

Section 6

Status of the report of a personal interview in the procedure

Introduction

Written transcript of personal interview

Audio- and video-recording of personal interviews

Requesting the applicant's approval of the contents of the report

Refusal to approve the content of the report

Access to the report of the personal interview

Section 6

Status of the report of a personal interview in the procedure

Introduction

In the examination of a claim for international protection, the oral testimony of the applicant is crucial. In many cases, an applicant will be unable to support his/her statements by documentary or other proof and, therefore, it is imperative that his/her oral testimony is recorded accurately and fully.¹ A failure to accurately and fully record the applicant's testimony may result in an erroneous decision and a failure to identify a person with protection needs. This is not in the interests of Member States as an inaccurate record of the content of the personal interview is liable to challenge upon appeal. For the applicant, such a procedural failure carries the risk of *refoulement* in breach of international law.

Article 14 APD sets out the minimum requirements with regard to the report of the personal interview.

Written transcript of personal interview

Article 14 (1) APD provides that:

"Member States shall ensure that a written report is made of every personal interview, containing at least the essential information regarding the application, as presented by the applicant, in terms of Article 4(2) of Directive 2004/83/EC" (the Qualification Directive).

In accordance with Article 14 (4) APD, this also applies to meetings with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application.² At the time of UNHCR's field research, the determining authorities in both Slovenia and Spain conducted such a meeting and, therefore, this research also focused on the report of the application interview and its compliance with the APD.³

¹ See Paragraph 196, UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention, and the 1967 Protocol relating to the Status of Refugees, revised 1992.

² Article 14 (4) APD states: *"This Article is also applicable to the meeting referred to in Article 12 (2) (b)".* Article 12 (2) (b) refers to *"a meeting with the applicant for the purpose of assisting him/her with completing his/her application"*.

³ UNHCR also observed interviews in the regular procedure in Spain for the purposes of this research.

Eleven of the 12 Member States under focus in this research have transposed Article 14 (1) APD in national legislation, regulations or administrative provisions: Belgium⁴, Bulgaria⁵, the Czech Republic⁶, Finland⁷, France⁸, Germany⁹, Greece¹⁰, Italy¹¹, the Netherlands¹², Slovenia¹³ and the UK¹⁴.

The only exception is Spain which, at the time of UNHCR's research, had not transposed Article 14 (1) APD in national legislation or administrative provisions, nor has it transposed Article 14 (1) APD in the New Asylum Law. In practice, UNHCR observed that the competent authorities produced a written completed application form following each application interview, and transcripts of interviews in the regular procedure were also made.

The Directive is explicit in requiring that a written report be made. The national legislation and regulations of most Member States reflect this and require that a written record be made of the personal interview.¹⁵ The national legislation of Finland is not explicit as to the form of the record, but, in practice, a written record is made.

Notwithstanding the fact that most of the Member States of focus have transposed Article 14 (1) APD and all produce a written record of the interview, practice amongst

⁴ Article 16 (1) of the Royal Decree of 11 July 2003 concerning the CGRA. Article 16 (2) of the same Decree requires that an inventory is made of all documentary evidence submitted by the applicant. By law, a record should also be made of the initial interview with the AO (Articles 15-18 of the Royal Decree of 11 July 2003 concerning the AO).

⁵ Article 63a (3) of LAR (New, SG No. 52/2007) and Article 91 (5) IRR. There is also explicit legislation requiring a written report of the interviews of accompanied and unaccompanied minors (Articles 102, 119(3) IRR).

⁶ Section 23 (1) ASA.

⁷ Administrative Guidelines apply (Turvapaikkaohje SM 109/032/2008). However, according to the Government Bill 86/2008, Section 97 a (2) and (3) of the Aliens' Act (301/2004) will be amended to explicitly state that a record must be made of the personal interview and interviews may be audio or video recorded.

⁸ Decree of 15 July 2008 (Article R.723-1-1 *Ceseda*).

⁹ Section 25 (7) APA: "A record of the interview containing the essential information produced by the foreigner shall be kept. A copy of this record shall be given to the foreigner or sent to him with the Federal Office's decision." The practice experienced in the framework of this study complied with this rule; a written record of the interview had been issued in each of the reviewed case files as well as in all the cases in which UNHCR observed the interviews. The adjudicators make use of a standardized template for the issuance of the written record.

¹⁰ Article 10 (9) of PD 90/2008.

¹¹ Article 14 d.lgs. 25/2008.

¹² Articles 3.110(3) and 3.111(2) Aliens Decree 2000 require a written record be made of both the initial and detailed personal interviews.

¹³ Article 48 IPA.

¹⁴ Paragraph 339NC Immigration Rules.

¹⁵ Belgium, Bulgaria, the Czech Republic (Section 18 CAP (1) which also states that a visual or audio recording may be taken in addition to the report), France, Germany, Greece, Italy, the Netherlands, Slovenia (Article 48 (4) IPA. Article 48 (7) IPA permits the audio and video recording of the personal interview) and the UK (Para 339NC (i)).

the Member States is nevertheless varied as some Member States produce a *verbatim* transcript of each personal interview and some Member States produce a summary report of each personal interview.

UNHCR notes that the APD does not explicitly require a *verbatim* transcript of the personal interview. The APD states that the written report should contain “*at least the essential information regarding the application*” in terms of Article 4 (2) of the Qualification Directive. UNHCR is of the opinion that this should be interpreted as requiring Member States to completely transcribe in detail all the questions and statements of the interviewer and applicant regarding the essential elements stated in Article 4 (2) of the Qualification Directive.¹⁶ This includes a complete and detailed transcript of the stated reasons for applying for international protection since this is considered ‘essential information’ in terms of Article 4 (2) of the Qualification Directive. It should be noted that, when an interpreter is used, the transcript of the applicant’s statements is in fact a transcript of the translation of the applicant’s statements. In order to ensure an accurate record of the applicant’s statements, UNHCR encourages Member States to make an audio-recording of personal interviews.¹⁷

UNHCR notes positively that according to law or administrative instruction, seven of the Member States of focus in this research require that the interviewer makes a *verbatim* written transcript of the personal interview, including everything said and not said by the applicant and interviewer.¹⁸ For example, UNHCR’s observation of interviews and audit of interview reports in the Czech Republic confirmed that a *verbatim* report is made and that some interviewers also described the non-verbal reactions of applicants, for example, “*the applicant is smiling*”, and “*the applicant cannot understand the question and it has to be re-formulated.*”¹⁹ Similarly, in Italy, some interviewers write a *verbatim* report and also describe the non-verbal reactions of applicants.²⁰

However, in a couple of Member States which, by law or administrative instruction, should produce *verbatim* transcripts, doubts were raised by stakeholders²¹ or by

¹⁶ This would include all questions and answers regarding “*the applicant’s age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection*”.

