



BEYOND PROOF

Credibility Assessment in EU Asylum Systems

GREFO

BEYOND PROOF

Credibility Assessment in EU Asylum Systems

Acknowledgements

The Project Coordinator for the report was Clara Odofin. The National Project Researchers, Mieke Verrelst (Belgium), Karen Geertsema and Hannah Helmink (Netherlands), and Mohbuba Choudhury (UK), are thanked for their contributions. Michael Andrew Ross is also thanked for his preparation of the checklists annexed to this report.

UNHCR is sincerely grateful for the cooperation of the national asylum authorities in Belgium (CGRA/CGVS), the Netherlands (IND) and the United Kingdom (UKBA) in participating in this research.

Appreciation is extended to those government officials, judges, representatives from non-governmental organizations and lawyers, who provided information and comments in the course of this research. UNHCR expresses particular thanks to Dr. Jane Herlihy from the Centre for the Study of Emotion and Law (CSEL) for carefully reviewing the report and giving expert advice. Thanks also go to Gábor Gyulai and the Hungarian Helsinki Committee (HHC) for their contribution to the project.

Acknowledgements must also be given to interns in UNHCR's Bureau for Europe: Amelia Gates for her substantive and valuable contribution to the report, and Louise Olivier and Imen Hannachi for their tireless support.

A special mention goes to staff in the UNHCR Offices in Belgium, the Netherlands and the UK; as well as the UNHCR Regional Representation for Western Europe in Brussels, the UNHCR Bureau for Europe, and the UNHCR Division for International Protection. Thanks also go to UNHCR staff in other offices in Europe, Ottawa, and the Regional Representations in Washington and Canberra.

The work of Fadela Novak-Irons, Bureau for Europe, for her leadership, coordination and drafting roles in the preparation of the report is particularly acknowledged.



UNHCR

United Nations High Commissioner for Refugees

Haut Commissariat des Nations Unies pour les réfugiés



This project has been financially supported by the European Refugee Fund of the European Commission.

The views expressed in this publication are those of the author and the project partners, and they do not necessarily reflect the views of the European Commission. The European Commission is not responsible for any use that may be made of the information contained in this publication.

This document is for general distribution. All rights reserved. Reproductions and translations are authorised, except for commercial purposes, provided the source is acknowledged.

© United Nations High Commissioner for Refugees
Brussels, May 2013

Photo ©: UNHCR

Layout and Design: BakOS DESIGN

Table of Contents

Acknowledgements	3
CHAPTER 1 – Introduction.....	11
1. Background	13
2. Purpose and Scope of the Report.....	15
Limitations of the research	16
3. Methodology	18
3.1. Research methodology	18
3.2. National research methodology	19
Desk-based research	19
Selection and review of case files and decisions	20
Observation of personal interviews.....	21
Interviews and consultation with national stakeholders	21
The national research in figures	21
4. Caveats, Use of Terms and Explanations	22
Caveats	22
Use of terms and explanations	22
Translations.....	23
CHAPTER 2 – Credibility Assessment: Purpose and Principles.....	25
1. What is the Credibility Assessment?	27
1.1. Purpose of the credibility assessment.....	27
1.2. Importance of the credibility assessment.....	28
1.3. Challenges of the credibility assessment	30
2. Principles and Standards of the Credibility Assessment	34
2.1. Shared duty.....	35
2.2. Individual assessment	35
2.3. Objective and impartial assessment.....	37
2.4. Evidence-based assessment.....	41
2.5. Focus on material facts	42
2.6. Opportunity for applicants to comment on potentially adverse credibility findings.....	43
2.7. Credibility assessment based on entire evidence	45
2.8. Close and rigorous scrutiny	48

2.9. Benefit of the doubt.....	49
2.10. Clear and unambiguous credibility findings and structured approach	50

CHAPTER 3 – Credibility Assessment: A Multi-Disciplinary Approach.....53

1. Introduction.....	55
2. The Applicant’s Individual and Contextual Circumstances.....	56
2.1 The limits and variations of human memory	57
2.1.1. Reconstruction.....	57
2.1.2. Memories for ‘facts’: dates and objects	58
2.1.3. Emotion and remembering.....	60
2.1.4. Retelling.....	60
2.2 Impact of trauma on memory and behaviour	61
2.3 Fear and lack of trust.....	65
2.4 Cultural background and customs.....	66
2.5 Education.....	68
2.6 Gender	69
2.7 Sexual orientation and/or gender identity.....	71
2.8 Stigma and shame.....	72
2.9 Other aspects of the applicant’s background such as age, urban or rural background, profession, socio-economic status, religion	74
3. Factors Affecting the Decision-Maker.....	75
3.1 The decision-maker.....	75
3.1.1. The decision-maker’s thinking processes	75
3.1.2. The decision-maker’s individual and contextual circumstances.....	76
3.1.3. The decision-maker’s state of mind.....	77
3.2 Political, societal and institutional context	78
3.3 The repetitive nature of the task	79
3.4 Case-hardening, credibility fatigue, emotional detachment, stress and vicarious trauma.....	79
4. Conclusion.....	82

CHAPTER 4 – Gathering the Facts..... 83

1. Introduction - Substantiation of the Application	85
2. Who has the Duty to Substantiate the Application?	86
3. The Applicant’s Duty in Principle to Substantiate the Application	89
3.1 What needs to be submitted by the applicant to substantiate the application?.....	89

3.2 Documentation and other evidence ‘at the applicant’s disposal’	92
3.2.1 Meaning of the term ‘documentation at the applicant’s disposal’	93
3.2.2 Meaning of the term ‘satisfactory explanation’	96
3.3 Duty of the applicant to substantiate the application ‘as soon as possible’	97
3.3.1. The meaning of ‘as soon as possible’ in state practice	98
3.3.2 The requirement to submit ‘as soon as possible’ and the individual and contextual circumstances of the applicant	102
4. The Duty of the Determining Authority with Regard to Substantiation of the Application	104
4.1 Provision of information and guidance to the applicant.....	105
4.1.1 Taking into consideration the applicant’s background when providing guidance	106
4.1.2 Providing guidance on the type of documentary and other evidence that may be relevant.....	107
4.2 Providing guidance through the use of appropriate questioning during the interview.....	110
4.2.1 Use of ‘general knowledge’ questions to probe credibility	113
4.2.2 Assessment of responses to questions testing ‘general knowledge’	114
4.2.3 Assumptions underlying the use of ‘general knowledge’ questions	116
4.3 Provision of reasonable opportunity for an applicant to clarify potentially adverse credibility findings.....	119
4.3.1 The right to be heard	121
4.3.2 Cooperation requirement.....	124
4.4 The determining authority’s duty to gather evidence bearing on the application by its own means.....	126
4.4.1 Gathering country of origin information (COI)	128
4.4.2 Gathering the facts and the principle of rigorous scrutiny	131
5. Conclusion.....	134
CHAPTER 5 – Credibility Indicators.....	135
1. Introduction	137
2. Sufficiency of Detail and Specificity	138
2.1 Policy framework on sufficiency of details.....	138
2.2 Memory and sufficiency of details	139
2.3 The individual and contextual circumstances of the applicant and sufficiency of details	142
2.4 Shame and stigma and sufficiency of details.....	145
2.5 Other factors impacting on the level of detail	145
2.6 Questions of general knowledge and sufficiency of details.....	146
3. Internal Consistency of the Oral and/or Written Material Facts Asserted by the Applicant.....	149
3.1 Policy framework on internal consistency	150
3.2 Memory and internal consistency.....	151

3.3	The individual and contextual circumstances of the applicant and internal consistency.....	153
3.4	Consistency between earlier and later statements	154
3.5	State practice on consistency between earlier and later statements.....	156
3.6	Consistency of applicant’s statements with supporting documentary or other evidence submitted by the applicant.....	160
3.7	Basing the credibility assessment on the entire evidence.....	161
4.	Consistency of the Applicant’s Statements with Information Provided by Family Members and/or Witnesses.....	165
4.1	Memory and consistency with information provided by family members and/or witnesses.....	165
4.2	Consistency with statements of other applicants	166
4.3	Individual and contextual circumstances and consistency with information provided by family members and/or witnesses	167
4.4	State practice on consistency with information provided by family members and/or witnesses.....	168
5.	Consistency of the Applicant’s Statements with Available Specific and General Information...169	
5.1	Legal and policy framework.....	169
5.2	Guidance on use of ‘external consistency’	170
5.3	The individual and contextual circumstances of the applicant and ‘external consistency’.....	171
5.4	Consistency with country of origin information	173
6.	Plausibility.....	176
6.1	Meaning of ‘plausible’	176
6.2	The individual and contextual circumstances of the decision-maker	177
6.3	Use of plausibility in state practice.....	181
6.3.1	Subjective assumptions and speculation	181
6.3.2	Perception of risk.....	183
7.	Demeanour.....	185
7.1	The individual and contextual circumstances	186
7.2	State practice on demeanour.....	189
8.	Conclusion.....	191
 CHAPTER 6 – Assessing the Applicant’s Behaviour		193
1.	Introduction	195
2.	Behaviour Considered Indicative of the Applicant’s Lack of Fear of Persecution or Risk of Serious Harm	199
2.1	Delay in applying for asylum	199
	Factors to take into account.....	200
2.2	Applicant did not apply for protection in safe third country	204
	Factors to take into account.....	205

State practice on failure to apply in safe third country	206
3. Expected Behaviour in the Member State Considered Indicative of Credibility	208
4. Behaviour Considered Indicative of the Applicant's Propensity to Deception and Dishonesty.....	211
Factors to be taken into account.....	213
5. Conclusion.....	217
CHAPTER 7 – Approaches to the Credibility Assessment.....	219
1. Introduction	221
2. Approaches Taken to the Credibility Assessment in State Practice.....	222
2.1. The approach in the Netherlands	222
Step one – assessment of documents.....	222
Step two – determining the threshold of credibility to be applied: consideration of the application of Article 31 (2) (a) to (f) Aliens Act	223
Step three – credibility assessment of the applicant's statements	224
2.2. The approach in the UK	225
2.3. The approach in the EAC	226
2.4. Analysing the various approaches.....	226
2.4.1. The starting point	227
2.4.2 Assessing the credibility of each material fact	227
2.4.3. Application of the principle of the benefit of the doubt	229
2.5. The threshold for establishing credibility.....	237
3. Clear Statement of Which Facts are Accepted as Credible and Which Facts are Rejected	243
4. A Structured Approach to the Credibility Assessment	245
4.1. The principle of the benefit of the doubt.....	246
4.2. Consideration of the benefit of the doubt	247
4.3. Application of the benefit of the doubt.....	248
5. Conclusion.....	250
Final Conclusion.....	251
Annexes.....	253
Flowcharts and Checklists for Decision-Makers.....	254
Flowcharts of National Asylum Procedures.....	262
Bibliography	265
List of Case Law	277
List of Abbreviations	285

CHAPTER 1

Introduction

1. Background	13
2. Purpose and Scope of the Report.....	15
Limitations of the research	16
3. Methodology	18
3.1. Research methodology	18
3.2. National research methodology	19
Desk-based research	19
Selection and review of case files and decisions	20
Observation of personal interviews.....	21
Interviews and consultation with national stakeholders.....	21
The national research in figures	21
4. Caveats, Use of Terms and Explanations	22
Caveats	22
Use of terms and explanations	22
Translations.....	23

1. Background

Credibility represents a very complex and challenging area of refugee law and status determination. Research and practice have showed that it is a core element of the adjudication of asylum applications. The assessment of credibility plays a central role in the determination of an applicant's needs for international protection.¹ In the exercise of its supervisory responsibility under its Statute² and Article 35 of the 1951 Convention relating to the Status of Refugees (hereinafter 1951 Convention),³ the United Nations High Commissioner for Refugees (hereinafter UNHCR) has noted a common trend across European Union Member States whereby negative decisions on applications for international protection often seem to be made on credibility grounds without the application of the criteria of the Qualification Directive to the facts of the application. In addition, notwithstanding the different legal traditions in the EU, UNHCR has noted that a common understanding and approach to credibility assessment is still lacking among its Member States.

The credibility assessment involves a determination of whether and which of the applicants statements and other evidence can be accepted, and therefore may be taken into account in the analysis of well-founded fear of persecution and real risk of serious harm. With the exception of the guidance on a few aspects of the credibility assessments in Article 4 QD and some relevant provisions in Council Directive 2005/85/EC of 1 December 2005 on *minimum standards on procedures in Member States for granting and withdrawing refugee status*,⁴ the EU asylum *acquis* provides little guidance on this core task of the asylum procedure. The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*,⁵ and the UNHCR *Note on Burden and Standard of Proof*⁶ provide some additional guidance.

¹ For the purposes of this report, "international protection" means refugee status and subsidiary protection status as defined by Article 2 (a) of Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 19 April 2004, 2004/83/EC (hereinafter Qualification Directive or QD), by which all Member States are bound with the exception of Denmark. The European Parliament and the Council of the European Union adopted Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast)*, 20 December 2011, OJ L 337, p 9–26 (hereinafter recast Qualification Directive or recast QD), which will repeal the 2004 Qualification Directive with effect from 21 December 2013, for all the Member States of the EU who were bound by it, with the exception of Ireland and the United Kingdom who opted not to take part in the adoption of the recast Directive. Of note, the definition of "international protection" remains the same in the recast Qualification Directive.

² UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, Resolution 428(V), Annex, UN Doc. A/1775, 1950, para. 1. Paragraph 8 of its Statute confers responsibility upon UNHCR to supervise the application of international conventions for the protection of refugees.

³ UN General Assembly, *Convention Relating to the Status of Refugees* (hereinafter 1951 Convention), 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137. Art. 35 of the 1951 Convention obliges States Parties to cooperate with UNHCR in the exercise of its functions, including in particular to facilitate its duty of supervising the application of the provisions of the 1951 Convention.

⁴ European Union: Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, 13 December 2005, OJ L 326/13 (hereinafter Asylum Procedures Directive and APD).

⁵ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, December 2011 (re-issue) (hereinafter UNHCR, *Handbook*). The handbook was first published in 1979 and re-edited in 1992. See in particular paras 195–205.

⁶ UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998 (hereinafter UNHCR, *Note on Burden and Standard of Proof*).



Against this backdrop, the Hungarian Helsinki Committee,⁷ in partnership with UNHCR, the International Association of Refugee Law Judges,⁸ and Asylum Aid (UK),⁹ launched in September 2011 a project entitled *Towards Improved Asylum Decision-Making in the EU* (hereinafter CREDO).¹⁰ The project received financial support from the European Refugee Fund Community Actions of the European Commission. The overall goal of the CREDO project is to contribute to better structured, objective, high-quality, and protection-oriented credibility assessment practices in asylum procedures conducted by EU Member States, as well as to promote a harmonized approach, reflecting relevant provisions in EU law and international standards.

The CREDO project aims to deliver three different outputs. In addition to this UNHCR research, a training manual on credibility assessment for practitioners has been prepared by HHC, and judicial guidance for the assessment of credibility in judicial review has been developed by the IARLJ. Two pilot training seminars,¹¹ involving first instance decision-makers, judges, and other legal practitioners, have further contributed to the development of the HHC manual and the UNHCR research.

⁷ Hungarian Helsinki Committee (hereinafter HHC), at: <http://helsinki.hu/en/>.

⁸ International Association of Refugee Law Judges (hereinafter IARLJ), at: <http://www.iarlj.org/general/>.

⁹ Asylum Aid, at: <http://www.asylumaid.org.uk/>.

¹⁰ HHC, *CREDO – Improving Credibility Assessments in EU Asylum Procedures*, at: <http://helsinki.hu/en/credo-%E2%80%93-improving-credibility-assessment-in-eu-asylum-procedures>.

¹¹ CREDO Pilot training seminars, Prague (30–31 May 2012) and Madrid (28–29 November 2012).

2. Purpose and Scope of the Report

The aim of the EU Common European Asylum System (CEAS) is to ensure that, regardless of the Member State in which an application for international protection is lodged, the application should receive the same level of treatment as regards procedural arrangements and status determination. The objective of the CEAS is that “*similar cases should be treated alike and result in the same outcome.*”¹² Even if Member States apply the same legal concepts in accordance with the Qualification and Asylum Procedures Directives and adopt a common interpretation of the provisions therein, given that credibility findings can be determinative of the outcome of an application, the examination of similar cases may result in different outcomes across the EU if the approach to the assessment of credibility differs.

Variances in outcomes may also occur within national jurisdictions where individual decision-makers exercise significant discretion and employ different approaches to credibility assessment. This has been recognized by the EU, which has taken steps through the European Asylum Support Office (hereinafter EASO) to address the issue. The EASO, which is tasked with providing support to Member States’ efforts to implement the standards set in the second phase of the CEAS, has established a Centre for Training, Quality and Expertise. This centre delivers a common training programme, the European Asylum Curriculum (hereinafter EAC), for national asylum officials across the EU that includes a module specifically on evidence assessment, including the credibility assessment.

With this report, UNHCR hopes to contribute to the further harmonization of Member State practices as they relate to the assessment of credibility. The report provides insights into some state practices on specific aspects of the credibility assessment. As such, it does not purport to provide a comprehensive overview or comparative analysis of evidentiary rules and practices in the EU. UNHCR’s own observation and recommendations in this area reflect the experience and challenges in its own capacity as refugee status determination decision-making body, and in particular the extensive work undertaken in recent years to support and train decision-makers in this area.

There is a pressing need for comprehensive and up-to-date guidance on credibility assessment to address the challenges inherent in evidentiary law in asylum claims. UNHCR has therefore embarked on the review of its existing guidance with a view to producing updated guidelines on credibility assessment that reflect recent developments in international refugee law and other relevant areas of law. This report does not constitute that final guidance.

Instead, the report seeks to identify and clarify some key concepts. As such, UNHCR hopes that the report will contribute to providing a more solid foundation to inform the necessary discussions at EU level for the further harmonization of credibility assessment practices. The state practices observed during the research and evidenced through the jurisprudence of national courts are used as illustrations of the issues discussed in the report.

Given the limited resources and time available for the project, the scope of this report extends only to selected aspects of credibility assessment. These consist of the purpose of the credibility assessment and its place in the overall process of establishing the facts, the principles underpinning the credibility assessment, the ‘shared burden’, the credibility indicators, and the benefit of the doubt. The structure of the report has been built around these concepts.

¹² European Council, *The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens*, OJ C 115/1, 4 May 2010, section 6.2, Asylum: a common area of protection and solidarity.

Given the little guidance that exists on the credibility assessment in the asylum procedure, and in light of the many developments noted in academic research in this area over the past two decades, the report supplements the observations of state practices and the analysis of case law with references to academic publications.

Particularly relevant in this regard are the developments in areas other than the law with direct relevance and consequences for the practice of refugee law and status determination, for they relate to the establishment of the facts in an asylum claim. The recent developments in disciplinary fields, including neurobiology, psychology, gender and cultural studies, anthropology, and sociology, have been reflected in this report to the extent that researchers had already articulated their relevance in academic publications. In addition to the chapters on the concepts listed above, the report, therefore, also contains one more theoretical chapter, which outlines and explains the scientific evidence that buttresses the factors that need to be taken into account when assessing the facts of the application. The bibliography annexed to this report provides an overview of the extensive academic publications referenced throughout.

Furthermore, because this report is conceived as a practical tool for policy makers and asylum practitioners, it seeks to demonstrate usefully how these factors can be taken into account. It therefore does not merely list these factors and their relevance; it undertakes the more challenging exercise of intersecting these factors with the application of the various legal concepts throughout the report. The practices observed during the national research and the jurisprudence developed by national courts, as well as regional and international courts, are used to illustrate how these factors need to be taken into account. A table of the case law referenced in the report is annexed.

UNHCR is acutely aware that complex concepts such as those underpinning the credibility assessment also need to translate into the daily practice of asylum decision-makers. It is acknowledged that decision-makers are pressured by time and other imperatives, and may have received little or no training in this complex area of their work. Many may have extensive status determination experience but only limited insights into the factors that impact on their practice. UNHCR has therefore also translated the legal and theoretical concepts into practical flowcharts and checklists to assist decision-makers and to support a fair assessment of credibility in the asylum procedure. These are annexed to this report.

Limitations of the research

It should be noted that, due to the above stated limitations and the wide-ranging issues at stake, the focus of the report is solely on the main asylum procedure. It does not include any considerations regarding the credibility assessment in accelerated procedures, for subsequent applications, appeal stages, procedures for the cessation, exclusion, revocation of, ending of, or refusal to renew international protection, or any national protection statuses.

Likewise, this report focuses on the assessment of credibility in the asylum procedure in general terms and does not address the specific considerations linked to claims based on religious conversion or sexual orientation and/or gender identity for instance.

In line with the UNHCR's Age, Gender and Diversity (AGD) Policy,¹³ the report mainstreams and systematically applies an age- gender- and diversity-sensitive approach in its focus and analysis. However, given the additional complexities represented by child asylum claims and the limited guidance in this field, the assessment of credibility in child asylum claims was excluded from the scope of the report. A follow-up project, also supported by the European Refugee Fund, will delve into this aspect in 2013–2014.

The limited number of files reviewed and interviews observed precluded the use of credibility assessment in the case of family members. Anecdotal evidence suggests that interviews with family members are

¹³ UNHCR, *Age, Gender and Diversity Policy, Working with People and Communities for Equality and Protection*, 1 June 2011.



used to refute or support the credibility findings in relation to the claim of the main applicant leading to the international protection needs to these family members being overlooked. Questions regarding the confidentiality of statements could also be posed. This aspect of state practice needs more research.

This report does not include either a detailed analysis of some procedural practices that impact on credibility assessment (UNHCR research on improving asylum procedures in March 2010 covered these),¹⁴ or an analysis of the use of country of origin information (hereinafter COI) and the impact of country guidance on evidentiary matters. It also does not analyse the methodology, quality and/or standards for certain methods of credibility testing such as age assessments, expert and forensic evidence, medical reports, and COI (including reliance on classified information). Neither does the report look at the role and impact of the interpreter in the assessment of credibility. Further research on this aspect is also needed.

¹⁴ UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice – Key Findings and Recommendations* (hereinafter UNHCR, APD Study), March 2010.

3. Methodology

3.1. Research methodology

As mentioned above, the methodology used in this research is multi-pronged.

To supplement the country-focused research in this project (in Belgium, the Netherlands and the United Kingdom), for which the methodology is further detailed below, the research into state practices has consulted publicly available state guidance issued by the national asylum authorities and/or tribunals in Sweden, Canada, the USA, and Australia. These are systematically referenced in the report.

The research has also extensively referred to the European Asylum Curriculum Module 7 on Evidence Assessment, as this training material is used across EU Member States either in its entirety through the e-learning facility of the EASO, or through shorter training materials derived from the module and adapted to the national context.

