviewers.

Code of conduct for interviewers

UNHCR recommends that the training of interviewers should be reinforced by a code of conduct by which all interviewers abide.

UNHCR has learnt that three Member States have such a code of conduct for interviewers (Finland,¹²² the Netherlands¹²³ and the UK¹²⁴). In addition, the determining authority in Belgium, the CGRA, has a charter of values which applies to all employees and a CGRA working group has produced an internal working document on the preparation and strategy of the personal interview which provides guidance on the conduct of interviewers.¹²⁵ In Germany, the Handbook for Adjudicators on the conduct of the interview as well as the Internal Guidelines on the Asylum Procedure, contain guidance with a view to appropriate behaviour, including consideration of the personality of the applicant.¹²⁶ Behavioural rules also form part of the on-the-job training.¹²⁷

However, the remaining seven Member States of focus in this research do not have such a code (Bulgaria,¹²⁸ the Czech Republic,¹²⁹ France, Greece, Italy, Slovenia and Spain¹³⁰).

¹²² An extensive guide which includes the role and conduct of the interviewer was published following a joint ERF funded project of the Refugee Advice Centre and the Immigration Services.

¹²³ *Gedragcode tolken en vertalers IND*, September 2002.

¹²⁴ The Protocol Governing the Conduct of Substantive Interviews and the Role of the Interviewing Officers, Representatives and their Interpreters.

¹²⁵ CGRA has a charter of values which mentions respect, integrity, impartiality, training, decisiveness, empathy, coherence, professionalism, responsibility, loyalty, cooperation, openness and clarity. The working document covers issues such as the need for respect, tolerance, neutrality, patience and how to create an atmosphere in which the applicant can speak freely, the need to interview rather than interrogate, setting aside one's prejudices and background etc. according to information from the Office of the CGRA (email from operational coordinator of the CGRA, 15 April 2009).

¹²⁶ There is also advice given on interviewing skills and questioning techniques (For example, Handbook for Adjudicators *"Interview"*, 2.6.1 to 2.6.4, p. 15).

¹²⁷ Information submitted by the determining authority to UNHCR.

¹²⁸ A Code of Conduct for Interpreters was developed in November 2009, and discussed during a training session, and is in the process of adoption at the time of writing this report.

Recommendation

It is recommended that the EU develop a code of conduct by which interviewers in all Member States should abide.

Competence of interpreters

The quality of interpretation clearly has a significant bearing on the effectiveness of the personal interview and the reliability of the oral evidence gathered. All applicants for international protection should receive, as necessary, the services of trained and competent interpreters who have competent language and interpreting skills, and conduct themselves in a professional manner.

Article 10 (1) (b) APD requires Member States to provide the applicant with the services of an interpreter *“when the determining authority calls upon the applicant to be interviewed as referred to in Articles 12 and 13 and appropriate communication cannot be ensured without such services.”* Article 13 (3) (b) APD further requires Member States to *“select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication need not necessarily take place in the language preferred by the applicant for asylum if there is another language which he/she may reasonably be supposed to understand and in which he/she is able to communicate.”*

UNHCR supports the requirement in the APD that applicants receive the services of an interpreter, whenever necessary, during the personal interview.¹³¹ UNHCR also supports the requirement that the interpreter must be able *“to ensure appropriate communication between the applicant and the person who conducts the interview”*. UNHCR is of the opinion that the term ‘appropriate’ should be understood to require that the interpreter competently understands and speaks languages which the interviewer and applicant can understand, and in which they are able to communicate. UNHCR has already noted its concern that the APD refers to a language which the applicant *‘may reasonably be supposed to understand’* and reiterates that the language

¹²⁹ According to interviewers and the head of the Asylum Procedure Unit, there is no code of conduct (interview of 7 April 2009).

¹³⁰ At the OAR, all personnel doing interviews reported to have had access to the *“Handbook on Good Practices for the formalization of asylum applications”*. In Barcelona, UNHCR was informed that personnel had obtained it at a seminar about asylum and refuge that had taken place in the Bar Association in Barcelona. In Valencia and Melilla the personnel reported to have no information about the guide.

¹³¹ Note that UNHCR also encourages Member States to ensure that applicants receive the services of an interpreter for submitting their case to the competent authorities whenever necessary, including during preliminary interviews and/or the written completion of an application form; and submission of any appeal.

used must be language which the applicant understands. This is a pre-requisite for a fair procedure and when it is not fulfilled, any evidence gathered in the course of the personal interview may be unreliable.¹³²

Moreover, UNHCR understands the clause '*appropriate communication*' to also require that the interpreter:

- possesses competent interpreting skills, for instance, interprets accurately without addition or omission, uses the same grammatical person as the speaker, takes notes, etc.;
- is neutral in his/her interpretation;
- is impartial;
- does not provide any kind of supplementary sociological, anthropological or historical information as a contribution to the case for which s/he is interpreting, and does not comment on the applicant's testimony; and
- does not provide procedural or legal advice to the applicant.

In addition, Member States should ensure that interpreters are respectful to all parties, adhere to the duty of confidentiality, and do not take on tasks that are unrelated to their role as interpreters as this could undermine the impartiality of the interpreter or the perception of impartiality.

Transposition of Article 13 (3) (b) APD

Seven Member States of focus in this research have transposed or reflected Article 13 (3) (b) APD in their national legislation, regulations or administrative provisions. These are Bulgaria,¹³³ the Czech Republic,¹³⁴ Greece,¹³⁵ Germany¹³⁶, Italy,¹³⁷ Slovenia¹³⁸ and the UK.¹³⁹

¹³² UNHCR APD comments 2005.

¹³³ Bulgaria has transposed the second sentence of Article 13 (3) (b) APD, Article 63a (6) LAR (New, SG No.52/2007): The interview shall be conducted in a language requested by the alien. If this is impossible the interview shall be conducted in a language that the alien may be expected to have command of. Choosing an interpreter who is able to ensure appropriate communication (Article 13 (3) (b) first sentence, APD) is not explicitly provided for. According to the Statute of the SAR, the organization and coordination of interpretation and translation is dealt with on the level of the RRC (Article 23 (2), item 6).

¹³⁴ Section 22 ASA: "(1) A participant in the proceedings is entitled to use his/her mother tongue or a language in which s/he is able to communicate during the course of the proceedings. For this purpose, the Ministry shall provide the participant, at no charge, with an interpreter for the entire course of the proceedings. (2) A participant in the proceedings is entitled to engage an interpreter of his/her own choice at the participant's own costs." Section 4 of Act No. 36/1967 on experts and interpreters states that an interpreter may be appointed if "(b) s/he has necessary knowledge and experience from the field in which s/he is to function, especially one who has completed specialized training on the expert activities in case there is such training available for the field in which s/he is to function".

¹³⁵ Article 10 (8) (b) PD 90/2008 states that "an interpreter shall be selected who is able to ensure appropriate communication **in a language understood by the applicant**".

Belgium has only partially reflected Article 13 (3) (b) in its national legislation¹⁴⁰ insofar as Belgian national legislation does not guarantee the services of an interpreter whenever necessary during the personal interview. Indeed, Article 20 (3) of the Royal Decree of 11 July 2003 concerning the CGRA permits the CGRA to decide on an application without a personal interview of the applicant, when there is no interpreter available who speaks a language understood by the applicant. This is not in line with Article 10 (1) (b) APD.

¹³⁶ Even though an interpreter has to be present during the interview it is questionable whether the respective provision sufficiently mirrors that “appropriate communication” has to be ensured. Section 17 (1) APA: “*If the foreigner does not have sufficient command of the German language, an interpreter, translator or other language mediator shall be provided at the hearing as standard procedure in order to translate into the foreigner’s native language or another language which the foreigner can reasonably be supposed to understand and in which he can communicate orally.*” (Translation provided on the website of the MOI: <http://www.en.bmi.bund.de>). The Higher Administrative court in Baden-Wuerttemberg referred to the last part of the provision when confirming its compatibility with Article 13 (3) (b) APD (A 9 S 666/09, decision of 25 March 2009.)

¹³⁷ Article 10 (4) of the d.lgs. 25/2008, which states that “*during all steps of the procedure related to the presentation and the examination of the application, if necessary, the applicant is granted the assistance of an interpreter of his/her language or a language he/she knows*”; the same principle is stated in Article 14 (2) of the d.P.R. 303/2004.

¹³⁸ Article 11(5) of the IPA (selection of interpreters) in connection with Article 10(1,2) of the IPA (right to an interpreter): “*(5) Priority in selection shall be given to interpreters who: have a broad general education, in particular in the field of anthropology, culture, political science, and sociology, and also are familiar with the actual political situation and culture in the state of the language which is the subject of interpretation; know the corresponding translations of professional terms which are used in procedures for obtaining international protection.*” “*(1) If the applicant does not understand the official language of the procedure, he/she shall be allowed to follow the procedure and participate in it in a language he/she can understand. The competent authority shall thus ensure the applicant follows the procedure through an interpreter. (2) The applicant shall be provided with the interpreter upon receipt of the application, at a personal interview, in other justified cases, and by the decision of the competent authority when this would be required for the understanding of the procedure by the applicant.*” This provision ensures the right to interpretation in a language the applicant understands, which exceeds the standard on requirements for a personal interview regarding language set in the APD.

¹³⁹ Immigration Rule 339ND.

¹⁴⁰ Articles 20 and 21 of the Royal Decree of 11 July 2003 concerning the CGRA. Furthermore, Article 15 of the Royal Decree requires the case manager to always verify whether the applicant and the interpreter understand each other. The proposal for amendments to the Royal Decree of 11 July 2003 concerning the CGRA provides for a new article with regard to the interpreter present at the personal interview. The proposal stipulates that if the interpreter establishes that there is a conflict of interest between him/her and the asylum applicant, the interpreter should inform the case manager. The case manager should examine whether there is indeed a conflict of interest and, if necessary, appoints a new interpreter at the Office of the CGRA who speaks the appropriate language. If a new interpreter cannot be appointed right away, a new date should be set for the personal interview.

Four Member States of focus in this research have not transposed or reflected Article 13 (3) (b) APD in their national legislation, regulations or administrative provisions. These are, Finland, France,¹⁴¹ the Netherlands¹⁴² and Spain.¹⁴³

Recommendations

Member States should have national legislation, regulations or administrative provisions which require that applicants receive the services of a qualified interpreter whenever the competent authority calls upon the applicant to communicate with the authority and appropriate communication cannot be ensured without such services. This should include any initial or screening interview and the personal interview. The APD should be amended to this effect.

Article 13 (3) (b) APD should be amended to require that communication take place in a language which the applicant understands and in which s/he is able to communicate.

Availability of interpreters

The competent authorities need to have access to a sufficient number of interpreters who cover the main languages spoken and understood by applicants for international protection.¹⁴⁴

In some Member States, the determining authority recruits its own interpreters on a freelance basis (Belgium, Bulgaria, Germany, the Netherlands and the UK). In Belgium, the database of the interpreter services of the determining authority (CGRA) contains 150 to 200 interpreters, representing about 80 different languages and dialects. About 80 to 100 interpreters work on a regular basis for the CGRA. The interpreters work for the CGRA on a self-employed basis and are paid for work undertaken i.e. both

¹⁴¹ Article R.723-1-1 al.1 *Ceseda* states that “*The third paragraph of Article R.213-2 [i.e. interpreter paid by the State] is applicable to the interview mentioned under the first paragraph of Article L.723-3 [i.e. personal interview by the OFPRA].*” However, there is no explicit legislation regarding the competence of the interpreter or the languages in which the interviews should be conducted.

¹⁴² In the table of correspondence, the Netherlands claims that Article 13 (3) APD has been transposed in Article 3:2 General Administrative Law Act but the latter does not contain any reference to the selection of interpreters or competence of interpreters. It states that when preparing a decision, the administrative authority should gather the necessary information concerning the relevant facts and interests to be weighed.

¹⁴³ Article 8 (4) ALR provides that “*applicants for asylum who are inside Spanish territory have the right to an interpreter and legal assistance during the formalization of their application and throughout the entire procedure*”. However, there is no legal provision with regard to the competence of the interpreter or the languages in which interviews can be conducted.

¹⁴⁴ Note that the competent authorities also need to take steps to identify both male and female interpreters so that, as far as possible, there is the capacity to conduct gender-sensitive interviews. See below for further information.

interpreting and the translation of documents. This approach is also taken in Germany, where according to information submitted by the determining authority to UNHCR, approximately 400 languages and dialects are covered by a pool of self-employed interpreters. In the Netherlands, the determining authority (IND) has a register (called GAAS) of approximately 700 freelance interpreters covering about 130 languages and strives to use interpreters on the register whenever possible.¹⁴⁵ Similarly, in the UK the determining authority has a Central Interpreters Unit which has a register of freelance interpreters.

Some Member States use service-providers or agencies to provide interpreters and translation services, often following a tender procedure: the Czech Republic, Finland,¹⁴⁶ France, Italy and Slovenia. In the Czech Republic, the agency selected following a tender procedure provides interpretation and translation services in approximately 43 languages, and also in other languages in cooperation with other external agencies.¹⁴⁷ In France, according to the 2008 OFPRA Activity Report, 96 languages are offered and 450 professional interpreters are hired through 10 companies selected under the tender procedure; and in Italy, the Interpreter and Translators Consortium (ITC), which was also selected through a tender procedure, offers the services of 320 interpreters covering 88 languages.

Spain uses a mixed approach, employing a few interpreters which are supplemented by interpreters from a service provider.¹⁴⁸

In Greece, the ADA in Athens employs 16 interpreters who cover 11 languages.¹⁴⁹ But there is a severe shortage of interpreters in Police Directorates outside Athens.

A number of Member States face shortages of interpreters in particular languages or in particular regional locations. Some Member States have addressed this challenge by using interpreters via video conference. For example, in Finland, most interpreters are

¹⁴⁵ According to the Dutch Interpreters and Translators Centre (*Tolken en Vertaalcentrum Nederland, TVcN*), the IND sometimes uses its services. All interpreters working for TVcN are registered in the quality register for interpreters. Legal Aid makes standard use of the services of TVcN.

¹⁴⁶ If the agencies are unable to provide an interpreter for a particular language, the determining authority will attempt to identify someone to undertake interpretation. This was the case in interview 9 which UNHCR observed, where the leader of a home for unaccompanied minors was used as an interpreter for Swahili as no other interpreter was available in southern Finland.

¹⁴⁷ Interview of 7 April 2009 with Head of Asylum Procedure Unit. Information was also provided to UNHCR Prague that the Czech Republic takes part in the Interpreters' Pool Project, the goal of which is to have a Europe-wide pool of interpreters which may be accessed on demand by European countries, when suitable interpreter cannot be found in-country.

¹⁴⁸ The determining authority, OAR, employs two interpreters. It is expected that a third interpreter will join the staff in the coming months. The Provincial Police Department in Melilla employs three interpreters and additionally OAR uses an agency hired by the Ministry of Interior to supplement its staff.

¹⁴⁹ According to ADA officials, the languages covered in the Department are the following: English, French, Urdu, Bangla, Russian, Georgian, Arabic, Farsi, Hindi, Punjabi and Kurdish.

located in Helsinki. Access to interpreters in the two offices located near the Finnish border with Russia is very difficult.¹⁵⁰ Thus, many of the interviews conducted in these offices are interpreted via video link from Helsinki. Moreover, in the border procedure in France, all interviews between non-French speaking applicants and OFPRA Protection Officers are conducted with an interpreter on the telephone.

In Bulgaria, the determining authority is also faced with a shortage of interpreters in particular languages. At the time of UNHCR's research, the determining authority, SAR, had an agreement with the determining authority in the Netherlands (IND) to use their interpreting services for particular languages via a video-conference call. This required double-interpretation via English, i.e. the interpreter in the Netherlands spoke the applicant's language and English, and there was an interpreter in the RRC Sofia who spoke English and Bulgarian.¹⁵¹ This form of cooperation and interpretation has been successfully piloted in the Interpreters' Pool Project of the General Directors' Immigration Services Conference (GDISC) which involved 12 Member States, three of which donated the services of experienced and qualified interpreters, and nine of which were beneficiary states.¹⁵² The aim of the project was to support Member States facing a lack of interpreters by giving them access to a pool of interpreters in three donor Member States by using videoconferencing equipment. Although relay interpretation is time-consuming and the use of electronic devices and technology can cause anxiety for some applicants, it was considered by the project's participating states that the benefits, in terms of accessing the services of experienced and qualified interpreters, outweighed these concerns, and that the execution had been effective.¹⁵³

A particular challenge arises in Belgium. In accordance with Article 51/4 of the 1980 Aliens' Act, the examination of the asylum application is in either Dutch or French.¹⁵⁴ Due to logistical reasons, or due to the fact that for some languages, no interpreter is available who can translate into Dutch, personal interviews in the 'Dutch procedure' are conducted in the language of the applicant and either French or English. Although the interpreter translates into English or French, the case manager will have to write the report of the interview in Dutch. However, due to the translations (from one of the languages the applicant speaks, possibly not the preferred language, to English or French, not being the mother tongue of the case manager), important elements in the applicants' statements may be missed or lost. Moreover, not all lawyers speak French

¹⁵⁰ There are two offices in Lappeenranta and Kuhmo. At the time of UNHCR's research, two further offices were to be opened in Imatra and Oulu in May 2009.

¹⁵¹ This was only available at the RRC-Sofia in Bulgaria. UNHCR observed interview 4 conducted by video from Tamil to English to Bulgarian and *vice-versa*. At the time of writing, it was not clear if this arrangement could be continued due to a shortage of funding.

¹⁵² GDISC Interpreters' Pool Project was funded by ARGO in 2008. Its project implementation phase ended on 31 December 2008.

¹⁵³ GDISC Interpreters Pool – Final Evaluation Meeting, Sofia, 20-21 November 2008.

¹⁵⁴ Article 51/4 of the Alien's Act (Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, M.B., 31 décembre 1980, p. 14584). "*In accordance with Article 51/4 of the Alien's Act, the examination of the asylum applicant is either in Dutch or French.*"

very well, which can make it difficult for a lawyer to fully understand what is said during the interview and check the report of the personal interview with his/her own notes. This might have an effect on the lawyers' ability to present and defend his/her clients' rights. Lawyers interviewed by UNHCR thought this to be especially problematic.