¹⁷ See subsection below.

¹⁸ Belgium (Article 17 (1) of the Royal Decree of 11 July 2003 concerning the CGRA), Bulgaria (Article 63a (3) LAR), the Czech Republic (practice), Finland (practice), France (practice), Slovenia (Article 48 (4) IPA), and the UK (Asylum Process Guidance “Conducting the Asylum Interview”).

¹⁹ Y005, Y009, Y012, X008 and X013.

²⁰ Information obtained from UNHCR Italy which participates in the determination procedure in Italy.

²¹ In Belgium, the written report is supposed to be a “true account” of the personal interview, but some lawyers have criticized the interview records on the grounds that they are not always a true account and the case managers do not report everything but only what they consider to be relevant for the application – interview with lawyers on 26 March 2009. The lawyers reported that the failure to record a true

UNHCR's audit of interview reports²² as to whether full *verbatim* transcripts are actually written in practice. The Council of State in Belgium has stated in a decision that there were no guarantees that the notes taken by case managers during the personal interview were reliable. The Council of State reasoned that if the applicant disputes the content of the report of the personal interview in a precise and credible manner, the recorded statements which are disputed cannot be used against the applicant.²³ The determining authority in Belgium (CGRA) has since produced a working document which provides instructions for case managers on how to take notes during the personal interview.²⁴ UNHCR welcomes CGRA's acknowledgement of this problem and readiness to take steps to address it. UNHCR suggests that the accuracy of the written reports of personal interviews in all Member States is best achieved if a complete transcript is made.²⁵

UNHCR is concerned that some Member States have interpreted 'essential information' as giving the interviewer discretion to determine which parts of the applicant's statements are worthy of recording in the written report with the result that the written report is only a summary of the oral evidence given. This may result in relevant oral evidence not being recorded, and/or the meaning and accuracy of statements being unwittingly altered in the process of summarizing.

In five Member States, the interviewer is not required to make a full *verbatim* record of the personal interview.²⁶

German law only requires that the record contains the "essential information", but remains silent with regard to the form in which this information shall be given. According to the interpretation of the determining authority (BAMF), this term means as a rule, that a *verbatim* report is not required but rather a combination of a *verbatim* record and a summary of parts.²⁷ Questions and answers regarding the core events shall

account has been a successful ground of appeal. UNHCR was not able to verify the accuracy of interview reports in Belgium as UNHCR was not able to audit the written reports of the interviews it had observed.

²² In Bulgaria, UNHCR observed that the written reports do not include all the questions which are additional to the standard template questions, and do not include all the statements made by the applicant. Some statements of the applicant were also re-phrased.

²³ *RvS*, 7 August 2007, nr. 173.899. The decision concerned an application dealt with within the asylum procedure before June 2007. In this case the Council of State compared the notes of the CGRA to the notes of the lawyer. The notes of the lawyer were more elaborate and more clear than the notes of the CGRA. Moreover, the notes of the lawyer stated that the case manager had said that "he was not there to note everything" and that he had asked the asylum applicant to be short and concise.

²⁴ The report should be readable, it should be an accurate and literal account of everything that has been said by applicant and case manager, it should also state what is not being said (questions that are not being answered), the report should clearly state who said what, the report should be objective and only official abbreviations can be used.

²⁵ See below also for recommendations regarding audio-recording.

²⁶ Greece, Italy, the Netherlands and Spain (with regard to both the application interview and the personal interview in the regular procedure).

²⁷ BAMF Handbook "*Interview*", 3.3 "Protocol", p.20.

be noted down *verbatim*; and summaries shall be marked as such, for example by use of reported speech.²⁸ The practice observed by UNHCR during the attended interviews²⁹ differed from these instructions. While questions and further enquiries by the adjudicator were noted down *verbatim*³⁰, this was not always the case with regard to the information given by the applicant, notwithstanding the fact that they concerned the core events. Judging only from the hearing reports, one could come to the conclusion that in practice *verbatim* records are made, as the information is clearly divided into questions and answers, and the answers are reported in direct speech (“I”, “we”, “our”). However, it depends very much on the adjudicator, the interpreter and their interplay, whether this answer is actually the one given by the applicant or rather the version of the answer the adjudicator has dictated in direct speech into the dictaphone after having “filtered” the statement of the applicant for the information seen as relevant. The aforementioned should not be misunderstood as implying that the adjudicators act in bad faith. The approach should be understood as an attempt to state the essential facts as clearly as possible. However, it should not go unmentioned when analysing the actual practice of the conduct of the interviews and the subsequent production of the hearing reports. Non verbal-reactions are also included in the hearing report³¹ as well as questions asked by other persons (e.g. by a lawyer).³²

In Italy, in practice, the level of detail recorded varies between the different Territorial Commissions and/or interviewers. As mentioned above, some write a full *verbatim* report, including recording non-verbal reactions, while others tend to summarize questions and answers.

In the Netherlands, there are empirical studies which have revealed discrepancies between the statements of applicants and the summary contained in the report.³³

In Spain, the report of the application interview in the admissibility procedure consists of a completed application form. UNHCR was informed that in certain offices, the applicant prepares and submits to the competent authority a written statement setting

²⁸ BAMF Handbook “Interview”, 3.3 “Protocol”, p.20.

²⁹ HR 1 to HR 16.

³⁰ The hearing report of HR 1 does not contain the first 24 questions, however, these questions are those contained in the standard catalogue of questions asked in each interview and thus their wording can be identified.

³¹ According to the BAMF Handbook “Interview”, remarks with regard to reluctant/evasive answers, emotions or conspicuous behaviour might be informative with regard to the applicant’s credibility; especially in cases in which the decision is not taken by the same adjudicator who has conducted the interview (under: 2.5 “Additional Remarks in the Protocol”; 2.5.3 “Reluctant/evasive answers, emotions, conspicuous behaviour”, p.13)

³² HR 7, page 10.