Desk-based research on existing case law from national courts in EU Member States and other countries, namely Canada, the USA, Australia, and New Zealand, has also complemented national research on first instance practice. Jurisprudence by the two European courts, the Court of Justice of the European Union (hereinafter CJEU) and the European Court of Human Rights (hereinafter ECtHR) is systematically referenced. In addition, rulings by the United Nations Committee against Torture (hereinafter CAT) have also been researched and the expertise developed in the treatment of trauma due to torture informs this report. A large proportion of individual complaints under the UN Convention against Torture concern violations under Article 3 and have been made by asylum-seekers whose asylum claims had been rejected. The case law of the CAT is thus relevant to international refugee law. Last, guiding standards from the international criminal tribunals on assessing testimonial evidence and relevant rulings by the International Criminal Tribunal for the former Yugoslavia (hereinafter ICTY) and the International Criminal Tribunal for Rwanda (hereinafter ICTR) have also been used in this research. Like asylum adjudicators, these courts have had to deal with cross-cultural contexts and other barriers, and have developed a body of principles, which can inform the credibility assessment of statements and other evidence provided by asylum-seekers. In total, over two hundred decisions by these courts have been referenced in the report.

In addition, more than seventy academic publications have been consulted to better understand the recent developments in the practice of refugee law as it relates to the establishment of the facts of the claim, as well as the developments in other scientific areas where researchers had already articulated their relevance to the credibility assessment in asylum applications. In an attempt to illustrate the impact of these scientific developments on the practices surrounding the credibility assessment, a multi- and inter-disciplinary approach has been applied to the whole research.

The aim of this extensive but by no means exhaustive research was to clarify some key concepts, reference key standards, outline the factors that have a bearing on the credibility assessment, and provide some insights into state practices on specific aspects of the assessment of credibility. Drawing on the legal and scientific developments mentioned above, this report analyses current state legislation, policy guidance, training, and decision-makers' practice on credibility assessments, and shows how approaches to the establishment of facts need to be cognisant of the factors that impact on the credibility assessment.

Although the files UNHCR reviewed and the interviews it observed during the national research in Belgium, the Netherlands, and the United Kingdom provide unique and detailed examples of how decision-makers go about the assessment of credibility, the aim was clearly not to focus solely on the three Member States under study. This report is not an audit of the practices of the national asylum authorities in these countries. Rather, the state practices observed in this research are used as illustrations of the key concepts and issues discussed in the report the issues discussed are relevant for and aim to inform practice in all the asylum systems of the European Union. UNHCR is deeply appreciative of the cooperation, time and expertise offered by the asylum authorities, as well as the many other stakeholders who contributed to this research.

3.2. National research methodology

The scope of the national research included a review of the legal and policy frameworks in Belgium, the Netherlands, and the United Kingdom, as well as their implementation by decision-makers.

In agreement with the state authorities, these three Member States were included in this research because they had developed national guidelines and standards for guidance on the credibility assessment (the Netherlands and the UK), or had introduced training for all new protection officers based on a shorter version of the EAC Module 7 on Evidence Assessment (Belgium).

A common methodology for this national research was applied across the three Member States of focus to facilitate, as far as possible, the gathering of commensurable data. A mixed-methods approach was utilized to gather the necessary information: (i) desk-based documentary research and analysis of legislation, administrative provisions, case law, policy instructions/guidelines, other existing data, and relevant literature; (ii) the selection and review of case files and decisions; (iii) the observation of personal interviews of applicants; and (iv) interviews and consultation with national stakeholders.

Desk-based research

UNHCR reviewed relevant primary and secondary sources from the three Member States of focus, which included:

- relevant national legislation;
- any relevant procedural or administrative regulations, provisions, and instructions;
- any relevant policy, operational guidelines or instructions on the credibility assessment;
- the determining authority's annual reports;
- official statistics;
- any relevant precedent-setting case law;
- any available training materials on the credibility assessment used for training officials involved in interviewing, examining, assessing, and taking a decision on applications for international protection; and
- relevant secondary documentary resources, such as reports, commentaries, articles, and critiques from reliable sources.

Selection and review of case files and decisions

A distinctive and key feature of this part of the research was its focus on the implementation of credibility assessment in practice by first-instance decision-makers. Consequently, a significant part of the research involved a review and analysis of a selected sample of individual case files.¹⁵

In total, 120 case files¹⁶ were reviewed. Case files were randomly selected according to the following criteria:

- ❶ Only case files relating to applications lodged after July 2010¹⁷ and December 2010¹⁸ and upon which a first-instance decision had been taken were selected.
- ❷ The case files selected represented both decisions to grant an international protection status and decisions not to grant such status in a ratio that broadly mirrored the recognition rates of the determined period of time.¹⁹
- ❸ The case files selected related to applications by both men and women as principal applicants in a ratio that broadly mirrored the number of applications lodged by men and women for the relevant period of time.²⁰
- ❹ The case files selected related to applications concerning the following six top countries of origin for the Member States under study, namely Afghanistan, the DRC, Guinea, Iran, Iraq, and Somalia.²¹

Within the above selection criteria, the selection of cases was random. UNHCR, however, aimed to ensure that selection methods would not produce misleading results by commission or omission.

As such, the case files selected were sampled in different regional locations within the Member State (if applicable),²² in different language sections within the Member State (if applicable),²³ and by a range of interviewing officers. In addition, and where possible, UNHCR reviewed the written decisions that were taken on the applications of whose interviews were observed.²⁴

¹⁵ The case files reviewed by UNHCR in the three Member States typically included the application for international protection, any other written statement by the applicant, the report(s) of the screening (if applicable) and personal interview(s), any evidence submitted by the applicant, COI (if any), any other evidence obtained by the determining authority, any other relevant documentation, case file notes and the written decision. In some instances, the case files also contained documents submitted to the appeal instance and the appeal decision. In these cases, such documents were also reviewed with the [single] aim of gaining a potentially useful insight into the appeal body's view of the first instance determining authority's assessment of credibility. Where examples of case files are given in this report, these and any references ensure that the applicant's identity is protected.

¹⁶ 40 case files were reviewed in each of the three Member States surveyed.

¹⁷ July 2010 refers to the national research in the UK.

¹⁸ December 2010 refers to the national research in Belgium and the Netherlands. With regard to the UK and the Netherlands these applications would have been lodged after the date of issuance of the latest guidelines on the credibility assessment.

¹⁹ In all three Member States, the case files selected represented both decisions to grant an international protection status (i.e. refugee status or subsidiary protection status) and decisions not to grant such a status. In Belgium, the case files selected represented decisions in a ratio that mirrored the recognition rates – for each of the selected countries of origin – of the period 1 July to 31 December 2011. In summary, 11 decisions to grant refugee status, 8 decisions to grant subsidiary protection status, and 21 negative decisions on international protection. In the UK, the case files selected represented decisions in a ratio, which broadly mirrored the 2010 recognition rates. In the UK, therefore, 7 decisions to grant international protection and 33 negative decisions were reviewed. It is noted that no case file with a decision to grant subsidiary protection status was analysed as the UK 2010 statistics only provided such protection status in 0.4 % of cases. In the Netherlands, the case files selected represented decisions in a ratio that broadly mirrored the 2011 recognition rates – 16 decisions to grant international protection (both refugee status and subsidiary protection status) and 24 negative decisions on international protection.

²⁰ In the UK, the overall sample of case files was made up of 12 female and 28 male applicants. In Belgium and the Netherlands, the equivalent figures were 14 female and 26 male applicants.

²¹ For the Netherlands and the UK, the case files related to applicants from Afghanistan, Iran, Iraq, and Somalia. For Belgium, the case files related to applicants from Afghanistan, the Democratic Republic of Congo, Guinea, and Iraq. In Belgium and the UK, an equal number of case files were included for each country of origin. In the Netherlands, the breakdown was as follows: 9 (Afghanistan), 11 (Iran), 13 (Iraq) and 7 (Somalia).

²² Case files were reviewed from the following regional centres – UK: London and Liverpool; the Netherlands: the four IND regions of north-east, south-east, south-west and north-west.

²³ In Belgium, UNHCR sought to review a proportionate number of case files from the Flemish and French speaking sections of the CGRA/CGRV.

²⁴ UNHCR reviewed eight such written decisions related to interviews observed in the UK and Belgium, respectively. In the Netherlands, UNHCR was not allowed to review any written decision that was taken on the application of the applicant whose interview was observed. However, the Dutch determining authority orally communicated the decisions.

Observation of personal interviews

UNHCR observed 29 personal interviews across the three Member States: 10 in Belgium, 9 in the Netherlands, and 10 in the UK.

Interviews and consultation with national stakeholders

UNHCR consulted 74 national stakeholders in the course of this research. Those consulted included personnel of the determining authorities responsible for examining, assessing, and taking a decision on the application for international protection; personnel of the competent authorities responsible for interviewing applicants for international protection, or taking decisions related to the asylum procedure; supervisors of decision-makers; personnel responsible for providing COI; legal representatives and advisers; NGOs; and appeal judges (for the purpose of providing a view on the quality of the evidence and credibility assessment in first-instance decision-making).

The national research in figures

	Number of case files reviewed	Number of decisions reviewed	Number of personal interviews observed	Number of national stakeholders consulted and interviewed		
				Personnel from competent authorities	Judges	Representatives from NGOs and Lawyers
Belgium	40	8	10	12*	4	15
Netherlands	40		9	13	3*	10
UK	40	8	10	8		9
Total	120	16	29	74		

* UNHCR was not able to interview any interviewer/decision-maker within the CGRA/CGRV. One interviewee was not interviewed one-to-one but provided information to UNHCR by email.

** One interviewee is legal advisor at the Council of State

4. Caveats, Use of Terms and Explanations

Caveats

Given the limited number of case files reviewed and interviews observed, this research does not purport to provide a quantitative analysis of state practice, nor does it intend to be a comparative study limited to three Member States. For the same reasons, the findings solely intend to be illustrative of the issues discussed in the report.

While the purpose of the review of case files and decisions was to illustrate how the credibility assessment is conducted in practice, it is noted that the issue of credibility might not have figured in all the decisions in the sample.

Use of terms and explanations

For the purpose of this report, UNHCR has used selected terminology used in the Qualification Directive and the Asylum Procedures Directive. The use of terms drawn from these Directives are for the purpose of this report only, as the scope and purpose of this report refers to the practice of EU Member States, and should therefore not be regarded as UNHCR's preferred terms.

The report uses the term 'determining authority' to refer to the administrative body in a Member State responsible for examining, assessing, and taking a decision at first instance on the application for international protection. It uses the term, decision-maker, to denote the personnel of the determining authority responsible for examining and assessing an application for international protection and competent to take a decision at first instance in such a case. The term 'interviewer' in this report is reserved for personnel of the determining authority responsible for interviewing applicants for international protection, if different from above, and/or where the report strictly refers to an interview situation.²⁵

For the purpose of this report, the concept of an applicant's 'individual and contextual circumstances' is used instead of the applicant's 'profile'. UNHCR has noted that the latter is often wrongly taken to imply a pre-defined category of persons actually possessing, or perceived, or attributed to possess some common characteristics, against which individual applicants are then measured. The term 'individual and contextual circumstances' refers to a broader concept and reflects the requirement under EU law that an application be assessed on an individual basis taking into account the *background* of the applicant.

An applicant's 'individual and contextual circumstances' encompasses both the personal background of the applicant, his or her age, nationality, ethnic origin, gender, sexual orientation and/or gender identity, education, social status, religion, beliefs, values, and urban/rural cultural background, and state of mental and physical health; his or her past and present experiences of ill-treatment, torture, persecution, harm, or other serious human rights violations, and experiences in any transit country and the Member State; as well as the wider legal, institutional, political, social, religious, cultural context of his or her country of origin, or place of habitual residence, the human rights situation, the level of violence, and available state protection.

²⁵ In the asylum procedure in the three Member States on which this report focuses, the function of interviewer and decision-maker are in principle merged, and entrusted to one person. However, this might not be indicative of practice in procedures in other EU Member States. The following terms are used in the national context to denote the person responsible: "case owner" (the UK), "protection officer" (Belgium), and "interviewer/decision-maker" (the Netherlands).



For the purposes of this report, the terms ‘substantiate’ and ‘duty to substantiate’ have been used instead of ‘burden of proof’ in accordance with the language in Article 4 QD.

Translations

All English translations contained in this report are unofficial translations by UNHCR unless otherwise specified.

CHAPTER 2

Credibility Assessment: Purpose and Principles

1. What is the Credibility Assessment?	27
1.1. Purpose of the credibility assessment.....	27
1.2. Importance of the credibility assessment.....	28
1.3. Challenges of the credibility assessment	30
2. Principles and Standards of the Credibility Assessment	34
2.1. Shared duty.....	35
2.2. Individual assessment	35
2.3. Objective and impartial assessment.....	37
2.4. Evidence-based assessment.....	41
2.5. Focus on material facts	42
2.6. Opportunity for applicants to comment on potentially adverse credibility findings.....	43
2.7. Credibility assessment based on entire evidence	45
2.8. Close and rigorous scrutiny	48
2.9. Benefit of the doubt.....	49
2.10. Clear and unambiguous credibility findings and structured approach	50

1. What is the Credibility Assessment?

1.1. Purpose of the credibility assessment

In the English language, the ordinary meaning of ‘credibility’ is whether something or someone is capable of being believed,¹ or alternatively, whether something or someone is trustworthy or reliable.² ‘Credible’ is defined as “*able to be believed or convincing*.”³

An applicant qualifies for international protection if he or she has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion in accordance with the 1951 Convention, or would face a real risk of suffering serious harm as defined in the Qualification Directive if returned to the country of origin or habitual residence. In the asylum procedure, the determination of whether an applicant has such a well-founded fear or faces such a risk is informed by the findings of fact on points that are material – that is, relevant – to the asylum claim.

The term ‘credibility assessment’ in this context is used to refer to the process of gathering relevant information from the applicant, examining it in the light of all the information available to the decision-maker, and determining whether the statements of the applicant relating to material elements of the claim can be accepted, for the purpose of the determination of qualification for refugee and/or subsidiary protection status.

This understanding of the credibility assessment, which encompasses the determination of which facts presented by the applicant can be believed, situates the credibility assessment as an integral part of the process of establishing the facts of an asylum claim. The credibility assessment involves a determination of whether and which of the applicant’s statements and other evidence submitted by the applicant can be accepted and, therefore, may then be taken into account in the analysis of the well-founded fear of persecution and real risk of serious harm.

This understanding is also promoted by the European Asylum Curriculum (EAC) module on evidence assessment, which describes “*the assessment of credibility as a tool to establish a set of material facts to which you can apply the refugee definition (the findings of facts)*.”⁴

The question for decision-makers is how do they know whether they should accept the facts presented by the applicant as supported by his or her statement and the other evidence available in the case? This, in essence, is the question that the credibility assessment should assist in answering.

For the purpose of this report, evidence may be oral or documentary.⁵ It includes the statement of the applicant as well as any other oral evidence provided by experts, family members and other witnesses. Evidence may also be documentary, including written, graphic, digital, and visual materials. In this sense,

¹ The Concise Oxford Dictionary, Ninth Edition, Oxford University Press, 1995: “*the quality of being convincing or believable*.”

² Collins Dictionary, HarperCollins, 2004. See also The Concise Oxford Dictionary, Ninth Edition, Oxford University Press, 1995: “*the quality of being trusted and believed in*.”

³ The Concise Oxford Dictionary, Ninth Edition, Oxford University Press, 1995.

⁴ EAC, Module 7 on Evidence Assessment, section 3.1.12 Points to remember.

⁵ UNHCR, *Note on Burden and Standard of Proof*, para. 5: “*Evidence may be oral or documentary*.”

evidence may also encompass COI, exhibits such as physical objects and bodily scarring as well as audio and visual recordings. Therefore, henceforth, where the term ‘evidence’ is used in this report, without being qualified, it should be understood as encompassing all types of evidence – oral and written statements, documentation, COI and other written, graphic, digital, and visual materials.

Evidence may be submitted by an applicant to substantiate his or her application and may also be gathered by the determining authority through its own means. Evidence may include anything that asserts, confirms, supports, refutes or otherwise bears on the relevant facts in issue.

In this regard, it should be recalled that the objective of refugee and subsidiary protection status determination is humanitarian. With this in mind, the determination does not purport to identify those in need of international protection as a matter of certainty.⁶

Moreover, the aim of the credibility assessment is not to determine the accuracy of statements provided by an applicant. As such, the decision-maker does not need to be certain of the veracity of a statement concerning a relevant fact to find it credible and accept it for the purpose of status determination.⁷ The aim, instead, is to determine what relevant information provided by the applicant should be considered for the purpose of the determination of qualification for refugee and subsidiary protection status.

“To show that a statement is credible is not the same as to show that it is true.”⁸

1.2. Importance of the credibility assessment

Credibility assessment is a core element of the adjudication of asylum applications. Credibility findings often lead to the determination of the material facts considered for the determination of an application, and are as such the first step in the decision-making process.

While the assessment of the credibility of statements provided by an applicant may in some cases be a straightforward process, in others, it represents a significant and challenging part of the adjudication. Some decision-makers have declared that they spend the vast majority of their time on credibility assessment and that this constitutes the most challenging aspect of their work.⁹ Credibility, to some extent, is nearly always at issue.¹⁰

Findings of facts made as a result of the credibility assessment can be determinative of the outcome of the asylum claim. Indeed, the issue of credibility is often the pivot upon which the outcome of the first instance determination procedure turns. Although there is a lack of comprehensive empirical evidence on the extent to which adverse credibility findings on material elements of the claim result in denial of international protection at the first instance in EU Member States, a number of studies in the EU and various other

⁶ UNHCR, *Note on Burden and Standard of Proof*, para. 2: “In examining refugee claims, the particular situation of asylum-seekers should be kept in mind and consideration given to the fact that the ultimate objective of refugee status determination is humanitarian. On this basis, the determination of refugee status does not purport to identify refugees as a matter of certainty, but as a matter of likelihood. Nonetheless, not all levels of likelihood can be sufficient to give rise to refugee status.”

⁷ UNHCR, *Note on Burden and Standard of Proof*, para. 12: “Given that in refugee claims, there is no necessity for the applicant to prove all facts to such a standard that the adjudicator is fully convinced that all factual assertions are true, there would normally be an element of doubt in the mind of the adjudicator as regards the facts asserted by the applicant.”

⁸ J A Sweeney, ‘Credibility, Proof and Refugee Law’, *International Journal of Refugee Law*, vol. 21, no. 4, 2009, p 700–26, at p. 719.

⁹ A Macklin, *Truth and Consequences: Credibility Determination in the Refugee Context*, International Association of Refugee Law Judges, Conference in Ottawa, Canada, 1998.

¹⁰ G Coffey, ‘The Credibility of Credibility Evidence at the Refugee Review Tribunal’, *International Journal of Refugee Law*, vol. 15, no. 3, 2003, p 377–417 at p. 378.

regions of the world indicate that a significant proportion of decisions to deny status are based wholly or partially on adverse credibility findings.¹¹

A common trend that UNHCR identified in its 2010 study on the implementation of the Asylum Procedures Directive in 12 EU Member States,¹² based on an audit of more than 1,000 cases,¹³ was that negative decisions were often made on credibility grounds and failed to apply the criteria of the Qualification Directive to accepted facts. In France, for instance, the great majority of negative decisions audited were cases where the application was rejected on credibility grounds [*faits non établis*]. In Germany, in about 75 per cent of the cases audited by UNHCR in which refugee protection was denied, decisions were based on the assessment that the applicant's presentation of the facts was not credible.¹⁴

UNHCR has also repeatedly identified the assessment of credibility as an area of concern, and observed that this aspect of decision-making poses a particular challenge to decision-makers.¹⁵ This has emerged strongly in the organization's work in support of determining authorities in the EU with a view to enhancing the quality of asylum procedures and determining international protection needs.

What is more, the appellate bodies in some states do not undertake their own investigation into the facts of the appeal. Instead, they rely on the evidence the appellant submits and on the first instance determining authority's fact findings.

¹¹ UNHCR, *Quality in the Swedish Asylum Procedure: A Study of the Swedish Migration Board's Examination of and Decisions on Applications for International Protection*, September 2011. This study, implemented in cooperation between UNHCR and the Swedish Migration Board in 2009–2011, involved the analysis of 200 decisions taken between July and December 2009, and found that 38 per cent of the cases analysed were rejected on credibility grounds. See also Asylum Aid, *Unsustainable: The Quality of Initial Decision-making in Women's Asylum Claims*, January 2011, which examined 45 cases by principle female claimants, of which 31 (69 per cent) involved an element of gender-related persecution. In 39 out of the 45 cases examined (87 per cent) the applicant's claim was not believed. The assessment of credibility formed the core of the decision to refuse. In all cases allowed at appeal (50 per cent), the credibility of the applicants' claims was accepted and the negative credibility findings at the initial decision-making were overturned. See also R Byrne, 'Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals', *International Journal of Refugee Law*, vol. 19, no. 4, December 2007, p 609–38: "[e]xisting studies indicate that somewhere between 48 and 90 per cent of all asylum claims are rejected on findings of adverse credibility in regions as diverse as North America and Northern Africa." See also M Kagan, 'Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination', *Georgetown Immigration Law Journal*, vol. 17, 2003, p 367–9. Kagan's review of determinations in UNHCR's regional field office in Cairo found that in the spring of 2002, 77 per cent of asylum rejections were attributed to a "lack of credibility" See also D Anker, 'Determining Asylum Claims in the United States: An Empirical Case Study', *New York University School of Law Journal of Law and Social Change*, vol. 19, 1992. Anker's earlier investigation of asylum determinations in Boston revealed that 48 per cent of rejections were on account of adverse credibility findings. See also, C Rousseau et al., 'The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-making Process of the Canadian Immigration and Refugee Board', *Journal of Refugee Studies*, vol. 15, no. 1, 2002. Some 90 per cent of rejections in the sample of an empirical study of Canadian refugee decisions were on grounds of a lack of credibility of the claimant. See also G Noll (ed.), *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*, 2005; and R Thomas, 'Assessing the Credibility of Asylum Claims: EU and UK Approaches Examined', *European Journal of Migration and Law*, vol. 8, 2006, p. 79.

¹² UNHCR, APD Study, March 2010.

¹³ In total, 1,090 case files and 1,155 decisions were audited for this research.

¹⁴ UNHCR, APD Study, p 26–7.

¹⁵ UNHCR, UK-based, *Quality Initiative Project* (Section 2.2, Second Report; section 2.3, Third Report; section 2.2, Fourth Report; section 2.3 Fifth Report) and *Quality Integration Project* (Section 4.1, First Report). See also UNHCR's *Quality in the Swedish Asylum Procedure Project*. See also ASQAEM (Asylum Systems Quality Assessment and Evaluation Mechanism) project in Central Europe (2008–2010) and FDQ (Further Developing Asylum Quality in the European Union) project (2010–2011), co-financed by the European Refugee Fund. The FDQ project also covered four countries in southern Europe (Cyprus, Greece, Italy, and Portugal). UNHCR's work with Member States is based on the supervisory role of UNHCR under the 1951 Convention relating to the Status of Refugees. It is a collaborative endeavour between UNHCR and determining authorities to improve the quality of the determination process through monitoring both procedures and the application of the refugee criteria and subsidiary protection.