Recommendation

States should seek to ensure that they have sufficient qualified interpreters of both genders for all the main languages of applicants. In the absence of a qualified and trained interpreter who speaks the language of the applicant, determining authorities should seek to establish agreements with other determining authorities whereby interpreters in other EU Member States are used via video link. The European Asylum Support Office could have a facilitative role to play in this regard.¹⁵⁵

Qualifications of interpreters

Within the scope of this research, UNHCR was not able to establish comparatively the qualifications required of interpreters by Member States, as some states use outside service providers, and the time constraints for this research did not allow UNHCR to interview these service providers. However, UNHCR notes that the Czech Republic¹⁵⁶ has national legislation which requires interpreters to have undertaken training whenever possible; and the Czech Republic and Slovenia¹⁵⁷ have national legislation requiring interpreters to have experience of interpreting. Whereas, in France, for example, the qualifications and skills required of interpreters are part of the contract with the service provider and in the Netherlands, an agency under the responsibility of the Ministry of Justice is tasked with ensuring that interpreters on the register have the necessary skills.¹⁵⁸ However, in a number of Member States, it was reported that no

¹⁵⁵ The 6th GDISC conference on 28 October 2009 noted that the Interpreters' Pool Project should be transferred to the European Asylum Support Office.

¹⁵⁶ According to Section 4 of Act No. 36/1957 Coll. on Experts and Interpreters, an interpreter may be appointed if: "a) s/he is a Czech citizen, b) s/he has necessary knowledge and experience from the field (language) in which s/he is to function, especially one who has completed specialized training on the expert (interpreter) activities, in case there is such training available for the field (language) in which s/he is to function; c) has such personal abilities that allow for presumption that s/he can do the expert (interpreter) activities properly; d) agrees with his/her appointment."¹⁵⁶ [Precondition a) can be pardoned].

¹⁵⁷ Art. 11(5) IPA. In Article 11 (3) IPA there is a list of requirements which interpreters must fulfil including evidence of a command of Slovene and the other language and evidence of previous experience of interpreting and knowledge of the corresponding translations of professional terms which are used in international protection procedures. Also, national legislation gives priority to interpreters who have a broad general education, in particular in the field of anthropology, culture, political science, and sociology, and is also familiar with the actual political situation and culture in the state of the language which is the subject of interpretation; and knows the corresponding translations of professional terms which are used in procedures for obtaining international protection.

¹⁵⁸ Bureau beëdigde tolken en vertalers (BTV), www.bureaubtv.nl.

specific professional qualifications are required for interpreters (Belgium, Bulgaria, Finland,¹⁵⁹ Germany¹⁶⁰, Greece and Italy).

It is worth noting that in some Member States, the determining authority reported that they do take steps to try to ensure the impartiality and neutrality of interpreters. For example, in Belgium, prospective interpreters are interviewed by the CGRA; and during the interview their background is checked, and a security check is carried out by the Belgian security services. Anyone who is found to have been politically active in their country of origin is rejected on the grounds that they may not be able to maintain neutrality and objectivity.¹⁶¹

However, UNHCR is concerned to note that there is no official procedure for the recruitment of interpreters in Greece, nor job description setting out minimum qualifications. UNHCR was informed that in ADA, in Athens, prospective interpreters submit a *Curriculum Vitae* and are recruited without any interview to assess their suitability for the job.¹⁶² Moreover, the Asylum and Security Departments outside Athens confront severe shortages of interpreters and reportedly use any available interpreter who can understand applicant's language.¹⁶³

Recommendation

Competent authorities should, as a matter of good practice, aim to use professionally trained and qualified interpreters. Where this is not possible, the authorities should ensure that interpreters have at least adequate interpreting skills. These include:

- **A competent command of the relevant languages;**
- **The ability to accurately and faithfully interpret what is said by the interviewer and applicant without omission, addition, comment, summarizing or embellishing;**
- **The need to use the same grammatical person as the speaker;**
- **Note-taking skills; and**
- **Gender, age and cultural sensitivity in interpretation.**

¹⁵⁹ In practice, the determining authority in Finland strives to use only interpreters with official degrees in translation but this is not always possible with regard to the rarer languages.

¹⁶⁰ Asylum law does not contain any requirements in this regard. The determining authority informed UNHCR that in practice, it seeks to use interpreters with an official degree, however, this is not always possible, especially with regard to rarer languages. According to stakeholder X2, the low payment for translation services seems to be a problem in this regard. This was confirmed by an interpreter (INTX).

¹⁶¹ In Finland, Section 10 (2) of the *Ulkomaaalaislaki* (Aliens' Act, 301/2004, as in force 24.4.2009) states that interpreters or translators used by the authorities may not be persons that have connections to the person or matter concerned in a manner that would jeopardize the reliability of the interpreter or translator or the safety of the person concerned. In Slovenia, Art. 11 (3) IPA requires that interpreters are not performing interpreting services for a diplomatic or consular mission.

¹⁶² Interview with interpreter in ADA (S5)

¹⁶³ Interview with S6 and S14.

Training for interpreters

Interpreters should receive appropriate training before interpreting personal interviews in the asylum procedure.¹⁶⁴ In order to perform their task effectively, professionally and ethically, interpreters must be aware of the purpose of their work in relation to the mandate of the determining authority, the international protection framework and the purpose of the personal interview specifically. Interpreting personal interviews requires knowledge of the terminology that is most frequently and commonly used in personal interviews.

Moreover, interpreters should receive guidance on the need for impartiality and neutrality in their role, and the duty of confidentiality. Training should also cover all relevant aspects of professional conduct including the need to be respectful, refrain from providing advice on the case or procedures to the interviewer or applicant, and not take on tasks that are unrelated to the role of an interpreter.

Across the 12 Member States of focus in this research, the provision of training for interpreters is, at best limited, and in many cases non-existent.

In a significant number of the Member States of focus in this research, the determining authorities do not organize any training for interpreters.¹⁶⁵ In Finland, steps are being taken to address the deficit in training. Following a joint ERF funded project involving the Immigration Services and the NGO Refugee Advice Centre, an extensive guide which includes guidance on the role and conduct of interpreters has been published. Training for interpreters, on the basis of these guidelines, was planned to commence in autumn 2009.

Exceptionally, in Belgium, interpreters who interpret personal interviews with unaccompanied children receive the same training as case managers conducting the interviews with unaccompanied children; and for other interpreters, voluntary training sessions are offered by the CGRA. Moreover, the CGRA is currently working with its best interpreters on a list of essential refugee terms and accurate translations. In the Czech

¹⁶⁴ See *'Interpreting in a Refugee Context – Self-study Module 3'*, UNHCR, 1 January 2009. This UNHCR self-study module is designed to familiarize interpreters with the principles and techniques of interpretation and assist UNHCR staff and partners in the field who frequently use the services of interpreters, in designing and conducting their own training sessions.

¹⁶⁵ Bulgaria, the Czech Republic, Finland, Germany, Greece, the Netherlands, and Slovenia. No information for the UK. The determining authority in Germany reported that a new attempt will be undertaken to train interpreters, since more and more translating services are offered to the BAMF. According to the BAMF, former attempts to provide training have failed as the time allocated for the training meant unpaid working time for the interpreter.

Republic, the service-provider provides interpreters with a dictionary of basic terms used in the asylum procedure.¹⁶⁶

Some initiatives have also been taken in Bulgaria¹⁶⁷ France, Italy and Spain. It should be noted that in France, the service providers do offer specific training sessions for interpreters, and the determining authority OFPRA has informed UNHCR that it plans to participate in some of the training sessions organized by these service providers in the future.¹⁶⁸ In Italy, the service provider, in cooperation with UNHCR and the CTRPIs, also recently organized training sessions for interpreters in 2008 and February 2009. 80 interpreters working in the different CTRPIs across Italy participated in the latter training session. Finally, in Spain in 2008, the Ministry of Interior, on the initiative of OAR's Interpreters Service, organized a one day training course for the interpreters of the service provider. More recently, UNHCR together with the Bulgarian Helsinki Committee held a training session for interpreters in Bulgaria.¹⁶⁹

Recommendations

UNHCR recommends that all Member States develop and deliver a training programme for interpreters engaged in the asylum procedure. Interpreters should receive specific training on interpreting personal interviews in the asylum procedure, and recruitment should be conditional upon completion of training. Training should cover a code of conduct for interpreters and include:

- **the framework of international protection and the purpose of the personal interview;**
- **the importance of faithfully interpreting what is said by the interviewer and applicant;**
- **impartiality, neutrality, objectivity, and confidentiality;**
- **the role and conduct of the interpreter in the personal interview; and**
- **gender, age and cultural sensitivity in interpretation.**

With regard to the personal interview of children, Member States should engage to the extent possible interpreters who have specific training on interpreting for children.

Member States should produce a glossary of essential and frequently used terminology in the main languages of applicants for international protection.

EU guidelines should be developed, potentially under the auspices of the EASO, which

¹⁶⁶ According to the Head of Asylum Procedures, interview of 7 April 2009.

¹⁶⁷ In Bulgaria, UNHCR organized training for interpreters in 2003 and 2006 covering the need for faithful interpretation, impartiality, gender, age and cultural sensitivity and obligations of confidentiality.

¹⁶⁸ Interview with the Head of Interpretation Service of OFPRA.

¹⁶⁹ 27 November 2009.

set out the minimum desirable qualifications and minimum training required for interpreters in the asylum procedure.

Conduct of interpreters in practice

UNHCR's research revealed widespread misconduct involving interpreters in personal interviews, and serious shortcomings in the ability of interviewers to work effectively with or manage the conduct of interpreters. During the observation of interviews, UNHCR researchers witnessed the following malpractices by interpreters:

- The interpreter omitted to interpret some of the applicant's statements. For example, in Greece, in three interviews observed, the interpreter did not interpret some of the applicant's answers.¹⁷⁰
- The interpreter extensively modified the statements of the applicant by summarizing, paraphrasing or only interpreting the conclusions of the answers given by the applicant, instead of providing a faithful interpretation. For example, in Greece, in at least 12 interviews observed, there was no *verbatim* interpretation of the applicants' statements and replies. The interpreter simply gave the conclusion of the applicants' statements.¹⁷¹ This also occurred in some of the interviews observed in Italy,¹⁷² and in interviews observed in Bulgaria¹⁷³, and Slovenia.
- The interpreter added his/her own comments or personal observations. For example, in an interview observed in the Czech Republic, the interpreter added comments such as: "*Should I ask him whether he is all right in the head?*" or "*This seems quite strange..*" or in translating he added the word "*allegedly...*" (*allegedly, he went to a feast...*).¹⁷⁴ Also, UNHCR observed an interpreter in

¹⁷⁰ IO13IRQ2, IO12AFG2, and IO33IRAQ4. All these interviews were conducted at the ADA in Athens and involved two different interpreters.

¹⁷¹ IO4NIG1, IO7NIG2, IO8NIG3, IO9SOM1, IO26GHA1, IO27GHA2, IO28SOM2, IO29NIG4, IO34ETH1, IO46SLK2, IO47SLK2, and IO49GHA3 (interviews in English and French [IO8NIG3]). All these examples were in ADA and involved the same interpreter.

¹⁷² Witnessed in the personal interviews audited I/03/M/NIG, I/04/ F/NIG, I/05/F/ERI, I/08/M/NIG, I/09/M/IND, I/10/M/GHA, I/11/ M/CDA, I/12/M/NIG, I/13/F/CAM, I/18/F/ERI, I/19/M/ERI, and I/20/M/ERI.

¹⁷³ Interviews 3, 4 and 5.

¹⁷⁴ Note that the interviewer tried to stop the interpreter from making such comments and asked him to merely interpret, but the interpreter still then added a few more comments (Y001). Also, in Bulgaria, two interviews were observed in which the interpreter made inappropriate comments in Bulgarian: interviews 1 and 4. Furthermore, in Greece, UNHCR observed an interpreter make personal comments and adopt a sarcastic attitude towards the applicant because the latter was illiterate: IO39AFG9. In Germany, UNHCR attended an interview (HR 12) during which the interpreter commented on the statements made by the applicants, and was not stopped by the interviewer. In another interview, the interpreter's role was not limited to just translating what had been said (HR9).

Greece who made personal comments on the situation in Afghanistan and the problems between different ethnic groups.¹⁷⁵

- The interpreter did not use direct speech i.e. first person (I) and second person (you) but instead interpreted in the third person (s/he).¹⁷⁶
- The interpreter did not adopt a position of neutrality but was instead hostile towards the applicant.¹⁷⁷
- The interpreter took over the role of the interviewer and asked the applicant questions. For example, in the Czech Republic, UNHCR witnessed an interview where the interviewer only asked three questions, but extended communication took place between the interpreter and the applicant during which approximately 12 questions were asked by the interpreter and answered by the applicant (Y010).¹⁷⁸ And in Italy and Spain, UNHCR observed interviews where the interpreter gathered all the initial bio-data from the applicant.¹⁷⁹
- The interpreter took over the role of the interviewer and explained aspects of the procedure¹⁸⁰ or answered questions posed by the applicant regarding the procedure without interpreting the questions for the interviewer to answer.¹⁸¹
- The interpreter took over the role of the applicant and answered the interviewer's question which was directed to the applicant.¹⁸²

¹⁷⁵ IO51AFG9.

¹⁷⁶ This was the case in most interviews observed in the RRC in Sofia, and occurred in some interviews observed in Germany.

¹⁷⁷ For example, in two interviews observed in Spain, the interpreter opposed the applicant instead of adopting a neutral attitude. This was the case in an interview observed in Melilla (Case No. 1101140) and in case No. 0501010.

¹⁷⁸ There were further examples of interpreters posing questions in Bulgaria (interviews 3 and 5), Finland (in all interviews observed) and the Czech Republic (Y005 and Y008).

¹⁷⁹ Cases of initial application interviews nr. 0501001 and 0501010.

¹⁸⁰ In some interviews in Germany (e.g., HR 9 and HR 13) information on the interview given at its outset was solely given by the interpreter and not by the adjudicator. However, UNHCR has been informed by the determining authorities that this problem has been tackled by instructing the adjudicators to give the initial instructions and explanations themselves, in order not to cause any misunderstandings on the role of the interpreter.

¹⁸¹ In one interview observed in the Czech Republic, the applicant was informed by the interpreter, not by the interviewer, of the fact that no copies could be made from the case files (Y007). Slovenia: Case No. 1-2009. In Bulgaria and France, at the end of the interview, interpreters were observed to informally provide information about the procedure and reception conditions to applicants.

¹⁸² The interpreter stated the date on which the applicant arrived in response to the question "On what date did you arrive in Greece?": IO30PAK9. Germany: HR 8: The interpreter started to answer the questions instead of asking the applicant. However, the interviewer intervened and insisted on the translation.

- In ADA in Greece UNHCR observed that in several cases, without guidance from the interviewer, the interpreter advised applicants and instructed them as to how to complete the application form.¹⁸³ For example, UNHCR witnessed an interpreter instruct the applicant to write on the application form that she came to Greece “for a better life”.¹⁸⁴
- The interviewer and the interpreter exchanged comments in an aside,¹⁸⁵ or the interpreter and the applicant exchanged comments that were not interpreted for the interviewer.¹⁸⁶
- The interpreter undertook or was asked to undertake tasks beyond their duties. For example, in Spain, UNHCR observed interviews in which the interpreter was asked to call the applicant in, or bring tissues or water.¹⁸⁷

All these malpractices would be in breach of any professional code of conduct for interpreters and are not in line with Article 13 (2) (b) APD insofar as these practices thwart appropriate communication between the applicant and the interviewer. UNHCR is also concerned by the inability of a significant number of interviewers to manage interpreters effectively.

The determining authorities of only four Member States of focus in this research have a code of conduct for interpreters involved in procedures for international protection. These are Belgium, Finland¹⁸⁸, the Netherlands¹⁸⁹, and the UK¹⁹⁰. However, in Italy, the service provider has its own code of conduct, and in the Czech Republic, interpreters who are not ‘appointed interpreters’ by law, sign a ‘promise of expert/interpreter’ which does set out certain obligations of confidentiality, impartiality and the need for

¹⁸³ This observation is further confirmed by the GCR and UNHCR report on interviews during the first instance procedure (GCR & UNHCR; 2008).

¹⁸⁴ IO37RUS.

¹⁸⁵ Observed in interviews in Bulgaria and Germany, and in an interview in France.

¹⁸⁶ Observed in interviews in Finland. Such instances have also been reported by one of the consulted lawyers (X1) in Germany.

¹⁸⁷ In Spain, it was observed that interpreters often assume tasks outside the scope of their responsibilities either because they are asked to do so by the interviewer or because they assume these tasks on their own initiative (cases of initial application interviews No. 0501001 and 0501010).

¹⁸⁸ A recent guide published following an ERF joint project of the Refugee Advice Centre and the Immigration Services which took place in 2008 covers the role and conduct of interpreters and will provide the basis for forthcoming training of interpreters.

¹⁸⁹ IND Code of Conduct: *Gedragcode tolken en vertalers IND*, September 2002.

¹⁹⁰ Home Office Interpreters’ Code of Conduct. Although in its 4th Quality Initiative report the UNHCR noted an apparent lack of awareness amongst interviewers of this code and recommended that its standards and procedures be given greater prominence, UNHCR 4th QI report paragraph 2.3.79. In Bulgaria, UNHCR was requested to develop ethical rules for interpreters at an ASQAEM project conference in June 2009.

faithful interpretation. Similarly, in Germany, interpreters are bound by contract to provide precise translations and to keep information obtained confidential.¹⁹¹

It may not be a coincidence that most of the incidences of misconduct by interpreters which were witnessed by UNHCR occurred in those Member States where the determining authority had not yet developed a code of conduct for interpreters.

Example of code of conduct for interpreters (Belgium)

- The interpreter should translate completely (without any omissions, additions or modifications), faithfully and objectively;
- The interpreter should regularly update his knowledge and expertise;
- The interpreter should take notes;
- The interpreters should use first (I) and second (you) personal singulars;
- The interpreter should speak clearly and comprehensibly;
- The interpreter may convey through intonation the emotions and intentions of the parties;
- The interpreter should only accept assignments for which s/he has the required skills;
- The interpreter must adopt a position of objectivity, neutrality and independence;
- The interpreter must undergo a security check;
- The interpreter should present him/herself as neutral;
- The interpreter is bound by confidentiality;
- The interpreter should refrain from any comments;
- The interpreter should accept that the case manager is conducting the interview and that s/he should not try to interfere;
- The interpreter should never stay alone with the applicant;
- The interpreter should never try to prevent or solve any problems, frictions or conflicts between the applicant and lawyer/legal guardian;
- The interpreter should immediately inform the CGRA of any conflict of interest;
- The interpreter should inform the case manager if the applicant speaks another language or dialect than indicated by the applicant (even if the interpreter is able to interpret this language or dialect);
- The interpreter should switch off his/her mobile phone;
- The interpreter should have a neat appearance;
- The interpreter should, under no circumstances, avail him/herself of his/her position to receive gifts or compensation;
- The interpreter is acquainted with the rules and legal provisions governing his/her profession;

¹⁹¹ Moreover, interpreters are obliged to refrain from deploying subcontractors who have not been explicitly authorized, and have to declare that neither they themselves nor one of their family members are currently conducting an asylum procedure. They also have to confirm that their service for the BAMF does not contravene contractual agreements with other parties, that they observe secrecy with regard to their remuneration, that they do not have a criminal record and that no criminal proceedings with regard to their person are conducted (Information provided by the BAMF).