³³ U. Aron & F. Heide, *Bandopnamen van het nader gehoor*, Den Haag 1999, p. 37-39; T.P. Spijkerboer, *De asielzoeker, de contactambtenaar, de tolk en de bandrecorder*, *Rechtshulp* 2003-3, p. 28-32; N. Doornbos, *De papieren asielzoeker. Institutionele communicatie in de asielprocedure*, Nijmegen: Gerard Noodt Instituut 2003, p. 114, 119, 130, 136-141.

out the reasons for the application for international protection. UNHCR observed that, in these cases, the application form either contained a summary based on the written statement which was then attached to the form, or the interviewer recorded on the application form "*written statement attached*". In two interviews observed by UNHCR, the interviewer had obviously received a written statement in advance of the application interview and had already filled in the application form so that the interview consisted of the applicant checking the details and confirming that the information was correct.³⁴

During UNHCR's observation of personal interviews in ADA, Athens, UNHCR was gravely concerned to discover that the written summary report made of a personal interview did not reflect the oral evidence given by the applicant at all. UNHCR conducted a random check of a completed interview report of an applicant from Sri Lanka who had claimed in the personal interview which UNHCR observed that he had left his village in Sri Lanka because of disorderly conditions. The completed interview form contained a dialogue which had not taken place in the personal interview³⁵:

Question (Q): Which were the crucial reasons that made you leave the country?
Answer (A): Economic reasons.
Q: Which other reasons made you leave?
A: None.
Q: Why did you choose Greece as your destination?
A: For a better life, because it's a secure country.
Q: Have you tried to move to another part of your country to find work?
A: No.
Q: Why you could not find a job in your country?
A: Because of grave unemployment.
Q: Have you tried to work outside your country?
A: No.
Q: Have you left your country because of family problems?
A: No.
Q: Have you faced any problems related with your job?
A: No, none.
Q: Your exclusive purpose was to come to Greece?
A: Yes.
Q: What other problems have you faced in your country that you will not face in Greece?
A: Better conditions of living.
Q: Could you practice your occupation freely in your country?
A: Yes

³⁴ Cases Nr. 1101140 and 1201141.

³⁵ IO46SLK1.

UNHCR randomly sampled and audited 185 written reports of personal interviews conducted in Greece.³⁶ The interviews had been conducted by nine different police officers and the case files examined by six different examining officers (three police officers and three civil servants). UNHCR discovered that 171 reports contained the same questions and answers. The 171 reports related to applicants of different nationality, social status and gender and yet the reports recorded exactly the same questions posed and exactly the same responses given. Some of the applicants were members of ethnic groups which, in other States, have been found to have experienced persecution,³⁷ and other applicants claimed to have come from regions experiencing widespread violence and armed conflict.³⁸ UNHCR's audit of the case files revealed that in all cases, the police officer who conducted the interview proposed in standard phraseology that the application for international protection should be rejected because the application was deemed manifestly unfounded.³⁹

In the face of this evidence, UNHCR can only conclude that the 171 interview reports reviewed do not reflect the actual discourse of the personal interview. With regard to the other reports audited, there was either an extremely brief summary of stated reasons for applying for international protection which provided insufficient information upon which to take a decision or in some reports, the statements of the applicants with regard to the reasons for applying for international protection were not recorded at all.⁴⁰

The following citation is taken from the report of a personal interview of an applicant who was registered as from Pakistan (not one of the 171 reports referred to above)⁴¹:

³⁶ UNHCR audited 202 case files in total but in 17 case files, an interview had not been conducted on the ground that the application had been implicitly withdrawn. All case files, with the exception of three, related to applications lodged at ADA in Athens.

³⁷ CF39AFG15, CF38AFG14, CF45AFG21 (Afghans belonging to the Hazara tribe) and CF84SLK2, CF83SLK1, CF85SLK3, and CF86SLK4 (nationals of Sri-Lanka of Tamil ethnic origin).

³⁸ Such as Paktia (CF27AFG3 and CF51AFG27), Uruzgan (CF39AFG15 and CF45AFG21), Logar (CF44AFG20 and CF42AFG18), Kapisa (CF29AFG5), Kabul (CF31AFG7), Ghazni (CF36AFG12 and CF38AFG14), Hirat (CF48AFG24), Kirkuk (CF80IRQ28) and Baghdad (CF77IRQ25, CF76IRQ24, CF53IRQ1, CF54IRQ2, CF55IRQ3, CF56IRQ4, CF57IRQ5, CF59IRQ7, CF60IRQ8, CF61IRQ9, CF62IRQ10, CF63IRQ11, CF64IRQ12, CF65IRQ13, CF67IRQ15, CF75IRQ23, CF78IRQ26, CF79IRQ27, and CF81IRQ29).

³⁹ Of the 202 case files randomly sampled and audited, in only one case file (CF13SSYR4) did the interviewer state that the application is unfounded and proposed rejection following an examination in the regular procedure. The Aliens Directorate of the Greek Police Headquarters (ADGPH) which received the proposal, and examined the interviewer's recommendation before a decision was taken, did not accept this proposal and recommended examination in the accelerated procedure without any recorded reasoning.

⁴⁰ CF77IRQ25, CF27AFG3, CF29AFG5, CF31AFG7, CF40AFG16, CF14SYR5, CF147PAK35, CF25AFG1, CF13SYR4, CF16SYR7, CF11IRN1, and CF9IRN9.

⁴¹ CF147PAK35.

Question (Q): Which were the crucial reasons that made you leave the country?
Answer (A): I belong to ATI party, which is in conflict with SSP. I received threats by SSP and therefore I was forced to leave.
Q: Why did you choose Greece as your destination?
A: Because it's a secure country.
Q: Have you tried to move to any neighboring country of Pakistan?
A: No.
Q: Your exclusive purpose was to come to Greece?
A: Yes.
Q: What other problems have you faced in your country that you will not face in Greece?
A: Better conditions of living.

No further questions or answers were recorded regarding the reasons for applying for international protection. The interviewer's proposal for a decision states that "*the applicant alleged that he had left his country of origin for political reasons*" and the interviewer recommends "*examination of the application within the accelerated procedure and rejection as manifestly unfounded*" without any further reasoning.

This evidence has led UNHCR to suspect that written reports of personal interviews may be copy-pasted standard templates which do not reflect the actual discourse of the personal interview or summarized to such an extent as to be generic and useless as evidence upon which a decision can be taken.⁴² These observations made by UNHCR cast grave doubts as to whether an individual, objective and impartial examination of applications is conducted in Greece, and suggests that in practice, the minimum standards of the Asylum Procedures Directive may be violated in practice.

Recommendations

Member States should ensure that the determining authority makes a complete and detailed transcript of every personal interview. Article 14 (1) APD should be amended accordingly.⁴³

Pending such amendment, the preparation of a written summary report of the personal interview should be permitted only if there is an audio recording of the entire personal interview, and audio recordings are admissible as evidence on appeal.

⁴² However, note UNHCR concerns regarding the brevity and quality of personal interviews observed in ADA in Athens in Section on requirements of the personal interview.

⁴³ It is noted that the Commission has proposed amendments to this effect, under which the relevant Article would state: "*Member States shall ensure that a transcript is made of every personal interview*" and "*Member States may make a written report of a personal interview, containing at least the essential information regarding the application, as presented by the applicant. In such cases, Member States shall ensure that the transcript of the personal interview is annexed to the report.*" APD Recast Proposal 2009.