The case law of the CJEU has established that the appeal body must have the power to review both facts and issues of law, a position the jurisprudence of the European Court of Human Rights reinforced.¹⁶ However, in a majority of the Member States the UNHCR surveyed in the framework of the APD study:

“the competent appeals body which reviews negative decisions on asylum claims has power to review questions of both fact and law. However, in at least two Member States, reviews at the appellate level are limited to questions of law, [...] and the appellate bodies in at least three states do not undertake their own investigation into the facts, but instead rely on the evidence submitted by the appellant and the determining authority.”¹⁷

Notwithstanding the importance of the credibility assessment, UNHCR has noted that there is very limited guidance by the determining authorities of EU asylum systems on credibility; this is made all the more acute as decision-making in the asylum system presents formidable challenges.

1.3. Challenges of the credibility assessment

The challenges of the credibility assessment in the asylum procedure are widely acknowledged and documented in literature on decision-making. While all courts have to decide under conditions of uncertainty, in the asylum system, this is compounded by the geographical and cultural distance between the country of origin or place of habitual residence in which the alleged facts happened and the country in which the application for international protection is examined, as well as by the amount of time that has elapsed between these facts and the hearing of the case.

Multi-lingual and cross-cultural communication in the asylum procedure increases scope for misunderstandings and errors. Though interpreters may help to overcome the linguistic barriers, decision-makers' lack of familiarity with the cultural backgrounds of applicants as well as the social mores and gender norms of their societies of origin, and the linguistic barriers may remain a challenge. As Lord Justice Keene of the UK Court of Appeal has stressed:

“An English judge may have, or think that he has, a shrewd idea of how a Lloyds Broker or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ships' engineer, or a Yugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibly assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even – which may be quite different – in accordance with his concept of what a reasonable man would have done.”¹⁸

In addition, the need to work through interpreters adds yet another layer of complexity to the process.

To examine an application for international protection, the interviewer and decision-maker require specialist competencies, knowledge and skills, combined with strong analytical abilities. These skills and competencies encompass the legal framework that regulates status determination, but they must also extend beyond it.

¹⁶ *Panayotova and others v. Minister voor Vreemdelingenzaken en Integratie*, C-327/02, Court of Justice of the European Union (CJEU), 16 November 2004, para. 27; *Unión de Pequeños Agricultores v. Council*, C-50/00, CJEU, 25 July 2002.

¹⁷ UNHCR, APD Study, p 89–90.

¹⁸ *Y v Secretary of State for the Home Department*, [2006] EWCA Civ. 1223, 26 July 2006, para. 25, Lord Keene quoting an article in T. Bingham, *Current Legal Problems*.



The psychology of the applicant, the interviewer and, if different, the decision-maker, as well as the interactions between these persons are all relevant to the credibility assessment. A wide-range of factors influence these psychological processes, including age, gender, sexual orientation and/or gender identity, culture, social status, education, state of health, and mind-set at the time of the interaction. The credibility assessment will also reflect assumptions about behaviour, values, attitudes, perceptions of and responses to risk, and about how a truthful account should be presented. When providing statements, applicants are also required to recall relevant past and present facts to substantiate their application. The reliance by interviewers and decision-makers on the human memory must also be informed by evidence from neurobiology, and expectations of what can be recalled and how this is done, should be realistic.

Interviewers and decision-makers, therefore, in addition to knowledge of the relevant law and of the country of origin, need to be aware of and to understand these factors that impact on the credibility assessment and to be informed by the substantial body of empirical scientific evidence that exists in these fields.

In addition, establishing the relevant facts of a case is a complex and challenging process in any sphere of law. In other areas of law, such as criminal law, fact-finders may have significant resources at their disposal and may be able to draw on a wide range of evidence, including, for example, forensic evidence, material objects, audio and/or visual recordings, witness statements, and documentary evidence to establish or help to establish the validity of the relevant facts.

The evidentiary challenges inherent in the process of fact-finding are even more acute and formidable in the examination of applications for international protection. There may be no third party evidence from, for example, witnesses, family, acquaintances, and members of the applicant's community, or there may be doubts about the reliability of the existing evidence.

There may be valid and obvious reasons for this related to the precipitous, hazardous and/or clandestine circumstances of the applicant's flight from his or her country of origin, or, in the case of stateless persons, country of former habitual residence. As UNHCR has stated:

*“[o]ften, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest of necessities and very frequently even without personal documents.”*¹⁹

Therefore, an absence of documentary or other evidence may itself be a direct consequence of the circumstances or events giving rise to an applicant's need for international protection rather than an indication of a lack of credibility.

What is more, available COI may be too general to confirm or refute relevant facts asserted by the applicant. Specific (country of origin) information may be unavailable, or the capacity to gather such information as exists may hinge on accessibility, as well as the time and resources available to the determining authority and/or applicant. In this regard, it should be borne in mind that Member States are prohibited from obtaining information from an alleged actor of persecution²⁰ or serious harm:²¹

*“in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.”*²²

Relevant and specific COI on the situation and treatment of particular social groups is often lacking. As UNHCR notes in the guidelines on gender-based persecution, for example:

*“[I]t is important to recognize that in relation to gender-related claims, the usual types of evidence used in other refugee claims may not be as readily available. Statistical data or reports on the incidence of sexual violence may not be available, due to under-reporting of cases, or lack of prosecution.”*²³

UNHCR then cautions in its recent guidelines on sexual orientation and/or gender identity that: *“this should not automatically lead to the conclusion that the applicant's claim is unfounded or that there is no persecution of LGBTI individuals in that country.”*²⁴

The evidentiary challenge confronting fact-finders has been starkly and frankly stated thus:

*“Frequently, we find ourselves frustrated by the paucity of information: If only we could verify this; if only we could corroborate that; then we could know ‘what really happened’. But we never have all the information. In my experience, we rarely have even as much information as I would consider necessary to choose a new appliance, much less make a decision about a person's future.”*²⁵

¹⁹ UNHCR, *Handbook*, para. 196.

²⁰ Article 22(b) APD.

²¹ Reference to alleged actor of serious harm has been added in Article 30 of the *Amended Proposal for a Directive of the European Parliament and of the Council on Common Procedures for Granting and Withdrawing International Protection Status (Recast)*, COM(2011) 319 final, 1 June 2011.

²² Article 22 (b) APD.

²³ UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01 (hereinafter UNHCR, *Guidelines No. 1*), para. 37.

²⁴ UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, (hereinafter UNHCR, *Guidelines No. 9*), para. 66.

²⁵ A Macklin, *Truth and Consequences: Credibility Determination in the Refugee Context*, International Association of Refugee Law Judges, Conference in Ottawa, Canada, 1998, p. 134.

Given the frequent scarcity of independent evidence confirming or supporting the applicant's testimony, the testimony, which is in any case always a major source, may sometimes be the only evidence the applicant furnishes. Thus, the applicant's testimony is central and crucial to the fact-finding process. As UNHCR stated: *"the applicant's own testimony is the primary and often the only source of evidence, especially where persecution is at the hands of family members or the community. Where there is a lack of country of origin information, the decision-maker will have to rely on the applicant's statements alone."*²⁶

Applicants in the asylum procedure may, in addition, be suffering the symptoms of trauma and other mental health problems associated with their experiences in either the country of origin or country of habitual residence, during their flight or in the putative country of asylum. The alien environment may also bewilder and disorient the applicant. Moreover, he or she may feel anxious, desperate, and frightened about the asylum procedure and lack trust in the authorities. All these factors may impact on the way the applicant provides statements and other evidence and thus the assessment of credibility, as discussed in the chapter on the factors to be taken into account.

The ability to conduct a rigorous and fair assessment of credibility is also affected by the quality of the first instance asylum procedure more broadly, including the opportunity for and quality of personal interview(s); the accuracy of interpretation and translation services; the accuracy and detail of written interview reports (in the absence of an audio recording); the pro-activity and quality of the determining authority's independent fact-finding inquiries; and the information resources available. It is also affected by the time-scale of the procedure, restrictive procedural rules, and the human resources available.

In light of these well-established and recognized challenges to assessing credibility in the asylum procedure, it is surprising to note that many decision-makers interviewed in this research have stated that the credibility assessment was not one they found particularly difficult and that it was a straightforward task.²⁷

In view of the humanitarian purpose of the examination of an application for international protection and the many and distinctive challenges posed by the nature of status determination, the evidentiary rules that apply to civil and criminal law are frequently inadequate or inappropriate for the credibility assessment in the asylum procedure.

This has been partly reflected in national jurisprudence.²⁸ The Australian asylum tribunals have stated in their guidance that they are *"not bound by legal forms and technicalities or the rules of evidence."*²⁹

However, there are a number of principles and standards that do apply, as outlined in the following section.

²⁶ UNHCR, Guidelines No. 9, para. 64.

²⁷ For instance, "I feel comfortable with the credibility assessment" (Interview 4). "I've been doing this for some time, I don't find credibility assessment difficult" (Interview 6). "It's OK, I don't find it hard" (Interview 7) or "The credibility part is straightforward" (Interview 1).

²⁸ Tribunale di Torino, 29 maggio 2009, sentenza n. 177, (Tribunal of Turin, 29 May 2009, judgment n. 177, 29 May 2009): "What can be required from the claimant is not the full satisfaction of the burden of proof stated in art. 2697 of the civil code, but that s/he furnishes a reliable and credible version of the facts (...) and in particular a version which is intrinsically coherent and does not contradict the documents shown during the case and his behaviour", [unofficial translation of: "ciò che può essere richiesto alla parte istante non è il pieno assolvimento dell'onere della prova di cui all'art. 2697 c.c., ma che questa fornisca una versione attendibile e verosimile (...) e in particolare una versione intrinsecamente coerente e che non si ponga in contraddizione rispetto alle risultanze di causa ed al comportamento tenuto dall'interessato."]

²⁹ Australian Government, Guidance on the Assessment of Credibility, Migration Review Tribunal and Refugee Review Tribunal, 24 March 2012, para. 2.2.

2. Principles and Standards of the Credibility Assessment

Neither the Asylum Procedures Directive nor the Qualification Directive explicitly or comprehensively prescribe how the credibility assessment should be carried out. However, Member States and decision-makers do not have unfettered discretion with regard to the assessment of credibility.

Both Directives state that they respect EU fundamental rights and principles.³⁰ EU administrative law principles are affirmed in the core legislative instruments of the EU, such as the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union, and should be respected in the credibility assessment.

Article 4 QD addresses the assessment of facts and circumstances with regard to qualification for both refugee and subsidiary protection status. Article 4 (1) QD, together with Article 4 (2) QD, stipulates that it is the duty of the Member State to assess the relevant elements of the application in cooperation with the applicant. Article 4 (3) QD states that the assessment of an application should be carried out on an individual basis and lists non-exhaustively some of the factors that should be taken into account. Moreover, Article 4 (5) QD states that where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when five stipulated conditions are met. These provisions provide guidance with regard to the credibility assessment.

Article 8 (2) APD requires Member States to ensure that “*decisions by the determining authority on applications for asylum are taken after an appropriate examination.*” To this end, Member States should ensure that applications are examined and decisions taken individually, objectively, and impartially. It follows that the credibility assessment must be carried out individually, objectively, and impartially.³¹

The CJEU has judicial oversight of the above-mentioned legislative instruments. At the time of UNHCR's research, only one ruling concerning the interpretation of Article 4 (1) QD was available and is referenced as appropriate in this chapter.

Further, relevant standards may be derived from other international bodies. UNHCR, as the agency entrusted by the United Nations General Assembly with responsibility to provide international protection to refugees and to seek permanent solutions to the problem of refugees, in the exercise of its supervisory responsibility, has produced guidance relevant to the credibility assessment.³²

Moreover, the decisions of treaty monitoring bodies such as the European Court of Human Rights and the UN Committee against Torture also shed light on how to approach credibility assessment. Since Article 8 (2) (c) APD obliges Member States to ensure that “*the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law*”, decision-makers should know and apply these standards to the credibility assessment.

This chapter, therefore, outlines some of these standards, and reports indicative findings on the extent to which these standards are reflected in national case law and guidance.

³⁰ Recital 10 of the 2004 Qualification Directive, recital (16) of the 2011 Qualification Directive and recital 8 of the Asylum Procedures Directive.

³¹ Article 8 (2) (a) APD: “*Member States shall ensure that: (a) applications are examined and decisions are taken individually, objectively and impartially.*”

³² UNHCR, *Handbook*, in particular paras 195–205; and UNHCR, *Note on Burden and Standard of Proof*.

The approach taken to the assessment of credibility by the determining authorities in the EU has primarily been defined by national legal traditions and practices in the assessment of evidence. These legal traditions and practices vary across EU Member States and may be an obstacle to achieving the harmonization objective of the Common European Asylum System. This has been recognized by the European Union which has taken steps through the European Asylum Support Office (EASO) to address this issue through a common training programme, the European Asylum Curriculum (EAC), for national asylum officials across the EU. The EAC includes a module specifically on evidence assessment, including credibility assessment. This chapter therefore also includes references to this EAC module.

Variances in outcomes on similar cases may also occur within national jurisdictions where individual decision-makers apply inconsistent standards and approaches, or incorrect evidentiary criteria to the credibility assessment, exercise significant discretion, or employ different approaches.

National courts have also contributed to the development of standards for the credibility assessment in their jurisprudence. This is the case in Belgium, the Netherlands and the UK. Some states, such as the Netherlands and the UK, have developed through specific guidelines, national standards for and guidance on the methodological approach to be taken to the credibility assessment. This guidance, together with training, aims to ensure a consistent approach is taken to the credibility assessment by individual decision-makers. Other states, such as Belgium, did not have specific guidelines on the credibility assessment at the time of UNHCR's research, although some guidance may be provided through training.

This chapter provides an insight into some of the national standards developed both within the EU and beyond.

2.1. Shared duty

A full discussion of the principle of the shared duty to substantiate an application, including the content and implications of the principle, is covered in Chapter 4, Gathering the Facts. Details are also provided on the reflection and meaning of the principle in international, regional and national jurisprudence and guidance.

Suffice thus to mention here this key principle of refugee law as stated by UNHCR: “*In view of the particularities of a refugee's situation, the adjudicator shares the duty to ascertain and evaluate all the relevant facts.*”³³

2.2. Individual assessment

Article 8 (2) (a) APD requires Member States to ensure that applications for international protection are examined and decisions are taken individually, and Article 4 (3) QD provides that the “*assessment of an application for international protection is to be carried out on an individual basis.*” The credibility assessment must, therefore, be conducted on an individual basis fully taking into account the individual and contextual circumstances of the applicant. This principle should also be reflected in national legislation³⁴ and guidance.³⁵

³³ UNHCR, *Note on Burden and Standard of Proof*, para. 6.

³⁴ In Belgium, Article 4, para. 3 and 27 of the Royal Decree on CGRA/CGRV Procedures; and Article 10, para. 2 of the Royal Decree on Immigration Department Procedures. In the Netherlands, Article 8 (2) (a) is stated, in the Explanatory Memorandum to the Implementation Law, to be transposed in Article 2:4 General Administrative Law Act and Article 29 Aliens Act. In the UK, para. 339J of the Immigration Rules stipulates that the credibility assessment should be carried out on an individual basis.

³⁵ UKBA, *Asylum Instructions, Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 5 states: “*Decision makers are to assess any claim on an **individual**, objective and impartial basis*” (emphasis added).

These individual and contextual circumstances should be taken into account routinely and in an integrated manner in all aspects of the credibility assessment. For instance, they are important in determining whether the applicant has made a genuine effort to substantiate the application and whether the authority has discharged its duty to cooperate in this process; whether specific indicators are reliable indicators of the credibility of statements by an applicant; whether explanations given by the applicant for identified credibility problems are reasonable; and whether reasons provided by the applicant for a lack of supporting evidence are satisfactory and support the application of the principle of the benefit of the doubt with respect to specific findings of fact.

In addition, as UNHCR has stated: “*The applicant’s statements cannot be considered in the abstract, and must be viewed in the context of the relevant background situation.*”³⁶ This encompasses both the personal background of the applicant, his or her age, nationality, ethnic origin, gender, sexual orientation and/or gender identity, education, social status, religion, and cultural background; his or her past and present experiences of ill-treatment, torture, persecution, harm, or other serious human rights violations; as well as the relevant situation in the country of origin or habitual residence, any transit country and Member State, the wider legal, institutional, political, social, religious, cultural context, the human rights situation, the level of violence, and available state protection. These factors and their relevance for various aspects of the credibility assessment are discussed throughout this report.

With regard to contextual circumstances in the country of origin or place of habitual residence, the relevant time-frame will depend on the issue at stake. For example, the assessment of the credibility of statements regarding past events must take into account the situation prevailing in the country of origin or habitual residence at the time the events are claimed to have taken place. Whereas an assessment of an applicant’s explanation that he or she was unable during the procedure to obtain documentary or other evidence from the country of origin in support of an asserted material fact must take into account the situation in the country of origin or place of habitual residence at the time of the examination of the application.

While the travel route taken by the applicant is rarely a material fact,³⁷ the circumstances pertaining to the applicant’s journey to the Member State and the situation in transit countries may be relevant in assessing, for example, the applicant’s explanations for an absence of documentary evidence in support of asserted material facts.

Contextual circumstances in the Member State may include reception and procedural conditions, and an understanding of how these may impact on the applicant’s ability to substantiate the application and provide testimony. As UNHCR stated:

*“It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant’s particular difficulties and needs.”*³⁸

Before making an assessment of the credibility of the applicant’s statements, decision-makers should seek to identify and understand all factors that may affect the reliability of the indicators of credibility. Some of these factors and their relevance for the credibility assessment are also explored in greater depth in

³⁶ UNHCR, *Handbook*, para. 42. See also *S v. Federal Asylum Review Board*, Higher Administrative Court of Austria (Verwaltungsgerichtshof), 2003/20/0389, 26.11.2003: “*On the whole, the picture reveals that the responding authority sustained its consideration of evidence on isolated considerations. Although a part of them does not seem to be inappropriate to account for a solution, they themselves, alone, without consideration of the complainant’s statements’ overall context, without evaluation of his personal credibility and without examination of the current country of origin information regarding incidents as the ones claimed by the complainant, cannot be sufficient to found the decision in a comprehensive way.*”

³⁷ The European Court on Human Rights considers the journey to the country of refuge as being peripheral. See *N. v. Finland*, no. 38885/02 (Judgment), ECtHR, 26 July 2005, paras 154–155.

³⁸ UNHCR, *Handbook*, para. 190.

this report. In this regard, the approach of the international criminal tribunals may be instructive as they begin the formal assessment of credibility by identifying all potential factors that may render the traditional indices of credibility determination ineffective. In addition to gathering relevant background information on the applicant, this may include, for example, calling for the expert opinion of an anthropologist to ensure that the tribunal understands the cultural and linguistic framework within which testimony is given.³⁹ This approach may enhance the capability of the decision-maker to assess credibility.

2.3. Objective and impartial assessment

It is critical to recall that the first instance procedure is not an adversarial process. On the contrary, Article 4 (1) QD explicitly states that it is the Member State's duty to assess the relevant elements of the application in cooperation with the applicant.⁴⁰ It is, therefore, not the role of the determining authority to contest an application for international protection or strive with zeal to identify indicators of a lack of credibility.⁴¹

Article 8 (2) (a) APD requires Member States to ensure that applications for international protection are examined and decisions taken objectively and impartially.⁴² The requirement of objectivity and impartiality applies throughout the procedure, including the processes of both gathering and assessing evidence, and it applies to the examination of all applications regardless of the applicant's identity, background, or circumstances.

The national legislation and guidance⁴³ of EU Member States should reflect this requirement. By way of example, updated UK guidance explains that:

“[a]ssessing the credibility of a claim is not about making negative credibility findings and focusing on refusal. It is an objective assessment of the material facts that go to the core of the claim [...].⁴⁴ The guidance adds: ‘It should be a neutral assessment of the material facts [...] in which subjectivity should be kept to a minimum’.”⁴⁵

³⁹ R Byrne, ‘Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals’, *International Journal of Refugee Law*, vol. 19, no. 4, December 2007, p 609–38. Referring to *Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić (Judgment)*, Case No IT-95-16-T, 14 January 2000, para. 72: “An expert witness who testified at the request of the Trial Chamber, the Norwegian anthropologist Dr. Tone Bringa, pointed out that [...]”; para. 336: “It should be noted that, as convincingly proved by the testimony of a court expert witness, the Norwegian anthropologist Dr. Bringa [...]”

⁴⁰ *M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Opinion of Advocate General)*, C-277/11, CJEU, 26 April 2012.

⁴¹ Immigration and Refugee Board of Canada, *Assessment of Credibility in Claims of Refugee Protection*, “The Refugee Division must not display a zeal ‘to find instances of contradictions in the [claimant’s] testimony [...] it should not be over-vigilant in its microscopic examination of the evidence’ [Attakora v. Canada (Minister of Employment and Immigration) (1989), 99 N.R. 168 (F.C.A.)]”, Refugee Protection Division, Legal Services, 31 January 2004, Section 2.3.2: Contradictions, Inconsistencies, Omissions, p. 26.

⁴² *M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 88, which states that the right to be heard (Article 41 (2) of the EU Charter and considered inherent in the fundamental principle of EU law of the right of defence) requires the authorities to examine “carefully and impartially all the relevant aspects of the individual case.”

⁴³ In Belgium, Article 4, paras 3 and 27 of the Royal Decree on CGRS Procedures; and Article 10, para. 2 of the Royal Decree on Immigration Department Procedures. In the Netherlands, Article 8 (2) (a) is stated, in the Explanatory Memorandum to the Implementation Law, to be transposed in Article 2:4 General Administrative Law Act and Article 29 Aliens Act. In the UK, para. 339J of the Immigration Rules stipulates that the credibility assessment should be carried out on an individual basis. In the UK, there is an ‘Interviewing Protocol’, which states: “Interviews should be conducted objectively and impartially and the purpose is to obtain facts relevant to the application. The interview is essentially a fact-finding exercise, an opportunity for the claimant to elaborate on the background to his or her application, introduce additional information and for the interviewing officer to test the information provided, if required. This process will assist the decision-maker to make a well-reasoned and sustainable decision on the application.” See UKBA, *Interviewing Protocol: Protocol Governing the Conduct of Substantive Interviews and the Role of Interviewing Officers, Representatives and their Interpreters*, 5 December 2008, Section 1.2.

⁴⁴ UKBA, *Asylum Instructions, Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 13; UKBA, *Asylum Instructions, Considering the Asylum Claim and Assessing Credibility*, February 2012, p. 12.

⁴⁵ UKBA, *Asylum Instructions, Considering Asylum claims and Assessing Credibility*, February 2012, p. 12.