- The interpreter should present him/herself in due time and has a right to a break of 15 minutes after one hour and a half; and
- The interpreter receives the agreed compensation for his/her assignments.

Interpreters who do not abide by the CGRA's professional code of conduct will not be called upon in the future.

Recommendations

A code of conduct for interpreters involved in procedures on international protection would go some way to address some of the critical deficiencies evidenced. An EU code of conduct for interpreters would ensure greater uniformity of conduct across Member States.

Interviewers and applicants should be provided with a way to report the poor conduct of an interpreter so that remedial action can be taken.

Working effectively with and managing interpreters should be a compulsory part of the training programme for all interviewers.

Effective communication – the language skills of interpreters

Obviously, interpreters who are engaged to provide interpretation in personal interviews should have competent language skills. Before commencing the personal interview, the interviewer should confirm that the applicant and the interpreter understand each other, and that the applicant is comfortable with the interpretation arrangement. The applicant should be advised that s/he should raise any perceived problem with the interpretation during the personal interview if and when it arises.¹⁹²

UNHCR observed personal interviews where it noted with approval that, to the extent that UNHCR's researchers were able to assess, on the whole interpreters had at least an adequate command of the languages of the interview and were able to ensure an appropriate level of communication between the interviewer and the applicant.¹⁹³

¹⁹² UNHCR checklist for the opening of the RSD interview, UNHCR Procedural Standards for RSD under UNHCR's Mandate, 1 September 2005.

¹⁹³ Bulgaria, the Czech Republic, Finland, France, Germany, the Netherlands and the UK. However, it should be noted that UNHCR in Germany attended one interview where the command of the foreign language was so poor, that the legal representative had to intervene (HR 7). Moreover, it should not go unmentioned that one of the lawyers consulted by UNHCR explicitly raised concerns with regard to the poor language skills of interpreters, and the negative effects for the persons concerned. It was reported that interviews often have to be postponed because the interpreter did not have a sufficient command of one of the languages (X1). Lawyer X2 stated that while the interpreting skills of some of the interpreters are very good, they are insufficient with regard to others. In addition, it has been cast into doubt whether

However, UNHCR did observe a few interviews in which the interpreters did not possess an adequate command of the language of the Member State. For example, in two interviews observed in Spain, the interpreters had a poor command of Spanish¹⁹⁴ and in an interview observed in Slovenia, the interpreter had a poor command of Slovene.¹⁹⁵

UNHCR also observed interpreters who did not possess an adequate command of the language of the applicant. UNHCR's researchers noted the following:

*"One interpreter's command of English was so poor that he could not use the past tense and a number of inconsistencies arose during the course of the interview."*¹⁹⁶

*"The interpreter's poor command of the language chosen by the applicant was an issue in two interviews observed. In the first one, this weakness was compensated for by the applicant's basic knowledge of Spanish but in the second interview, although the applicant tried to raise the issue during the interview, no measure was taken to resolve the problem."*¹⁹⁷

During nine interviews observed in Greece, the interpreter was not able to ensure appropriate communication because of the interpreter's poor language and interpreting skills.¹⁹⁸ In two cases of Nigerian applicants, the interpreter's command of English was very poor and provoked several misunderstandings during the interview.¹⁹⁹ In five interviews, the applicants were Pashto speakers while the interpreter spoke Farsi and only poor Pashto.²⁰⁰ Similarly, there was poor interpretation and misunderstandings from French to Greek during the interview of an applicant who was Nigerian, and from Kurdish to Greek for an Iraqi applicant. In both two cases, the interpreter blamed the applicants by saying *"they speak a strange dialect"*.²⁰¹

applicants without legal representation would dare to ask for another interpreter, or in fact be able to achieve a change of interpreter, even though applicants are explicitly asked in the framework of the interview whether they understand the interpreter (X1).

¹⁹⁴ No. 0602125 and 0601142.

¹⁹⁵ Case No. 2-2009

¹⁹⁶ In the Czech Republic, (Y006).

¹⁹⁷ In Spain, Case No. 0502102 and Case No. 0501010. In an interview observed in Spain, the applicant was Nigerian and had a university degree. When he stated that he was having problems understanding the interpreter, the interviewer replied that that was not possible as the applicant should have a good level of English since he had a university degree. The applicant replied that he did have good proficiency in English. However, no action was taken in response and the interview continued with the same interpreter.

¹⁹⁸ 52 interviews were observed in total.

¹⁹⁹ IO7NIG2 and IO29NIG4.

²⁰⁰ IO11AFG1, IO11AFG2, IO17AFG3, IO19AFG4 and IO20AFG5.

²⁰¹ IO8NIG3 and IO43IRQ6.

Recommendations

UNHCR recommends guidelines for interviewers on working with interpreters. Such guidelines should require interviewers to confirm, before initiating the personal interview, that the applicant and the interpreter understand each other, and that the applicant is comfortable with the interpretation arrangement. Such guidelines should also make it clear that a personal interview should be stopped if it becomes apparent that there are problems of communication.

Interviewers and applicants should be provided with a way to report the poor language and interpreting skills of an interpreter so that remedial action can be taken.

The languages of the personal interview

Article 13 (3) (b) APD states that *“The communication need not necessarily take place in the language preferred by the applicant for asylum if there is another language which he/she may reasonably be supposed to understand and in which he/she is able to communicate.”*

It is UNHCR’s view that the personal interview must be conducted in a language which the applicant understands and in which s/he is able to communicate, recognizing that there is a difference between the basic ability to make oneself understood in a language and the ability to present a complex account which may include difficult or painful events in that language. Evidence which is gathered in the context of an interview conducted in a language which the applicant is only “reasonably supposed to understand” is unreliable and renders the procedure unfair.

UNHCR notes with approval that some Member States have set a more appropriate national legislative standard. For example, in Italy, Article 10 (4) of the d.lgs. 25/2008 states that:

*“during all steps of the procedure related to the presentation and examination of the application, if necessary, the applicant is granted the assistance of an interpreter of his/her language or a language s/he knows”.*²⁰²

Similarly, in Greece, Article 10 (8) (a) of PD 90/2008 stipulates that the selected interpreter for the interview should be able to communicate in a language understood by the applicant and in Belgium, national legislation requires that interpretation is in

²⁰² The same principle is stated in Article 14 (2) of the d.P.R. 303/2004. The audit of case files confirmed that all the personal interviews were conducted in the language preferred by the applicant. In one case of an applicant from Nigeria, the language used by the interpreter was English, while the language in which the applicant spoke was Pidgin English: I/08/M/NIG.

principle into a language spoken by the applicant.²⁰³ Article 15 of the Royal Decree of 11 July 2003 concerning the CGRA requires the case manager to verify whether the applicant and the interpreter understand each other.

Based on UNHCR's observation of interviews and audit of interview records, UNHCR is pleased to note that most interviews were conducted in the mother-tongue of the applicant or in another language chosen by the applicant.²⁰⁴

However, UNHCR notes that personal interviews are sometimes conducted in a language which the determining authority supposes the applicant understands, and not the language requested by the applicant. This may not always be a language which the applicant actually understands. The problem appears to stem from a shortage of interpreters in particular languages in some Member States. For example, in France, Chechen applicants are interviewed in Russian, and Roma from the Balkans are very rarely interviewed in the Romani language.²⁰⁵

In 11 out of the 49 interviews observed by UNHCR in ADA in Athens, applicants were obliged to speak in a language that they did not request and/or hardly knew.²⁰⁶ For example, in a number of cases the applicant claimed to be from Afghanistan and to speak Pashto but the interview was conducted in Farsi.²⁰⁷ In one interview observed, more than 30 minutes were spent repeating questions and requesting clarifications

²⁰³ Article 20 (1) of the Royal Decree of 11 July 2003 concerning the CGRA.

²⁰⁴ For example, in the Czech Republic, all the interviews observed were in the language chosen by the applicant. In one interview, the interpreter was changed to find an interpreter who could speak the mother-tongue of the applicant. However, in one case, the determining authority sought to contact a recognized Somali refugee to interpret. In Finland, in 9 out of 10 interviews observed the language used was the mother tongue of the applicant. In the one interview where the language was different, the language was, nevertheless, chosen by the applicant. In Slovenia, UNHCR observed two interviews that were not conducted in the preferred mother-tongue language of the applicant. However, the interpreter used a technique called 'double-check' to check interpretation was correct. In Case No. 4-2009, the applicant's mother-tongue was Kasem but the interview was conducted in English, and in Case No. 8-2009, the mother-tongue of the applicant was Pashto, but the interview was conducted in Farsi.

²⁰⁵ Case 10, the applicant's mother-tongue was Romani but the Protection Officer considered that s/he should understand Serbo-Croat and this was the language of the interview. In Germany, the interviews attended by UNHCR were conducted in the mother-tongue or the language chosen by the applicant. However, according to statements given by consulted lawyers, applicants may face the problem that the interpreter appointed by the BAMF is one who speaks the official language of the country of origin, but not the language/dialect the applicant actually speaks and understands best (X1, X2). This finding is confirmed insofar as in one of the interviews attended by UNHCR (HR6), the interpreter was told before the interview to interpret into Russian, even though the applicant was of Chechen origin. The interview, nevertheless, took place in Chechen and German, since the interpreter was also able to interpret into and from Chechen.

²⁰⁶ The Greek language was used in two interviews with a national from Sri Lanka [IO47SLK2] and Pakistan [IO50PAK13]). Neither applicant could speak Greek well.

²⁰⁷ IO11AFG1, IO11AFG2, IO17AFG3, IO19AFG4 and IO20AFG5.

because the applicant could not understand many of the questions and the interviewer could not understand many of the applicant's responses.²⁰⁸

Other appropriate steps which should be taken to ensure effective personal interviews

In addition to ensuring the competence of the interviewer and the interpreter, UNHCR considers that Article 13 (3) APD requires Member States to take further appropriate steps in order to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner.

Preparing for the personal interview

In accordance with Article 13 (3) APD, in order to establish the conditions which allow applicants to present the grounds for their applications in a comprehensive manner and to ensure that the interviewer is competent to conduct the interview, the interviewer should prepare the personal interview in advance. This requires the interviewer to be familiar with the content of the application, including the personal and general circumstances relating to the application, review the information provided in travel and other documents submitted, consult relevant objective country of origin information, including maps of the relevant region and information on the culture of the country, and identify preliminary issues that need to be addressed and any specific questions that might need to be asked, before initiating the personal interview.²⁰⁹ An interviewer will not be able to ask the right questions and ultimately make a fair assessment of the credibility of the applicant's statements unless s/he is well-prepared and familiar with the application and the relevant objective country information before s/he conducts the personal interview.

In some Member States, UNHCR has found that there are guidelines regarding the importance of the interviewer preparing for the personal interview well and how to prepare for the interview so that it is effective (Belgium,²¹⁰ Finland²¹¹ and the UK²¹²). In the UK, the guidelines state:

²⁰⁸ IO50PAK13. Moreover, of the 202 case files reviewed by UNHCR researcher, in 19 cases the interview was held in a language other than applicants' mother tongue.

²⁰⁹ See paragraph 4.3.2 of UNHCR Procedural Standards for RSD under UNHCR's Mandate, September 2005.

²¹⁰ Internal working document on the preparation and strategy of the personal interview.

²¹¹ An extensive guide which includes planning and scheduling the interview was published following a joint ERF-funded project of the Refugee Advice Centre and the Immigration Services.

²¹² Interviewers have guidelines on how to structure and conduct an interview. These are contained in the Asylum Policy Instruction (API) on *Interviewing* November 2006, rebranded December 2008.

“Interviewing officers should always prepare for their asylum interviews as thoroughly as time allows. They should identify the key issues specifically focusing on: the reason asylum is being claimed, alleged agents of persecution and any allegations of torture or ill treatment.

The interviewing officer should consider the likelihood of the applicant having scars. Where there are elements of the claim that require further examination, the interviewing officer should prepare a question plan to take into account these areas....The interviewing officer should be familiar with the country report or other country information relating to where the applicant fears persecution, where available.”²¹³

In order to prepare the interview, the interviewer will need to have some basic information regarding the profile of the applicant and his/her reasons for applying for international protection. For example, in Belgium, UNHCR has been informed that on registration of the application, the applicant is asked to complete a questionnaire which has been devised to provide background information for the preparation of the interview. In the Czech Republic, the application form is completed by the determining authority in the presence of the applicant and an interpreter whenever necessary. The completed form signed by all persons present is then forwarded to the appointed interviewer. Whereas, in the Netherlands and the UK, the determining authority conducts an initial interview which, *inter alia*, gathers background information.

However, in some Member States, UNHCR was informed that insufficient data is gathered prior to the personal interview to facilitate the preparation of the interview. For example, UNHCR was informed that in Spain²¹⁴ and Greece, the only data available to the interviewer is the identity, nationality, gender and family composition of the applicant. Similarly in Germany, the form²¹⁵ available before the interview for the interviewer, contains basic information regarding the profile of the applicant but does not provide information about the reasons for applying for international protection.²¹⁶

²¹³ API Interviewing.

²¹⁴ This relates to the interview in Spain, which is conducted in the course of the admissibility procedure in which all applications are examined, and is considered to constitute the personal interview in line with Article 12 (2) (b) and Article 13 (5) APD. Eligibility officials who conduct personal interviews in the course of the regular procedure do have sufficient data in advance of the interview.

²¹⁵ So-called “*Niederschrift zu einem Asylantrag (Teil 1)*”, which was submitted to UNHCR for all cases in which UNHCR observed the interview.

²¹⁶ Even though the electronic file is available, information on the reasons for applying for asylum is only very exceptionally included, e.g. in cases where a written statement by a legal representative has been submitted before the interview takes place. Moreover, a medical opinion is not necessarily contained in the electronic file at this point in time according to information provided by the determining authority to UNHCR. Furthermore, neither the Handbook for Adjudicators on the conduct of the interview, nor the Internal Guidelines on the Asylum Procedure contain explicit advice or instructions on how to prepare for the interview in advance. Also in the information submitted by the determining authority to UNHCR, it is not mentioned that interviewers are instructed to do so and how.

In some other Member States, the information available to the interviewer is also very limited.²¹⁷

It is evident that the interviewer will need to receive adequate information sufficiently in advance of the interview so that the interviewer can conduct a thorough review of the applicant's case file and consult relevant country of origin information.²¹⁸ Interviewers in a number of Member States reported to UNHCR that they receive the case files of applicants sufficiently in advance of the personal interview, and claimed to undertake preparatory research with regard to both personal and general factors, although UNHCR was not able to verify this in the context of this research.²¹⁹ By way of example, in Belgium, interviewers informed UNHCR that they receive applicants' case files on average two to three weeks before the personal interview and that preparation for the interview, including relevant COI and other research, may take from 30 minutes to a few days, depending on the case.²²⁰

In contrast, interviewers at ADA, Athens in Greece reported that they are informed of the interviews that they will conduct on the same day the interview is to be conducted. During UNHCR's period of observation, each interviewer received every day a list of approximately 20 interviews that s/he had to conduct during that day. As such, there was no time to prepare the interview. The interviewer opened a case file for the applicant at the interview.²²¹ It should be noted that whilst the overwhelming majority of applications for international protection are lodged at ADA in Athens,²²² a small percentage are lodged elsewhere.²²³

Due to the increase in the number of applications lodged in Italy in 2008, the members of the Territorial Commissions (CTRPis) were also experiencing time constraints on their preparation of interviews. During the period of UNHCR's research, two CTRPis in particular were conducting 15 – 20 personal interviews per day.²²⁴ Instead of interviews being conducted by the four members as a collective, interviews observed were

²¹⁷ In Slovenia, prior to the application interview, the inspector receives a registration form completed by the police with a statement of the reasons for the application handwritten by the applicant. The *Modello C3* completed in Italy contains limited information for the members of the Territorial Commissions.

²¹⁸ Including the application, any statement, country of origin information, including maps of the region, identify preliminary issues, missing information etc.

²¹⁹ Belgium, Bulgaria, the Czech Republic, Finland, and France. However, given the time constraints of the border procedure in France, in practice, there is little time for preparation of the interview.

²²⁰ Information based on interview with case managers, 19 & 20 March 2009.

²²¹ Interview with S3 and S4.

²²² According to 2008 statistics of the Ministry of the Interior, 90.1% of applications are lodged in Athens.

²²³ Interviewers in SDAA and SDS have to conduct personal interviews per week; therefore, they have the opportunity to prepare their interviews.

²²⁴ According to internal UNHCR data, at the time of writing, the average number of personal interviews conducted is 6-8 per CTRPI each day, four days a week. In most CTRPis, one day per week is dedicated to case discussion, COI research and the drafting of decisions.

conducted by one or two members together.²²⁵ UNHCR observed that on the morning of the scheduled interviews, each member had approximately 30 minutes to view the case files of all the applicants to be interviewed that day. Otherwise, the interviewers reviewed the case file of the applicant just before the interview. As a result, in practice, the interviewers rarely had the opportunity to conduct any specific research or to formulate specific questions prior to the personal interview.

In the Netherlands, in the application centres, UNHCR observed that interviewers receive the case file of the next applicant to be interviewed approximately 30 minutes before the detailed personal interview. This provided time for the interviewer to read the information obtained during the initial interview, but not to conduct research or formulate specific questions in preparation for the personal interview. To compensate, interviewers scheduled breaks during the course of the interview in order to conduct relevant research.

In the course of this research, UNHCR did not shadow interviewers in their work and as such did not observe interviewers preparation of interviews in all the Member States of focus. However, UNHCR observed 185 personal interviews and noted whether interviewers referred to COI or other information that had been previously collected, and which they had to hand; or whether questioning was indicative of a specific knowledge of the applicant or the region of origin.