Member States are encouraged to consider the use of transcribers to assist interviewers in the task of producing a complete and detailed transcript of the personal interview.⁴⁴

Audio and video-recording of personal interviews

Some determining authorities have begun to use audio and/or video recording of the personal interview.⁴⁵ The determining authority in Finland supplements the written report with an audio-recording of all personal interviews.⁴⁶ A few other Member States use audio-recording to record some, but not all, personal interviews. For example, in Spain, since 2006, the determining authority (OAR) has audio-recorded personal interviews in the regular procedure, but not the application interviews.⁴⁷ In the UK, a legal precedent has established that applicants who are not entitled to publicly-funded legal representation at the personal interview and cannot afford to fund their legal representation may now request that their personal interview be audio-recorded.⁴⁸ If they do so, the interviewer is required to do this. However, in UNHCR's observation of personal interviews in the UK, it was noted that there were occasions when applicants who were entitled to publicly funded legal representation requested and were granted an audio-recorded interview, while in others, this was not granted, due to the unavailability of an interview room with recording equipment. In the Netherlands, the personal interviews of all unaccompanied minors are audio and video-recorded.⁴⁹

The audio-recording of personal interviews is an effective means to ensure that an accurate record of the personal interview is made.⁵⁰ It does not employ the human resources of the interviewer during the interview; it helps to eliminate disputes regarding the accuracy of the written report; may also help to address allegations of inaccurate interpretation during the personal interview and provides a useful evidential resource to both the decision-maker and, in the case of any eventual appeal, the adjudicator on appeal. Clearly, rules of data protection and confidentiality apply to audio-recordings and must be taken into consideration.

⁴⁴ The requirement that the interviewer make a detailed transcript of the interview hampers the interviewer's ability to establish a rapport with the applicant, slows the conduct of the interview and may have a negative impact on the flow of the interview.

⁴⁵ UNHCR was informed, on 9 April 2009, by the determining authority in Slovenia that it plans to introduce the audio-recording of personal interviews but this had not been implemented yet at the time of writing.

⁴⁶ The digital audio-tapes are filed for five years together with the other materials relating to the application. UNHCR observed both written reports and audio-tapes in all the case files audited.

⁴⁷ In the course of this research, UNHCR listened to two audio-recordings of personal interviews in the regular procedure (Case No. 0602125 and 0702129).

⁴⁸ *Dirshe. R (on the application of) v Secretary of State for the Home Department* [2005] EWCA Civ 421.

⁴⁹ In Den Bosch. Some stakeholders have recommended that all interviews be audio-recorded e.g. ACVZ.

⁵⁰ See UNHCR 3rd QI Report: recommendation 39 supported audio recording: 4th QI report at paragraphs 2.3.74 -2.3.75

Recommendation

UNHCR strongly encourages Member States to make an audio recording of the personal interview of each applicant.

Requesting the applicant's approval of the contents of the report

Article 14 (3) APD states that “*Member States may request the applicant's approval of the contents of the report of the personal interview.*” This is an optional provision and, therefore, it is not surprising that UNHCR found that practice is divergent amongst the Member States of focus. Moreover, the Directive does not contain the concomitant guarantee that the applicant can check the accuracy of the report and rectify the content, as necessary, before approving the contents of the report. Without this guarantee, written records may be inaccurate and distort the oral testimony of the applicant, making them unreliable as evidence in the first instance examination and liable to challenge on appeal.

UNHCR considers that the determining authority should seek the applicant's approval of the contents of the interview transcript. Verifying the content of the report of a personal interview is important not only to avoid misunderstandings but also to facilitate the clarification of any contradictions.⁵¹ Ultimately, the applicant's approval is imperative in order to seek to assure the accuracy of the evidence upon which a decision is based.

Article 8 of the Charter of Fundamental Rights of the European Union states a fundamental administrative legal principle that, with regard to personal data, “*such data must be processed fairly for specified purposes*” and “*everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.*” UNHCR is very concerned that, to the contrary, in some Member States, decisions are taken by determining authorities on the basis of, *inter alia*, written reports of personal interviews, the accuracy of which applicants have not been able to check and rectify.

UNHCR is particularly concerned that it has observed that in some Member States, applicants are required to approve the contents of the written report without being given the opportunity to check the content of the report; and in some Member States, approval of the content of the report is not sought and applicants are not given the opportunity to check the contents of the written report at all before a decision is taken by the determining authority.

UNHCR also observed good practice in some Member States whereby the applicant is informed, with the assistance of an interpreter if necessary, of the content of the report

⁵¹ UNHCR APD Comments 2005.

and is given the opportunity to rectify the report, as required.⁵² Indeed, in an interview observed in Finland, the applicant wished to waive the right to check the report of the interview, however, the interviewer insisted that the applicant check the content of the report.⁵³ Similarly in Germany, according to the Internal Guidelines for Adjudicators,⁵⁴ the adjudicators shall advise insistently those applicants who want to waive the retranslation⁵⁵ that the aim of the retranslation is to make corrections and to clarify any misunderstandings that might have arisen during the interview. UNHCR witnessed such advice being given to an applicant in practice.⁵⁶

Nine of the Member States surveyed require the applicant to sign the report of the interview to indicate that s/he approves of the contents.⁵⁷ Sometimes, the applicant is required to sign each page of the report.⁵⁸ Clearly, if the applicant is requested to approve the contents of the report, then the content of the report must have been read by, or to, the applicant, in a language s/he understands, so that s/he can check its accuracy. For example, in Finland, Italy, Slovenia and occasionally in Bulgaria⁵⁹, when the interviewer has typed the report during the personal interview, the document is printed out immediately and the interpreter reads back the report to the applicant before asking for his/her signature of approval.⁶⁰ In Bulgaria, often the interviewer has handwritten the report, so the interviewer schedules an appointment for the applicant to return and have the contents of the typed report read by the interpreter and signed.⁶¹ In these Member States, any amendments, additions or clarifications can be

⁵² Bulgaria, Finland, Italy, the Netherlands and Slovenia. This was observed in only five out of 14 interviews observed in the Czech Republic.

⁵³ Interview 8.

⁵⁴ BAMF Internal Guidelines for Adjudicators, "Translation (of the hearing report)", No. 3; Date: 07/02.

⁵⁵ The retranslation is normally done directly after the interview has taken place.

⁵⁶ HR 14. This has also been experienced during interviews attend by UNHCR *stagiaires*. The relevant part of the so-called "control sheet" template contains the standard paragraph for such cases that the applicant has dispensed with the retranslation despite being informed that its purpose is the correction of eventual misunderstandings.