The requirement of impartiality and objectivity applies regardless of the circumstances of the case. As stated in the UNHCR Handbook, the decision-maker must conduct the fact-finding process “*in a spirit of justice and understanding and his judgment should not, of course, be influenced by the personal consideration that the applicant may be an ‘undeserving case’*.”⁴⁶

It is, therefore, critical that decision-makers do not prejudge credibility and do not approach the task with scepticism or a ‘refusal mind-set’. This may prejudice and distort the processes of both gathering information and assessing the applicant’s statements and other evidence, thereby violating the requirement of impartiality.

The examiner(s) must, therefore, start out with maintaining and being seen to maintain an open mind throughout the procedure.⁴⁷ This is particularly salient when only one case worker handles an application,⁴⁸ and none or only limited review or quality checks are carried out on decisions to reject claims for protection, in particular the basis for the findings of fact upon which decisions are made. In some Member States, while

⁴⁶ UNHCR, *Handbook*, para. 202.

⁴⁷ UK case law has stressed the importance of an impartial mind-set: *XS (Kosovo- Adjudicator's conduct – psychiatric report) Serbia and Montenegro* [2005] UKIAT 00093 Immigration Appeal Tribunal [2005] UKIAT 00093 26 April 2005, para. 29: “*where live evidence is to be heard it is unwise and very likely reasonably to be seen to be unfair for an Adjudicator to express a sceptical view about the credibility of a case.*” See also Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal and Refugee Review Tribunal, 24 March 2012, para. 3.5: “*A member should maintain, and be seen to have, an open mind when conducting a hearing. There is a duty to clearly and unambiguously raise with an applicant the critical issues upon which his or her application may depend.*” Also at para. 10.1: “*The Tribunal must maintain an open mind when assessing individual cases and when deciding whether an applicant’s evidence is to be believed and how much weight is to be given to the evidence before the Tribunal.*”

⁴⁸ This is the case in the three Member States of focus in this research.

decisions to grant international protection may require peer review by a senior colleague, decisions to reject an application may be taken by the one case worker without any peer review.⁴⁹

It should also be recognized that many asylum adjudicators work in a societal and political context concerned with preventing irregular immigration and ensuring that the asylum system is not abused by persons fabricating evidence. Some determining authorities are located in government departments that have the objective to prevent irregular immigration. This may influence the mind-set of decision-makers and make it more challenging to implement an institutional culture in asylum procedures that is adequately human rights and protection-oriented.

It is, therefore, vital that decision-makers recall that their task is to uphold fundamental human rights and identify applicants who qualify for international protection. Furthermore, it is crucial that determining authorities take appropriate steps, as necessary, to ensure an institutional mind-set that is protection-oriented and an institutional culture that is ‘protection-sensitive’.

In addition, examiners need to be aware that their perception of the applicant and his or her application should not be negatively influenced by issues that are not pertinent to the material facts of the application.⁵⁰ Elsewhere in this report, UNHCR stresses that a factor such as the applicant’s demeanour is not a reliable indicator of credibility. A determination of credibility by reference to demeanour has a subjective basis that will inevitably reflect the values, views, experience, prejudices, and cultural norms of the decision-maker and is, therefore, at odds with the requirement of objectivity and impartiality.

Examiners should also be aware of the subliminal influence of factors that are pertinent to the material facts of the application. For example, that an applicant has told a lie(s), concealed a fact(s) or submitted fraudulent documentation is not necessarily decisive in the assessment of credibility of the applicant’s statements on material elements in the claim. A lie or submission of false documentary or other evidence may be re-evaluated once all the circumstances of the case are known.⁵¹

The credibility assessment should be based on the available relevant evidence and not on the decision-maker’s intuition or gut feeling. Speculative argument that fails to rely on objective and reliable sources of information and that reflects the decision-maker’s own theory about how the applicant or others could or should have acted, or about how certain events could or should have unfolded, violates the principle of objectivity. As expressed in Australian guidance: “*What is capable of being believed is not to be determined according to the Member’s subjective belief or gut feeling about whether an applicant is telling the truth or not. A Member should focus on what is objectively or reasonably believable in the circumstances.*”⁵²

Assessing credibility, therefore, requires decision-makers not just to assess the statements and other evidence applicants present, but also to be aware of the extent to which their own emotional and physical

⁴⁹ Unless, as in the Netherlands, the person with case responsibility is a new appointee still under probation.

⁵⁰ J Herlihy and S Turner, ‘The Psychology of Seeking Protection’, *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at p. 190. See also A Macklin, *Truth and Consequences: Credibility Determination in the Refugee Context* (1998) IARLJ Conference Paper, 1998, p. 140 “credibility determination is necessarily and inexorably subjective ... when making evaluation about credibility, we need to look outwards – at the claimant, his or her demeanour, the quality of testimony, the documentation, the country information. However, we also have to look inwards – at our own values, prejudices, orientation and perspective” p. 140; and also J Millbank, “‘The Ring of Truth’: A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations”, *International Journal of Refugee Law*, vol. 21, no. 1, 2009, p. 35 “In assessing demeanour, consistency and plausibility, decision-makers overestimated their own ability to discern truthfulness, relied upon assumptions and failed to fully articulate reasons for disbelief.”

⁵¹ UNHCR, *Refugee Status Determination, Identifying who is a Refugee, Self-study module 2*, 1 September 2005, section 5.1.2 on general principles. See also *A v. Netherlands*, CAT/C/21/D/91/1997, 13 November 1998, para. 6.5: “The Committee notes that in the proceedings that followed his first request for asylum the author lied about his identity and his nationality and expressed a number of inconsistencies as to the reasons that prompted his departure from Tunisia. In the Committee’s view, however, these inconsistencies were clarified by the explanations given by the author in his interview with immigration authorities on 24 February 1997, explanations which have not been referred to in the State party’s submission.”

⁵² Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal and Refugee Review Tribunal, 24 March 2012, para. 2.4.

state, values, views, prejudices, and life experiences may influence the objectivity and partiality of their decision-making. This will enable them to minimize subjectivity and partiality.⁵³

It is recognized that remaining objective and impartial is a challenge, especially given that the decision-makers in the determining authorities are repeatedly called on to assess applications, often within limited time-frames and sometimes from applicants from the same (few) country(ies) of origin or habitual residence. Due to the repetitive nature of the task, there is a risk that decision-makers may, consciously or unconsciously, categorize applications into generic case profiles and make predetermined assumptions about their credibility and other issues.⁵⁴

Previous findings on the credibility or otherwise of similar applications from the same country of origin or place of habitual residence should not result in a predetermined assumption about credibility. Conversely, that an applicant's application differs substantively from others from the same country of origin, or habitual residence, should not result in a predetermined assumption about credibility. In this regard, it is perhaps also worth noting that each application must be assessed individually, impartially, and objectively, even in the context of country guidance relating to at-risk and not at-risk groups.

Routine exposure to narratives of torture, violence, inhuman and degrading treatment can take its psychological toll on examiners.⁵⁵ If interviewers and decision-makers suffer psychological distress from their exposure to such evidence – so-called vicarious trauma – they risk employing natural coping strategies that involuntarily compromise their fact-finding and impartiality. For example, examiners may seek to avoid exposure to evidence causing further distress and this may distort their questioning of the applicant during interview and/or their pursuit of further relevant supporting evidence.

Examiners may find the content of the evidence so horrific that they are tempted to reject it as unimaginable, fabricated and therefore not credible.⁵⁶ Other recent research noted that “*it becomes increasingly difficult to approach each case afresh and to avoid creating hierarchies of suffering which demand ever higher levels of abuse to incite sympathy.*” The research cites the view of a presenting officer as follows:

“*[T]o start with, it was quite traumatic ... and then after a while, I suppose once you've read a lot of these cases and you tend to sort of get past the stage where they might, they're probably not telling the truth anyway.... I don't know if you become hardened to it, well perhaps you do a little bit; you learn ways of dealing with it.*”⁵⁷

Disbelief is a very human coping strategy that undermines objectivity and impartiality.

⁵³ R Thomas, *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication*, Hart Publishing, 2011, p. 166; A Macklin, *Truth and Consequences: Credibility Determination in the Refugee Context*, IARLJ Conference Paper, 1998, p. 140; see also J Millbank, “The Ring of Truth”: A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations’, *International Journal of Refugee Law*, vol. 21, no. 1, 2009.

⁵⁴ In interviews with decision-makers, several stated that when they heard similar stories over and over again they believed the story was false. Decision-maker A stated “*Instinctively I think it's false, you think to yourself here we go again*” (Interview 1). Another decision-maker also stated: “*Over a period of time you can't help but have a stereotype. I try to remain objective to see what the person says. But you can't block out preconceived ideas of people from that nationality. You can't do this job for too long because you build up a preconception about things*” (Interview 3).

⁵⁵ A decision-maker stated: “*You hear horrific things all the time, it's an intense thing. It has an effect on you*” (Interview 6). Similarly, another decision-maker said: “*Sometimes it is extremely upsetting, it does affect you*” (Interview 4).

⁵⁶ J Cohen, ‘Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers’, *International Journal of Refugee Law*, vol. 13, 2001, pp. 293–309 citing R F Mollica's chapter, ‘The Trauma Story: The Psychiatric Care of Refugee Survivors of Violence and Torture’, in F M Ochberg (ed.), *Post Traumatic Therapy and Victims of Violence*, 1998, New York: Brunner/Mazel: “*Mollica (1988) showed that the interviewer's own mental protective devices will be employed to resist the negative effects of hearing about upsetting events.*”

⁵⁷ H Baillot, S Cowan, V Munro, *Research Briefing: Rape Narratives and Credibility Assessment (of Female Claimants) at the AIT*, April 2012, p. 6.

Emotional detachment may be viewed as essential in maintaining objectivity. However, examiners have to be careful that such detachment does not translate into disbelief and/or a reluctance to engage with the applicant's narrative.⁵⁸

The requirement that the credibility assessment must be conducted on an individual basis, taking into account the individual and contextual circumstances of the applicant, as well as impartiality and objectivity, means that the assessment should be undertaken through the lens of various disciplines, including legal, cultural, psychological, anthropological, and sociological.⁵⁹ A multi- and inter-disciplinary approach is required to ensure that the credibility assessment responds to the realities of testimony by applicants. It is, therefore, necessary that the credibility assessment, in all its aspects, is informed by the substantial body of relevant empirical evidence that exists in these fields.

2.4. Evidence-based assessment

Credibility findings have to be explained and supported by the evidence. Where the determining authority finds a lack of credibility, there must be a basis or foundation in the evidence.⁶⁰ This derives from the requirement that the assessment of the application must be individual, impartial, and objective.⁶¹ It finds further support in the case law of the European Court of Human Rights, which suggests that the assessment of credibility should be based on the examination of the statements and the documents submitted in support of the claim. The Court further indicated that the credibility of such statements should be questioned only where inconsistencies affect the core of the applicant's story.⁶² Similarly, the Committee against Torture has stated that state authorities must be able to substantiate a finding that a claim is not credible.⁶³

Speculation occurs when a decision-maker reaches subjective conclusions without relying on supporting evidence. Adverse credibility findings should not be based on unfounded assumptions, subjective speculation, conjecture, stereotyping, intuition, or gut feelings.⁶⁴ This has been expressed in the following terms in national case law:

“4) The assessment of credibility [...] must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told. 5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.”⁶⁵

The decision-maker should therefore assess the credibility of the identified material facts by applying relevant credibility indicators.

⁵⁸ H Baillot, S Cowan, V Munro, Research Briefing: Rape Narratives and Credibility Assessment (of Female Claimants) at the AIT, April 2012, p. 6. In interviews with UNHCR, one decision-maker stated “my emotional attachment to interviews is limited. I am there to take information, so I am very passive, cold even” (Interview 5).

⁵⁹ C Rousseau, F Crépeau, P Foxen, F Houle, ‘The Complexity of Determining Refugeehood: A multidisciplinary Analysis of the Decision-Making Process of the Canadian Immigration and Refugee Board’, *Journal of Refugee Studies*, vol. 15, no. 1, 2002, pp. 43–70.

⁶⁰ Immigration and Refugee Board of Canada, Legal Services, Refugee Protection Division, *Assessment of Credibility in Claims for Refugee Protection*, January 31, 2004, Section: 2.1.2. Assessing the Balance of the Evidence Found to be Credible, p. 14.

⁶¹ Article 9 (2) APD: “Member States shall also ensure that, where an application is rejected, the reasons *in fact* and *in law* are stated in the decision and information on how to challenge a negative decision is given in writing” (emphasis added).

⁶² *F.H. v. Sweden*, no. 32621/06 (Judgment), European Court of Human Rights (ECtHR), 20 January 2009, para. 95.

⁶³ *Iya v. Switzerland*, CAT/C/39/D/299/2006, 16 November 2007, para. 6.6.

⁶⁴ *Zhuchkova v Minister for Justice Equality and Law Reform and the Refugee Appeals Tribunal*, High Court of Ireland, 2003/669JR; (2004) IEHC 414, (2005) 10 ICLMD 73, 26 November 2004. In this case, the decision-maker rejected the explanation given by the applicant for why there was an inconsistency in the evidence, but “no contrary evidence given to suggest their explanation was incorrect.” On this ground, it was considered by the High Court that the decision not to grant refugee status could be set aside: “a finding of a lack of credibility, it is at least arguable, must therefore be based on a rational analysis which explains why, in the view of the deciding officer, the truth has not been told.”

⁶⁵ *I.R. v Minister for Justice, Equality and Law Reform, the Refugee Appeals Tribunal*, [2009] IEHC 353, 24 July 2009.

2.5. Focus on material facts

The credibility assessment should focus on those facts asserted by the applicant that are identified as material or relevant for qualification for international protection, and that are most significant in the determination of the claim. Furthermore, case law from Ireland confirms that any adverse finding on credibility must be substantial and not relate only to minor matters.⁶⁶

This has been highlighted in national guidance within the European Union and beyond. For example, at the time of UNHCR's research, guidance in the UK stated: "*Credibility findings should be focused upon material facts that are serious and significant in nature.*"⁶⁷ In the same vein, Australian guidance provides: "*Findings made by the Tribunal on credibility should be based on relevant and material facts.*"⁶⁸

Dutch guidance does not explicitly state that the credibility assessment should focus on material facts. It states instead that the credibility of the applicant's statements on factual circumstances, events, and assumptions should be assessed. Factual circumstances include, *inter alia*, the identity, nationality, ethnicity, sexual orientation, medical condition, and religion of the applicant. 'Assumptions' refers to the applicant's assumptions about why, for example, asserted past events occurred. It should also be assessed whether the applicant's connection between those facts, events, and assumptions is plausible.⁶⁹

The EAC module on evidence assessment advises that, as a first step in the process of establishing the facts, decision-makers should identify all the material facts.⁷⁰ As such, it is essential that decision-makers understand what constitutes a material fact and are able to identify them in an application. The EAC module further asserts that "[i]t is generally unnecessary to focus on minor/peripheral facts that do not affect the central elements of the claim."⁷¹

The EAC module explains that "*Material facts go to the core of the claim and are of direct relevance for the determination of one or several of the requisites of the relevant definition.*"⁷² UK guidance also seeks to shed light on what constitutes a material fact in the following terms:

"A material fact goes to the core of a claim and is fundamental as to why an individual fears persecution. It is central to the decision. Examples of material facts include an applicant's nationality, membership of a political party, religion or a particular social group, incidences of arrests and periods of detention, locations or episodes of violence at the hands of non-state agents. This list is not exhaustive and the material facts will depend on the nature of the claim for asylum. Decision makers should note that what is important to the applicant may not necessarily be material to the assessment of the claim. It is for the

⁶⁶ *Skender Memishi v The Refugee Appeals Tribunal*, Rory McCabe, *The Minister for Justice, Equality and Law Reform, The Attorney-General, and Ireland*, [2003] IEHC 65, 25 June 2003: "In relation to credibility, Mr Christle referred to the Diaz decision and that in *Cordon-Garcia*, to which I have referred and quoted relevant passages. The principles which emerge from these decisions are that [...] the reasons for any such adverse finding on credibility must be substantial and not relating only to minor matters. [...] As general principles I agree."; *I.R. v Minister for Justice, Equality and Law Reform, the Refugee Appeals Tribunal*, [2009] IEHC 353, 24 July 2009.

⁶⁷ UKBA, *Asylum Instructions, Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 14. The updated guidance of 2012 no longer includes this text but does contain a section on identifying the facts of a claim. See UKBA, *Asylum Instructions, Considering Asylum Claims and Assessing Credibility*, February 2012, section 4.1: "Identifying the facts of a claim (Material and non-material facts). A key element of the decision making process is to 'assess the validity of any evidence and the credibility of the applicant's statements' (UNHCR, *Handbook*, para. 195). [...] In determining if an applicant is in need of protection, decision makers are required to consider which aspects of the account they accept and which they reject. By doing this, decision makers are assessing the credibility of an applicant's claim about past and present events."

⁶⁸ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal and Refugee Review Tribunal, 24 March 2012, para. 2.4.

⁶⁹ IND-werkinstructie nr. 2010/14 (AUB): *Beslissystematiek Beoordeling geloofwaardigheid en zwaarwegendheid* (hereinafter IND Working Instruction 2010/14).

⁷⁰ EAC, *Module 7*, section 2.1.

⁷¹ EAC, *Module 7*, section 3.1.

⁷² EAC, *Module 7*, section 2.1.14.

*decision maker to first identify all the claimed facts and to distinguish which facts are material to the claim and which are not.*⁷³

2.6. Opportunity for applicants to comment on potentially adverse credibility findings

As part of the process of establishing the facts, Member States should give applicants a reasonable opportunity to address any issues that may result in adverse credibility findings.

This obligation to provide an opportunity to the applicant to comment on matters that may be the source of potentially adverse credibility findings flows from Article 4 (1) QD, which provides that “[i]n cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.” Article 4 (1) QD imposes a duty on the Member State to cooperate with the applicant in establishing the relevant facts and circumstances.⁷⁴ The notion of cooperation implies “that the two parties will work together towards a common goal.”⁷⁵ This entails far-reaching obligations to communicate for both the Member State and the applicant.⁷⁶ The common goal is to have, as far as possible, a solid basis on which to assess the credibility of the asserted facts.

Moreover, UNHCR recalls that the right to be heard and of defence are part of the general principles of EU law.⁷⁷ The right to be heard is affirmed in Article 41 of the European Charter of Fundamental Rights, which provides for the “right of every person to be heard before any individual measure which would affect him or her adversely is taken.” The CJEU has stated that this provision is of general application. It has affirmed its importance and its very broad scope in the EU legal order, for the right must apply in all proceedings that are liable to culminate in a measure adversely affecting a person, including national procedures to determine qualification for international protection.⁷⁸ In a case, specifically concerning a procedure to determine qualification for subsidiary protection, the Court stated: “The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely.”⁷⁹

⁷³ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, Section 4.1.2. See also UK guidance on the conduct of interviews which states: “Every interview must focus on establishing and testing key aspects of the claim and avoid areas which are not relevant. Obtaining relevant and detailed evidence on material elements of the claim at an interview will enable a decision maker to make a well-informed and balanced decision on the asylum and human rights aspects of an application.” See UKBA, Asylum Instructions, *Conducting the Asylum Interview*, March 2012, para. 4.1.

⁷⁴ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 68 states that Article 4 (1) QD relates to the first stage of establishing the factual circumstances.

⁷⁵ *M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Opinion of Advocate General)*, C-277/11, CJEU, 26 April 2012, para. 59.

⁷⁶ G Noll, *Evidentiary Assessment and the EU Qualification Directive*, New Issues in Refugee Research, Working Paper No. 117, UNHCR, June 2005, p. 4.

⁷⁷ *Krombach v. Bamberski*, C-7/98, CJEU, 28 March 2000, para. 42; *Sopropé – Organizações de Calçado Lda v Fazenda Publica*, C-349/07, CJEU, 18 December 2008, para. 36: “Observance of the rights of the defence is a general principle of Community law which applies where the authorities are minded to adopt a measure which will adversely affect an individual”; *France v. People’s Mojahedin Organization of Iran*, Case C-27/09 P, CJEU, 21 December 2011, para. 66; *Fulmen and Mahmoudian v. Council*, Joined Cases T-439/10 and T-440/10, CJEU, 21 March 2012, paras 71 and 72 and the case law cited.

⁷⁸ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 85. See *M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Opinion of Advocate General)*, C-277/11, CJEU, 26 April 2012, para. 32: “Consequently, the right to be heard must apply in relation to the procedure for examining an application for international protection followed by the competent national authority in accordance with rules adopted in the framework of the common European asylum system.”

⁷⁹ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 87.

With regard to the purpose of the principle, the Court has noted:

“The purpose of the rule that the addressee of an adverse decision must be placed in a position to submit his observations before that decision is adopted is to enable the competent authority effectively to take into account all relevant information. In order to ensure that the person or undertaking concerned is in fact protected, the purpose of that rule is, inter alia, to enable them to correct an error or submit such information relating to their personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content.”⁸⁰

This is of particular relevance in national procedures to determine qualification for international protection:

“Indeed, in this type of procedure [for examining an application for international protection], which inherently entails difficult personal and practical circumstances and in which the essential rights of the person concerned must clearly be protected, the observance of this procedural safeguard is of cardinal importance. Not only does the person concerned play an absolutely central role because he initiates the procedure and is the only person able to explain, in concrete terms, what has happened to him and the background against which it has taken place, but also the decision will be of crucial importance to him.”⁸¹

This standard is also reflected in national jurisprudence⁸² and guidance⁸³ both within the EU and beyond. For example, Canadian guidelines state that it would be a breach of natural justice to base a negative determination on an adverse finding of credibility, if the claimant were denied the opportunity to know and address the case against him or her.⁸⁴

In the adjudication of claims for international protection, ensuring that an applicant has the right to comment on potential credibility problems in the claim requires that he or she be advised in clear terms of problems or issues and have the opportunity to refute, explain, or provide mitigating circumstances in respect of any evidence that appears inaccurate, contradictory, vague, implausible, or inconsistent with other evidence (for example expert evidence, evidence of other family members, and specific or general COI). It would also include the opportunity to address any concerns on the part of the determining authority regarding a lack of relevant elements; and/or concerns that any documentary or other evidence submitted by the applicant is not authentic or reliable. It may also require the determining authority to give the applicant the opportunity to bring further evidence, if appropriate or necessary.

This opportunity should be offered during the substantive asylum interview if the interviewer identifies any apparent inconsistencies, vagueness and/or implausible statements at that time. However, this may not be possible if the decision-maker only becomes aware of potential credibility problems following the substantive asylum interview.

⁸⁰ *Sopropé – Organizações de Calçado Lda v Fazenda Publica*, C-349/07, CJEU, 18 December 2008, para. 49.

⁸¹ *M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Opinion of Advocate General)*, C-277/11, CJEU, 26 April 2012, para. 43.

⁸² The Supreme Court of Slovenia has recognized that it is “standard administrative judicial practice” that if the statements (or conduct) of an applicant for asylum bear important inconsistencies and discrepancies, the asylum authority has to give the applicant the opportunity to explain these discrepancies or inconsistencies (Supreme Court of Slovenia, Judgment I Up 500/2009 of 16 December 2009).