UNHCR did witness instances indicative of prior familiarization with the application and prior research. For example, in all the interviews observed in Finland, the interviewers' questioning indicated that s/he had prepared the interview in advance and undertaken relevant research.²²⁶ In the UK, some interviewers had perused Operational Guidance Notes about countries of origin and had read submissions received from legal representatives.²²⁷ There was a mixed picture in some other Member States, with some indications that some interviewers had undertaken some preparation.²²⁸ In the

²²⁵ Although, in principle, in accordance with Article 12 (1) of the d.lgs. 25/2008, the personal interview may be conducted by only one member of the Commission "on the basis of a motivated request of the applicant". Article 12 (1) also provides that, if possible, the interviewer should be "of the same sex as the applicant".

²²⁶ For example, interview 5, the interviewer had fully researched the family relationships prior to the interview.

²²⁷ LIV int9.3.09 and GLA int4.3.09.

²²⁸ During two interviews observed in the Czech Republic, the interviewers had a detailed map of the country of origin with which they were obviously familiar. This was also noted in France where in one case (Case 6), the protection officer had prepared questions in advance together with his/her head of section (this was a case which could possibly raise the issue of exclusion). In Case 7 and Case 8, the protection officer had a map at hand and some COI documents. In Case 11 and in Case 12, the protection officer had a map at hand. In Greece, in contrast to interviews observed in ADA, from interview observation in SDAA and SDS, it was clear that interviewers in these Departments were prepared for their interviews. They had access to the case file before interview, they had undertaken some country of origin research in advance and they were equipped with a map that they were using during interview. However, other stakeholders suggested that the interviews that UNHCR observed at SDAA and SDS were not representative of the way

Netherlands, UNHCR observed that the interviewers structured the interviews to include short breaks. During these breaks, when the applicant left to go to the waiting area, the interviewer researched relevant information.

However, UNHCR is concerned to note that in most interviews observed, the interviewer did not refer to any information that had been previously gathered and questioning did not indicate any specific knowledge of the circumstances pertaining to the application.²²⁹

Moreover, UNHCR witnessed a couple of interviews where the interviewer 'stood in' for an absent colleague on the day of the interview and, therefore, did not have sufficient time to prepare the interview.²³⁰ In one interview, the interviewer had been sent questions by another decision-maker. When the applicant addressed some questions to the interviewer, s/he replied that s/he did not know why certain questions had been asked.²³¹

UNHCR is concerned that there is evidence that a significant number of personal interviews are either not prepared or poorly prepared, and there is a failure on the part of the interviewers in some determining authorities to ensure familiarisation with country of origin information (COI) prior to or in the context of interviews. Knowledge of the relevant objective COI on the part of the interviewer is a prerequisite if the personal interview is to be used effectively to assess the credibility of evidence. UNHCR believes that as a general principle, unless an applicant has had the opportunity to explain inconsistencies or evidence that are otherwise not believable, the interviewer should not make a negative credibility finding in assessing the facts. Therefore, if the

interviews are normally conducted there. UNHCR was informed that the two interviews at the SDS had been specifically prepared for UNHCR's visit and that in many cases in SDAA, interviews are omitted without any examination of the case or last only a few minutes: interviews with S15 and S13. In Spain, eligibility officials appeared to have prepared the personal interviews observed in the regular procedure.

²²⁹ Bulgaria: the interviewer did not refer to the case file in any of the interviews observed, and in only one did the interviewer refer to a map of the country of origin. This was also the case in quite a high number of the interviews observed in France. In Germany, on the basis of the interviews observed by UNHCR for this research, it appeared that interviewers were not specifically prepared for the interview. This was evident in a case in which the adjudicator at the beginning of the interview noticed with surprise that the standard questions which are asked before the questions enquiring into the actual grounds for persecution, had already been dealt with at an earlier date (HR 13). However, a calendar (in interviews involving applicants from countries using a different calendar) was always at hand, and often the adjudicators seemed to know quite well the regions and towns mentioned by the applicant when describing where something happened or which route they had travelled. In ADA in Greece, during the 49 interviews observed, no interviewer asked any specific question which was indicative of prior knowledge of the relevant circumstances relating to the application, and country of origin maps were not referred to. In Slovenia, the inspectors who conduct the meeting to complete the application only asked the standard questions on the form and a few follow-up questions. No research was previously undertaken. In Spain, it appeared that no specific research is undertaken prior to the meeting to complete the application.

²³⁰ E.g. LIVint13.3.09 in the UK.

²³¹ The Czech Republic, interviewer E.

determining authority assesses that there are inconsistencies or discrepancies between the applicant's statements and COI or other information gathered following the personal interview, a second interview should be scheduled in order to give the applicant an opportunity to explain these inconsistencies.

Recommendations

Pre-interview preparation should be a specific and mandatory step in the interview process. Such preparation should include a thorough review of the applicant's case file and relevant country of origin information.

Member States must ensure that interviewers receive adequate information relating to the application and any special needs of the applicant sufficiently in advance of the scheduled interview. Interviewers should be assured sufficient time to prepare the interview.

Preparing the applicant for the personal interview

The personal interview will be more effective if the applicant understands the purpose and significance of the interview, the roles of those present, and his/her rights and obligations with regard to the conduct of the personal interview. In accordance with Article 10 (1) (a) APD, all applicants must be informed in a language which they understand of the procedure to be followed as well as their rights and obligations during the procedure. This should, therefore, encompass information regarding the purpose and conduct of the personal interview.

UNHCR has noted that all Member States have developed an information brochure for applicants which includes information on the personal interview.²³²

It is evident that any such information brochure needs to be given to the applicant at the earliest possible opportunity, and in advance of the personal interview, if it is to serve its purpose. The determining authorities of some Member States informed UNHCR that this information brochure should be given to the applicant at the time s/he applies for international protection (Belgium,²³³ Bulgaria,²³⁴ the Czech Republic, Finland, France,²³⁵ Germany²³⁶, Greece,²³⁷ Italy,²³⁸ the Netherlands²³⁹ and the UK²⁴⁰); and/or is

²³² Belgium (two brochures provided by the AO and the CGRA), Bulgaria, the Czech Republic, Germany, Greece, Finland, France, Italy, the Netherlands (a number of brochures depending on the procedure), Slovenia, Spain, and the UK.

²³³ Article 3 of the Royal Decree of 11 July 2003 concerning the CGRA.

²³⁴ This constitutes a minimum of 14 days in advance of the personal interview in the accelerated procedure, but a minimum of 3 days if it is a subsequent application.

²³⁵ This is the role of *Prefectures* not the determining authority, OFPRA.

²³⁶ The applicants receive the leaflet "*Important Information*" which contains information about the duties of the applicant as well as the asylum procedure, including information concerning the conduct of the

disseminated in the reception centres by partner NGOs or the personnel running the reception centre in advance of the personal interview (Belgium,²⁴¹ Finland and Slovenia). Within the remit of this research, UNHCR was unable to verify to what extent this occurs in practice in all these Member States.²⁴² However, some deficiencies were brought to UNHCR's attention. For example:

- In France, it was reported to UNHCR that the information brochure for applicants is not always given to applicants by the *Prefectures* and practice may vary from one *Prefecture* to another.²⁴³ An updated version of the information brochure should be available shortly and steps should be taken to ensure that all *Prefectures* systematically distribute these brochures to all applicants.
- During UNHCR's observation of 49 registrations and interviews²⁴⁴ at ADA in Athens, only seven applicants were given the information brochure and this occurred after the conclusion of the personal interview.²⁴⁵
- In Greece, the information brochure was produced in 2005 and had not been updated to take into account more recent legislative changes.
- In Italy, at the time of this research, the updated information brochure for applicants reflecting recent legislative changes was only available online in Italian as translation and publication in other languages had not yet been finalized. As a consequence, some police officers reported that they were not supplying

personal interview. The applicants confirm by signature that they have received the information. According to information from the determining authority, this is handed out to applicants either in person after they have filed their application or sent to them by mail, if the application has been made in writing (if possible in the respective case). No information on actual practice throughout the country could be gathered.

²³⁷ According to ADGPH's internal circular, the leaflet '*Basic information for asylum seekers*' should be disseminated by the Aliens Directorates and Security Departments at the start of the procedure.

²³⁸ Article 10 (1) and (2) of the d.lgs 25/2008 explicitly stipulates that an information brochure should be produced and that at the time of lodging the application, the applicant should be provided with information on the procedure and his/her rights and obligations.

²³⁹ Article 3.43a Aliens Regulations.

²⁴⁰ The '*Points Claim*' leaflet should be given to applicants at the screening interview.

²⁴¹ At the time of writing (21 July 2009), due to an acute shortage of capacity in the open reception centres which has necessitated the use of temporary emergency accommodation and the heavy workload on the staff of Fedasil who run the reception centres, social assistants have not been able to provide guidance to applicants or ensure the assignment of legal assistance. Therefore, the scheduling of personal interviews for new applicants had been temporarily suspended.

²⁴² In the Netherlands, at the time of writing, the IND was running a pilot to see if this happens in practice.

²⁴³ Information provided in interviews with NGOs.

²⁴⁴ Note that a 'full' interview including a question regarding the reasons for applying for international protection was omitted in 10 cases.

²⁴⁵ According to interviewees S8 and S9, applicants are not given the information brochure when they register their names and nationalities at ADA on Saturdays.

applicants with the out-dated information brochure any longer and were awaiting the new brochures. However, by the time of writing, in autumn 2009, the brochure had been translated into 10 languages and was posted on the website of the Ministry of Interior.

- In Spain, at OAR in Madrid, applicants are only given the information brochure (if available in a language which the applicant understands) while they wait in the waiting room before the interview. The most significant consequence of this is that the applicant is not informed of the right to have legal assistance until the beginning of the interview, which means that if s/he wants a lawyer to be present at the interview, the interview has to be postponed. In practice, applicants do not postpone the interview as this would result in them not being registered and documented as applicants for international protection; therefore, they do not receive legal advice prior to the interview to complete the application.²⁴⁶

There are clearly some inherent constraints with the use of written brochures to convey information about the personal interview. Firstly, the information brochures need to be made available in the multiple languages of applicants if they are to be independently accessible by applicants. UNHCR has noted that the Member States of focus have taken steps to produce their information brochures in between five and 19 foreign languages, depending on the Member State.²⁴⁷ Exceptionally, in Germany, the information leaflet of the determining authority is available in 58 languages.²⁴⁸ Moreover, the service of an interpreter is foreseen in case of need.²⁴⁹ Also in the Netherlands, the information brochure produced by the Dutch Refugee Council is published in 32 foreign languages. Clearly, given the extent of the languages spoken by applicants, in those Member States where the information is only available in five to nine foreign languages, this will not always satisfy demand.²⁵⁰

²⁴⁶ Note that this was not the practice in Barcelona, Valencia or Melilla where UNHCR were informed that applicants are referred to the legal services of specialized NGOs, to complete the application before the meeting.

²⁴⁷ In Belgium, the recent CGRA information brochure is available in 8 languages. The AO brochure is available in 19 languages and the AO is preparing additional language versions. In Bulgaria, 'The Instructions' are available in 17 languages. In Finland, the brochure is available in 9 languages. In France, the recently updated brochure will be available in 6 languages (including French). In Greece, the information leaflet is available in 6 languages (including Greek). In Italy, the new brochure will be available in 9 languages. In the Netherlands, the brochures are available in 11 foreign languages but the brochure of the Dutch Refugee Council is available in 32 foreign languages. In Slovenia, the brochure is available in 9 languages. In Spain, the brochure is available in 11 languages (including Spanish). In the UK the brochure is available in the 17 main asylum-seeker languages.

²⁴⁸ Information provided by the determining authority.

²⁴⁹ At the end of the leaflet the applicant states in which language the content has been translated by the interpreter and confirms that s/he has understood the content. The interpreter also signs the document. No reliable information could be gathered with regard to practice.

²⁵⁰ For example, UNHCR observed two cases at Madrid Barajas airport where the information brochure was not given to two applicants because it was not available in Somali. In Greece, the information

Furthermore, some applicants may be illiterate or may have limited literacy skills and/or education. It is critical that the style of language used in the information brochure is not too technical or legalistic; otherwise it may be inaccessible for some applicants.²⁵¹

In order to ensure, as far as possible, that applicants understand the purpose and significance of the personal interview, its conduct, and their rights and obligations during the interview, it is, therefore, essential that Member States supplement any written brochures with the systematic provision of oral information at the earliest point in the procedure and, at least, before the personal interview.

In Italy, oral information and a written leaflet providing basic information was given to persons arriving in Lampedusa. This was an initiative of the Praesidium project, an EC-funded project coordinated by the Ministry of Interior and implemented by UNHCR, the International Organization for Migration (IOM), Save the Children and the Red Cross until May 2009.²⁵²

The determining authorities of some Member States informed UNHCR that information is orally provided to applicants in advance of the personal interview at reception or application centres.²⁵³ However, it is important to note that reception centres may not accommodate all applicants. For example, in France, applicants whose applications are processed in the accelerated procedure do not have access to the reception centres. Some *départements* have 'reception platforms' which offer an alternative source of information but state funding for a number of these 'platforms' was cut in 2007 and, therefore, they are not universal. Also, in Italy, the personnel of some reception centres informed UNHCR that there was a lack of human resources to ensure that all applicants are adequately informed, although specialized NGOs funded by the government are present in the reception centres to provide legal and psycho-social support and information. In this respect, the practice in Finland may serve as a possible model. There, a specialized NGO holds information meetings in the reception centre which are offered to all applicants and is funded by the Finnish Ministry of Interior. Also, in the Netherlands, the Dutch Refugee Council provides information in the TNVs and at the application centres.²⁵⁴

brochure is not available in a number of the more common languages of applicants. The Head of ARD informed UNHCR that the information brochure will be translated into more languages (interview with S1).

²⁵¹ According to NGOs, although the information brochures provided in Belgium are of good quality and near exhaustive, the language used may be too technical for some applicants to understand fully.

²⁵² This project continues at places of arrival in Sicily.

²⁵³ In Belgium and France, staff at the reception centres provide the information.

²⁵⁴ It should be borne in mind that these are volunteers who do not always have a legal background and may not always be available.

Before initiating the personal interview, the interviewer should again explain the purpose and significance of the interview, how it will proceed and the roles of those present with the applicant. UNHCR was informed by the determining authorities in some Member States that the interviewer, before initiating the interview, should inform the applicant of the purpose of the interview, or check that the applicant has understood the purpose of the interview based on information previously provided.²⁵⁵ This was done on a standard basis in all the interviews that UNHCR observed in Finland, Germany²⁵⁶ and Slovenia.²⁵⁷

However, based on UNHCR's observation of personal interviews and based on interviews with stakeholders, this was not always done, or practice was varied in interviews observed in other Member States.²⁵⁸ In Greece, of the 52 interviews observed, in only four was the applicant orally informed of the purpose of the interview.²⁵⁹ In Spain, in OAR in Madrid, UNHCR observed that the standard form providing information to the applicant is read either by the interviewer in Spanish or by the interpreter, without the presence of the interviewer, before the interview begins.²⁶⁰ But in Valencia and Barcelona, the form was read and signed at the end of the interview; and in Melilla, it was not read but given to the applicant to sign at the end of the interview.²⁶¹ No information was provided about the significance and purpose of the interview before the interview, as it appeared to be assumed that the assisting NGO had already done this.

²⁵⁵ Belgium (in accordance with Article 15 of the Royal Decree of 11 July 2003 concerning the CGRA), Bulgaria, the Czech Republic, Finland, France, Germany, Greece (ADGPH internal circular), Italy (in Italy, just prior to the start of the interview, the applicant is provided with a document, read by the interpreter, which provides basic information on the interview), Slovenia, Spain, and the UK.

²⁵⁶ This was also noted down in a standardized form at the beginning of the hearing report. Applicants are also asked whether they received and understood the leaflet "*Important Information*".

²⁵⁷ However, in some interviews observed the information provided was very brief and in others very long and applicants were given irrelevant information such as how to apply for international protection from a consular or diplomatic representation, notwithstanding the fact that they were in-country and had already initiated the process of application. In two cases, the information provided was not tailored to take into account the applicant's age, education and cultural background (Cases No. 1-2009 and 7-2009). At the time UNHCR observed interviews, the so-called "information sessions" were provided by inspectors of the determining authority. This was due to the fact that an NGO-run project, funded by the ERF, to provide information to all applicants prior to the initiation of the procedure was not in operation at the time of UNHCR's field research, because of a gap in contract periods. These information sessions would provide information on the applicant's rights and obligations, and would prepare the applicant for the personal interview.

²⁵⁸ Interviews with case managers in Belgium on 19 & 20 March 2009, interview with NGOs, 25 March 2009, and interview with lawyers, 26 March 2009. The CGRA is aware of the fact that not all case managers provide the same information during the interview, and is working to address this. In France, officers usually informed the applicant briefly of the purpose and format of the interview, but not always.

²⁵⁹ One interview at the ADA in Athens, one interview at the SDAA and two interviews at the SDS.

²⁶⁰ Case No. 0501001, 0401009, 0501010, 1001020, and 0201037.

²⁶¹ Case No. 1101140. The applicant did not understand Spanish.

Where appointed, lawyers may be able to provide information about the procedure, including the personal interview.²⁶² In the UK, applicants receive a letter inviting them to their personal interview. The letter sets out, in English, the purpose and significance of the interview. A copy is sent to the legal representative, if the applicant has one, asking them to ensure that the applicant understands the content of the letter.

However, some constraints have been reported regarding the provision of legal assistance. In the Netherlands, the timetable of the procedure does not allocate time for the applicant to meet with a legal advisor before the initial interview is held. However, all applicants are appointed a legal counsellor who is on duty at the application centre. The legal counsellor has two hours to discuss with the applicant the initial interview after its completion, and to prepare for the detailed personal interview. In Belgium, the time schedule of the accelerated procedure in the closed reception centres reportedly does not allow for the applicant to be prepared for the personal interview by the lawyer.²⁶³ Lack of funding meant that the Bulgarian Helsinki Committee had to suspend its legal advice service based in the RRC-Sofia for the first six months of 2009. And in Finland, legal representatives rarely attend the personal interviews conducted in the offices on the Russian border.