⁵⁷ Bulgaria: Article 63a (7) LAR; the Czech Republic; Finland; Germany (not a legal requirement but performed in practice); Greece, Italy, Slovenia, Spain (with regard to the application interview) and the UK (Immigration Rules HC395, para 339NC (iii) and (iv); and Asylum Process Guidance "*Conducting the Asylum Interview*", section on signature of approval of contents of interview record.

⁵⁸ Bulgaria, the Czech Republic, Finland and Italy.

⁵⁹ This was observed in 4 out of 12 interviews in the accelerated and in the general procedure in Bulgaria.

⁶⁰ According to the Government Bill 86/2008, Section 97 a (2) and (3) of the Aliens' Act (301/2004) will be amended to explicitly state that "*at the end of the interview the report of the interview is translated to the applicant and the applicant is informed about the possibilities to make amendments to the record. The applicant confirms the contents of the record by signing it.*"

⁶¹ Almost all of the audited reports of personal interviews conducted in the accelerated procedure were handwritten. Courts do not accept the handwritten reports of interviews conducted in the general procedure according to interviewers. At the end of interview 1 which UNHCR observed, the applicant was invited to hear a reading of the written report of the personal interview and sign the report 17 days after the date of the interview.

made to the report at that time.⁶² As a result, any amendments are made to the report before the determining authority assesses the evidence and takes a decision on the application. For example, in all the interviews observed in Finland, corrections were made to the written record during the final check of the report at the end of the interview. Occasionally, in Italy the applicant wished to add relevant information for the record or sometimes corrections were made to the details.⁶³ Even though in Germany, asylum law does not contain a provision concerning the applicant's approval of the report, the determining authority (BAMF) informed UNHCR that in practice all applicants are asked to approve the report by providing their signature.⁶⁴ The BAMF handbook states that there is no obligation on applicants to approve the report by signature; however, in case an applicant refuses to sign, this has to be noted in the record.⁶⁵ Applicants are asked for approval on a so-called "control sheet"⁶⁶ after they have had the chance to check the accuracy of the content of the report⁶⁷ and were able to ask for amendments⁶⁸. Whether corrections or amendments are requested by the applicants depend on the individual case.⁶⁹

⁶² Article 63a (7) LAR requires that *"the record shall be read to the alien and should be signed by him/her, by the translator or interpreter and by the interviewing authority."*

⁶³ Substantive corrections or amendments were rarely requested by applicants during the interviews observed in Italy.

⁶⁴ This is done by the use of a "control sheet". This statement is confirmed by the consulted asylum lawyers (X1, X2). Illiterate applicants are asked to sign with a cipher (e.g. X) or a fingerprint.

⁶⁵ Handbook for Adjudicators „Interview“, p. 20.

⁶⁶ A line is foreseen for the signature of the applicant(s), the interpreter and the adjudicator.

⁶⁷ This was witnessed by UNHCR during the interviews which were attended in the framework of this study. The accuracy of the report is checked either by means of the written report or in case the report cannot be produced electronically on the day of the interview, orally directly after the interview is completed. The content of the report, which exists in the latter case at this point as an audio-version in German (that has been dictated by the adjudicator into a Dictaphone during the interview), is retranslated by the interpreter to the applicant orally. Oral retranslation was the practice observed by UNHCR in the BAMF Branch office in Berlin. (Due to personnel constraints, it was not possible to produce the written report the same day the interview took place.) This process of oral retranslation creates a greater risk of oversight of discrepancies between what has actually been said and what has been understood. Moreover, an asylum lawyer (X1) reported that the direct retranslation may impact negatively on the attentiveness of the interpreter as well as the applicant and therefore, according to his/her experience, it is often better if the retranslation takes place on a day other than the day of the interview.

⁶⁸ This was observed by UNHCR during the interviews which were attended in the framework of this study.

⁶⁹ As stated by asylum lawyer X2, it is problematic in this regard, that the corrections are added at the end of the report introduced by the phrase *"After the retranslation of the report the applicant states..."*, which suggests that the applicant wants to *correct* the original statement, while the person concerned only wants to clarify that s/he has been misunderstood. This can have a negative impact on the credibility.

It is also possible to make corrections by means of a written statement, submitted by the applicant after s/he receives the written report. Even though German asylum law contains a provision (Section 25 (3) APA) allowing under certain circumstances the exclusion of such statements, this provision is – as a rule – not applied in such cases. (This has been reported by asylum lawyers X1 and X2). However, such corrections may also have a negative impact on the credibility of the applicant. Section 25 (3) APA: *"If the foreigner produces such facts only at a later stage, they may be ignored if the decision of the Federal*

In the Netherlands, a different approach is taken. The applicant receives a copy of the written report of the detailed personal interview at the end of the interview or soon after. The applicant signs the report, not to indicate approval of the content but instead to indicate that s/he has received a copy of the report. The applicant is then given time to read the report together with his/her appointed legal representative, with the services of an interpreter, if required, and to make corrections, amendments or additions. The report itself should state the deadline by which the applicant can submit corrections.⁷⁰ In the regular procedure, a period of at least two days applies but, in the accelerated procedure, the period is just three working hours.⁷¹ This process would be improved if two shortcomings were addressed. UNHCR has been informed that the time restrictions on legal aid in the accelerated procedure may mean that the legal representative is unable to discuss the full content of the report with the applicant.⁷² Furthermore, in the accelerated procedure, the report of the personal interview is often given to the applicant simultaneously with the 'intended decision' so that any corrections or additional information have not been taken into account when the determining authority took the intended decision. With reference to the regular procedure, the Council of State did not accept this practice.⁷³ However, with regard to the accelerated procedure, the Council of State considered this practice compliant with the requirement to deliver the report of the interview 'as soon as possible'.

UNHCR was very concerned to note during its observation of interviews that in some Member States, some interviewers requested the applicant to sign the report to indicate approval of the content without giving the applicant the opportunity to read the report or have the report read to him/her in a language s/he understood.⁷⁴

In the Czech Republic, at the bottom of each page of the written report, there is a sentence which reads "*I was informed of the content of this page of the protocol*" and, at the end of the report, there is a sentence which reads "*I was informed of the content of the report from the interview in the ... language, I agree with it and do not ask for any amendments to it.*" In the detention centres, UNHCR observed that applicants were asked to write this sentence in their language. On the basis of the reports UNHCR audited, it appeared that all the reports were read back to the applicants page by page and signed. However, this practice could not be confirmed by UNHCR's observation of

Office would otherwise be delayed. The foreigner shall be informed of this provision and of Section 36 (4) third sentence."

⁷⁰ Article 3.111(3) Aliens Decree 2000.