⁸³ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal and Refugee Review Tribunal, 24 March 2012, paras 3.3, 3.4 and 3.6 with references to the national case law on which this is based: 3.3: “It is appropriate that the member not only listens to what a person has to say but also tests an applicant’s evidence and directs an applicant’s attention to points which are adverse to his or her case and about which the applicant might wish to comment. For example, the Tribunal may ask questions about the consistency of an applicant’s oral evidence with other sources of information.” 3.4: “Procedural fairness requires an applicant to be made aware of the case against him or her and to be provided with an opportunity to respond to the issues arising in his or her case. The Tribunal is under a duty to ensure that an applicant has an opportunity to be heard on the issues to be decided by the Tribunal.” 3.6: “An applicant may be plainly confronted with matters which bear adversely on his or her credit or which bring his or her account into question. However, the tribunal should take care to ensure that vigorous testing of the evidence and frank exposure of its weaknesses does not result in the applicant being overborne or intimidated.” See also para. 9.5: “If the tribunal is of the view that a submitted document is not genuine, and the document is material to an applicant’s claims, the tribunal should give the applicant an opportunity to address the tribunal’s concerns.”

⁸⁴ Immigration and Refugee Board of Canada, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, p. 6.

The case law of the European Court of Human Rights has established that it is the duty of national authorities to conduct a thorough and rigorous assessment in order to dispel any doubt regarding the credibility of asserted facts.⁸⁵

Accordingly, where there is doubt about the credibility of asserted facts, the determining authority may need to conduct a further interview with the applicant. UNHCR has stated that “*while an initial interview should normally suffice to bring an applicant’s story to light, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for any misrepresentation or concealment of material facts.*”⁸⁶

2.7. Credibility assessment based on entire evidence

The credibility assessment must be based on the entirety of the available relevant evidence as submitted by the applicant and gathered by the determining authority by its own means.

“*Such decision-makers, on classic principles of public law, are required to take everything material into account. Their sources of information will frequently go well beyond the testimony of the applicant and include in-country reports, expert testimony and – sometimes – specialised knowledge of their own (which must of course be disclosed). No probabilistic cut-off operates here: everything capable of having a bearing has to be given the weight, great or little, due to it.*”⁸⁷

Therefore, in determining whether to accept or reject a material fact the applicant presents, the decision-maker must take into account all relevant evidence that confirms, supports, refutes, or otherwise bears on the asserted material fact. Decision-makers should be careful not to reach conclusions on the credibility of each material fact in isolation. As UNHCR has stated: “*taking isolated incidents out of context may be misleading. The cumulative effect of the applicant’s experience must be taken into account.*”⁸⁸

The European Court of Human Rights has held that “[i]n determining whether it has been shown that the applicant runs a real risk of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of **all the material placed before it, or, if necessary, material obtained proprio motu**” (emphasis added).⁸⁹ This is echoed by the Committee against Torture, which exercises the power of free assessment of the facts based on “*the full set of circumstances*” in every case.⁹⁰ This can be used in an analogous way for credibility assessments.

⁸⁵ *R.C. v. Sweden*, no. 41827/07 (Judgment), ECtHR, 9 March 2010, para. 55: “*the Court considers that the onus rests with the State to dispel any doubt about the risk of being subjected again to treatment contrary to Article 3 in the event that his expulsion proceeds.*”

⁸⁶ UNHCR, *Handbook*, para. 199.

⁸⁷ *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11, 25 January 2000, Sedley LJ, para. 18.

⁸⁸ UNHCR, *Handbook*, para. 201.

⁸⁹ *Hirsi Jamaa and Others v. Italy*, no. 27765/09 (Judgment), ECtHR, 23 February 2012, para. 116. See also R May, M Wierda, *International Criminal Evidence*, New York: Transnational Publishers Inc., 2002, p. 167 cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague 2010, p. 88: The overall assessment of credibility must be considered “*in light of the entire trial record.*”

⁹⁰ CAT General Comment No. 1: Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications). Adopted at the Sixteenth Session of the Committee against Torture, on 21 November 1997 (contained in document A/53/44, annex IX), para. 9 (b).

This approach is also expressed in UK case law as assessing all the evidence ‘in the round’:

*“It is the task of the fact-finder, whether official or judge, to look at all the evidence in the round, to try and grasp it as a whole and to see how it fits together and whether it is sufficient to discharge the burden of proof. Some aspects of the evidence may themselves contain the seeds of doubt. Some aspects of the evidence may cause doubt to be cast on other parts of the evidence. ... Some parts of the evidence may shine with the light of credibility. The fact finder must consider all these points together; and ... although some matters may go against and some matters count in favour of credibility it is for the fact-finder to decide which are the important, and which are the less important features of the evidence, and to reach his view as a whole on the evidence as a whole.”*⁹¹

The concept of looking at information ‘in the round’ is reflected in UK national guidance on fact-finding⁹² and using COI.⁹³ UK guidance states that *“Decision makers should consider the credibility of a claim in the light of all the available evidence relating to the claim.”*⁹⁴

In more specific terms, Dutch guidelines state that the credibility assessment should include an assessment of all documents submitted by the applicant; the statements of the applicant compared with all that is known from independent and reliable resources about the situation in the country of origin or habitual residence and what has been assessed and determined in interviews with other applicants in comparable situations; and any other information concerning the relevant statements.⁹⁵

Moreover, Australian guidance states that the decision-maker should assess all the available evidence *“in its entirety, not just in isolated parts.”*⁹⁶ Canadian guidance stresses that the determining authority would err if it ignored, misconstrued, or misapprehended evidence, and that it must ensure that its credibility findings are reasonable in the light of all the evidence, and that reasonable inferences were drawn from that evidence.⁹⁷

This principle is also highlighted in the EAC Module on Evidence Assessment, which states that when determining whether or not the asserted material facts can be accepted as credible, the decision-maker must consider all the circumstances of the case at hand: *“All evidence having a bearing on the existence or non existence of an alleged fact will have to be taken into account.”*⁹⁸

This means that, for example, the credibility of asserted material facts should be assessed with reference to the entirety of the applicant’s statements, including any additional information given to explain any apparent inconsistencies, vagueness or doubts regarding plausibility.⁹⁹

⁹¹ *SM (Section 8: Judge’s process) Iran* [2005] UKAIT 00116, 5 July 2005, para. 10.

⁹² UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, section 4.2.

⁹³ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, section 4.3.3: Using researching and referencing country of origin information: *“Decision makers must ensure that the relevance of the COI used is clearly explained by looking at the information in the round.”* Later, at section 4.3.4: Benefit of the doubt and general credibility, the decision-maker is instructed: *“The benefit of the doubt needs to be considered and applied appropriately to these uncertain facts when considering all the evidence in the round at the end of the credibility assessment.”*

⁹⁴ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p 14; UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, p 14.

⁹⁵ IND, Aliens Act Implementation Guidelines (2010) Vc 2000, as amended by Decree of the Minister of Justice of 24 June, WBV 2010/10, section C14/2.3 on the assessment of credibility.

⁹⁶ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal and Refugee Review Tribunal, 24 March 2012, para. 2.2, which is based on case law.

⁹⁷ Immigration and Refugee Board of Canada, Legal Services, Refugee Protection Division, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, p 8 and 11.

⁹⁸ EAC Module 7, section 2.1.1.

⁹⁹ The Supreme Administrative Court of Bulgaria in overturning a decision by the determining authority and first instance court found that they had not taken into account explanations by the applicant that contradictions in dates provided by him were due to differences with the Iranian calendar and discrepancies in the interpretation during the interview. It was essential to take this into account in determining credibility: *Sina Faham v. the head of the State Agency for Refugees*, Supreme Administrative Court (Върховен административен съд), 2866/2011, 17 May 2011, Bulgaria.

On the latter point, the Committee against Torture has highlighted the requirement that decision-makers take into account explanations provided by the applicant:

*“The Committee notes the State party’s arguments that the inconsistencies in the information provided by the complainant in the asylum process in Sweden cast doubts on the veracity of his claim. However, the Committee attaches importance to the explanations for these inconsistencies given by the complainant, and reiterates its jurisprudence that complete accuracy is seldom to be expected from victims of torture.”*¹⁰⁰

Similarly, the European Court of Human Rights has highlighted the importance of taking into account the applicant’s explanations and found that an ‘applicant’s general credibility’ is weakened when there are strong reasons to question the veracity of the applicant’s submissions, and the applicant does not provide a satisfactory explanation.¹⁰¹

In assessing the credibility of an asserted material fact, the decision-maker should take into account any relevant documentary evidence that asserts, confirms, supports, refutes or otherwise bears on the material facts. On the issue of assessing documentary evidence, UK guidance adds that, *“in practice, this means that documentation submitted as evidence should not be considered in isolation from other pieces of evidence that go towards establishing the particular material fact to which it is intended to support as well as other elements of the credibility assessment.”*¹⁰²

The assessment of the credibility of a presented fact is flawed if, for example, it is carried out solely with reference to an assessment of the applicant’s statements and ignores available reliable documentary evidence that bears on that fact. Similarly, the reliability of the documentary evidence can only be determined in light of all available evidence. As the High Court of Ireland explained:

*“[T]he adverse finding of credibility is effectively based on the Tribunal member’s premise as to the level of knowledge to be expected and the apparent lack of that knowledge, while the documents have the potential to establish that specific events did happen and happened to the applicant. It is this which gives rise to the need for the whole of the evidence to be evaluated and the analysis to be explained.”*¹⁰³

Similarly, case law in the UK highlights the need to take into consideration all relevant evidence, including expert evidence, before reaching a conclusion on the credibility of a material fact:

*“The adjudicator’s failing was that she artificially separated the medical evidence from the rest of the evidence and reached conclusions as to credibility without reference to that medical evidence; and then, no doubt inevitably on that premise, found that the medical evidence was of no assistance to her. That was a structural failing, not just an error of appreciation, and demonstrated that the adjudicator’s method of approaching the evidence diverted from the procedure advised in paragraph 22 of HE.”*¹⁰⁴

Likewise, the credibility of asserted material facts should be assessed in light of all the available relevant COI, and not just portions of that information. Relevant COI should be neither ignored nor misapplied.¹⁰⁵

The credibility assessment would be flawed if it were carried out with reference solely to selected portions of the available evidence. It must be made with reference to the full picture.¹⁰⁶

¹⁰⁰ *Karoui v. Sweden*, CAT/C/28/D/185/2001, 25 May 2002, para. 10.

¹⁰¹ *M. v. Sweden*, no. 22556/05 (Final Decision), ECtHR, 6 September 2007, para. 60: “Taking these circumstances into account, the Court finds that the applicant has failed to provide a satisfactory explanation for the irregularities and inconsistencies in his story and cannot but endorse the Government’s observations as to the applicant’s general credibility.”

¹⁰² UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, section 4.3.7, February 2012.

¹⁰³ *I.R. v Minister for Justice, Equality and Law Reform, the Refugee Appeals Tribunal*, [2009] IEHC 353, 24 July 2009, para. 29.

¹⁰⁴ *Mibanga v Secretary of State for the Home Department*, Court of Appeal [2005] EWCA Civ 367, 17 March 2005, para. 30.

¹⁰⁵ *S. v. Federal Asylum Review Board*, Higher Administrative Court of Austria (Verwaltungsgerichtshof), 2003/20/0389, 26.11.2003.

¹⁰⁶ *I.R. v Minister for Justice, Equality and Law Reform, the Refugee Appeals Tribunal*, [2009] IEHC 353, 24 July 2009, para. 11: 4). “The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed.”

2.8. Close and rigorous scrutiny

The assessment of the credibility of the asserted material facts must be carried out through close and rigorous scrutiny.

The European Court of Human Rights has often repeated its well-established case law that, given the importance of Article 3 ECHR and the irreversible nature of the harm likely to be caused in the event of ill-treatment, it is the duty of national authorities to conduct a thorough and rigorous assessment to dispel any doubt regarding the ill-foundedness of the claim:¹⁰⁷ “*The Court considers it important to point out that an applicant’s complaint alleging that his or her extradition would have consequences contrary to Articles 2 and 3 of the Convention must imperatively be subject to close scrutiny by a ‘national authority,’*”¹⁰⁸ and “*Article 13 requires careful control, independent and rigorous review of any grievance under which there is a reason to believe a risk of treatment contrary to Article 3.*”¹⁰⁹

Moreover, the CJEU has stated that the right to be heard, which is a fundamental principle of EU law, requires the authorities to pay due attention to the observations submitted by the applicant, “*examining carefully and impartially all the relevant aspects of the individual case.*”¹¹⁰

This principle is also well-established in UK national jurisprudence and applies under the standard of ‘the most anxious scrutiny’:

“*It has been said time and again that asylum cases call for consideration with ‘the most anxious scrutiny’.... That is not a mantra to which only lip service should be paid. It recognises the fact that what is at stake in these cases is fundamental human rights, including the right to life itself.*”¹¹¹

¹⁰⁷ *Singh and Others v. Belgium*, 33210/11 (Judgment), ECtHR, 2 October 2012, para. 103; *M.S.S. v. Belgium and Greece*, no. 30696/09 (Judgment), ECtHR, 21 January 2011, para. 387: “*the Court reiterates that it is also established in its case-law [...] that any complaint that expulsion to another country will expose an individual to treatment prohibited by Article 3 of the Convention requires close and rigorous scrutiny.*” See also *M. and ors. v. Bulgaria*, no. 41416/08 (Judgment), ECtHR, 26 July 2011, para. 127: “*The Court reiterates in this connection that in view of the importance which it attaches to Article 3 of the Convention and the irreversible nature of the damage which may result if the risk of ill-treatment materialises, the effectiveness of a remedy within the meaning of Article 13 imperatively requires independent and rigorous scrutiny by a national authority of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3*” (emphasis added). See also *Chahal v. The United Kingdom*, no. 70/1995/576/662 (Judgment), ECtHR, 15 November 1996; *NA v. The United Kingdom*, no. 25904/07 (Judgment), ECtHR, 17 July 2008, para. 111; *Jabari v. Turkey*, no. 40035/98 (Judgment), ECtHR, 11 July 2000, para. 50; *Yoh-Ekale Mwanje c. Belgique*, no. 10486/10 (Judgment), ECtHR, 20 décembre 2011; *Hirsi Jamaa and Others v. Italy*, no. 27765/09 (Judgment), ECtHR, 23 February 2012. See also *Brahim Samba Diouf v. Ministre du Travail, de l’Emploi et de l’Immigration*, C-69/10, CJEU, 28 July 2011, para. 56 where the CJEU ruled that a thorough national judicial review of the merits of the claim is required.

¹⁰⁸ *Shamayev and Others v. Georgia and Russia*, no. 36378/02 (Judgment), ECtHR, 12 April 2005, para. 448. See also *Hirsi Jamaa and Others v. Italy*, no. 27765/09 (Judgment), ECtHR, 23 February 2012, para. 198.

¹⁰⁹ *Singh and others v. Belgium*, no. 33210/11 (Judgment), ECtHR, 2 October 2012, para. 103.

¹¹⁰ *M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Opinion of Advocate General)*, C-277/11, CJEU, 26 April 2012, para. 88.

¹¹¹ *R v Secretary of State for the Home Department, Ex parte Sivakumar* (FC) [2003] UKHL 14, 20 March 2003 at para. 16. A more rigorous scrutiny of administrative decisions became common in the UK courts where fundamental rights were at stake after the ruling in *R (Bugdaycay) v Secretary of State for the Home Department* [1987] AC 514, a case concerning the proposed deportation of asylum-seekers, in which Lord Bridge said: “*The most fundamental of all human rights is the individual’s right to life and when an administrative decision under challenge is said to be one which may put the applicant’s life at risk, the basis for the decision must surely call for the most anxious scrutiny.*” Cited in M Farrell, *Recent Developments in Human Rights and Judicial Review – The Role of the European Convention on Human Rights Act, 2003*, Free Legal Advice Centres, 16 May 2009. See also in *Horvath v Secretary of State for the Home Department*, Appeal No. 17338, 28 September 1998: “*It is incumbent upon these officials [on behalf of the Secretary of State] to give each and every case anxious scrutiny*” (emphasis added).

This means, for instance, that the applicant should be able to present his or her case to the full, that all the evidence provided must be considered,¹¹² and that decisions should be based on both material evidence presented by the applicant, including his or her statement, and the “*available information on the situation in the country.*”¹¹³ Further, the authority is under the obligation to dispel any doubts about the evidence adduced.¹¹⁴ This principle has also been translated into UK national guidance on the submission of new evidence,¹¹⁵ though not into the UKBA Asylum Instructions. The duties of the determining authority in this regard as well as the various methods available to examine the asserted facts carefully and through rigorous scrutiny are further discussed in the chapter on Gathering the facts.

2.9. Benefit of the doubt

The principle of the benefit of the doubt reflects recognition of the considerable difficulties applicants and decision-makers face gathering evidence to support the claim.¹¹⁶ The UNHCR Handbook states:

*“After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. [...] It is hardly possible for a refugee to ‘prove’ every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt.”*¹¹⁷

The principle recognizes that, notwithstanding the efforts of an applicant, and indeed of the determining authority, to gather evidence pertaining to the material facts asserted by the applicant, there may still be some doubt regarding some of the facts. Moreover, the need for the principle is reinforced by recognition of the fact that an applicant’s life and/or integrity may be put at grave risk if international protection is wrongfully declined.

The need for and relevance of the principle of the benefit of the doubt for the credibility assessment has been acknowledged by the European Court of Human Rights, which has held that it is frequently necessary to give applicants the benefit of the doubt when it comes to assessing the credibility of their statements: “*The Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof.*”¹¹⁸

¹¹² *A v Secretary of State for the Home Department* [2003] EWCA Civ 175, 21 January 2003, para. 20, Keene LJ stated: “As a matter of principle it would be difficult to achieve [anxious] scrutiny whilst closing one’s eyes to relevant evidence.” See also *PO (Nigeria) v Secretary of State for the Home Department*, [2011] EWCA Civ 132, Court of Appeal (England and Wales), 22 February 2011, [human trafficking], para. 41: “All this leads me to the conclusion that the AIT [...] failed to take into account her evidence which provided a foundation, together with the preserved findings of the original immigration judge, and the uncontradicted objective evidence, for a finding that Osagie was not simply an individual trafficker acting alone.”; para. 42: “I cannot escape the conclusion that the AIT, perhaps because of the long delay in producing its Determination, failed to give due consideration to the appellant’s evidence.”

¹¹³ *Auad v. Bulgaria*, no. 46390/10 (Judgment), ECtHR, 11 October 2011, para. 103.

¹¹⁴ *R.C. v. Sweden*, no. 41827/07 (Judgment), ECtHR, 9 March 2010, para. 53.

¹¹⁵ UKBA, *Guidance on Further Submissions – What the UK Border Agency would Like to see from your Client’s Further Submission*, p. 2: “Finally, since asylum is in issue, the consideration of all the decision-makers, the Secretary of State, the immigration judge and the court, must be informed by the anxious scrutiny of the material.”

¹¹⁶ UNHCR, *Handbook*, para. 196: “Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing persecution will have arrived with the barest necessities and very frequently even without personal documents.”

¹¹⁷ UNHCR, *Handbook*, para. 203.

¹¹⁸ *R.C. v. Sweden*, no. 41827/07 (Judgment), ECtHR, 9 March 2010, para. 50; *N. v. Sweden*, no. 23505/09 (Judgment), ECtHR, 20 July 2010, para. 53; *F.H. v. Sweden*, no. 32621/06 (Judgment), ECtHR, 20 January 2009, para. 95.

The application of the principle of the benefit of the doubt, therefore, allows the decision-maker to reach a clear conclusion to accept an asserted material fact as credible even though there may be no other evidence to support the fact. This is reflected in UK policy guidance, which explains that:

*“[A] decision must be made whether to give the applicant the benefit of the doubt on each uncertain or unsubstantiated fact – this means that the decision maker must come to a clear finding as to whether the fact can be accepted or rejected. It is not acceptable to come to a final conclusion that a claimed fact (about which you are uncertain) ‘may have happened’.”*¹¹⁹

2.10. Clear and unambiguous credibility findings and structured approach

The decision-maker must reach clear and unambiguous findings on the credibility of the identified material facts and explicitly state whether the asserted material fact is accepted as credible or rejected. This requirement is reflected in Australian guidance: *“The tribunal should make clear and unambiguous findings as to the evidence it finds credible or not credible and provide reasons for such findings.”*¹²⁰

Article 9 (2) APD requires that, where an application is rejected, the reasons in fact and in law are stated in the decision. The obligation to state reasons for a decision that are sufficiently specific and concrete to allow the applicant to understand why his or her application has been rejected has been framed as a corollary of the fundamental EU law principle of the right to defence.¹²¹

Having carefully assessed the credibility of the material facts with regard to all the relevant evidence obtained through the lens of the credibility indicators, as appropriate in light of the applicant’s individual and contextual circumstances, and duly taking into account the reasonableness of any explanations provided by the applicant with regard to potentially adverse credibility findings, the decision-maker must determine whether to accept a material fact as credible or not.

If, following such assessment, there is nevertheless an element of doubt in the mind of the decision-maker as regards the credibility of some asserted relevant facts, and there is no other evidence to support that fact, the decision-maker should consider whether it is appropriate, in all the circumstances, to apply the principle of the benefit of the doubt.¹²² The application of the principle of the benefit of the doubt, as explained in the UNHCR Handbook, allows the decision-maker to accept an asserted material fact as credible even though there may be no evidence other than the applicant’s statements to support the fact, and thereby, reach a clear and unambiguous conclusion regarding the asserted material facts of the application.

¹¹⁹ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4.

¹²⁰ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal and Refugee Review Tribunal, 24 March 2012, para. 2.5.

¹²¹ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 88: “the obligation to state reasons for a decision which are sufficiently specific and concrete to allow the person to understand why his application is being rejected is thus a corollary of the principle of respect for the rights of the defence.”

¹²² UNHCR, *Note on Burden and Standard of Proof*, para. 12: “Given that in refugee claims, there is no necessity for the applicant to prove all facts to such a standard that the adjudicator is fully convinced that all factual assertions are true, there would normally be an element of doubt in the mind of the adjudicator as regards the facts asserted by the applicant.” See also UNHCR, Handbook, para. 196, 203, and 204. Para. 196 states: “Even such independent research may not, however, always be successful and **there may also be statements that are not susceptible of proof**. In such cases, if the applicant’s account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.” Para. 203: “After the applicant has made a genuine effort to substantiate his story **there may still be a lack of evidence for some of his statements**. As explained above (para. 196), it is hardly possible for a refugee to ‘prove’ every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt” (emphasis added). See also UNHCR, *The International Protection of Refugees: Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, p. 3: “Once the examiner is satisfied with the applicant’s general credibility, the latter should be given the benefit of the doubt as regards those statements **for which evidentiary proof is lacking**” (emphasis added).