In Belgium, the determining authority is working closely with the governmental agency for the reception of asylum seekers, Fedasil, to develop an audio-visual DVD in eight languages which can be shown to all applicants for international protection in the reception centres. The DVD will be distributed to the reception centres in 2010 with an information brochure.²⁶⁴ A similar initiative has been taken in Italy, where a DVD entitled "*Asking for international protection in Italy*" has been made by UNHCR and the Association of Legal Studies on Immigration and Asylum coordinated by SPRAR.²⁶⁵ The DVD is translated into nine languages.

However, UNHCR's research, based on the observation of interviews, found that notwithstanding the arrangements in place in Member States to explain the personal interview and the procedure to applicants, applicants may not always be aware of the procedure and significance of the interview for the determination of their application. For example:

- During one interview observed in Bulgaria, at the end of the interview, the applicant was invited to ask any questions. S/he asked what had been the

²⁶² Belgium, Finland, and the Netherlands. In Finland, an extensive guide which covers the role of reception centres and legal representatives in preparing the applicant for the interview was published following a joint ERF-funded project of the Refugee Advice Centre and the Immigration Services in 2008.

²⁶³ Interview with lawyers, 26 March 2009.

²⁶⁴ Information from communication, information and press unit at the CGRA, 23 April 2009.

²⁶⁵ This was produced in the context of a project called *In/formazione* (training and information).

purpose of this conversation, demonstrating that s/he had not understood the significance of the interview.²⁶⁶

- In two interviews observed in Italy, the applicant was explicitly asked by the interviewer if s/he understood what it meant to apply for asylum. In both cases, the applicant replied in the negative.²⁶⁷
- In one case observed in the Czech Republic, the applicant was not informed at all about the interview and his rights and obligations, although it was still recorded in the case file that he had been informed. In one case, part of the information given by the interviewer was not translated by the interpreter, but it was recorded in the case file that this information had been given.
- In Germany, concerns were raised by consulted stakeholders that some applicants in fact do not fully understand the purpose and significance of the interview, despite the explanations and information given to them before and at the outset of the interview. Different reasons have been mentioned: excitement and level of education of the applicants, information is given in a formalized language and information is “rattled off”.²⁶⁸

Recommendations

Member States should ensure that all applicants are informed in a language they understand, and at the earliest possible point in the procedure, of the purpose and significance of the personal interview, the format of the interview and their rights and obligations during the personal interview. This information should be provided sufficiently in advance of the scheduled interview so that the applicant has time to prepare for the interview, taking into account any special needs. Article 10 (1) (a) APD should be amended to this effect.

UNHCR suggests that Member States review their procedures for the distribution of information brochures to applicants and ensure that this be done systematically at the earliest possible point in the procedure.

Any written information produced for this purpose should be available in the languages of the main countries and/or regions of origin of applicants, and written in a style which is accessible. UNHCR encourages determining authorities to explore other methods of imparting this information, such as the use of DVDs.

²⁶⁶ Interview 9.

²⁶⁷ I/11/M/CDA and I/12/M/NIG.

²⁶⁸ Lawyers: X1, X2, X3, and interpreter: INTX.

UNHCR recommends that the purpose, significance, and an outline of the structure of the interview, the roles of those present and the applicant's rights and obligations during the interview should be explained orally to the applicant by the interviewer at the start of every interview. A standard text should be developed for this purpose to ensure uniformity in the provision of information.

Applicants should have an effective opportunity to consult a legal adviser prior to the personal interview.

Explaining the interview to children

Children who are to be interviewed also need to be informed in advance of the purpose, significance, timing, format and consequences of the personal interview but in a way which is appropriate for their age and level of maturity. The importance of being truthful, and providing as much information as possible, should be explained in a way the child can understand.²⁶⁹

Article 17 (1) (b) APD states that Member States must ensure that the appointed representative of an unaccompanied child is given the opportunity to inform the unaccompanied child about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare him/herself for the personal interview.

The scope of this research meant that UNHCR did not assess the preconditions of Article 17 (1) (b) APD as such, but only dealt with matters of unaccompanied children when the issue came up in the framework of the research. However, some difficulties were highlighted by stakeholders, and are therefore mentioned below, although they do not represent a comprehensive picture of the situation in the surveyed Member States.

In a number of Member States, delays in the appointment of a representative may mean that there is not sufficient opportunity for the representative to explain the purpose and conduct of the interview to the child.²⁷⁰ In a couple of the case files audited

²⁶⁹ Paragraph 4.3.7 UNHCR Procedural Standards for RSD under UNHCR's Mandate, September 2005. See also UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997 and Refugee Children: Guidelines on Protection and Care, 1994.

²⁷⁰ The Czech Republic, Greece and Italy. In Italy, it can take up to three or four months to appoint a legal guardian instead of the two day time limit foreseen in law. In Greece, stakeholders informed that in practice the appointed representative rarely meets with the minor before the latter has the personal interview. Moreover, according to the determining authority in Germany, problems may arise, inter alia, with regard to the time span needed for the appointment of legal guardians, the actual time guardians have to fulfill their tasks (depending in particular on the amount of cases the guardian is responsible for) as well as the process of identification of children. However, since neither interviews nor case files of unaccompanied minors were evaluated, these issues were not reported in the framework of this research. With regard to the practice concerning issues of unaccompanied minors, please refer also to the findings

in Italy, the application for international protection had been submitted without the assistance of an appointed representative, or the representative had confirmed the application just one day before the personal interview.²⁷¹ In four out of six case files audited in the Czech Republic concerning unaccompanied children, it was clear from the case files that the representative was appointed on the same day as the asylum application was lodged.²⁷² In addition, appointed representatives can sometimes reside a considerable distance from the child – for example, five hours' travelling distance – making it difficult for the representative to meet with the child before interview.²⁷³

Furthermore, the appointed representative may not always be appropriate for the role.²⁷⁴ For example, in Italy, the city councillor may be appointed as legal representative and may have very little time to spend preparing the child for the procedure, although in most cases, the city councillor delegates to a social assistant.²⁷⁵ In Bulgaria, in theory the appointed representative (a social worker) can meet with the child to explain the personal interview in advance. In practice, however, this does not happen due to the workload of social workers and the fact that they lack the necessary knowledge due to constant changes in personnel.²⁷⁶

UNHCR was also informed of concerns that unaccompanied children may not always be identified as children and, therefore, would not benefit from any procedural guarantees in place for children.²⁷⁷ In one of the case files UNHCR audited in the UK, the legal representative complained about the conduct of the interview and about the determining authority's initial decision that the applicant was not a child. The applicant's interpreter was excluded from the interview, and a request for an

of the ASQAEM Project (implemented in Germany mainly in 2009) which had a special focus on the asylum procedures of these applicants.

²⁷¹ D/68/F/NIG/N and D/70/M/IRQ/S respectively.

²⁷² X014, X016, X024 and X040.

²⁷³ The Czech Republic.

²⁷⁴ See UNHCR's Comments on the European Commission's Proposal for a recast of the Directive laying down minimum standards for the reception of asylum-seekers (COM (2008) 815 final of 3 December 2008, March, 2009, pg.12, where UNHCR has recommended that a guardian should have the necessary expertise in the field of childcare so as to ensure that the interests of the child are safeguarded, and that the child's legal, social, health, psychological, material and educational needs are appropriately covered. Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship.

²⁷⁵ It has been argued (Olivetti, 2008) that there may be a risk of a possible conflict of interests for the municipalities involved in unaccompanied minor's guardianship, as mayors cooperate with the administrative bodies in charge of repatriating unaccompanied minors and *"may be influenced by the opportunity to favour their repatriation to their country of origin, instead of confirming the minors' applications for asylum in Italy, especially when considering that mayors are the authority responsible for the management of public funds needed for the accommodation and reception of the same unaccompanied minors"*.

²⁷⁶ Information received from interviewers.

²⁷⁷ Greece. Note that there is no mechanism for carrying out an age determination in Greece and the determining authority registers the age as claimed by the applicant: interview with S8.

interpreter of the applicant's gender was ignored. Translations subsequently appearing in the interview record of words used to describe family relationships were challenged by the legal representative. The authority's initial age assessment was also challenged: it had been made in spite of the applicant's passport and a Social Services' age assessment both indicating that the applicant was under 18. Following these challenges, the age assessment was changed.²⁷⁸ Research carried out in 2007 revealed concerns about the extent to which the determining authority disputed the age of applicants, with the result that they did not benefit from policies provided for children.²⁷⁹ Since then, policies have been under review.²⁸⁰

Recommendation

Member States must ensure the timely appointment of an appropriate and qualified representative for every unaccompanied child. It should be a requirement that the personal interview of a child cannot proceed unless the representative has had the opportunity to inform the child of the purpose, significance, format and possible consequences of the personal interview.

Specific measures for children

The environment, tone, language and conduct of the personal interview with children should be age-appropriate and sensitive to their special needs. Special emphasis should be placed on putting the child at ease and developing a relationship of trust. Therefore, the environment and tone of the interview should be as informal as possible.²⁸¹

The personal interview should be conducted by specifically trained professionals.²⁸² It should be conducted in an informal child-friendly environment that accommodates the special needs of the child and in which s/he feels secure and comfortable, for instance an interview room designed for children. The personal interview should be scheduled at an appropriate time of day, taking into consideration the age and maturity of the child. Its duration should also be appropriate, with regular breaks taken. All interactions with children should take place in a language that the child uses and easily understands, and which is appropriate taking into account the child's age and intellectual maturity.²⁸³

²⁷⁸ DAF42.

²⁷⁹ Crawley H., *When is a Child not a Child? Asylum, age disputes and the process of age assessment* ILPA, May 2007.

²⁸⁰ In March 2009, the remit of the Refugee Council's Children's Panel was narrowed so that it no longer includes age dispute cases: letter from Chief Executive, British Refugee Council to stakeholders, 4 March 2009..

²⁸¹ Paragraph 4.3.7 of UNHCR Procedural Standards for RSD under UNHCR's Mandate, September 2005.

²⁸² See above for further information on training of interviewers.

²⁸³ See paragraph 14 of UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, 2005 (Res. 2005/20).

Only a few of the Member States of focus in this research have specific guidelines on interviewing children: Belgium,²⁸⁴ Finland,²⁸⁵ the Netherlands²⁸⁶ and the UK.²⁸⁷ In these Member States, the determining authorities have taken specific steps to ensure that the interview of children takes place under conditions which are child-friendly. Practical steps to this end are also undertaken in Germany.²⁸⁸

For example, the determining authority in Belgium has developed a cartoon to explain the asylum procedure to children.²⁸⁹ Furthermore, in Belgium, the determining authority has six specially designed and furnished child-friendly interview rooms.²⁹⁰ In the Netherlands, the unit for unaccompanied children has a special hearing area with a separate television area where the legal representative can observe the interview. In the Czech Republic, the interview of children is reported to take place in the special accommodation centres for children.²⁹¹

UNHCR has been informed by the determining authorities that interviews are conducted by specially trained staff in Belgium, Finland, Germany, the Netherlands and the UK. However, due to the fact that the transposition and implementation of Article 17 APD on guarantees for unaccompanied minors did not fall within the scope of this research, UNHCR did not observe interviews involving unaccompanied children.

UNHCR was also informed that all interviews of unaccompanied children in the Netherlands are both audio and video recorded, and that specific question templates have been developed for children over 15 and children under 15 years of age in Finland.

With the exception of the presence of the appointed representative at the personal interview, UNHCR is concerned to note that in Bulgaria, France, Greece,²⁹² Italy, Slovenia and Spain, no specific measures are taken for the personal interview of children.

²⁸⁴ Presentation of the examination of asylum applications by the CGRA (evaluation of the new asylum procedure before the Senate), March 2009.

²⁸⁵ *Yksintulleiden alaikäisten turvapaikanhakijan haastatteluohjeistus* (Guidelines on Interviews with Unaccompanied Minors), Ulkomaalaisvirasto 2001.

²⁸⁶ Protocol on interviewing unaccompanied minors under the age of 12.

²⁸⁷ API on *Processing Claims for Children* (07 March 2007, last updated 02 November 2009).

²⁸⁸ According to the determining authority, specific steps are taken for child-friendly interviews (in addition to the conduct by specially trained staff), e.g. by using a language appropriate to the child. With regard to the practice concerning issues of unaccompanied minors, please refer also to the findings of the ASQAEM Project.

²⁸⁹ Presentation of the examination of asylum applications by the CGRA (evaluation of the new asylum procedure before the Senate), March 2009.

²⁹⁰ Interview with operational coordinator of the CGRA on 25 February 2009.

²⁹¹ A social worker from the accommodation centre may accompany a child at the interview; interview with Head of Asylum Unit, 7 April 2009.

²⁹² In spite of exemplary legislation which provides that "*When minors are concerned, the personal interview shall be conducted taking into consideration their maturity and psychological consequences of any traumatic experience,*" No. specific measures are taken for the personal interviews of children in practice (Article 3 PD 81/09). Children are interviewed in the same rooms and in the same conditions as

Recommendation

UNHCR recommends that EU-wide guidelines on the personal interview of children are adopted and implemented. UNHCR would be available to play an advisory role in the elaboration of such guidelines.

Specific measures to address special needs

Member States should have measures and procedures in place to identify, as early as possible in the procedure, and refer as appropriate, applicants who have special needs. An initial or screening interview and reception procedures may provide an opportunity to identify applicants who have special needs. However, an applicant's special needs may not become evident until during the personal interview.

Interviewers should be aware that the following are applicants who may be vulnerable or have special needs which need to be taken into account during the personal interview:

- Victims of torture, sexual violence and persons suffering post-traumatic stress disorder;
- Women with special needs;
- Children under the age of 18;²⁹³
- Elderly applicants;
- Applicants who have a disability; and
- Applicants with mental or physical health problems.

Before initiating the personal interview, interviewers should ask whether the applicant feels physically and psychologically fit for the personal interview.²⁹⁴ If the applicant indicates that s/he does not feel well, the interviewer should ask follow-up questions to assess the nature of the problem. Similarly, if after initiating the personal interview, the interviewer has reasons to doubt whether the applicant is fit for the personal interview, the interview should be suspended. In both cases, the interviewer must assess whether or not it is appropriate to proceed with the personal interview or whether other action is required, for instance, a referral to a medical expert and/or counselling and support services.²⁹⁵ This requires determining authorities to have

other applicants. Note, however, that the applications of children are not examined in the accelerated procedure.

²⁹³ See sub-section above for further information.

²⁹⁴ UNHCR was concerned to observe that at ADA in Athens, Greece, interviewers routinely stated in writing in the record of the interview that the applicant was in good health and physical condition without having asked the applicant about his/her health.

²⁹⁵ Paragraphs 205, 208 and 212 of UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, 1991.

appropriate referral processes in place. Women who have or may have experienced sexual or domestic violence may require referral as necessary, and steps should be taken to seek to ensure a gender-sensitive interview.²⁹⁶

The determining authorities of only a few Member States were reported to have guidance in place regarding the treatment of persons with special needs: Belgium, Finland²⁹⁷ and the UK.²⁹⁸ However, UNHCR, within the scope of this research, was not able to assess the quality of these guidelines or the extent to which they are implemented in practice.²⁹⁹

UNHCR was informed by the determining authority in Belgium that it has a 'gender cell', comprising a coordinator and a case manager in each geographic section. The coordinator ensures that the case managers have appropriate guidelines for the examination of applications by women and ensures that these are implemented and applied in practice. Moreover, s/he ensures that relevant international and national case law relevant to applications by women are distributed to case managers, and that the geographic sections inform the coordinator of their needs with regard to gender.³⁰⁰

In Germany, specially trained staff interview victims of sexual violence and torture, traumatized applicants, and unaccompanied minors.³⁰¹ Moreover, the determining authority informed UNHCR that all staff conducting interviews has been sensitized to identify indicators that an interviewee has special needs.³⁰²

In Italy, the National Commission has facilitated the creation of a network of experts in the public sector to whom the determining authority can refer, when applicants with special needs are identified prior to or during the personal interview.³⁰³

²⁹⁶ See sub-section below for further information.

²⁹⁷ Administrative Asylum Guidelines and the guide produced following the ERF-funded joint project of the Immigration Services and Refugee Advice Centre both provide guidance on interviewing persons with special needs.

²⁹⁸ The API on Interviewing contains a section on '*Interviewees requiring particular care*'. There is a separate API on *Gender Issues in the Asylum Claim*, October 2006.

²⁹⁹ Concerns have been expressed in the UK that guidelines on gender are not followed in practice. See "Lip Service" or implementation? The Home Office Gender Guidance and women's asylum claims in the UK March 2006: UNHCR 4th Quality Initiative Report.

³⁰⁰ Presentation of the examination of asylum applications by the CGRA (evaluation of the new asylum procedure before the Senate), March 2009.

³⁰¹ See for instance Internal Guidelines for the Asylum Procedure, under "*Adjudicator with special tasks*" (1/3) – (3/3). It should also be noted that it is standard practice to ask applicants at the outset of the interview whether they feel fit for the interview.

³⁰² The determining authority also informed UNHCR that in case such indicators are identified, the adjudicator shall inform the applicant (again) that specially trained interviewers (so-called "*Sonderbeauftragte*") are available. The conduct of the interview by one of these "*Sonderbeauftragte*" needs to be noted down in the hearing report.

³⁰³ NIRAST project.

In the course of this research, UNHCR did observe some interviews where applicants with special needs were treated with sensitivity.³⁰⁴ However, UNHCR also audited a record of a personal interview of a female child which revealed a lack of appropriate action. The interviewer was male and the child's father was present as her legal guardian. The applicant asked for her mother to be present instead of her father. She stated repeatedly that she was the daughter of her mother, not her father. The interview only took a few minutes and only four questions were asked. The transcript stated that the applicant was unable to respond to questions and that her father was unable to understand what she was saying. A decision on the application was taken on the basis of this short interview. The interview was not postponed for the applicant to be referred to a medical expert or to a counsellor for an assessment. And the interview was not re-scheduled to take place without the presence of her father.³⁰⁵

UNHCR was informed that there are no specific guidelines regarding the treatment of persons with special needs in the Czech Republic, France, Greece,³⁰⁶ Italy, the Netherlands, Slovenia, and Spain.

Recommendation

UNHCR recommends that EU-wide guidelines on the personal interview of persons with special needs are adopted and implemented in all Member States. UNHCR would be available to play an advisory role in the elaboration of such guidelines.

Gender-sensitive interviews

The gender of the applicant should be taken into account when assigning a case file to an interviewer and appointing an interpreter. A woman may be reluctant, or find it difficult, to talk about her experiences to a male interviewer and/or through a male interpreter. This may especially be the case where these experiences relate to, for example, sexual violence.