⁷¹ Article 3.111(3) Aliens Decree 2000. C13/2 Aliens Circular also provides the right of the applicant to correct, amend or add information to the report of the initial interview. Similarly, the applicant has some time with the appointed legal representative to discuss the content of the report and propose any amendments as necessary.

⁷² Commissie Evaluatie Vreemdelingenwet 2000, WODC 2006, Evaluatie Vreemdelingenwet 2000, De asielprocedure – Deel 2, pg. 158.

⁷³ Council of State, 22 June 2004, JV 2004/325.

⁷⁴ The Czech Republic, Greece, Spain and UK.

personal interviews. In nine out of the 14 personal interviews observed, the report was not read back to the applicant. In some cases, this opportunity was offered with the words: *"If you would like to have the report read back, the interpreter can read it back to you"*. However, in some cases an additional comment was made such as: *"If you do not trust that I have written it well, the interpreter can read it back to you."* In one interview, the applicant nevertheless requested that the report be read back, but in the others, the applicants replied *"No, I trust you."*⁷⁵ In one interview observed, the report was not read back to the applicant and the applicant was not asked if s/he wanted the report read back.⁷⁶ Moreover, according to information from a local NGO, applicants are sometimes afraid not to sign the record for fear that it might have a negative impact on the outcome of their application.⁷⁷

Yet, on appeal in the Czech Republic, when appellants argued that the written report of the personal interview distorted their statements or that they had not understood the interpreter, their signature on the report was used by the courts to dismiss their appeal. For example, the decisions of the SAC No. 5 Azs 70/2008-55 of 11 February 2009 stated: *'The appellant had the opportunity to provide his opinion on the information [COI] or propose his own evidence; however he made no use of such option and signed the reports from the interviews without objections'*,⁷⁸ or judgment of the SAC No. 2 Azs 91/2008 of 27 January 2009 *'If the appellant was not content with the way his statements were being interpreted, he should have stated that in the course of the interviews, or should not have signed that he had been acknowledged with the content of the interview and agreed with it on each page of the report from the interview, but rather should have stated that parts of his statements were interpreted wrongly. He had a great opportunity to do so, since there were different interpreters present at every interview (...) The appellant thus had sufficient conditions to find out independently from the interpreters how his statements were recorded and could, in case he did not agree with that record, have pointed out exactly what parts of his statements were being interpreted wrongly.'*⁷⁹

In ADA in Athens, UNHCR observed that applicants were asked to sign the report without having read or listened to a re-reading of the contents of the report.⁸⁰ In all the 49 interviews that UNHCR observed in ADA, the report of the interview was printed whilst the applicant was taken to be fingerprinted and upon return the applicant was asked to sign the report. Also, in most of the interviews observed in Spain, the applicants were asked to sign the application form but they were not informed that they

⁷⁵ Y005, Y008 and Y011.

⁷⁶ The interpreter said, *"Everything that you said in the interview is written here. For example, here is the information you received at the beginning. Please, sign the papers one by one."* Y006.

⁷⁷ Interview of 22 April 2009.

⁷⁸ Available at www.nssoud.cz, unofficial translation.

⁷⁹ Available at www.nssoud.cz, unofficial translation.

⁸⁰ In the interviews observed in SDAA and SDS, the interviewers read the report to the applicants before asking for their signature.

could read the form first or have the contents of the form read to them by the interpreter.⁸¹

In the UK, in spite of published policy⁸² and the law⁸³ which states that the applicant should sign the end of the report to confirm approval of the contents of the report, UNHCR's observation of interviews revealed that applicants were asked to sign to confirm receipt of a photocopy of the report. Applicants were not asked to confirm that they approved the contents of the report and the interview record was not read back to any applicant. The Asylum Process Guidance⁸⁴ states:

"It is Home Office policy to not routinely read out the interview record after the conclusion of a substantive asylum interview. Read overs should only be given in very exceptional circumstances".

The applicant may be given five days, or two days in the fast-track detained processes, after the interview to submit further information and from UNHCR's audit of case files, information submitted during this time is referred to in the decision letter.⁸⁵ This period provides an opportunity to correct the transcript of the interview.⁸⁶ However, this opportunity is severely compromised by the fact that the determining authority does not provide the applicant with an interpreter so that s/he can read the transcript. In principle, with regard to applicants in receipt of legal aid, public funding may be available for a post-interview conference with the legal representative and interpreter. However, in practice, stakeholders indicate that, under the current fixed fee system for legal aid provision, there are often insufficient funds available to allow for this post-interview meeting to take place.

Finally, some Member States do not request the applicant's approval of the report of the personal interview and the applicant is not given the opportunity to read the report or have it read by an interpreter in order to check the accuracy of the content.⁸⁷

⁸¹ In only two of the 11 interviews observed was the applicant informed s/he could read the contents of the application form.

⁸² Asylum Process Guidance "Conducting the Asylum Interview", section on Signature of Approval of Contents of Interview Record accessed 29th April 2009 which states "The applicant is required to sign at the end of the interview record to confirm approval of the contents of the record. There is no need for the applicant to sign the photocopy that has been provided. The refusal of an applicant to approve the contents of the record shall not prevent the Interviewing Officer from making a decision".

⁸³ Immigration Rules HC395, paragraph 339NC (iii) which state "(iii) The Secretary of State shall request the applicant's approval of the contents of the report of the personal interview."

⁸⁴ Asylum Process Guidance "Conducting the Asylum Interview", section on Read Overs.

⁸⁵ DAF 19.

⁸⁶ DAF 42.

⁸⁷ Belgium, France and Spain. In Belgium, the CGRA does not request approval of the report which is not read to the applicant and the applicant does not receive a copy according to the CGRA website http://www.cgvs.be/nl/Procedure_d_asile_en_pratique/Audition/. On the other hand, the initial interview report with the AO is read to the applicant and s/he is asked to sign the report to indicate approval of the contents. In France, the determining authority does not request the applicant's approval

Without knowledge of the content of the report, the applicant does not have the opportunity to correct or amend the content of the report before a decision is taken by the determining authority.⁸⁸ As a result, decisions may be taken on the basis of inaccurate reports.

UNHCR considers that it is in both Member States' and applicants' interests that the applicant reads or is read, through an interpreter, the content of the report of the personal interview and the applicant has the opportunity to correct or add to the content of the report before a decision is taken by the determining authority on the application. From the perspective of the Member States, it is costly to conduct a procedure which fails to accurately record all the relevant grounds for the application for international protection with potentially further costs resulting from a challenge on appeal; and from the perspective of the applicant the failure to do so may result in a risk of *refoulement*. In Finland, a full *verbatim* transcript of the personal interview is made; the report is read back to the applicant, with the assistance of an interpreter, at the interview so that corrections and amendments are made as necessary; and there is an audio-recording of the interview. UNHCR was informed that under this system, applicants do not generally challenge the accuracy of the report on appeal.⁸⁹

Recommendations

The content of the written transcript of the personal interview should, in all cases, be read by the applicant, or read back to the applicant with the assistance of an interpreter. The applicant should not be asked to approve the content of the transcript of the personal interview before the transcript has been read by him/her or read back to him/her, with the assistance of an interpreter if necessary.