Guidance in the Netherlands stipulates that: “*Finally, at the end of the assessment of the statements of the alien a clear conclusion regarding the plausibility of these statements has to be drawn and stated.*” Where the applicant’s statements regarding factual circumstances, events and assumptions are considered credible as a whole, guidance states that the written decision does not have to refer to these findings, and an absence of written reference should be assumed to indicate that the relevant facts are considered credible.¹²³ Where asserted material facts relating to factual circumstances such as ethnicity or religion are not accepted as credible, the finding of a lack of credibility must be explicitly stated and justified.¹²⁴ Where some of the asserted material facts are accepted as credible and others are not, those that are considered credible must be identified. However, the written decision need not state on what grounds the fact has been accepted.¹²⁵

In contrast to the Netherlands, in UK guidance, regardless of whether the credibility findings are clear, unambiguous, and accepted by the decision-maker, the decision must still outline the material facts in question and the reasons for which they are accepted.¹²⁶ Likewise, when a decision-maker grants international protection to an applicant, a reasoned note, known as a ‘Grant Minute’, is produced outlining the reasoning and placed on the file.

Although the international legal and standard-setting guidance establishes principles and standards, it provides no predetermined structured approach for the assessment of credibility. UNHCR acknowledges the margin of discretion afforded to decision-makers in the assessment of evidence. However, the assessment of credibility of similar cases should lead to similar outcomes.

An additional complexity lies in the fact that EU Member States have different legal traditions and practices with regard to credibility assessment. In general terms, common law systems tend to be more formalistic, setting rules and standards for the assessment of evidence. In civil law countries, general administrative law principles apply unless the law provides specific guidance otherwise. Civil law systems may apply the principle of the free evaluation of evidence.

In their credibility assessment, the European Court of Human Rights and national jurisdictions in many EU Member States adopt conclusions that are supported by the principle of the free evaluation of all evidence, including such inferences as may flow from the facts and the parties’ submissions. The Court further indicates that “*proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact.*”¹²⁷ Similarly, the Committee against Torture exercises the power of free assessment of the facts based on the full set of circumstances in every case.¹²⁸

An approach based on free evaluation of the evidence does not, however, exclude a structured approach to the assessment of credibility – the absence of which may result in a failure to apply the above-mentioned relevant standards appropriately.

If the norm of equality of treatment is to be upheld, “*similar cases should be treated alike and result in the same outcome.*”¹²⁹ It is, therefore, vital that in the first instance the credibility assessment is conducted within a framework that is rational, consistent, and fair.

¹²³ IND-werkinstructie nr. 2010/14 (AUB): Beslissystematiek Beoordeling geloofwaardigheid en zwaarwegendheid (hereinafter IND Working Instruction 2010/14), 4.2.

¹²⁴ IND Working Instruction 2010/14, 4.2.

¹²⁵ AFG03FNP, IRQ03MNP, IRQ02FBP, IRQ02MBP, IRQ01MBP, IRN01FBP

¹²⁶ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, states at section 4.3.5: “*Decision makers should base their findings on the facts of the case and decide which facts to accept or reject based on the internal and external credibility of the claim. The subsequent decision should set out the decision makers reasoning behind the conclusions.*”

¹²⁷ *Nachova v. Bulgaria*, no. 43577/98 and 43579/98 (Judgment), ECtHR, 6 July 2005, para. 147.

¹²⁸ CAT General Comment No. 1: Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications). Adopted at the Sixteenth Session of the Committee against Torture, on 21 November 1997 (contained in document A/53/44, annex IX), para. 9 (b).

¹²⁹ Council of the European Union, *The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens*, OJ (2010/C 115/01), 2010, section 6.2, p. 32.

As stated at the beginning of this chapter, the credibility assessment involves a determination of whether and which of the applicant's statements and other evidence can be accepted and, therefore, may then be taken into account in the analysis of the well-founded fear of persecution and real risk of serious harm. Credibility findings lead to the determination of the material facts considered for the determination of an application and are, as such, the first step in the decision-making process.

The CJEU has ruled that Article 4 (1) QD “relates only to the first stage [...], concerning the determination of the facts and circumstances qua evidence which may substantiate the asylum application.”¹³⁰

The credibility assessment is thus only one step in the determination of international protection needs.¹³¹ It is a tool to assist in establishing the relevant facts to which the law should be applied. Even if the decision-maker accepts the credibility of past and current events as submitted by the applicant, this does not necessarily mean that the applicant is a refugee or in need of subsidiary protection. There must be a forward-looking assessment of risk as well as an application of the facts to the criteria for qualification.

The EAC promotes a systematic approach to ensure that the credibility assessment is based on the entirety of the relevant evidence available. The training module encourages decision-makers to identify clearly all the material facts that emerge from the totality of the applicant's statements and other available evidence; and then, in relation to each identified material fact, to list the evidence that confirms, supports, refutes, or bears on that fact.

In Belgium, the Netherlands, and the UK, a structured approach is also promoted in training. In addition, in the Netherlands and the UK, it is stipulated in specific national guidance on the assessment of credibility. While these approaches share common features with each other and with the EAC structure for the credibility assessment, particularly with regard to the stipulated indicators for assessing the credibility of the applicant's statements, there are differences in terms of the stipulated starting points for the assessment, the stage at which factors relating to the behaviour of the applicant are taken into account, and the approach to the application of the principle of the benefit of the doubt.

¹³⁰ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 68.

¹³¹ I Up 471/2012 Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije), 18 October 2012, paras. 21-22, confirming I Up 787/2012-4 Administrative Court (Upravno sodišče Republike Slovenije), 29 August 2012.

CHAPTER 3

Credibility Assessment: A Multi-Disciplinary Approach

1. Introduction	55
2. The Applicant’s Individual and Contextual Circumstances.....	56
2.1 The limits and variations of human memory	57
2.1.1. Reconstruction.....	57
2.1.2. Memories for ‘facts’: dates and objects	58
2.1.3. Emotion and remembering.....	60
2.1.4. Retelling	60
2.2 Impact of trauma on memory and behaviour	61
2.3 Fear and lack of trust.....	65
2.4 Cultural background and customs	66
2.5 Education.....	68
2.6 Gender	69
2.7 Sexual orientation and/or gender identity	71
2.8 Stigma and shame.....	72
2.9 Other aspects of the applicant’s background such as age, urban or rural background, profession, socio-economic status, religion	74
3. Factors Affecting the Decision-Maker	75
3.1 The decision-maker.....	75
3.1.1. The decision-maker’s thinking processes	75
3.1.2. The decision-maker’s individual and contextual circumstances	76
3.1.3. The decision-maker’s state of mind.....	77
3.2 Political, societal and institutional context	78
3.3 The repetitive nature of the task	79
3.4 Case-hardening, credibility fatigue, emotional detachment, stress and vicarious trauma.....	79
4. Conclusion.....	82

1. Introduction

As stated in Chapter 2, *The Credibility Assessment: Purpose and Principles*, the determining authorities do not have unfettered discretion when it comes to assessing credibility in asylum procedures. The assessment must uphold the applicant's fundamental rights and adhere to certain legal principles and standards. This in turn requires that the examination of the application, including the credibility assessment, must be conducted fully taking into account:

- ❶ the individual and contextual circumstances of the applicant; and
- ❷ relevant factors affecting the decision-maker.

These factors and circumstances should be taken into account routinely and in an integrated way with regards to and throughout all aspects of the credibility assessment.¹ These factors are addressed in turn in the following paragraphs.

¹ The relevant procedural circumstances are analysed in the chapters to follow and will be discussed in the light of the applicant's individual and contextual circumstances and the factors affecting the decision-maker illustrated here. It should also be noted, however, that the applicant's age, either when young or elderly, has been excluded from a substantive discussion in this study as it is not within the scope of the report. Suffice to say that age is a factor that should be considered in the credibility assessment from two points in time: at the time the events related by the applicant took place and at the time of the asylum procedure; EAC Module 7, section 4.2.12.

2. The Applicant's Individual and Contextual Circumstances²

Expectations about the applicant's ability to substantiate his or her application, the indicators used to assess the credibility of the applicant's statements, and the criteria applied in determining whether to afford the applicant the benefit of the doubt are all based on assumptions about human memory, behaviour, values, attitudes, perceptions of and responses to risk, and about how genuine account is presented.³ Indeed, it is widely assumed that human memory, behaviour and perceptions conform to a *norm*, and that deviations from this norm may be indicative of a lack of credibility. However, scientific research in the field of psychology has shown that the assumptions that interviewers and decision-makers commonly make may not accord with what is now known about human memory, behaviour, and perceptions. On the contrary, the research indicates that there is no such norm, that human memory, behaviour, and perceptions vary widely and unpredictably, and that they are affected by a wide range of factors and circumstances.⁴

To take into account the applicant's individual and contextual circumstances, the decision-maker needs to cross geographical, cultural, socio-economic, gender, educational, and religious barriers, as well as take account of different individual experiences, temperaments and attitudes.⁵ These factors and circumstances span many disciplinary fields, including neurobiology, psychology, gender and cultural studies, anthropology, and sociology. Consequently, it is necessary that the whole credibility assessment is duly informed by the substantial body of relevant empirical evidence that exists in these fields.

Interviewers and decision-makers need to keep in mind and take into account the individual and contextual circumstances of the applicant in all aspects of the examination of the application, including throughout the credibility assessment. Indeed, this constitutes a legal requirement.⁶

² The term 'individual circumstances' is not a synonym for 'biographical data' or 'identity'; it is a much broader concept and captures the applicant's background and experiences as well as those of persons similarly situated (for example, neighbours, family, friends, and members of the same or similar social, religious or political group). The applicant's 'contextual circumstances' encompass the conditions in the applicant's neighbourhood, region and country of origin as well as conditions in the Member State. For a more in-depth explanation of this term see Chapter 2, The Credibility Assessment: Purpose and Principles.

³ J Herlihy, K Gleeson, S Turner, 'What Assumptions about Human Behaviour Underlie Asylum Judgments?', *International Journal of Refugee Law*, vol. 22, no. 3, 2010, p 351–66 at p. 351.

⁴ J Cohen, 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers', *International Journal of Refugee Law*, vol. 13, no. 3, 2001, p 293–309.

⁵ S Conlan, S Waters, K Berg, *Difficult to Believe: The Assessment of Asylum Claims in Ireland*, Irish Refugee Council, 2012.

⁶ Article 8 (2) (a) APD: "Member States shall ensure that (a) applications are examined and decisions are taken individually, objectively and impartially." Article 4 (3) QD: "The assessment of an application for international protection is to be carried out on an individual basis." Article 13 (3) (a) provides 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 cultural origin or vulnerability, insofar as it is possible to do so."

2.1 The limits and variations of human memory

Applicants are required to recall relevant past and present facts to substantiate their application. To do so, they are reliant on their memory. It is incumbent on decision-makers to have realistic expectations of what an applicant should know and remember. It has been suggested that some decision-makers may have unreasonable expectations about what applicants should be able to remember.⁷

A wealth of research in the field of psychology reveals that there is a wide-ranging variability in a person's ability to record, retain, and retrieve memories.⁸ Some people appear to recall memories more easily than others. Indeed, many people struggle to recall facts and memories of past events. Moreover, psychological research has consistently shown that memories of even the most important, traumatic, or recent life events can be difficult to retrieve and recall with any accuracy.⁹ Inconsistency, loss of detail, and gaps in recall are a natural phenomenon of the way a person records, stores, and retrieves memories.

The following paragraphs illustrate some key points about normal memory, excluding traumatic memory, which have emerged from research in psychology and have a bearing on the credibility assessment.

2.1.1. Reconstruction

Memories consist of people's experiences of events; they are not a record of the events themselves.¹⁰ The content of a memory reflects the individual's conscious and unconscious experience of an event, and this can change with each recall.¹¹ Autobiographical memory is a bringing together of a construction at the time of remembering, of the knowledge of a person's life, for example, schools, occupations, friends, travel, achievements or failures, and experienced events.¹² In autobiographical memory, visual, verbal and auditory information is not recorded as an accurate copy of experiences at the time, but is reconstructed at the time of recall as a verbal narrative.¹³

Memories generated by a reconstructive process vary in content and output order. No two reformulations can be identical, meaning some inconsistency is inevitable.¹⁴ Autobiographical memories are an interpretation influenced by and reconstructed according to what is known.¹⁵ Therefore, autobiographical memories

⁷ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, 2010, vol. 22, no. 4, p 469–511. See Chapter 4: Gathering the Facts, for examples of this research.

⁸ J Cohen, 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers', *International Journal of Refugee Law*, vol. 13, no. 3, 2001, p 293–309 citing E Tulving, *Episodic and Semantic Memory*, New York Academic Press, 1972, p 381–403.

⁹ C A Morgan-III, et al., 'Accuracy of Eyewitness Memory for Persons Encountered during Exposure to Highly Intense Stress', *International Journal of Law and Psychiatry*, vol. 27, no. 3, 2004, p. 265–79; T Valentine, J Mesout, 'Eyewitness Identification under Stress in the London Dungeon', *Applied Cognitive Psychology*, vol. 23, no. 2, 2009, p 151–61.

¹⁰ M. Conway, E. Holmes, *Memory and the Law: Recommendations from the Scientific Study of Human Memory*, Leicester: The British Psychological Society Press, 2008, p. 2.

¹¹ M Conway, E Holmes, *Memory and the Law: Recommendations from the Scientific Study of Human Memory*, Leicester: The British Psychological Society Press, 2008, p. 2.

¹² M Conway, E Holmes, *Memory and the Law: Recommendations from the Scientific Study of Human Memory*, Leicester: The British Psychological Society Press, 2008, p. 2.

¹³ Although they may evoke some of the sensory experience of the original event: J Herlihy, S Turner, 'The Psychology of Seeking Protection', *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at p. 175. M Conway, E Holmes, *Memory and the Law: Recommendations from the Scientific Study of Human Memory*, Leicester: The British Psychological Society Press, 2008.

¹⁴ S Black, L J Levine, T M Lulhere, 'Autobiographical Remembering and Hypermnesia: A Comparison of Older and Younger Adults', *Psychology and Ageing*, vol. 14 no. 4, 1999, p 671–82.

¹⁵ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 470. See also, J Herlihy, S Turner, 'The Psychology of Seeking Protection' *International Journal of Refugee Law*, vol. 21, 2009, p 171–92; J Cohen, 'Errors of Recall and Credibility of Testimony: Can Omissions and Discrepancies in Successive Statements Reasonably Be Said to Undermine Credibility of Testimony', *Medico-Legal Journal*, vol. 69, no. 1, 2001, p 25–34.

change over time, sometimes significantly.¹⁶ Following any event, memory will naturally decay as details are forgotten. This can be changed by *rehearsal*, i.e. talking about the event. Some memories can fade, some can become distorted, and others may become more vivid.¹⁷

People remember more details with repeated recalls, known as hypermnesia.¹⁸ Research has shown that a second recall of a memory will produce an elaboration of the original version with few verbatim repetitions and with much new detail added.¹⁹ Therefore, information not provided in an initial interview may be indicative, not of inconsistency, but of the normal functioning of memory.²⁰ Blended or generic memories, known as a *schema*, may consist of a fusion of separate specific instances.²¹ This can occur regardless of whether the instances were distressing, significant, or mundane.²² Therefore, it can be extremely difficult to recall accurately separate incidences that were repeated, and recall of entire instances may be omitted.²³

The memories of younger adults are more prone to variability, as are more recent memories.²⁴ The memories of older adults may be more stable, but they also rely more on knowledge and less on the dynamic reconstruction of the events experienced.²⁵

2.1.2. Memories for ‘facts’: dates and objects

Memory for facts is better than memory for the source of those facts,²⁶ so asking someone how they came to know a fact is not a good way of testing knowledge. Memory for temporal information such as dates, times, frequency, duration and sequence;²⁷ proper names; verbatim of verbal exchanges; peripheral information;²⁸ and the appearance of common objects are notoriously unreliable and may be difficult or impossible to recall.²⁹

¹⁶ H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p. 469–511. See also case law that recognizes the effect of the passage of time on memory: *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, IT-96-23-T and IT-96-23/1-T, Trial Judgement, 22 February 2001, para. 564 cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague 2010, p. 140.

¹⁷ H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p. 469–511 at p. 491.

¹⁸ D G Payne, ‘Hypermnesia and Reminiscence in Recall: A Historical and Empirical Review’, *Psychological Bulletin*, vol. 101, no. 1, 1987, p 5–27; , ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 495.

¹⁹ S J Anderson, G Cohen, S Taylor, ‘Rewriting the Past: Some Factors Affecting the Variability of Personal memories’, *Applied Cognitive Psychology*, vol. 14, no. 5, 2000, p 435–54.

²⁰ H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 496: “The strength of the hypermnesia/remembrance phenomenon has led one team of researchers to conclude categorically that in a forensic context ‘if a witness is inconsistent in testimony due to the addition of information, the witness should not be viewed as less credible’”: reference to R P Kern, T M Libkuman, H Otani, ‘Memory for Negatively Arousing and Neutral Pictorial Stimuli Using a Repeated Testing Paradigm’, *Cognition & Emotion*, vol. 16, no. 6, 2002, p 749–67.

²¹ A Baddeley, M W Eysenck, M C Anderson, *Memory*, Hove: Psychology Press, 2009. See also J A List, ‘Age and Schematic Differences in Reliability of Eyewitness Testimony’, *Development Psychology*, vol. 22, no. 1, 1986, p 50–7.

²² H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 482.

²³ S Bidrose, G S Goodman, ‘Testimony and Evidence: A Scientific Case Study of Memory for Child Sexual Abuse’, *Applied Cognitive Psychology*, vol. 14, no. 3, 2000, p 197–213 at p. 209.

²⁴ S J Anderson, G Cohen, S Taylor, ‘Rewriting the Past: Some Factors Affecting the Variability of Personal memories’, *Applied Cognitive Psychology*, vol. 14, no. 5, 2000, p 435–54.

²⁵ S J Anderson, G Cohen, S Taylor, ‘Rewriting the Past: Some Factors Affecting the Variability of Personal Memories’, *Applied Cognitive Psychology*, vol. 14, no. 5, 2000, p 435–54.

²⁶ J S McIntyre, & F I M Craik, ‘Adult Age Differences for Item and Source Information’, *Canadian Journal of Psychology*, vol. 41, no. 2, 1987, Adult age differences for item and source information, *Canadian Journal of Psychology*, vol. 41, 1987, p 175–92.

²⁷ H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511.

²⁸ S A Christianson and M A Safer, ‘Emotional Events and Emotions in Autobiographical Memories’, in D C Rubin (ed.), *Remembering our Past: Studies in Autobiographical Memory*, Cambridge, 1995, p 218–41.

²⁹ H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 470.

A person's recall of dates, frequency, and duration is nearly always reconstructed from inference, estimation and guesswork, and is rarely accurate.³⁰ This is the case for both autobiographical experiences and other events.³¹ We may accurately recall dates, for example, if we deliberately commit them to memory and give them regular attention as some individuals do, for example, with birthdays and anniversaries. However, a wealth of studies demonstrate that the dates that individuals commit to memory in this way are very personal. We do not necessarily or reliably commit to memory the dates of events – including traumatic or emotionally significant ones.³² For example, if we attempt to date an event or describe its duration or frequency, we estimate. Our estimate is unlikely to be accurate, but this is not necessarily indicative of a lack of credibility. It may be that a person is genuinely trying to recall information from memory. If we are then asked to date or describe the same event again after a period of time, we will estimate again and may give a different answer.³³ Thus, such an inconsistency may be indicative of a person trying to remember what he or she has actually experienced, rather than what he or she said previously.

Proper names are difficult to remember.³⁴ Although there is wide variation in the ability of individuals to remember proper names, we often forget the names of even friends and acquaintances; some people have an extremely poor ability to recall proper names. An inability to recall a proper name may not be indicative of a lack of credibility, but simply indicate that proper names are difficult to remember.

A person will only tend to recall those aspects of an event that capture his or her attention, usually on a subjective basis. A person is unlikely to accurately remember details away from the centre of focus even if they occurred within range of sight and hearing.³⁵ As such, decision-makers should not expect applicants to be able to recall every detail of an event, even if the decision-maker considers it *memorable*.³⁶

A wealth of studies concur that people have a particularly poor visual memory for common objects because they do not record information they deem to serve no useful function.³⁷ This is relevant when credibility is assessed based on asking applicants to describe common objects such as currency, identity cards etc. This may also apply to larger everyday objects such as buildings, bridges etc. A failure to describe such common objects is not necessarily indicative of a lack of credibility. An individual's memory for an environment will tend to be organized around key landmarks, such as a monument or supermarket, but this can also distort memories of distances, estimates of size and spatial layout.³⁸

³⁰ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 470 and p. 475 citing a range of studies.

³¹ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p 471–2 cites a range of studies which evidence the inaccuracy of people's recall of dates for both personal and public events.

³² H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 473.

³³ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 491.

³⁴ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p 486–8.

³⁵ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 484.

³⁶ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 483.

³⁷ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 480.

³⁸ M Conway and E Holmes, *Memory and the Law: Recommendations from the Scientific Study of Human Memory*, Leicester: The British Psychological Society Press, 2008, p. 21, for a review of studies.

2.1.3. Emotion and remembering

Although moderate levels of emotion can enhance our memory for events, high levels of emotion can impair the encoding³⁹ of any memory.⁴⁰ The recall of autobiographical memory is influenced by mood. For example, if a person is depressed, they are more likely to recall negative rather than positive experiences.⁴¹

2.1.4. Retelling

The context in which memories are recalled guides their reconstruction. When people retell events, they may take a different perspective for different audiences and purposes.⁴² Therefore, inconsistencies may arise between earlier and later statements delivered in different circumstances or to different people.

Memory is influenced by the nature of a question or cue used to elicit information, such as closed or open-ended questions, as well as the way the question is asked. Memories are susceptible to suggestion,⁴³ more so when the interviewee feels under stress, has low self-esteem, or perceives the interviewer to be critical or negative.⁴⁴ Research has also shown that there is variation in reporting when information is elicited in face-to-face interviews compared with self-completing forms.⁴⁵ The behaviour and perceived intentions of the interviewer influence the recall of memories.⁴⁶ Thus, it is very possible for repeated interviews, or statement writing, to yield discrepancies that result from the form and process of the interrogation, which have no bearing on the credibility of the person or their account.

There is, therefore, ample research on the functioning of memory to show that “*stories can change for many reasons and such changes do not necessarily indicate that the narrator is lying.*”⁴⁷ Indeed, the research shows that it is highly unusual for recall to be accurately reproduced and that, instead, variations are more common.

³⁹ AllPsych Online Dictionary defines encoding as the transformation of information to be stored in memory.

⁴⁰ J Herlihy, S Turner, ‘Asylum Claims and Memory of Trauma: Sharing our Knowledge’, *The British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 3–4 at p. 3; T Valentine, J Mesout, ‘Eyewitness Identification under Stress in the London Dungeon’, *Applied Cognitive Psychology*, vol. 23, no. 2, 2009, p 151–61; K A Deffenbacher, S D Penrod, B H Bornstein and E K McGorty, ‘A Meta-Analytic Review of the Effects of High Stress on Eyewitness Memory’, *Law and Human Behaviour*, vol. 28, no. 6, 2004, p 687–706.