UNHCR's Procedural Standards and guidance on interviewing state that, if at all possible, female applicants should be interviewed by a female interviewer and female interpreter

³⁰⁴ An interview in Bulgaria where the applicant who had mild mental health problems was treated with sensitivity. Similarly, UNHCR observed two interviews in Slovenia where elderly applicants were treated with sensitivity: the interview room was warmed in advance, breaks were offered, a nurse was called to treat an eye complaint and questions were adapted to aid understanding; application No. 2-2009 and 3-2009.

³⁰⁵ X008, the Czech Republic.

³⁰⁶ Article 10 (12) of the law (PD 90/2008) states that "If, there are strong indications during the interview that the applicant has been submitted to torture, s/he shall be referred to a specialized medical centre, or a doctor or a psychologist of a public hospital, who shall make a report on the existence or not of injuries of maltreatment or of indications of torture." However, in practice, it was reported that there is no referral procedure and that the situation is worse since the suspension of operations of the independent and specialist Medical Centre for Rehabilitation of Victims of Torture.

(where an interpreter is required).³⁰⁷ Gender-appropriate interviewing will enhance the fact-finding potential of the interview, but this becomes particularly important when the application indicates that gender issues may be raised in the personal interview.

UNHCR has been informed that in no Member State of focus in this research is the provision of a same-sex interviewer and interpreter mandatory. Moreover, the provision of a same-sex interviewer *and* interpreter is not mandatory or automatic, even for applications which raise the issue of sexual violence. Exceptionally, legislation in the Czech Republic does require the provision of an interviewer of the same sex “*for reasons that require special consideration or upon explicit request of the applicant*”, but provision of an interpreter of the same sex is conditional upon availability.³⁰⁸

UNHCR was informed that in some Member States, the competent authorities formally ask applicants at an initial or screening interview whether they have a preference with regard to the sex of the interviewer and interpreter at the personal interview: Belgium, the Netherlands³⁰⁹ and the UK.³¹⁰ The authorities stated that they seek to satisfy any such request as far as possible.³¹¹ Moreover, in accordance with Belgian law, if the case manager considers that the persecution alleged by the applicant may be related to his/her sex, at the beginning of the interview, the case manager should check whether the applicant has any objections to the interview being conducted by a person of the opposite sex.³¹² In the Netherlands, in the personal interviews that UNHCR observed,

³⁰⁷ Paragraphs 2.5.1 and 4.1.1 of UNHCR Procedural Standards for RSD under UNHCR’s Mandate, 1 September 2005 and Interviewing Applicants for Refugee Status, 1995.

³⁰⁸ Section 23 (3) ASA states that: “*For reasons that require special consideration or upon an explicit request of the applicant for international protection, the Ministry shall arrange that the interview shall be conducted and, if feasible on the part of the Ministry, interpreting shall be provided by a person of the same gender.*” See below – this may not always be implemented in practice.

³⁰⁹ C3/3.1.1 Aliens Circular is applicable in the regular procedure and provides that a female applicant should be informed about the possibility to be interviewed by a female in the presence of a female interpreter. In observations of initial interviews, UNHCR observed that applicants are asked if they have a preference regarding the gender of the interviewer and interpreter for the detailed interview.

³¹⁰ UNHCR 5th Quality Initiative Report paragraph 2.4.31 (March 2008).

³¹¹ In the UK, the guidelines ‘API Conducting the Asylum Interview: *Requests for a Same Sex Interviewing Officer*’ states that this request should be accommodated as far as possible, especially if the request has been made in advance of the interview. If an applicant refuses to go ahead without a same-sex interpreter, the interview will only be postponed if a same-sex interpreter could be provided in future, and it is clear that failure to provide such an interpreter would adversely affect the applicant’s ability to advance a full and accurate account.

³¹² Article 15 of the Royal Decree of 11 July 2003 concerning the CGRA states that when there are reasons to assume that the persecution suffered by the applicant is related to his/her sex, the case manager should check whether the applicant has any objections to being interviewed by a person of a different sex. If so, the applicant is assured a hearing by a case manager of the same sex. Article 20 (2) of the Royal Decree also requires the CGRA to take the specific situation of the applicant into account when appointing an interpreter. Article 21 of the Royal Decree states that the applicant can request another interpreter at the beginning of the interview as well as during the interview. If the applicant has a valid reason for requesting another interpreter, the interview will be stopped and will resume with another interpreter or will be rescheduled.

also at the end of the interview, the applicant was asked whether the sex of the interviewer and interpreter had prevented the applicant from giving a full account. From the templates of the detailed interview, provided by INDIAC, it is standard to raise these questions at the end of the interview.

In Germany, the information leaflet provided to applicants at the outset of the procedure informs female applicants of the possibility to request a female adjudicator and that in such cases the interview will also be carried out with the assistance of a female interpreter (if possible).³¹³

The determining authorities of the other Member States of focus in this research reported that, upon request by the applicant (or sometimes upon the request of the reception centre which accommodates the applicant³¹⁴), the determining authorities would try to appoint an interviewer and interpreter of the same sex: Bulgaria,³¹⁵ the Czech Republic,³¹⁶ Finland,³¹⁷ France, Greece,³¹⁸ Italy,³¹⁹ Slovenia³²⁰ and Spain.³²¹

³¹³Information leaflet “*Important Information*”. A corresponding remark is also contained in the Internal Guidelines for the Asylum Procedure (“Female-specific persecution” (1/1)). The respective paragraph of the English information leaflet reads as follows: “**Notes for women and girls, as well as for the parents of daughters:** *Insofar as may be required by you for personal reasons, the hearing can be carried out or continued by a [...] female decision-maker - as far as possible with the help of a female interpreter. The Federal Office has [...] female decision-makers specially trained in the field of sex-specific violations of human rights (e.g. rape, other types of sexual abuse, impending mutilation of the genitals). If you wish your hearing to be carried out by such a female person, please inform the Federal Office in good time before the hearing*”. In both interviews attended by UNHCR in which gender and sexuality issues played a role (rape, homosexuality), the interviewer and the interpreter were of the same sex as the applicant. However, according to stakeholders, the request for an adjudicator of a certain sex is not always satisfied (X2, INTX).

³¹⁴ In France.

³¹⁵ In Bulgaria, Art. 63a (4) LAR

³¹⁶ Section 23(3) ASA: “*For reasons that require **special consideration** or upon an explicit request of the applicant for international protection, the Ministry shall arrange that the interview **shall be conducted and, if feasible on the part of the Ministry, interpreting shall be provided by a person of the same sex.***” Confirmed by the Head of Asylum Procedure Unit, interview 7 April 2009. There was some evidence of this in case file X026, according to which a female applicant who alleged forced marriage requested to be interviewed by a female interviewer. Another interview took place with a female interviewer.

³¹⁷ It is the legal representatives who make the request normally as they meet with the applicant in advance of the interview. There was no evidence in the case files audited of such requests. According to legal representatives interviewed, such requests are informal and thus not registered in the case file.

³¹⁸ In Greece, Article 3 PD 81/09 states that “*If the interview concerns a woman applicant who, due to her experiences or her cultural background, is having difficulties in presenting the reasons for her claim, special attention shall be taken so that the interview is conducted by a specialised woman interviewer in the presence of a woman interpreter.*”

³¹⁹ In Italy, Article 12 (1) of the d.lgs. 25/2008 states that the CTRPI, “*on the basis of a grounded request of the applicant, may decide to run the personal interview in the presence of only one of its members and, if possible, of the same sex of the applicant*”.

³²⁰ In Slovenia, Article 18 of the IPA (female applicant for international protection) stipulates special provisions on processing female applications: “(1) *Upon her request, a female asylum applicant shall be*

However, UNHCR was not able to verify to what extent applicants are informed of the possibility to request an interviewer and interpreter of the same sex and in some of these States, a lack of female interviewers and interpreters may mean that such a request, even if made, is difficult to satisfy.³²²

UNHCR observed a significant number of personal interviews in which the interviewer and/or interpreter were not gender-appropriate. For example:

- In two interviews observed by the UNHCR researcher in the Czech Republic, the applicants and interviewers were female but the interpreters were male. Both female applicants claimed to have been subjected to sexual violence and were asked to detail this during the personal interview. They were not asked whether they would prefer a female interpreter and they did not request a female interpreter.³²³
- Three interviews were observed in Finland in which issues of sexual violence and forced abortions were raised, but neither the interviewer nor the interpreter was of the same sex as the applicant.³²⁴
- In the UK, UNHCR observed four personal interviews of female applicants where the interpreter was male, and either sexual violence and/or details of sexual activity were discussed.³²⁵ UNHCR considered that having a male interpreter hindered gender-appropriate interviewing, even where the interviewer was female.
- In Greece, UNHCR observed a total of seven interviews where the applicant was female. In all seven interviews, the interviewer was male.

entitled to have a female person conduct the procedure. (2) The female applicant shall be provided an interpreter, if possible."

³²¹ Article 17.5 of the New Asylum Law states that "*The administration will adopt the necessary measures to give a different treatment during the interview, when necessary, on ground of the applicant's sex*".

³²² In Bulgaria, due to a severe shortage of interpreters, it may be difficult to satisfy such a request with regard to the interpreter. In most of the aliens departments in Greece, there is only one police officer responsible for conducting personal interviews and there is a severe shortage of interpreters. In Greece and Slovenia it was reported that applicants are not routinely informed that they can request an interviewer and interpreter of the same sex.

³²³ Y005 and Y009. It should be noted that in case Y005, a female interpreter who spoke French was initially appointed; but due to the fact that the applicant did not have a sufficient command of French, a male interpreter who spoke Lingala was then appointed. It is recognized that the determining authority may have experienced difficulty in finding a female interpreter of Lingala which is a rare language in the Czech Republic.

³²⁴ Interviews 3, 4 and 5.

³²⁵ Glaint2.3.09; glaint11.3.09; LIVint13.3.092; GLAJ202.

- In Italy, UNHCR observed an interview in which the male interviewer used inappropriate questioning and an inappropriate tone with a female applicant who may have been a victim of sexual violence. The interpreter intervened and translated the questions more appropriately.

Recommendations

UNHCR recognises that genuine operational constraints with respect to providing a same-sex interviewer and interpreter may currently exist in some Member States. Member States should seek to ensure their capacity to assign interviewers of the same sex upon request.

Member States should also seek to ensure the availability of sufficient numbers of qualified interpreters of both sexes. In particular, states should identify shortages of female interpreters. In the absence of a qualified interpreter of the same sex in the required location, determining authorities could seek to address this through the use of telephone or video-conferencing. The European Asylum Support Office could have a facilitative role to play in this regard.

EU guidelines should state that all applicants should be informed of their right to request an interviewer and interpreter of the same sex; and all applicants should be routinely asked, in advance of the personal interview, whether they wish to request an interviewer and interpreter of the same sex.

Same-sex interviewers and interpreters should be provided, subject to genuine operational constraints, when requested, and when the application raises gender issues. Where an interview has been arranged that is not gender-appropriate for whatever reason, a mechanism should be in place to allow for the postponement of the interview.

Time allocated for and duration of the personal interview

Sufficient time must be allocated for the personal interview so that applicants can present the grounds for their application in a comprehensive manner. What is sufficient will vary and will depend on a number of factors relating to the profile of the applicant and the reasons for the application. Many other factors will also affect the time required to interview an applicant, for example, the use of interpretation etc. As such, it is not possible to recommend an average duration of a personal interview. However, it is critical that interviews are scheduled in such a way as to allocate sufficient time. Scheduling should be based on a realistic assessment of interviewing capacity, and

should give both the interviewer and applicant a reasonable amount of time to prepare for the interview.³²⁶

UNHCR's audit of interview records in case files and observation of interviews confirmed that the duration of personal interviews varies widely.

However, UNHCR has very serious concerns regarding the time allocated and taken for interviews in ADA in Athens, Greece.³²⁷ During the period of UNHCR's observation of interviews in ADA, interviews were conducted simultaneously by four police officers.³²⁸ According to interviewers at ADA, every day, each interviewer receives a list of approximately 20 interviews that s/he has to conduct during that same day.³²⁹ A total of 60 to 80 interviews were conducted each day by four police officers during the period of UNHCR's observation. UNHCR observed the personal interview of 39 applicants at ADA.³³⁰ Twenty interviews lasted 5 minutes each³³¹; ten interviews lasted 10 minutes each³³²; four lasted 15 minutes each³³³; four lasted 25 minutes each³³⁴; and one lasted 35 minutes.³³⁵

The following is an example of the complete personal interview of an applicant in ADA, Athens who claimed to be from Afghanistan. The questions and answers (as interpreted) were recorded word for word by UNHCR's researcher. The interview from start to finish lasted approximately five minutes. There was no introduction to the personal interview and no other questions were asked.

Police Officer: Can he tell us why he left Afghanistan?
Interpreter (interpreting the applicant's answer): There was a land problem. His family has enemies. These enemies wanted his land and killed a member of his family.
Police Officer: These enemies are neighbours?
Interpreter: Yes.
Police Officer: When he arrived in Greece?

³²⁶ See paragraph 3.5.3 of UNHCR Procedural Standards for RSD under UNHCR's Mandate, 1 September 2005.

³²⁷ The interviews conducted at the SDAA and SDS were of longer duration. The interview at SDS lasted 50 minutes and the two interviews at SDAA lasted 3 hours each.

³²⁸ The Head of ARD has stated that 10 police officers are appointed to conduct interviews in ADA, and the fact that only four police officers were conducting interviews at the time of UNHCR's observation was probably due to temporary administrative problems. A GCR and UNHCR *Report on the conduct of interviews during the first instance procedure for refugee recognition at ADA*, 2008, reported that during the period 13.09.07 and 16.05.08, interviews were conducted by four to six police officers.

³²⁹ Interview with S3 and S4.

³³⁰ A total of 49 cases were observed in total at ADA, but in ten of these the full personal interview was omitted.

³³¹ On average.

³³² *Ibid.*

³³³ *Ibid.*

³³⁴ *Ibid.*

³³⁵ *Ibid.*

Interpreter: Three months ago.
Police Officer: Is he working in Greece?
Interpreter: No.
Police Officer: What was his itinerary?
Interpreter: He went to Iran. From there he went to Turkey...
Police Officer: He came by boat?
Interpreter: Yes.
Police Officer: How much he paid?
Interpreter: 1000 dollars.
Police Officer: OK, tell him to go now for fingerprints.

This cannot be considered to constitute a personal interview, as it has not allowed the applicant to present the grounds for his/her application in a comprehensive manner, and the interviewer has not conducted the interview in a way that allows all the facts relevant to the criteria for international protection to emerge. In addition to issues such as the need for the specialist training of interviewers, which is dealt with earlier in this chapter, the determining authorities of Member States must ensure that they have sufficient staffing capacity for the conduct of personal interviews, that sufficient time is allocated for the interview so that all the relevant issues relating to the application can be addressed fully (see below), and the scheduling of interviews is realistic.

Interviews require concentration and can be stressful and tiring for all involved. Therefore, a personal interview should not be too prolonged, and a second interview should be scheduled if more time is needed to fully establish the grounds for the application or if the applicant suffers an onset of ill health or tiredness.

As a matter of course, at the beginning of each interview, applicants should be informed that they may request a break during the interview³³⁶ and the interviewer should schedule breaks during the personal interview. This is important for all involved in the interview.

Based on UNHCR's observation of interviews, in some Member States, breaks were rarely offered by the interviewer, were ad hoc or when offered, it was a lunch break.³³⁷

³³⁶ For example, at the beginning of the interviews observed in Bulgaria and France, the applicant was not informed that s/he could request a break.

³³⁷ Bulgaria, the Czech Republic, France [a break was taken after language problems], Italy and the Czech Republic. In Finland, breaks were offered at least for lunch and before the record of the interview was reviewed at the end of the interview. This was the case in all audited interviews. Additionally, for instance in interview 3, breaks were offered for the applicant to feed her baby who was with her husband outside. In Slovenia, applicants were never informed that they may request a break, but it was always given for lunch. In Germany, in 12 of the 16 interviews observed, no break was taken. While eight of these interviews were only about an hour long, there were another three which lasted for about two hours and one which was four hours long. In the other four interviews breaks were taken. In one of these which lasted six hours, two breaks were taken. Only sometimes, at the beginning of the interview, was the

One interview observed in the Czech Republic lasted four hours and no break was offered.³³⁸ And in another interview observed in Bulgaria, the interpreter – operating via video link - in the Netherlands took a break after 2 hours. The interviewer also left the room but the applicant was not informed that s/he could take a break.³³⁹ In contrast, breaks were regularly taken in interviews observed in the Netherlands.

It is not surprising, therefore, that either due to the duration of the interview or, in the case of interviewers and interpreters, due to the cumulative number of interviews conducted during the day, UNHCR observed interviewers, interpreters and applicants who appeared to be very tired. This is not conducive to the conduct of an effective interview.³⁴⁰

Recommendations

Scheduling should be based on a realistic assessment of interviewing capacity. It should give both the interviewer and applicant a reasonable amount of time to prepare for the interview.

The determining authority must ensure that the applicant has sufficient time to present all the reasons for the application for international protection. The duration of the personal interview should be whatever is required in order to establish all the relevant reasons for the application for international protection. However, the interview should not be excessively long and a second interview should be scheduled if more time is needed to establish fully the grounds for the application.

UNHCR recommends short breaks for every hour of interview, with more frequent breaks where special needs are present , for instance pregnant applicants, those accompanied by young dependants or suffering from ill-health. Applicants should also be informed that they can request a break at any point during the interview.

The environment in which personal interviews are conducted

The environment in which the personal interview takes place may have an impact on the effectiveness of the personal interview. A failure to establish an appropriate environment will inhibit disclosure on the part of the applicant.

applicant informed that s/he could ask for a break. In all the cases the applicant requested a break, this was complied with. In case an interview takes place over lunch time, a lunch break is foreseen.

³³⁸ Y006.

³³⁹ Interview 4.

³⁴⁰ In one interview observed in the Czech Republic, both the interviewer and interpreter appeared tired during what was the third interview of the afternoon. Cumulatively the interviews had taken 4 hours and 29 minutes. In many of the CTRPIs visited in Italy, the interviewers appeared tired after 6-8 hours of back-to-back interviewing.