Before the content of the written report is read by or read to the applicant, with the assistance of an interpreter as necessary, the applicant must be informed that s/he has the right to rectify, clarify or provide additional information for inclusion in the transcript. An effective opportunity to do so should be provided.⁹⁰

and the applicant is not given any practical opportunity to read or hear the content of the report. In Spain, the applicant is not given the opportunity to check the content of the written report of the interview in the regular procedure, although note that these interviews are audio-recorded.

⁸⁸ In Belgium, the applicant can only request a copy of the report which may be received 4 days after notification of the decision by the determining authority. Article 17 (3) of the Royal Decree of 11 July 2003 concerning the CGRA allows the applicant or his/her legal representative to send additional information or documents by registered mail. But without knowing the content of the report, it will not always be clear what additional information may be required.

⁸⁹ The audio-tapes are rarely referred to as evidence in court, but are widely used by the judges for information about the case. It should be noted here also that in Finland, the applicant's legal representative can submit in writing further evidence or corrections to the written report (cases 87 and 88).

⁹⁰ The EC has proposed that recast Article 16 would contain the following new requirements: '*Member States shall request the applicant's approval on the contents of the transcript at the end of the personal*

The applicant should be clearly informed, in a language s/he understands, that his/her signature represents approval of the content of the transcript and informed of his/her right to refuse to approve the contents of the written transcript.

Refusal to approve the content of the report

With the exception of Spain (and Germany), in those Member States that require approval of the contents, if the applicant refuses to approve the contents of the report, the reasons for this refusal should be entered in the applicant's file in accordance with Article 14 (3) APD.⁹¹ UNHCR only observed such a note of refusal in some of the case-files audited in the Czech Republic.⁹²

In Germany, the asylum law does not contain such a provision and with regard to the administrative practice the BAMF Handbook only requires that a refusal is noted, but does not explicitly state that the reasons for the refusal should be noted.⁹³ According to information provided by an asylum lawyer⁹⁴, applicants have to 'fight' to refuse to sign the report⁹⁵ and are mostly not allowed to have their own reasons recorded; the stated reason is: "Signature refused, because the protocol is allegedly wrong."

In Spain, if the applicant does not sign the application form, which constitutes the record of the application interview, then the application is not officially registered. This is problematic because the signature is considered to attest to the truth and accuracy of the content of the form⁹⁶, yet, as stated above, applicants are not always given the opportunity to read the content of the report.⁹⁷ This problem could be overcome by

interview. To that end, Member States shall ensure that the applicant has the opportunity to make comments and/or provide clarifications with regard to any mistranslations or misconceptions appearing in the transcript": APD Recast Proposal 2009.

⁹¹ Bulgaria: Article 63a (8) LAR; the Czech Republic: Article 18(3) CAP; Finland: Article 97a Aliens Act (301/2004) states that the applicant approves of the report by signing all pages of the report. The preparatory works, Government Bill 86/2008, at page 56 further clarify that if the applicant does not approve of the report, the reasons for this shall be written down in the report. Greece: Article 10 (11) PD 90/2008; Italy: Article 14 (2) d.lgs. 25/2008; Slovenia: Article 48 (6) IPA; and the UK: Asylum Process Guidance . In Belgium, this is the case with regard to the initial interview with the AO, but not the personal interview with the determining authority (CGRA).

⁹² For example, case file X013.

⁹³ Handbook for Adjudicators „Interview“, p. 20.

⁹⁴ X 2.

⁹⁵ Another asylum lawyer (X1) reported that s/he has never experienced an applicant refusing to sign and that s/he did not believe that – in practice – an applicant is able to refuse the approval.

⁹⁶ This is explicitly stated on the application forms used by authorities other than the determining authority OAR and at the border, but it is not explicitly stated in the application form used by OAR although in practice it is implicit.

⁹⁷ Whether or not the applicant is given the opportunity to check the content of the interview report depends on the interviewer. This opportunity is not always offered by the interviewer. If requested by the applicant, this opportunity would not be denied.

requiring a signature to officially register the application and requesting a separate signature to approve the content of the application form after its content has been read by or read to the applicant with the assistance of an interpreter as necessary, and the content checked by the applicant.

Recommendation

The applicant should be given an opportunity, which can be exercised in practice, to refuse to approve the content of the interview report, and to have recorded for the attention of decision-makers his/her reasons for refusal.⁹⁸

Access to the report of the personal interview

Article 14 (2) APD states that:

“Member States shall ensure that applicants have timely access to the report of the personal interview. Where access is only granted after the decision of the determining authority, Member States shall ensure that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.”

UNHCR welcomed the APD’s requirement that applicants should have timely access to the report of the personal interview, and recommends that applicants should automatically receive a copy of the report of the personal interview before a decision is taken on the application. The practice in a number of Member States of focus demonstrates that this can be done.⁹⁹ For example, in Finland, Germany, Italy, the Netherlands and the UK, the applicant is given a copy of the report of the interview at the conclusion of the interview or soon after.¹⁰⁰ In the Netherlands, in the accelerated

⁹⁸ The Commission has proposed that recast Article 16 should state: *“Where an applicant refuses to approve the contents of the transcript, the reasons for this refusal shall be entered into the applicant’s file. The refusal of an applicant to approve the contents of the transcript shall not prevent the determining authority from taking a decision on his/her application”*: APD Recast Proposal 2009.

⁹⁹ In Slovenia, this is done with regard to the personal interview in the regular procedure but not at the application interview.