⁴¹ J M G Williams, T Barnhofer, C Crane, D Hermans, F Raes, E Watkins and T Dalgliesh, ‘Autobiographical Memory Specificity and Emotional Disorder’, *Psychological Bulletin*, vol. 133, no.1, 2007, p 122–48.

⁴² M Eastmond, ‘Stories as Lived Experience: Narratives in Forced Migration Research’, *Journal of Refugee Studies*, vol. 20, no. 2, 2007, p 248–64; B Tversky, E J Marsh, ‘Biased Retellings of Events Yield Biased Memories’, *Cognitive Psychology*, vol. 40, no. 1, 2000, p 1–38.

⁴³ G Gisli, *The Psychology of Interrogations, Confessions and Testimony*, Chichester: J Wiley and Son, 1992; E Loftus, ‘Planting Misinformation in the Human Mind: A 30-year Investigation of the Malleability of Memory’, *Learning & Memory*, vol. 12, no. 4, 2005, p 361–6. See also J Herlihy, S Turner, ‘The Psychology of Seeking Protection’, *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at p. 181 and J Cohen, ‘Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers’, *International Journal of Refugee Law*, vol. 13, no. 3, 2001, p 293–309 for reviews.

⁴⁴ J Baxter, J Boon, C Marley, ‘Interrogative Pressure and Responses to Minimally Leading Questions’, *Personality and Individual Difference*, vol. 40, no. 1, 2006, p 87–98.

⁴⁵ H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 506.

⁴⁶ D Bögner, J Herlihy, C Brewin, ‘Impact of Sexual Violence on Disclosure during Home Office Interviews’, *British Journal of Psychiatry*, vol. 191, no.1, 2007, p 75–81; D Bögner, C Brewin, J Herlihy, ‘Refugees’ Experiences of Home Office Interviews: A Qualitative Study on the Disclosure of Sensitive Personal Information’, *Journal of Ethnic and Migration Studies*, vol. 36, no. 3, 2009, p 519–35.

⁴⁷ J Cohen, ‘Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers’, *International Journal of Refugee Law*, vol. 13, no. 3, 2001, p 293–309.



2.2 Impact of trauma on memory and behaviour

Applicants for international protection are more likely than the general population⁴⁸ to have experienced traumatic events.⁴⁹ Psychological literature indicates that memories of traumatic events differ significantly from normal memories.⁵⁰ There is ample evidence that the need to cope with traumatic experiences affects memory.⁵¹ There is also a substantial body of research that demonstrates the effects of trauma on recall and behaviour.⁵²

Post-traumatic stress disorder includes symptoms of distressing re-experiences of the events, sensory encoding of the events, conscious and unconscious avoidance of memories of the event, irritability, poor

⁴⁸ For example S Dahl, A Mutapcic, B Schei, 'Traumatic Events and Predictive Factors for Posttraumatic Symptoms in Displaced Bosnian Women in a War Zone', *Journal of Traumatic Stress*, vol. 11, no. 1, 1998, p 137–45; C Gorst-Unsworth, E Goldenberg, 'Psychological Sequelae of Torture and Organised Violence Suffered by Refugees from Iraq. Trauma-Related Factors Compared with Social Factors in Exile', *The British Journal of Psychiatry*, vol. 172, no. 1, 1998, p 90–4; M Hollifield, T Warner, N Lian, B Krakow, J H Jenkins, J Kesler, J Stevenson, J Westermeyer, 'Measuring Trauma and Health Status in Refugees: A Critical Review', *Journal of the American Medical Association*, vol. 288, no. 5, 2002, p 611–21.

⁴⁹ American Psychiatric Association, *DSM-IV-TR: Diagnostic and Statistical Manual of Mental Disorders*, 2000: "The Diagnostic and Statistical Manual, one of the two main international manuals used for psychiatric diagnosis, defines a traumatic experience as one in which 'the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others'."

⁵⁰ J Herlihy, S Turner, 'The Psychology of Seeking Protection', *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at p. 176; J Herlihy, L Jobson, S Turner, 'Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum', *Applied Cognitive Psychology*, vol. 26, no. 5, 2012, p 661–76.

⁵¹ J Cohen, 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers', *International Journal of Refugee Law*, vol. 13, no. 3, 2001, p 293–309; see also Australian Government, *Guidance on Vulnerable Persons*, Migration Review Tribunal and Refugee Review Tribunal, June 2012, paras 64 and 92.

⁵² J Herlihy, L Jobson, S Turner, 'Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum', *Applied Cognitive Psychology*, vol. 26, no. 5, 2012, p 661–76.

concentration and other symptoms of hyper-arousal.⁵³ A person may also experience these difficulties without satisfying the full range of criteria necessary to receive a psychiatric diagnosis.⁵⁴

Those who have suffered traumatic events often display avoidance symptoms; that is, they avoid thinking and talking about the event, and/or avoid situations that might trigger a recall.⁵⁵ This is a normal survival strategy, which would need to be suppressed to facilitate disclosure of all relevant information in an asylum interview. As such, it may be extremely difficult, very distressing and potentially detrimental for the applicant to disclose such traumatic memories.⁵⁶ Moreover, the applicant may not even be conscious that he or she is avoiding triggers or situations that could cause traumatic memories to recur.⁵⁷ Avoidance may explain an applicant's apparent refusal to answer a question, omission of relevant information from testimony, vagueness and apparent inconsistencies if relevant facts are recalled later in the asylum process.⁵⁸

Studies have also shown that applicants who have lived through traumatic events may experience dissociation.⁵⁹ Dissociation can happen either at the time of the traumatic event or later when recalling it.⁶⁰ Dissociation at the time of the traumatic event may hinder the person's encoding of the event in memory. The applicant may experience dissociative amnesia – that is, an inability to remember some or all aspects of the trauma, because the event, or aspects of the event, was never initially encoded. Dissociation may be a reason why there is a lack of detail, vagueness, incoherence, or gaps in an applicant's recall.⁶¹ Dissociation may also occur at the moment a person is asked to recall a traumatic event.⁶² The person may appear distracted and detached, and/or appear unwilling to cooperate.

Applicants who have experienced traumatic events may display emotional numbing whereby they emotionally detach themselves from the facts they are relating. The applicant can appear to be indifferent. Indifference could, without an understanding of this psychological strategy, be mistakenly interpreted

⁵³ American Psychiatric Association, *Diagnostic and statistical manual of mental disorders* (4th edn.), Washington DC: American Psychiatric Association, 1994; see also *Australian Government, Guidance on Vulnerable Persons, Migration Review Tribunal and Refugee Review Tribunal*, June 2012, para. 79.

⁵⁴ J Herlihy, S Turner, 'Should Discrepant Accounts Given by Asylum Seekers be Taken as Proof of Deceit?', *Torture*, vol. 16, no. 2, 2006, p 81–92 at p. 86.

⁵⁵ American Psychiatric Association, *Diagnostic and statistical manual of mental disorders* (4th edn.), Washington DC: American Psychiatric Association, 1994; See also Swedish Migration Board (Migrationsverket), *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection*, 28 March 2001, p.14: "The description of a chain of events can be made less detailed or specific because a woman may not want to remind herself about all the details and circumstances. This should be kept in mind when evaluating the information a woman provides."

⁵⁶ J Herlihy, S Turner, 'Should Discrepant Accounts Given by Asylum Seekers be Taken as Proof of Deceit?', *Torture*, vol. 16, no. 2, 2006, p 81–92 at p. 83.

⁵⁷ J Herlihy, L Jobson, S Turner, 'Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum', *Applied Cognitive Psychology*, vol. 26, no. 5, 2012, p 661–76.

⁵⁸ D Bögner, J Herlihy, C Brewin, 'Impact of Sexual Violence on Disclosure during Home Office Interviews', *British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 75–81; see also EAC Module 7, section 4.2.5: "Traumatised persons may not wish to report and to discuss all the details of their experiences. [...] One of the diagnostic features of PTSD is that the individual makes efforts not to have conversations associated with the trauma. During an interview it will be possible that the claimant will switch into an avoidance response."

⁵⁹ Dissociation is described as the "disruption in the usually integrated functions of consciousness, memory, identity, or perception of the environment": American Psychiatric Association, *Diagnostic and statistical manual of mental disorders* (4th edn), Washington DC: American Psychiatric Association, 1994; D Bögner, J Herlihy, C Brewin, 'Impact of Sexual Violence on Disclosure during Home Office Interviews', *British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 75–8.; See for references, J Cohen, 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers', *International Journal of Refugee Law*, vol. 13, no. 3, 2001, p 293–309.

⁶⁰ *Zubeda v. Ashcroft*, 333 F.3d 463, 476–77 (3rd Cir. 2003): "Caution is required because of the numerous factors that might make it difficult for an alien to articulate his/her circumstances with the degree of consistency one might expect from someone who is ... haunted by the traumatic memories, that may hamper communication between a government agent in an asylum interview and an asylum seeker. This is particularly true when we consider that such an alien may have tried to suppress the very memories and details that have suddenly become so important to establishing his/her claim."

⁶¹ J Herlihy, S Turner, 'The Psychology of Seeking Protection', *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at p. 178; See also EAC Module 7, section 4.2.5.

⁶² D Bögner, J Herlihy, C Brewin, 'Impact of Sexual Violence on Disclosure during Home Office Interviews', *British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 75–8; see also *Falcon Rios v. Canada*, CAT/C/33/D/133/1999, 17 December 2004, para. 8.5: "In the Committee's view, the vagueness referred to by the State party can be seen as a result of the psychological vulnerability of the complainant mentioned in the report; moreover, the vagueness is not so significant as to lead to the conclusion that the complainant lacks credibility."

as indicating lack of credibility.⁶³ Applicants may react in other ways that might seem strange to those unfamiliar with psychological coping mechanisms, for example, laughing, smiling, grinning, or deep silence.⁶⁴ This is just one of the reasons why decision-makers are cautioned not to rely on demeanour as an indicator of credibility.

Memories of traumatic experiences can be qualitatively different from other autobiographical memories.⁶⁵ An applicant may have no memorized verbal narrative of the trauma that occurred, but only sensory impressions such as emotions, sensations, sounds, smells, or visual images like flashbacks and nightmares.⁶⁶ Such memories are not evoked voluntarily, but they are provoked by triggers or reminders of the traumatic event. When triggered, the individual may relive an aspect of the experience as though it is occurring in the present.⁶⁷ Therefore, an applicant who has experienced trauma may be unable to produce a coherent verbal narrative because none exists; this may mean only fragments or impressions of the experience may be related.⁶⁸ Since sensory impressions are not evoked voluntarily, it is also possible that recall may be different in different interviews.

When people experience traumatic events, they tend to remember some details at the expense of others. They are likely to have better recall of central details, on which they have focused, with reduced recall of peripheral details.⁶⁹ Scientific studies reveal that discrepancies may arise more frequently with regard to peripheral details.⁷⁰

Detention, whether in the country of origin or in the host state, may have an impact on the ability to record and retrieve specific details of events. Where a history of persecution includes multiple instances of detention, applicants may have difficulty distinguishing between them, especially where events were similar. Evidence from memory research⁷¹ shows that people rely on general knowledge or *schematic*

⁶³ J Herlihy, S Turner, 'The Psychology of Seeking Protection', *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at p. 177; see also *Sheikh v. Canada* (Minister of Citizenship and Immigration) [2000] FCJ No. 568 at para. 28 (Federal Court of Canada) cited in H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 469.

⁶⁴ EAC Module 7, section 4.2.5.

⁶⁵ There is a higher than normal prevalence of mental health problems among applicants for international protection. The applicant may be suffering the symptoms of mental health problems associated with their experiences in the country of origin, in flight and/or in the putative country of asylum. It should be borne in mind that stress, anxiety, depression, and sleep loss can all impair autobiographical memory and affect behaviour. See M Fazel, J Wheeler, J Danesh, 'Prevalence of Serious Mental Disorder in 7000 Refugees Resettled in Western Countries: A Systematic Review', *Lancet*, vol. 365, no. 9467, 2005, p 1309–14; M J Ouimet, M Munoz, L Narsiah, V Rambure, J A Correa, 'Pathologies courantes chez les demandeurs d'asile à Montréal : prévalence et facteurs de risque associés', *Canadian Journal of Public Health*, vol. 99, no. 6, 2008, p 499–504; J Cohen, 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers', *International Journal of Refugee Law*, vol. 13, no. 3, 2001, p 293–309.

⁶⁶ C Brewin, J D Gregory, M Lipton, N Burgess, 'Intrusive Images in Psychological Disorders: Characteristics, Neural Mechanisms and Treatment Implications', *Psychological Review*, vol. 117, no. 1, 2010, p 210–32; J Cohen, 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers', *International Journal of Refugee Law*, vol. 13, no. 3, 2001, p 293–309 refers to a number of research studies. See also J Herlihy, S Turner, 'Should Discrepant Accounts Given by Asylum Seekers be Taken as Proof of Deceit?', *Torture*, vol. 16, no. 2, 2006, p 81–92 at p. 86. J Herlihy, L Jobson, S Turner, 'Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum', *Applied Cognitive Psychology*, vol. 26, no. 5, 2012, p 661–76; see also EAC Module 7, section 4.2.5.

⁶⁷ J Herlihy, S Turner, 'The Psychology of Seeking Protection', *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at p. 176.

⁶⁸ J Herlihy, S Turner, 'Should Discrepant Accounts Given by Asylum Seekers be Taken as Proof of Deceit?', *Torture*, vol. 16, no. 2, 2006, p 81–92 at p. 86; see also EAC Module 7, section 4.2.5: "This means that when an applicant is interviewed and asked about an experience that was traumatic and has only or largely memories of this fragmentary type, he/she is unlikely to be able to produce a coherent verbal narrative of his/her experience, because no complete verbal narrative exists. He/she will have only fragments and impressions, which are likely, incidentally, to evoke the feelings that were felt at the time of the original experience."

⁶⁹ J Herlihy, S Turner, 'Asylum Claims and Memory of Trauma: Sharing our Knowledge', *The British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 3–4 at p. 3; see also Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 4.3.

⁷⁰ J Herlihy, S Turner, 'Should Discrepant Accounts Given by Asylum Seekers be Taken as Proof of Deceit?', *Torture*, vol. 16, no. 2, 2006, p 81–92 at p 86 & 88; J Herlihy, S Turner, 'The Psychology of Seeking Protection', *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at p. 179; S A Christianson, E F Lofus, H Hoffman, G R Loftus 'Eye Fixations and Memory for Emotional Events', *Journal of Experimental Psychology, Learning, Memory and Cognition*, vol. 17, no. 4, 1991, p 693–70.

⁷¹ For more information see the section on Reconstruction, specifically schematic memory, above.

memory about situations, and may rely on this in preference to recalling specific events,⁷² especially if these are painful memories.⁷³

The normal variability of memory is likely to be exacerbated when the applicant has experienced trauma.⁷⁴ Impaired memory and concentration are just two of the symptoms of post-traumatic stress disorder. The accuracy of recall can be further influenced by the other symptoms associated with the experiences of trauma, such as depression,⁷⁵ anxiety, disturbed sleep, nightmares, headaches, cardiovascular symptoms, pain, and traumatic brain injury.⁷⁶

It should also be noted that psychological and physical effects of trauma may also affect the applicant's behaviour.

International⁷⁷ and national jurisprudence,⁷⁸ as well as judicial guidance,⁷⁹ recognizes that the need to cope with traumatic experiences affects memory. These also acknowledge the consequent impact on an applicant's testimony and behaviour. For example, the Committee against Torture has repeatedly held that complete accuracy is seldom to be expected from victims of torture:

“The State party has pointed to contradictions and inconsistencies in the author's story, but the Committee considers that complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the author's presentation of the facts are not material and do not raise doubts about the general veracity of the author's claims.”⁸⁰

⁷² J Herlihy, L Jobson, S Turner, 'Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum', *Applied Cognitive Psychology*, vol. 26, no. 5, 2012, p 661–76.

⁷³ J M G Williams, 'Capture and Rumination, Functional Avoidance, and Executive Control (CaRFAX): Three Processes that Underlie Overgeneral Memory', *Cognition & Emotion*, vol. 20, no. 3–4, 2006, p 548–68.

⁷⁴ *Tala v. Sweden*, CAT/C/17/D/43/1996, 15 November 1996, para. 10.3.

⁷⁵ Research has shown that depression has significant effects on memory which may account for a lack of detail and inconsistency in the applicant's account. In particular, Depression is linked to 'over-general memory', where individuals have difficulty giving specific memories. See L Wilson-Shaw, N Pistrang, J Herlihy, 'Non-Clinicians' Judgments about Asylum Seekers' Mental Health: How do Legal Representatives of Asylum Seekers Decide When to Request Medico-Legal Reports?', *European Journal of Psychotraumatology*, vol. 3: 18406, 2012; J M G Williams, T Barnhofer, C Crane, D Hermans, F Raes, E Watkins, T Dalgleish, 'Autobiographical Memory Specificity and Emotional Disorder', *Psychological Bulletin*, vol. 133, no. 1, 2007, p 122–48; EAC Module 7, section 4.2.7.

⁷⁶ J Cohen, 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers', *International Journal of Refugee Law*, vol. 13, no. 3, 2001, p 293–309.

⁷⁷ *Prosecutor v. Alfred Musema (Appeal Judgement)*, ICTR-96-13-A, 16 November 2001, para. 20 cited in Rosemary Byrne, 'Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals', *International Journal of Refugee Law*, vol. 19, no. 4, December 2007, p 609–38. See also *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, IT-96-23-T and IT-96-23/1-T, (Trial Judgement), 22 February 2001, paras 564 and 679 cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague 2010, p. 95: Due to the nature of the trauma experienced by witnesses, they could not be reasonably expected to recall "the minutiae of the particular incidents charged, such as the precise sequence, or the exact dates and times of the events they have described"; see also *Prosecutor v. Alfred Musema (Appeal Judgement)*, ICTR-96-13-A, 16 November 2001, para. 60; *Prosecutor v. Anto Furundzija* (Trial Judgment), IT-95-17/1-T, ICTY, 10 December 1998, para. 113.

⁷⁸ *A. M. v. Federal Asylum Review Board*, Higher Administrative Court (Verwaltungsgerichtshof) 2005/01/0080 28.06.2005; Tribunale di Napoli, Sezione Civile I bis, 2 febbraio 2011, sentenza n. 30, (Tribunal of Naples, judgment n. 30, 2 February 2011); *F. C. v. Migration Office of the Ministry of Interior of the Slovak Republic*, Supreme Court of the Slovak Republic (Najvyšší súd Slovenskej republiky) 1Sža/12/2009 26th May 2009.

⁷⁹ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 4.3: "A person may have had traumatic experiences or be suffering from a disorder or illness which may affect his or her ability to give evidence, his or her memory or ability to observe and recall specific events or details." See also para. 5.3: "Traumatic experiences including torture may impact upon a number of aspects of an Applicant's case including the timeliness of an application, compliance with immigration laws, or the consistency of statements since arrival in Australia. They may also impact adversely on an Applicant's capacity in providing testimony of such events."

⁸⁰ *Ismail Alan v. Switzerland*, CAT/C/16/D/21/1995, 8 May 1996. See also *Tala v. Sweden*, CAT/C/17/D/43/1996, 15 November 1996, para. 10.3; and *Kisoki v. Sweden*, CAT/C/16/D/41/1996, 8 May 1996, para. 9.3.

The Committee, as well as the ICTY and ICTR, has further elaborated that inconsistencies with regard to material facts do not necessarily undermine the credibility of an applicant's statements.⁸¹

The applicant may feel frightened, bewildered and disoriented in the alien environment. The natural disorientation one feels on engaging with an administrative or legal system in a foreign culture can cause confusion or limit recall. Moreover, the applicant may understandably feel anxious about the asylum procedure and its outcome, which may impact on his or her voice and speech patterns, his or her ability to articulate the material facts of the claim, his or her demeanour (he or she may look confused, nervous, or unconvincing), or lead to omissions and inconsistencies.⁸²

2.3 Fear and lack of trust

As a result of their experiences, applicants for international protection may lack trust in state authorities, interpreters from their country of origin or habitual residence or other individuals.⁸³ Some applicants may hold a genuine belief that their persecutors in the country of origin or place of habitual residence have wide networks in other countries, including the putative country of asylum. Moreover, the applicant may not wish to disclose certain relevant facts for fear of endangering the lives of relatives, friends, or associates left in the country of origin or place of habitual residence.

UNHCR has stated: “A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-à-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case.”⁸⁴

Fear or lack of trust in state authorities may explain a lack of disclosure in a preliminary⁸⁵ and/or personal interview. This has been acknowledged in international jurisprudence⁸⁶ and judicial guidance.⁸⁷

⁸¹ *Halil Haydin v. Sweden*, CAT/C/21/D/101/1997, 16 December 1998, para. 6.7: “The Committee notes that the State party has pointed to contradictions and inconsistencies in the author’s story and further notes the author’s explanations for such inconsistencies. The Committee considers that complete accuracy is seldom to be expected by victims of torture, **especially when the victim suffers from post-traumatic stress syndrome; it also notes that the principle of strict accuracy does not necessarily apply when the inconsistencies are of a material nature.** In the present case, the Committee considers that the presentation of facts by the author does not raise significant doubts as to the trustworthiness of the general veracity of his claims.” See also *Prosecutor v. Juvénal Kajelijeli (Judgment and Sentence)*, ICTR-98-44A-T, 1 December 2003, para. 40 referring to *Delalic et al. (Appeal Chamber); Prosecutor v. Kupreskic et al. (Appeal Judgment)*, IT-95-16-A, 14 January 2000 at para. 31; *Prosecutor v. Anto Furundzija (Trial Judgment)*, IT-95-17/1-T, ICTY, 10 December 1998, para. 113: “[...] In fact, inconsistencies may, in certain circumstances, indicate truthfulness.”

⁸² Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 4.3: “Members need to be mindful that a person may be anxious or nervous due to the environment of a hearing and the significance of the outcome.”

⁸³ J Herlihy, S Turner, ‘The Psychology of Seeking Protection’, *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at p. 174 citing Turner, ‘Torture, refuge and trust’, in D E Valentine, J C Knudsen (eds.), *Mistrusting Refugees*, Berkeley: University of California Press, 1995. See also UNHCR, *Guidelines on International Protection no. 1*; W Kälin, ‘Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing’, *International Migration Review*, vol. 20, no. 2, Special Issue: Refugees: Issues and Directions, Summer 1986, p 230–41.

⁸⁴ UNHCR, *Handbook*, para. 198.

⁸⁵ *Guan v. Gonzales*, 432 F.3d 391, 396 (2d Cir.2005); *AZ (Trafficked women) Thailand v Secretary of State for the Home Department*, CG [2010] UKUT 118 (IAC), 8 April 2010, para. 116.