As such, the personal interview should be free from external noise, other interruptions and distractions. However, during the period of this research, UNHCR witnessed numerous personal interviews that took place against a background of noise, interruptions and other distractions. The following circumstances are cited by way of example:

- Personal interviews were interrupted by phone calls to the interviewer and/or the interpreter who responded during the interview (Bulgaria, the Czech Republic, Italy, Germany³⁴¹, Slovenia, Spain)
- Personal interviews were interrupted by colleagues of the interviewer or other persons entering, exiting, and/or asking questions (Bulgaria,³⁴² the Czech Republic,³⁴³ Italy, Germany³⁴⁴ and Spain)
- Personal interviews were affected by the level of noise in or around the room where the interview was being conducted (Greece,³⁴⁵ Italy, Germany³⁴⁶ and Spain)
- In the UK, UNHCR observed the interview of a female applicant whose young baby was present throughout. Rape emerged as an issue in the account and although the baby was too young to understand, UNHCR was concerned that its presence was inhibiting the woman from giving a full account, since she might not wish to exhibit her own distress, in case it upset the baby. Also, the rape account was not pursued at the time when the woman raised it, which meant that the topic had to be returned to later, which appeared to be unnecessarily distressing. The woman became very tired during the interview and although a break was taken, it was clear that the responsibility of caring for the child throughout the three hour interview was affecting her. UNHCR considered that some issues – such as personal circumstances on return - were not fully explored in this interview. UNHCR was also concerned to note that the presence of the child had not been recorded on the interview record.³⁴⁷ In the same interview, the interpreter's conduct was not properly controlled as she started to complete

³⁴¹ For instance in interviews HR 5 and HR7 the phone of the interviewer rang and the call was taken.

³⁴² Interviews 1 and 4. In interview 4, the interview which was taking place by means of a video conference with an interpreter in the Netherlands was interrupted by a technician, who passed through the room at least three times for reasons unconnected to the conduct of the interview.

³⁴³ Y001 and Y003.

³⁴⁴ For instance HR 8.

³⁴⁵ ADA, Athens in Greece; some CTRPIs in Italy; OAR, Madrid, Spain

³⁴⁶ The noise of landing aeroplanes sometimes had a disruptive effect.

³⁴⁷ Stakeholder interviewee confirmed that it would not be normal practice to record the presence of family members unless they became distracting.

what appeared to be a timesheet during the interview. UNHCR concluded that these factors impacted on the effectiveness of the interview in this case.³⁴⁸

Recommendation

EU-wide guidelines should set out the conditions in which personal interviews should be conducted.

Rapport between interviewer and applicant

There are a number of factors which contribute to creating an atmosphere of trust, such as the tone adopted by the interviewer (and, where present, the interpreter), body language and other forms of non-verbal communication.

The tone adopted by the interviewer and the interpreter should always remain neutral and professional throughout the personal interview. In particular, the interviewer should never use a threatening or harsh tone. Gestures that demonstrate disapproval, disbelief or a lack of interest should be avoided.

UNHCR observed that in some interviews, the conduct of the interviewer was not appropriate. The following behaviours are cited by way of example:

- aggressive questioning (Slovenia);
- body language demonstrating disbelief in the applicant's story (Slovenia and Spain);
- rare eye contact with applicant (Finland, Slovenia, and Spain);
- inappropriate comments (Spain: "This interview is not going very well for you"³⁴⁹ or "You did it very well"³⁵⁰, or comments on the workload; and Germany³⁵¹);
- loss of patience by the interviewer (Bulgaria and Spain);
- interviewer did some work on the computer while the interpreter and the applicant were still communicating (Germany);
- interpreter appeared to be filling in a timesheet during the interview (UK); and
- lack of respect shown by interviewer in use of language e.g. using informal/familiar term for 'you' ("tu" instead of "lei" in Italy).

³⁴⁸ LIVint9.3.09.

³⁴⁹ Case No. 0501010.

³⁵⁰ Case No. 1001020.

³⁵¹ For instance, HR 1: "I think we should leave that out. You can't know that, since you had already left the country at that time." HR 2: "So, you do not yet know your husband well."

Initial compulsory training for all interviewers should include a module which covers the conduct of interviewers and interpreters. An EU code of conduct for interviewers and interpreters should be adopted.

Interviews conducted by the interviewer via video

At the end of 2007, the French determining authority (OFPRA) introduced personal interviews by videolink in the Lyon Administrative Retention Centre (CRA). The applicant remains in the detention centre in Lyon and the interviewer, and where necessary, the interpreter is located in premises in OFPRA in Paris. This technique was introduced as a means to reduce the costs of transporting applicants under police escort to Paris, where all personal interviews in France generally take place, and to save time, given the strict time limits for detention. Furthermore, in 2008, 25% of applicants who applied for international protection whilst in French overseas territories were also interviewed by video.³⁵² In the framework of this research, it was not possible for UNHCR to observe interviews conducted by video. However, this new technique was much criticized by NGOs when it was introduced. A Charter has since been drafted which aims at ensuring the same guarantees that are applicable to personal interviews conducted in the OFPRA premises.

In the context of this research, it has not been possible for UNHCR to assess whether the use of video technology to replace a face-to-face interview for the interviewer and applicant may have any impact on the effectiveness of the personal interview. However, the fact that OFPRA itself, on the basis of its own assessment of whether an application may raise complex issues, selects some applications for face-to-face interview on mission rather than by video interview may be indicative of a recognition that video interview is not always appropriate or the most effective method. Some OFPRA officers informed UNHCR that they found it easier to be neutral, objective and impartial when there is no face-to-face interview. On the other hand, face-to-face interviews are certainly more conducive to creating a climate of confidence and to facilitating communication between the protection officer and the applicant. It must also be borne in mind that the use of such technology may be difficult for some applicants to grasp.³⁵³ More research on this issue may be required.

³⁵² For applicants in Guadeloupe, in Martinique and in Guyana, missions are organized from the office of the OFPRA based in Basse-Terre (Guadeloupe). For applicants in Mayotte and Réunion, missions are organized directly from the Headquarters in Paris, with the deployment of some protection officers for several weeks to conduct interviews. 75% of the case files in the French overseas territories were treated this way in 2008.

³⁵³ When asked about the use of interpretation via video, the representative of the determining authority in Lappeenranta in Finland, where interpretation via video is frequently used, states that for some applicants, it takes some time for them to become accustomed to the interpretation via video.

Establishing the facts in the personal interview

Questioning during the personal interview should facilitate the most complete and accurate disclosure of the facts that are relevant to the application for international protection.³⁵⁴

In UNHCR's experience, the most effective interviews are those that are well-structured and focused on assessing qualification for refugee status or subsidiary protection status. As such, the personal interview should establish all the facts that are relevant for the application of all the elements of the refugee definition and the application of the criteria for qualification for subsidiary protection status. An assessment of the credibility of the applicant's statements is an important part of the fact-finding process and the personal interview provides the interviewer with an opportunity to clarify any incomplete information and/or apparent inconsistencies, to resolve, if possible, any contradictions and to find an explanation for any misrepresentation or concealment of facts. However, the personal interview should not concentrate on establishing discrepancies, inconsistencies and contradictions. Neither should it be focused in the main on establishing the applicant's travel route, the facilitation and means of travel.

In this research, UNHCR observed personal interviews and audited the transcripts of interviews in order to assess whether the interviews were conducted in a way which allowed all the facts relevant to criteria for international protection – both refugee and subsidiary protection status – to emerge.³⁵⁵

The picture which emerged was mixed. In general terms, UNHCR found that the interviews observed in the Czech Republic,³⁵⁶ Finland, Germany³⁵⁷, the Netherlands and the UK³⁵⁸ were structured and conducted in such a way that allowed facts relevant to

³⁵⁴ Paragraph 4.3.6 of UNHCR Procedural Standards for RSD under UNHCR's Mandate, September 2005. This requires the use of both open-ended questions which permit the applicant to use his or her own words and describe events they consider relevant, and closed questions.

³⁵⁵ All the Member States of focus operate a single procedure for the determination of both refugee status and subsidiary protection status. Even though in Germany, the examination of subsidiary protection cannot be applied for, but is dealt with by the determining authority *ex-officio*, all forms of international protection are assessed in the same interview.

³⁵⁶ With the exception of issues related to internal protection and subsidiary protection status, which were not always fully examined.

³⁵⁷ However, it should not go unmentioned that adjudicators firstly ask (25) standard questions concerning personal data, family, travel route etc., and only subsequently, ask the applicants to state their reasons for applying for asylum.

³⁵⁸ Based on UNHCR's observation of personal interviews, interviewers did investigate whether the applicant's feared persecution was for a 1951 Convention reason; but in some cases all relevant criteria of the Qualification Directive and the Convention were not explored. For example, although the interview did ask about the position of a Somali woman as a minority clan member, the question of gender-based persecution was not pursued. Where the internal protection alternative was being considered, interviewers did not establish whether internal protection was relevant and reasonable, taking into account the general situation and the personal circumstances of women: LIVint9.3.09; GLAint4.3.09.

the criteria for international protection to emerge. However, personal interviews observed elsewhere revealed notable shortcomings.

UNHCR has found that, in general terms, the personal interview was more effective in those Member States which conduct a separate interview to gather bio-data and information regarding the travel route. As a result, the personal interview focused principally on the reasons for applying for international protection and an assessment of credibility.

For example, in the Czech Republic, there is a separate process to gather the elements relating to the profile and travel of the applicant. Also, in Finland, the police or border guards conduct a separate investigation, including an oral hearing with the applicant, regarding the applicant's identity, travel route and entry to Finland. As such, the personal interview conducted by the determining authority is focused on the reasons for the application. In the Netherlands, the determining authority conducts an initial interview in which the identity of the applicant and the travel route taken are assessed. Similarly, in the UK, prior to the personal interview, a screening interview is conducted by the determining authority. The screening interview gathers bio-data and detailed information regarding the travel route, as well as brief reasons for applying for international protection.³⁵⁹ In these four Member States, the observed personal interviews, in general and comparative terms, established all the facts relevant to the application of the criteria for refugee status and subsidiary protection status.

However, in other Member States, the personal interview or application interview³⁶⁰ has multiple objectives.³⁶¹

- gathering of bio-data regarding the applicant
- gathering of detailed information regarding the travel route
- establishing the reasons for the application for international protection

Moreover, in these Member States, the format of the interview means that it begins with the gathering of bio-data and/or information on the travel route taken by the applicant, and subsequently addresses the reasons for the application. The consequence of this approach is that it was observed that a limited amount of the interview time was dedicated to exploring the reasons for the application. For example, in the application

³⁵⁹ Note that a report entitled '*The Management of Asylum Applications by the UK Border Agency*', by the UK's National Audit Office found that of the 49,834 asylum applicants over the period January 2007-August 2008, 13,684 (27.5 per cent) had not had a full screening interview within two days of their application. The Comptroller and Auditor General, *The Home Office, Management of Asylum Applications by the UK Border Agency*, Part two, paragraph 2.2-2.3, The National Audit Office; HC 124 Session 2008-2009, 23 January 2009, www.nao.org.uk.

³⁶⁰ In Slovenia and Spain.

³⁶¹ Bulgaria, France, Germany, Italy, Slovenia and Spain. Note that in Bulgaria, information on the travel route is gathered in a separate interview (Dublin II interview).

interviews observed in Slovenia and Spain, approximately two-thirds of the interview time was dedicated to gathering bio-data and information on the travel route, and only one third of the interview time was dedicated to exploring the reasons for the application.³⁶² In this regard, UNHCR was also concerned to note that in some application interviews observed in Spain, questioning on the reasons for the application was omitted and replaced solely by a written statement by the applicant.³⁶³

UNHCR was also concerned to note that in some of the interviews observed in these Member States, questioning with regard to the reasons for the application tended to be superficial, formalistic or insufficient to elicit all the facts which are relevant to qualification for international protection.³⁶⁴ There was little evidence of clarification being sought regarding salient issues. Questioning was often more extended and more probing with regard to the identity of and travel route taken by the applicant.

Some interviews observed were overly dominated by credibility assessment, and applicants appeared to be questioned or tested at length regarding their origin and/or travel route.³⁶⁵ Country information or maps were mainly used to test the applicant's knowledge of his/her claimed region of origin or travel route.³⁶⁶ UNHCR recognizes the importance of establishing the identity of the applicant and travel route, but points out that the credibility assessment may also be made in the framework of exploring the reasons for the application.

Furthermore, UNHCR noted with concern that, with regard to the reasons given for applying for international protection, interviewers did not refer to any country of origin information in the interviews observed in Bulgaria, France, Germany³⁶⁷, Slovenia,³⁶⁸ Spain³⁶⁹ and the UK.

³⁶² The ratio was estimated to be 50/50 in the personal interviews observed in Bulgaria (with regard to bio-data and reasons for the application) and France. Also in Germany, the major part of the interview was used for gathering information on bio-data and the travel route, before the reasons for applying for asylum were investigated. This sometimes even meant that only one third of the time was dedicated to the reasons for the application (e.g. HR 4: only the last two hours of six were dedicated to the reasons for the application). Moreover, sometimes directly after the interview took place, applicants were asked by another BAMF officer (especially responsible for gathering information on the travel route), to report again in detail on the travel route. It should not go unmentioned that applicants apparently do not understand that the question posed at the end of the interview, whether the applicant has any other reasons which would form an obstacle for returning to the country of origin, relates to all forms of subsidiary protection. (Lawyer: X2, X3; similarly X1).

³⁶³ Four interviews observed outside Madrid.

³⁶⁴ Bulgaria, France, Italy, Slovenia and Spain with regard to OAR in Madrid.

³⁶⁵ Based on observation of interviews and interview records in Belgium, France (with regard to Sri Lankans), Slovenia, and Spain.

³⁶⁶ Observed in Belgium and France. The CGRA in Belgium is aware of this criticism and is taking steps to discuss and address this in working groups and documents.

³⁶⁷ During the attended interviews the interviewer did not explicitly inform the applicant which COI would be used by the interviewer in taking the decision. This finding is confirmed by the consulted lawyers, who

There was also some evidence to suggest that interviewers do not always give applicants the opportunity to clarify apparent or perceived contradictions or inconsistencies which emerge in the course of the interview.³⁷⁰ For example, the audit of case files in Bulgaria showed that inconsistencies are often used as a ground for finding the testimony of the applicant not credible.³⁷¹ The interview records in relation to the respective decisions, however, provided no evidence that the applicant had been alerted to these inconsistencies or given the opportunity to clarify these inconsistencies. In only one of the interviews observed in Bulgaria,³⁷² did the interviewer address the inconsistency which emerged, and the applicant provided an explanation which was accepted as satisfactory.

The shortcomings observed in the personal interviews conducted at ADA, Athens were so severe that it can only be concluded that the personal interviews were not fit for purpose. Of the 49 interviews observed, the overwhelming majority lasted only five to ten minutes. Inevitably, these applicants were thus not given the opportunity to present the grounds for their applications in a comprehensive manner. In the majority of interviews observed, when the applicant claimed to have left his/her country of origin for fear of persecution, no follow-up questions were asked.³⁷³ For example:

- In case IO34ETH1, the applicant claimed that her father had “problems with the army”. No related question followed.
- In case IO48IRQ7, the applicant claimed that he was facing problems because of his Kurdish origin. No further question regarding the alleged problems was asked.
- In case IO49GHA3, the applicant claimed fear of persecution for reasons of race. The interviewer did not ask any related questions to clarify the exact reasons.

In contrast, applicants at ADA were questioned on:

- their travel route to Greece;³⁷⁴

all stated that the interviewers do not inform applicants of the relevant COI during the interview (X1. X2, X3).

³⁶⁸ With regard to the application interviews.

³⁶⁹ *Ibid.*

³⁷⁰ Witnessed in some interviews in Bulgaria and confirmed by interviewers; and observed in some interviews in Italy and the UK: LIVint9.3.09; LIVint13.3.09. Also observed in some interviews and the transcripts of interviews in case files in France.

³⁷¹ See for example Decision 50.

³⁷² Interview 2.

³⁷³ Of the 52 personal interviews observed in total, in only 6 interviews was a follow-up question asked when the applicant claimed to have left the country of origin for fear of persecution.

³⁷⁴ IO40AFG7, IO42IRQ5, IO43IRQ6, IO46SLK1, IO32PAK10, IO31GEO1, IO30PAK9, IO5PAK4, IO2PAK2, IO1PAK1, IO51AFG9, and IO52MAU1.

- the economic conditions in the country of origin and the financial status of the applicant;³⁷⁵ and
- why Greece was chosen as the country of destination.³⁷⁶

By way of example, in interview IO40AFG7 the applicant was asked to answer only the following questions in this order:

1. *What were the reasons of your flight?*
2. *Do you work in Greece?*
3. *Do you have relatives in Afghanistan?*
4. *What was the exact itinerary that you followed on your way to Greece?*
5. *Have you gone to school?*
6. *When did you leave Afghanistan?*
7. *Do you have a passport?*
8. *What was your employment in Afghanistan?*
9. *How much money have you spent for your itinerary?*

Some determining authorities reported that interviewers have guidelines on how to structure the interview (Belgium, Finland,³⁷⁷ Germany³⁷⁸, Greece,³⁷⁹ the Netherlands and the UK. However, in most Member States of focus in this research, the determining authorities informed UNHCR that interviewers use a template with standard questions (Bulgaria,³⁸⁰ Finland,³⁸¹ Germany³⁸², Italy,³⁸³ the Netherlands, Slovenia, and Spain) or

³⁷⁵ This was whether or not the applicant had claimed to have left the country of origin for economic reasons: IO5PAK4, IO46SLK1, IO31GEO1, IO30PAK9, IO11AFG1, and IO49GHA3.

³⁷⁶ IO42IRQ5, IO43IRQ6, IO46SLK1, IO32PAK10, IO31GEO1, IO38GEO2, IO48IRQ7, and IO49GHA3.

³⁷⁷ Finnish Immigration Service, Pakolaisneuvonta ry, ERF: *Suosituksset turvapaikkapuhuttelun kehittämisessä* 2008.

³⁷⁸ Adjudicators firstly use a catalogue of 25 standard questions concerning personal data, family, travel route etc. Subsequently, applicants are asked to state their reasons for applying for asylum. The catalogue was used in all the case files reviewed by UNHCR as well as in all the attended interviews. Adjudicators are instructed to use this catalogue and to ask also all necessary additional and follow-up questions. They can only deviate from it if it seems more appropriate during a particular interview (Handbook for Adjudicator "Interview", in particular, p. 7; Internal Guidelines for the Asylum Procedure, in particular, under: "Record"; "Interview" (4/5)). Moreover, there is a checklist available concerning the requirements set by the determining authority.