¹⁰⁰ In Finland, at the time of writing, the Government Bill amending Section 97 a (2) and (3) of the Aliens’ Act will read that *“the applicant is immediately or as soon as possible given a copy of the record.”* The Administrative Guidelines state that the record should not be given immediately, but as soon as possible, if sensitive issues have arisen in the course of the interview with a spouse and the other spouse is present or waiting at the office of the determining authority (Turvapaikkaohje SM 109/032/2008, 30 – 31). In this case the report is sent by mail to either the applicant or his/her legal representative. In Germany, although Section 25 (7) 2nd Sentence APA allows for the submission of the report together with the decision (*“A copy of this record shall be given to the foreigner or sent to him with the Federal Office’s decision.”*), the BAMF has informed UNHCR that in practice the applicant receives the report directly after its production, i.e. either on the day of the interview or some time later by post (cf. also Handbook for Adjudicators *„Interview“*, p.20). Furthermore, the BAMF reported, that only in absolutely exceptional cases a copy of the report of the interview is submitted together with the decision and that it never occurs that the applicant receives the record only after the decision has been submitted. These

procedure, the report is given to the applicant as soon as possible after the interview. Sometimes it is given simultaneously with notification of the 'intended decision', but before the decision is finally taken and issued.¹⁰¹

In some Member States, the applicant may access the report of the personal interview upon request at any point in the procedure.¹⁰²

However, UNHCR regrets that in some Member States, the applicant is only granted access to the report after a decision has been taken by the determining authority.¹⁰³ This means that an applicant for international protection in Belgium, France and Greece does not have the content of the report of the personal interview read back to them in order to check its accuracy and does not receive a copy of the report before a decision is taken by the determining authority.¹⁰⁴

In Belgium, the applicant has to apply to get access to his/her case file by completing and sending a form to the determining authority (CGRA). Although the form can be submitted immediately after the personal interview, the applicant will only receive copies of the requested documents after the decision has been taken by the CGRA and normally within four days of notification of the decision.¹⁰⁵ The deadline for submission of an appeal is 15 days from notification of the decision for applicants who are detained

statements are confirmed by an asylum lawyer (X2) in so far as s/he stated that applicants receive the report immediately or shortly after the interview (either by post or it can be picked up), and that cases in which the report had been submitted together with the decision have not been observed lately. Lawyer X1 reported that the time frame for the submission of the report is 1 to 4 weeks. It is interesting to note that the second sentence of Section 25 (7) APA is one of the rare examples of a modification of the law due to the APD. It has been introduced in order to fulfill the requirements set by Article 14 (2) APD (Explanatory Report, Bundestag printed papers 16/5065, re Number 17 (Section 25 APA), p. 217.). Furthermore Section 29 Administrative Procedure Act arranges for the right of the legal representative to access the applicant's BAMF file at any time. The BAMF has reported that this right is realized with the submission of a print out of the electronic file. In Italy, Article 14 (1) of the d.lgs. 25/2008 states that "*the foreign citizen is given a copy of the record*". In practice, the applicant is given a copy of the report at the end of the personal interview. In the Netherlands, the copy of the report is also sent to the legal representative unless the applicant does not approve this action: C13/2 and C13/3.3 Aliens Circular 13/3.3. In the UK, this is provided for in Asylum Process Guidance "*Conducting the Asylum Interview*", section on Photocopies of the Interview Transcript.

¹⁰¹ See above for further information.

¹⁰² The Czech Republic: Section 38 CAP; Slovenia (with regard to the application interview): Article 82 AGAP and Spain (with regard to the application interview but not in relation to the personal interview during the regular procedure): information provided by OAR and confirmed by other stakeholders.

¹⁰³ Belgium, Bulgaria, France, and Greece.

¹⁰⁴ In Bulgaria, the content of the interview report is read back to the applicant before it is signed by them. It should be noted that in Belgium, the report of the preliminary interview with the AO is read to applicants and the report is signed. However, this is not the case with regard to the report of the personal interview with the determining authority (CGRA).

¹⁰⁵ http://www.cgvs.be/nl/binaries/CG%20-%20419b%20N%20-%20aanvraag%20kopie%20ABn%20administratieve%20stukken_tcm127-18459.pdf

and 30 days for other applicants.¹⁰⁶ Clearly, this practice further limits the time available to the applicant to prepare and lodge an appeal. This is particularly significant for applicants who are detained and whose right of appeal is curtailed by a shortened deadline.¹⁰⁷

In France, by contrast, a part of the overall written report, including the report of the personal interview, is systematically sent to the applicant together with the negative decision of the determining authority.¹⁰⁸ This does not include the parts of the report which contain the reasoning for the decision which is essential if the applicant has to consider whether s/he has grounds to appeal and to substantiate any eventual appeal. Applicants have to request access to the whole report if they wish to access these key parts of the report. In the remit of this research, UNHCR was not able to verify the time it takes to receive this part of the report in practice given that the applicant has one month within which to lodge an appeal.

According to personnel of the determining authority in Greece, applicants can request access to the report of the interview after the decision has been issued¹⁰⁹ and access is granted in time to permit the appeal to be prepared and lodged in due time.¹¹⁰ However, this is disputed by NGOs and legal advisers who state that access is not granted in time to prepare and lodge the appeal. One legal adviser stated: *“It takes more than 10 days for the authorities to provide the applicant or his/her representative with a copy of the decision. Access to the case file takes even longer. In most cases, the appeal against the decision is lodged without knowing what the police officer recorded in the interview”*.¹¹¹

In Bulgaria, access to the case file, including the report, is only allowed on the premises of the determining authority (SAR) as no copies can be made of the documentation.¹¹² Similarly, in the Czech Republic access to the case file is allowed on the premises of DAMP. Although the law states that the determining authority cannot make copies of the file or any part of it, the current case law of the SAC allows applicants to make copies at their own cost by using, for example, a digital camera. During UNHCR’s observation of procedures, it noted that applicants were being informed that copies

¹⁰⁶ Law of 6 May 2009 regarding various provisions concerning asylum and migration (B.S., 19 May 2009).

¹⁰⁷ Article 14 (2) APD has not been transposed in Belgian legislation or administrative provisions, and at the time of writing, the proposal for amendments to the Royal Decree of 11 July 2003 concerning the CGRA did not foresee a transposition of Article 14 (2) APD.

¹⁰⁸ Parts 1 – VI of the interview form. Article R.723-1-1 *Ceseda* states that *“A copy of the report is transmitted to the applicant together with the decision of the General Director of the OFPRA when refugee status is refused”*.

¹⁰⁹ Interviews with S3, S4, and S9.

¹¹⁰ Interviews with S1, S3 and S4.

¹¹¹ Interview with S8. It should be noted that according to article 25 of PD 90/2008, the deadline for lodging an appeal is: 10 days for inadmissible applications, 8 days for applications examined through border procedure and 30 days for all other applications.

¹¹² Interviews with stakeholders at the Methodology Directorate.

could not be made of the case files but did not witness applicants being informed of their right to take photos of the case file. It was also unclear whether an interpreter would be available to assist the applicant with accessing the information contained in the case file.¹¹³

Recommendation

All applicants should receive a copy of the report of the personal interview before a decision is taken by the determining authority.¹¹⁴

¹¹³ Differing views were held by personnel within DAMP.

¹¹⁴ A proposed recast Article 16(5) would require that “Member States shall ensure that applicants have timely access to the transcript and, where applicable, the report of the personal interview before the determining authority takes a decision”: APD Recast Proposal 2009.