³⁷⁹ Head of ARD in ADGPH informed UNHCR that interviewers have internal guidelines which are strictly for internal use, so UNHCR was not given permission to see or obtain a copy of the guidelines. At the time of UNHCR's research, according to the Head of ARD in ADGPH, a general circular on the implementation of PD 90/2008 was in preparation which would cover issues related to personal interviews.

³⁸⁰ The template is not obligatory. Some interviewers do not follow it in the general procedure. The case files audit confirmed that the templates for the accelerated procedure and for interviews on subsequent applications are in all cases followed.

³⁸¹ Confirmed by observation of interviewers, although all interviewers asked additional and follow-up questions.

³⁸² The catalogue does not state questions related to the actual reasons for the asylum application. These are enquired following the general questions. The Handbook for Adjudicator "Interview", does not provide a checklist or practical information on the criteria for qualification for refugee status or subsidiary

that such a template was being prepared (France). Within the remit of this research, UNHCR has not assessed the content of these guidelines or templates.

Recommendations

An *aide memoire* to interviewers should be developed to facilitate the structuring of the personal interview, ensuring that all the relevant key elements of the refugee definition and the criteria for qualification for subsidiary protection status are covered during the personal interview. UNHCR would wish to contribute to the development of such an aide memoire. The EASO may also be able to play a facilitating role in developing such a tool.

Establishing the facts relevant to qualification for international protection should be the principal aim and focus of the personal interview, and appropriate lines of questioning should be used to this end. The applicant should be given the opportunity to address any perceived inconsistencies, discrepancies or contradictions during the personal interview.

Sufficient time should be allocated for the personal interview, so that the applicant is able to present the grounds for the application in a comprehensive manner.

Recording of interview

In the overwhelming majority of interviews UNHCR observed in the course of this research, the interviewer made a written or typed record of the applicant's statements.³⁸⁴ The fact that the interviewer requires time to record the applicant's statements not only has an impact on the duration of the interview, but also has an impact on the 'flow' of communication. The extent of this impact will depend upon the ability of the interviewer to type proficiently or write quickly; and whether a verbatim record or summary notes are being made. UNHCR was informed that the determining authority (CGRA) in Belgium, at the time of this research, provided case managers with a course in touch-typing so that the case manager is able to maintain eye contact with the applicant and interpreter whilst recording statements made.³⁸⁵

protection, but contains advice regarding adequate conduct of the interview. The Internal Guidelines for the Asylum Procedure contain a table with explanations with a view to the criteria for qualification for refugee status or subsidiary protection; however this table does not refer to the structuring of the personal interview. Also the explanatory documents available for the adjudicators regarding the assessment of the criteria of Article 15 c QD (in certain countries of origin), do not explicitly relate to the conduct of the interview (Documents submitted by the determining authority to UNHCR).

³⁸³ Some Commissions of the determining authority have a template with some initial questions or general areas to be addressed during the interview. Further questions are developed in the course of the interview.

³⁸⁴ See section on Article 14 for further information regarding the status of the report of a personal interview in the procedure.

³⁸⁵ Interview with operational coordinator of the CGRA, 25 February 2009.

	Audio taped	Video taped	Written or typed notes	Drafted by who?
Belgium			√	Interviewer
Bulgaria			√	Interviewer
Czech Republic			√	Interviewer
Finland	√ ³⁸⁶		√	Interviewer
France			√	Interviewer
Germany	√ ³⁸⁷		√ ³⁸⁸	Interviewer ³⁸⁹
Greece			√	Interviewer
Italy			√	Interviewer
Netherlands	√ (UAM u12s only)	√ (u12s only)	√	Interviewer
Slovenia ³⁹⁰			√	Interviewer or typist
Spain	√ (RSD only)		√	Interviewer
UK	√ (on request & piloted cases) ³⁹¹		√	Interviewer

UNHCR encourages all Member States to audio-record personal interviews as a back-up to the written record of the interview.

Presence of third parties during personal interview

It is UNHCR's view that, as a general rule, the participation of third parties during the personal interview should be limited to a legal representative or, in the case of a child applicant or applicant who is suffering from a mental illness or disability, the designated representative. Where the attendance of a third party other than a legal representative or a designated representative is specifically requested by an applicant, discretion should be exercised in determining whether to grant the request. In assessing, the appropriateness of the participation of a third party, consideration should be given to any special needs or vulnerabilities of the applicant, the nature of the relationship between the applicant and the third party, as well as any factors indicating that the

³⁸⁶ This is a back-up to the *verbatim* record made of interview.

³⁸⁷ In the interviews attended by UNHCR, the adjudicators dictated into a dictaphone the information deemed to be "essential information". Thus, the interview is divided into sections during which the applicant speaks and the interviewer takes notes and parts during which the adjudicators dictate in direct speech the audio version of the interview record. (Many interpreters were already "checking" at this stage, whether the adjudicator dictated accurately based on what had been stated before). Therefore, the audio version is not an audio record of the interview itself.

³⁸⁸ During the interviews all adjudicators and most interpreters made firstly written notes, in order to use these for the audio version, of the interview with the help of the dictaphone. However, these written notes do not form part of the typed final version of the hearing report.

³⁸⁹ The dictation is made by the interviewer. Only the typing of the dictation is done by a typist.

³⁹⁰ The MOI has set audio-taping as a long term goal. It has been unable to introduce it so far due to financial constraints.

³⁹¹ UNHCR observed two interviews that were audio-taped – one at the request of the legal representative and the other as part of a pilot; GLAint4.3.09 and LIVint9.3.092.

attendance of the third party would be likely to promote or undermine the objectives of the personal interview.³⁹²

Article 13 (4) APD states that “Member States may provide for rules concerning the presence of third parties at a personal interview.” Most Member States do have some rules in place, but these may be supplemented in practice. Most determining authorities permit a legal representative to be present. The notable exception is OFPRA in France.

Practice regarding who may be present during the personal interview is stated below.

	Rules	Legal Rep/NGO/UNHCR	Friend or supporter or person of trust	Expert - medical	Appointed Guardian for minors	Parent or family
Belgium	√ ³⁹³	√	√ ³⁹⁴		√ mandatory	√ ³⁹⁵
Bulgaria	√ ³⁹⁶	√ ³⁹⁷		√ ³⁹⁸	√ mandatory	√ ³⁹⁹
Czech Republic		√	√	√	√ mandatory	√ ⁴⁰⁰
Finland	√ ⁴⁰¹	√ ⁴⁰²	Possible		√	√
France					√	
Germany	√ ⁴⁰³	√ ⁴⁰⁴	√ ⁴⁰⁵	√ ⁴⁰⁶	√ ⁴⁰⁷	√ ⁴⁰⁸

³⁹² Paragraph 4.3.4 of UNHCR Procedural Standards for RSD under UNHCR’s Mandate, September 2005.

³⁹³ Article 19 of the Royal Decree of 11 July 2003.

³⁹⁴ With permission from the CGRA.

³⁹⁵ *Ibid.*

³⁹⁶ The only explicit legislative provision is Article 63a (9) of LAR concerning unaccompanied minors, otherwise there is an unofficial administrative list.

³⁹⁷ Only NGOs which are implementing partners of UNHCR.

³⁹⁸ In interviews with applicants who are minors.

³⁹⁹ Parents of accompanied children may be present as long as it is not to the detriment of the child’s interests.

⁴⁰⁰ Only when the interviewee is a minor and the parent is legal guardian. According to Section 29 (4) CAP, interviews of minors may be conducted without the presence of parents or any other persons responsible for raising the child, when this is required by the interest’s of the child.

⁴⁰¹ Administrative Asylum Guidelines state that legal representatives, minor’s appointed representative and family members may be present at the interview. In practice, even if it is rare, it may be possible to have a person of trust or an NGO present.

⁴⁰² A legal representative was present in 3 out of 10 interviews observed. In 2/3 of these cases, the representative came from the Refuge Advice Centre. However, note that legal representatives only rarely attend personal interviews held outside Helsinki due to distance.

⁴⁰³ Section 25 (6) APA: “The interview shall not be open to the public. It may be attended by persons who show proof of their identity as representatives of the Federation, of a Land, the United Nations High Commissioner for Refugees or the Special Commissioner for Refugee Matters at the Council of Europe. The head of the Federal Office or his/her deputy may allow other persons to attend.”

⁴⁰⁴ Legal representatives do not need a permission, as they are not considered to be “other persons” (Section 25 (6) APA). They are allowed to be present during the interview pursuant to the rules generally

	Rules	Legal Rep/NGO/UNHCR	Friend or supporter or person of trust	Expert - medical	Appointed Guardian for minors	Parent or family
Greece	√ ⁴⁰⁹	√ ⁴¹⁰			√ ⁴¹¹	
Italy	√ ⁴¹²	√		√	√	√
Netherlands	√ ⁴¹³	√ ⁴¹⁴			⁴¹⁵	
Slovenia	√ ⁴¹⁶	√	√		√	

applying in administrative procedures (They can be excluded under certain circumstances according to the general administrative rules). The possibility of attendance by UNHCR staff is explicitly mentioned in Section 25 (6) APA (In practice, if UNHCR staff/interns (located in Berlin) want to attend interviews in the branch office in Berlin, prior approval of the head of the branch office is obtained). NGO staff may attend the interview, however, they need permission too.

⁴⁰⁵ According to Section 25 (6) APA possible with prior permission.

⁴⁰⁶ *Ibid.*

⁴⁰⁷ The determining authority informed UNHCR that in the case of unaccompanied minors the appointed guardian has the right to be present during the interview; however, it stated at the same time that the filing of an asylum application as well as the conduct of the interview are only possible after a legal guardian has been appointed. Also working paper 26 speaks on the one hand of “permitting the attendance of legal guardians” while stating on the other hand that a legal guardian has to be appointed (Working Paper 26, “Unaccompanied Minors in Germany”, Research Study II/2008 (EMN), published 2009, p. 39). With regard to practice, UNHCR has been informed by the determining authority that in all cases of unaccompanied minors under the age of 16, the interview is conducted in the presence of the legal guardian. It has to be kept in mind, that according to Section 12 APA, a person “*who is at least 16 years of age shall be capable of performing procedural acts in accordance with [the APA]*”. Even though, according to Section 42 Code of Social Law (“SGB VIII”), a legal guardian has to be appointed for unaccompanied minors until they are 18 years old, these persons are capable of performing procedural acts. This also pertains to the personal interview. This is mirrored in the practice, experienced by lawyer X2, who stated that in cases of unaccompanied minors who are 16 years of age or older, only sometimes a guardian is present. With regard to the practice concerning issues of unaccompanied minors, please refer to the findings of the ASQAEM Project (implemented in Germany mainly in 2009) which had a special focus on the asylum procedures of unaccompanied minors and separated children.

⁴⁰⁸ According to the determining authority, interviews of children (under 16, see remark above) are conducted in the presence of the parent(s), and in cases of minors who are 16 or 17 years of age, the parent(s) are permitted to be present during the interview, if requested by the minor. Spouses are interviewed separately, unless otherwise explicitly wished by the applicants.

⁴⁰⁹ Article 11 (5) and 12 (1) of PD 90/2008.

⁴¹⁰ Of the 52 interviews observed, a legal representative was present during only one (IO51AFG9).

⁴¹¹ This is not mandatory according to Article 12 (1) of PD 90/2008.

⁴¹² Article 13 (1) of the d.lgs. 25/2008 and Article 8 of the d.lgs. 140/2005 permit the presence of family members.

⁴¹³ According to the table of correspondence, Article 13 (4) has not been transposed. However, according to Article C13/2 Aliens Circular, the applicant can be assisted by a legal counselor in the accelerated procedure. There are no specific rules regarding the presence of other persons but in practice the Dutch Council for Refugees and other NGOs are generally allowed if requested. Article C13/3.1.2 Aliens Circular states that a legal counselor and a social worker may be present in the regular procedure.

⁴¹⁴ In practice, legal counselors are only rarely present during the initial and detailed personal interviews due to budgetary and time limit constraints.

⁴¹⁵ According to the AMA-unit in Den Bosch, legal guardians can observe the interview via a television but they are not allowed to be physically present.

⁴¹⁶ Article 47 (1 -4) of the IPA.

	Rules	Legal Rep/NGO/UNHCR	Friend or supporter or person of trust	Expert - medical	Appointed Guardian for minors	Parent or family
Spain	√	√		Possible	√	
UK	√ ⁴¹⁷	√	√ ⁴¹⁸			√ ⁴¹⁹

Monitoring and quality control of personal interviews

It is essential that the determining authorities ensure that personal interviews are monitored, so as to check whether interviewers and interpreters meet the relevant standards of fairness and due process. Moreover, without monitoring, the training needs of interviewers and interpreters will remain unidentified.

In the UK the determining authority has established a Quality Assurance Team to randomly monitor interview records and a small number of 'live' interviews.⁴²⁰

According to some determining authorities, a supervisor will check case files and/or read interview records⁴²¹ or conduct random checks on interviews;⁴²² or audio-tapes

⁴¹⁷ API on *Interviewing*.

⁴¹⁸ API on *Interviewing* states that friends or other companions may be present at the interview at the discretion of the interviewing officer, provided that they are there to provide medical or emotional support.

⁴¹⁹ A parent, guardian, representative or other independent responsible adult must be present. Where unaccompanied minors are interviewed, their representative shall have the right to be present, ask questions and make comments in the interview. As with accompanied children, it is mandatory that a responsible adult is present when unaccompanied children are interviewed, but it is not mandatory that the legal representative be present; Immigration Rules 352 and 352ZA. In the case file audit, UNHCR noted that the legal representative's interpreter for an unaccompanied minor had been excluded from the interview on the ground that there may not be enough space in the room, but when the interview went ahead, the room would have been large enough: DAF 42.

⁴²⁰ National Audit Office Report HC124 2008-09 23 January 2009, paragraphs 2.11- 2.13, and stakeholder interview 16.3.09.

⁴²¹ Belgium; and the Czech Republic according to the Head of Asylum Unit, interview of 7 April 2009. In Belgium, only rarely will a supervisor monitor the conduct of an interview, according to an interview with case managers on 19 & 20 March 2009. In France, the Head of Section receives the proposal for a decision and the interview record. However, UNHCR does not have any evidence that the interview record is monitored.

⁴²² In Bulgaria, the Methodology Directorate and Head of Proceedings and Accommodation Department reported that they carry out random monitoring. Similarly, in Germany, the determining authority informed UNHCR that random checks on interviews are conducted by the quality unit and the quality promoter (i.e. one of the staff members in a branch office). Also in Greece, the Head of ARD in ADGPH informed that there is occasional monitoring of the interviews conducted in ADA, but no monitoring of interviews conducted in the provincial Asylum and Security Departments. However, ADGPH plans to send experienced officers to provincial Departments for interview monitoring; interview with the Head of ARD in ADGPH.

will be checked if there is a complaint.⁴²³ In some Member States, in practice, however, there is no systematic monitoring of personal interviews.⁴²⁴

With regards to interpreters, UNHCR was informed that in Belgium, there is constant monitoring in the first three months of an interpreter's recruitment, and thereafter an evaluation interview once a year.⁴²⁵ In the UK, in its 5th Quality Initiative report, UNHCR welcomed the fact that an interpreters' monitoring form – aimed at identifying poor performance among interpreters - had been piloted as it could help to ensure a higher standard of interpretation in practice. It is not clear how widely it is used.⁴²⁶

Recommendations

UNHCR recommends that EU Member States which do not have national quality evaluation or monitoring systems should consider developing them, to address interviews as well as other procedural elements. At EU level, the EASO should work towards the establishment of EU criteria and mechanisms for quality control and improvement among Member States and stakeholders, based on common objective standards. It is recommended to introduce in the APD the obligation for states to establish quality control and improvement mechanisms.

Determining authorities should ensure that they conduct random and regular monitoring of personal interviews and assess performance based on established criteria. Such monitoring should be conducted by personnel with the requisite training and experience.

There should be a formal link between quality control and monitoring, training and operational guidance. Where quality controls identify gaps in training, guidance or policy, there should be mechanisms in place to communicate these findings and ensure that appropriate changes are made.

Complaints

UNHCR's Procedural Standards for Refugee Status Determination stress the importance of a complaints procedure for applicants about services provided in any refugee status determination operation. Such procedures are an essential managerial tool that can permit early detection of problems.

⁴²³ In Slovenia, according to the determining authority (MOI) there are plans that, at some point in the future, all procedures will be taped, but it is foreseen that the tapes will only be monitored if a complaint is lodged.

⁴²⁴ Finland, France, Italy, and Spain.

⁴²⁵ According to interview with persons responsible for the interpreter services of the CGRA, 24 April 2009.

⁴²⁶ UNHCR 5th QI Report paragraph 2.4.34 and 35.

Some determining authorities reported that they do have a specific complaints procedure. In some Member States, this is in the form of a designated mail box.⁴²⁷ In the Czech Republic, applicants are informed of the possibility to lodge a complaint in case of partiality of the employees of the determining authority.⁴²⁸ In the Netherlands, applicants are informed of the complaints procedure during the interview. Other determining authorities noted that there is a general administrative complaints procedure or ombudsman.⁴²⁹ However, UNHCR has not been able to assess the extent to which applicants are informed that they may lodge a complaint.

On the other hand, it was reported that in a number of Member States there is no complaints procedure: Finland, France, Greece, and Italy.

Recommendation

All determining authorities should establish a procedure to receive and respond to complaints by applicants or other individuals about the services provided in the asylum procedure. Information regarding the basic rights of applicants and the procedures for reporting mistreatment or misconduct should be disseminated to applicants at the earliest stage of the procedure. It should be made clear that making a complaint will not in any way influence the examination of the application; and is distinct from appeal procedures. Determining authorities should emphasise the seriousness of the complaints procedure so that it is not used for improper, frivolous or malicious complaints. The complaints procedure should be used to report serious misconduct or procedural unfairness.

⁴²⁷ In Bulgaria, according to the Head of Proceedings and Accommodation Department, of RRC-Sofia, and in Slovenia.

⁴²⁸ An NGO, stated that applicants are often afraid to make complaints, interview of 22 April 2009.

⁴²⁹ Belgium and Spain. In Germany, in addition to the general administrative complaints procedure, there is the possibility to directly address the head of the respective branch office (Information provided by the determining authority. No information could be gathered concerning the practice).