⁸⁶ *Tala v. Sweden*, CAT/C/17/D/43/1996, 15 November 1996. In this case before the Committee against Torture, the author conceded that he had made untrue statements and that his statements were also contradictory and inconsistent during the initial asylum procedure; but on appeal he had given a consistent, thorough, and detailed account. He explained his initial actions were caused by his psychological state and fear of providing a full account to the authorities which the Committee implicitly accepted.

⁸⁷ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 4.3: “There may also be mistrust in speaking freely to people in positions of authority.” See also para. 5.6: “A person may not reveal the whole of his or her story ... for fear of endangering relatives or friends or because of mistrust of persons in positions of authority.”

Applicants whose reasons for applying for international protection relate to gender, sexual and gender-based violence, sexual orientation and/or gender identity, or trafficking, may fear reprisals by their family, community, and/or traffickers.⁸⁸ Likewise, some applicants may fear reprisals from agents who arranged their travel and entry to the Member State, and this may account for an applicant's unwillingness to divulge certain relevant information or furnish particular documentary or other evidence.⁸⁹

2.4 Cultural background and customs

There are a variety of ways in which culture influences credibility assessment. Diversity in the cultural background of the applicant and decision-maker will influence the communication and understanding between the two. Understanding and interpreting any kind of information received is culturally determined.⁹⁰ The way in which individual cultural backgrounds influence the delivery and interpretation of oral or written information from one person to another is problematic, as culture can be objective or subjective.⁹¹ Misinterpretation of statements and behaviour is a particular danger in the context of cross-cultural communication.

With regards to communication, words, notions and concepts can all have different meanings in different cultures.⁹² A failure to recognize the cultural relativity of words, notions and concepts can be a major source of misunderstanding and flawed credibility assessments.⁹³ For example, the word 'brother' or 'sister' may mean a biological or adopted sibling for an interviewer or decision-maker, but for an applicant from another culture it may be understood to encompass other people, for example, those belonging to the same ethnic group or clan. Such differences in meaning may explain an apparent inaccuracy or discrepancy in an applicant's statements. This has been recognized by the ICTR, which relied on the testimony of an expert on linguistics to understand the meaning of words in Kinyarwanda more clearly.⁹⁴

⁸⁸ UNHCR, *Guidelines No. 1; Guidelines No. 9*, para. 63 (i)–(viii). See also UKBA, Asylum Instructions, *Gender Issues in Asylum Claims*, September 2010. See also UNHCR, *Guidelines No. 7*.

⁸⁹ For example, most first instance procedures respect and observe confidentiality concerns, however, it may not be so for an appeals proceeding.

⁹⁰ S Bryant, J K Peters, 'The Five Habits: Building Cross-Cultural Competence in Lawyers', *Clinical Law Review*, vol. 8, no. 1, 2001, p 33–94 at p. 39. "Consider, for example, a client who explains that the reason that she left her native country was that God appeared to her in a dream and told her it was time to leave. If the time of departure is critical to the credibility of her story, how will the fact-finder evaluate the client's credibility? Does the fact-finder come from a culture where dreams are valued, where an interventionist God is expected, or where major life decisions would be based on these expectations or values? Will the fact-finder, as a result of differences, find the story incredible or indicative of a disturbed thought process or, alternatively, as a result of similarities, find the client credible?"

⁹¹ Objective culture is what we can observe such as artefacts, food, clothing, etc. whereas, subjective culture is what is invisible, such as a person's values, attitudes, and beliefs. Subjective culture is where most cross-cultural misunderstandings occur. S Bryant, J K Peters, 'The Five Habits: Building Cross-Cultural Competence in Lawyers', *Clinical Law Review*, vol. 8, no. 1, 2001, p 33–94 citing K Cusher, R W Brislin (eds.), *Intercultural Interactions: A Practical Guide*, 1996, p 6 and 10. The example given by these authors is in reference to a lawyer and their client, however, it holds relevance for this point: "Imagine a lawyer saying to a client, 'If there is anything that you do not understand, please just ask me to explain' or 'If I am not being clear, please just ask me any questions.' The lawyer might assume that a client who does not then ask for clarification surely understands what the lawyer is saying. However, many cultural differences may explain a client's reluctance to either blame the lawyer for poor communication (the second question) or blame himself or herself for lack of understanding (the first question). Indeed, clients from some cultures might find one or the other of these results to be rude and, therefore, will feel reluctant to ask for clarification for fear of offending the lawyer or embarrassing himself." at p. 5.

⁹² W Kälin, 'Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing', *International Migration Review*, vol. 20, no. 2, Special Issue: Refugees: Issues and Directions, Summer 1986, p 230–41 at p. 233: "Words, notions and concepts which carry the same label often embody different meanings in different cultures." See also *Matter of X*, United States Executive Office for Immigration Review (EOIR), 9 August 2011, p. 8: "In the Court's view, it seems likely that much of the discrepancy between the respondent's testimony and her statement can be accounted for by cultural and linguistic nuances surrounding the definition of the word 'rape'."

⁹³ W Kälin, 'Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing', *International Migration Review*, vol. 20, no. 2, Special Issue: Refugees: Issues and Directions, Summer 1986, p 230–41 at p. 234.

⁹⁴ *Prosecutor v. Jean-Paul Akayesu*, Case No ICTR-96-4-T, Judgment, 2 September 1998, para. 146 cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague 2010, p. 132.

Concepts of time, distance, and location may be culturally relative. Different cultures have different perceptions of time.⁹⁵ In certain cultures, temporal concepts may not be based on units of time such as clocks and Western calendars. Events may be remembered instead by reference to seasons, religious holidays, festivals, or other events. Even in cultures that use calendars, concepts of time may differ from those commonly used in Western society. Moreover, information that is considered significant in Western cultures, such as birth dates and anniversaries, may not be significant in others.⁹⁶ In this regard, it is instructive that the ICTR recognized that the cultural backgrounds of witnesses may mean that they have difficulty being specific about dates, times, distances, locations; ICTR therefore stated that no adverse inference about their credibility would be drawn from reticent or circuitous answers in this regard.⁹⁷ As such, cultural factors, rather than a lack of credibility, could be taken to explain an apparent lack of detail or vagueness in the applicant's statements.

As noted in Chapter 5, The Credibility Indicators, the 'sufficiency of detail' indicator is based on an assumption that a person who is relating a genuine experience will tend to be more expressive and detailed, including, for example, sensory details. There is growing literature showing that people store and recall autobiographical memories very differently in different cultures.⁹⁸

People's cultural backgrounds and the cultural norms of their societies may affect the way they relate their accounts to the interviewer.⁹⁹ For example, a woman's cultural background may mean that she has lived a secluded life with little contact and communication with strangers or authorities, or she is accustomed to having a male relative speak on her behalf in public situations.¹⁰⁰

It is instructive that the ICTR has considered that expert anthropological evidence is crucial to understanding the cultural framework within which testimonies are given. By way of example, the Trial Chamber called an expert witness specifically to explain how particular features of Rwandan culture may affect testimony. The expert witness explained that Rwandans do not always answer questions directly, especially if they consider them of a sensitive nature. In addition, the expert informed that because most Rwandans live in an oral tradition, facts are reported as they are perceived by the witness. When the facts are passed on orally, they can be recounted as a first-hand account irrespective of whether or not the speaker witnessed them personally.

This explained why some witnesses gave evidence as though it were their eyewitness account when in fact it was second-hand information. As a result, the ICTR Trial Chamber specifically adjusted its questioning to take this into account. Moreover, the Trial Chamber decided not to draw any adverse inference about the witness's credibility on account of circuitous answers to perceived sensitive questions.¹⁰¹ Indeed, the Trial

⁹⁵ W Kälin, 'Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing', *International Migration Review*, vol. 20, no. 2, Special Issue: Refugees: Issues and Directions, Summer 1986, p 230–41 at p. 236. See EAC Module 7, section 4.2.20: "what does 'a long time ago' mean? 15 years, 1 year?"

⁹⁶ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 475

⁹⁷ *Prosecutor v. Alfred Musema (Judgement and Sentence)*, ICTR-96-13-T, 27 January 2000, para. 103 cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague 2010, p. 125. See also R Byrne, 'Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals', *International Journal of Refugee Law*, vol. 19, no. 4, December 2007, p 609–38.

⁹⁸ J Herlihy, L Jobson, S Turner, 'Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum', *Applied Cognitive Psychology*, vol. 26, no. 5, 2012, p 661–76 at p 668–9 for a review of culture and autobiographical memory.

⁹⁹ Refugee, Asylum and International Operations Directorate (RAIO), U.S. Citizenship and Immigration Services, *Asylum Officer Basic Training Module: Gender-Related Claims*, October 2012, para. 7.1.3.

¹⁰⁰ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 4.3: "The educational, social and **cultural background** of a person may affect the manner in which a person provides his or her evidence and the depth of understanding of particular concepts" (emphasis added).

¹⁰¹ *Prosecutor v. Alfred Musema (Judgement and Sentence)*, ICTR-96-13-T, 27 January 2000, para. 103 cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague 2010, p. 125. See also R Byrne, 'Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals', *International Journal of Refugee Law*, vol. 19, no. 4, December 2007, p 609–38.

Chamber had stressed that sensitivity toward cultural factors is needed, not only during interviews and in the assessment of credibility, but also when gathering and preparing the facts.¹⁰²

2.5 Education

The applicant's education should be taken into account when assessing credibility. Some applicants may have had limited or no formal education, while others may possess high academic qualifications.

The applicant's level of education may affect his or her ability to articulate the reasons for the application and to respond to questions. Brief responses to open-ended questions may simply reflect a limited vocabulary,¹⁰³ lack of fluency, or lack of awareness that a detailed response is required. An inability to present a coherent and consistent account may also result from a lack of education and training in logical thinking, rather than lack of credibility.¹⁰⁴

An applicant may be illiterate and may not have been educated in the use of, for example, time, dates and/or distances.¹⁰⁵ For example, the Trial Chamber of the ICTR noted that some witnesses testifying before the court were farmers with limited formal education. Consequently, it was to be expected that they would have difficulty testifying about exhibits such as maps or photographs of locations, films or other graphic representations, dates, times, distances, colours, and motor vehicles.¹⁰⁶ Therefore, no adverse inference about their credibility would be drawn from reticent or circuitous answers in this regard.¹⁰⁷

The applicant's level of formal education may affect his or her understanding of the context of certain events experienced. It may also affect the applicant's ability to respond to general knowledge questions intended to probe the credibility of his or her statements. Less educated applicants may have limited knowledge of the history, geography, and social, political, and economic conditions in their countries and/or regions of origin.¹⁰⁸

While the effect of an applicant's level of education on his or her ability to present testimony is not gender-specific, it should be borne in mind that in some countries or cultures, females are denied the opportunity to obtain an education or may have access to only a limited education. The literacy rate for women in a number of refugee-producing countries is quite low.¹⁰⁹

¹⁰² *Prosecutor v. Alfred Musema (Judgement and Sentence)*, ICTR-96-13-T, 27 January 2000, para. 105 cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague 2010, p. 125.

¹⁰³ EAC Module 7, section 4.2.16.

¹⁰⁴ EAC Module 7, section 4.2.16.

¹⁰⁵ EAC Module 7, sections 4.2.16 and 4.2.17.

¹⁰⁶ *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, (Judgement and Sentence), Case No ICTR-96-3-T, 6 December 1999, para. 23 cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague 2010, p. 125.

¹⁰⁷ *Prosecutor v. Alfred Musema (Judgement and Sentence)*, ICTR-96-13-T, 27 January 2000, para. 103 cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague 2010, p. 125. See also R Byrne, 'Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals', *International Journal of Refugee Law*, vol. 19, no. 4, December 2007, p. 609–38.

¹⁰⁸ EAC Module 7, section 4.2.17.

¹⁰⁹ Refugee, Asylum and International Operations Directorate (RAIO), U.S. Citizenship and Immigration Services, *Asylum Officer Basic Training Module: Gender-Related Claims*, October 2012, para. 7.1.4. See also Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 4.3: "The **educational, social and cultural background** of a person may affect the manner in which a person provides his or her evidence and the depth of understanding of particular concepts" (emphasis added).

2.6 Gender

Gender defines identity, status, roles, responsibilities, and power relations among members of any society or culture.¹¹⁰ Gender roles are socially constructed and not determined by biological differences between males and females.¹¹¹ They vary across and within societies and cultures, and evolve with time to respond to changes in the social, political, and cultural environment.¹¹² They also vary according to other factors such as age, religion, ethnic and social origin.¹¹³ Gender roles influence the attitudes, behaviour, roles, and activities of males and females. Gender roles and identities usually involve inequality and a power imbalance between women and men.¹¹⁴ Many women around the world are in a disadvantaged position compared with men from the same social and economic backgrounds.

Gender differences have also been noted in scientific research on recall. Leading memory researchers have noted that:

*“Differences in the historical social roles of the two genders have undoubtedly contributed to the development of different interests as well as different expectations regarding the types of activities at which each gender should excel. Thus, variations between men’s and women’s memory performance may be due to their physiological capabilities, their interest, their expectations, or some complex interaction of these factors.”*¹¹⁵

Gender roles affect male and female experiences of persecution and serious harm and, thus, their asylum claims. Females may be persecuted in ways that are different from those in which males are subjected. Often, they may be persecuted because of their inferior status in their home society.¹¹⁶

The interviewer and decision-maker should be aware that social constraints may restrict a female’s access to information and/or her knowledge of certain events and activities. For example, cultural and social mores governing gender roles may restrict a woman’s role in a political organization. This would mean that she is unable to provide details about the structure and functioning of the organization, even though she is a member and takes risks to advance its aims.¹¹⁷

¹¹⁰ UNHCR, *Sexual and Gender-Based Violence against Refugees: Returnees and Internally Displaced Persons, Guidelines for Prevention and Response*, May 2003, p. 11.

¹¹¹ UNHCR, *Guidelines No. 1*, para.3: “Gender refers to the relationship between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another, while sex is a biological determination.”

¹¹² UNHCR, *Sexual and Gender-Based Violence against Refugees: Returnees and Internally Displaced Persons, Guidelines for Prevention and Response*, May 2003, p. 11; UNHCR, *Ensuring Gender Sensitivity in the Context of Refugee Status Determination and Resettlement*, October 2005.

¹¹³ UNHCR, *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons, Guidelines for Prevention and Response*, May 2003, p. 11.

¹¹⁴ UNHCR, *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons, Guidelines for Prevention and Response*, May 2003, p. 12.

¹¹⁵ E F Loftus, M R Banaji, J W Schooler, R A Foster, ‘Who Remembers What?: Gender Differences in Memory’, *Michigan Quarterly Review*, vol. 26, no. 1, 1987, p 64–85 at p. 83.

¹¹⁶ *Secretary of State for the Home Department (Respondent) v K (FC) (Appellant) and Fornah (Appellant) v Secretary of State for the Home Department (Respondent)*, [2006] UKHL 46, 18 October 2006, para. 86, per Baroness Hale.

¹¹⁷ Refugee, Asylum and International Operations Directorate (RAIO), U.S. Citizenship and Immigration Services, *Asylum Officer Basic Training Module: Gender-Related Claims*, October 2012, para. 7.1.1.

In certain cultures, men do not share information about their professional, political, military, or even social activities with their female relatives, which may account for a female applicant's lack of knowledge.¹¹⁸ Women may be credited with the political opinions of their family or male relatives, and have a well-founded fear of persecution on account of that, but nevertheless not possess the knowledge of the activities of adult male figures in the family. Such factors should be taken into account when assessing the applicant's general knowledge of asserted material facts.¹¹⁹

The gender, cultural, and educational background of an applicant may affect his or her ability to relate his or her account to the interviewer.¹²⁰ A woman, for instance, may lack experience of and confidence in communicating with figures of authority.¹²¹ A woman, for instance, may be unaccustomed to communicating with strangers and/or persons in public positions due to a background of social seclusion and/or social mores dictating that, for example, a male relative speaks on her behalf in public situations.¹²² In addition, it may be common for a female applicant to be deferential in her country of origin or place of habitual residence. Male applicants may also find it difficult to discuss aspects of their past and present experiences that may be at variance with their expected gender roles in their society. Such factors may account for brief, vague or apparently inconsistent responses.

For a number of reasons, a female applicant may not have access to identity documents or other documentary evidence to support her application. For instance, the country of origin may not afford women full rights of citizenship, or male relatives may exercise control over documentation relating to women.¹²³

The applicant's testimony has to be assessed in the context of his or her gender, linked also with other factors such as age, culture, religion, family, and socio-economic status in the country of origin or place of habitual residence. Interviewers and decision-makers need to maintain an objective and impartial approach so that they do not reach conclusions based on stereotypical, superficial, erroneous, or inappropriate perceptions of gender.¹²⁴

¹¹⁸ During interviews, the applicant's gender may affect the way a question is understood, how the answer is provided and the nature of the answer provided. Questioning that focuses on knowledge held or activities conducted customarily by males may fail to elicit material relevant facts from a female applicant. See UNHCR, Regional Representation for Western Europe, *Note du Haut Commissariat des Nations Unies pour les réfugiés relative à l'évaluation des demandes d'asile introduites par des femmes*. See also UKBA, Asylum Instructions, *Gender Issues in the Asylum Claim*, September 2010.

¹¹⁹ Refugee, Asylum and International Operations Directorate (RAIO), U.S. Citizenship and Immigration Services, *Asylum Officer Basic Training Module: Gender-Related Claims*, October 2012, para. 7.1.1.

¹²⁰ Refugee, Asylum and International Operations Directorate (RAIO), U.S. Citizenship and Immigration Services, *Asylum Officer Basic Training Module: Gender-Related Claims*, October 2012, para. 7.1.3.

¹²¹ UNHCR, *Handbook for the Protection of Women and Girls*, January 2008.

¹²² Refugee, Asylum and International Operations Directorate (RAIO), U.S. Citizenship and Immigration Services, *Asylum Officer Basic Training Module: Gender-Related Claims*, October 2012, para. 7.1.3. See also UNHCR, *Handbook for the Protection of Women and Girls*, January 2008.

¹²³ Refugee, Asylum and International Operations Directorate (RAIO), U.S. Citizenship and Immigration Services, *Asylum Officer Basic Training Module: Gender-Related Claims*, October 2012, para. 8.

¹²⁴ T Spijkerboer, 'Stereotyping and acceleration: gender procedural acceleration and marginalised judicial review in the Dutch asylum system', Chapter 5 in G Noll, *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*, Leiden: Martinus Nijhoff, 2005.

2.7 Sexual orientation and/or gender identity¹²⁵

People fleeing persecution and/or serious harm for reasons of sexual orientation and/or gender identity can qualify for international protection. Where an application for international protection is grounded on the applicant's asserted sexual orientation and/or gender identity, ascertaining whether the applicant is lesbian, gay, bisexual, transgender, and/or intersex¹²⁶ (hereinafter LGBTI) is essentially an issue of credibility.

However, for a number of reasons, some LGBTI individuals may not initially disclose the real grounds for the application. LGBTI individuals may have suffered human rights abuses, discrimination, harassment, marginalization, and/or isolation in their home societies. They may have been compelled to conceal and deny their identity in an effort to avoid such treatment. Being compelled to conceal one's sexual orientation and/or gender identity may also result in significant psychological and other forms of harm. Feelings of self-denial, anguish, shame, isolation, and even self-hatred may accrue in response to an inability to be open about one's sexuality or gender identity.¹²⁷ Such feelings may diminish the applicant's capacity to disclose relevant information, inhibiting them from informing interviewers and decision-makers that their fear of persecution and/or serious harm relates to their sexual orientation and/or gender identity.

An applicant in the process of coming to terms with, or afraid of openly expressing, his or her sexual orientation and/or gender identity may be reluctant to identify the true extent of the persecution suffered or feared. LGBTI applicants may, for instance, change their claim during the process by initially stating that their sexual orientation is imputed to them, or, before eventually expressing that they are LGBTI, making a claim on grounds unrelated to sexual orientation and/or gender identity.¹²⁸

It is important to ensure that credibility assessment contains no superficial understandings of the experiences of LGBTI individuals, or erroneous, culturally inappropriate, or stereotypical assumptions. The experiences of LGBTI individuals vary greatly and are strongly influenced by their cultural, economic, family, political, religious, and social environment. The applicant's background may influence the way he or she expresses his or her sexual orientation and/or gender identity, or may explain why he or she does not live openly as a LGBTI individuals. It is therefore essential that decision-makers understand both the context of each refugee claim, as well as the individual narratives that map uneasily onto common, notably Western, experiences or labels.¹²⁹

The presence or absence of certain stereotypical behaviours or appearances should not be relied on to conclude that an applicant does or does not possess a given sexual orientation and/or gender identity.¹³⁰ There are no universal characteristics or qualities that typify LGBTI individuals, any more than there are for heterosexual individuals. Their life experiences can vary greatly even if they are from the same country.¹³¹ This is another reason why UNHCR discourages the use of the indicator demeanour and other behaviours

¹²⁵ The concepts of sexual orientation and gender identity are outlined in the Yogyakarta Principles and this terminology is also used for the purposes of this report. Sexual orientation refers to: "each person's capacity for profound emotional, affectional and sexual attraction to, and intimate relations with, individuals of a different gender or the same gender or more than one gender." Gender identity refers to: "each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech and mannerisms." See International Commission of Jurists (ICJ), *Yogyakarta Principles – Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, (hereinafter 'Yogyakarta Principles'), March 2007.

¹²⁶ UNHCR, *Guidelines No. 9*, para. 10 for the meanings attached to this terminology.

¹²⁷ UNHCR, *Guidelines No. 9*, para. 33.

¹²⁸ UNHCR, *Guidelines No. 9*, para. 59.

¹²⁹ UNHCR, *Guidelines No. 9*, para. 4.

¹³⁰ This issue has been addressed by a number of US Courts: *Shahinaj v. Gonzales*, 481 F.3d 1027, 1029, (8th Cir. 2007); *Razkane v. Holder, Attorney General*, 562 F.3d 1283, 1288, (10th Cir. 2009); *Todorovic v. US Attorney General*, 621 F.3d 1318, 1325-1327, (11th Cir. 2010). See also S Jansen and T Spikerboer, *Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, 2011. UK policy guidance states that, "stereotypical ideas of people – such as an 'effeminate' demeanour in gay men or a masculine appearance in lesbians (or the absence of such features) should not influence the assessment of credibility." UKBA Asylum Instructions, *Guidelines on Sexual Orientation Issues in the Asylum Claim*, October 2010.

¹³¹ UNHCR, *Guidelines No. 9*, para. 60 (ii).

in the credibility assessment. For further discussion on demeanour see Chapter 6, Beyond the Credibility Indicators: Other Elements Affecting the Credibility Assessment in State Practice.

The impact of gender is relevant to applications made by both LGBTI men and women.¹³² Decision-makers need to be attentive to differences in their gender-based experiences. For example, norms, or COI, about heterosexual or gay males may not apply to the experiences of lesbians, whose position may, in a given context, be similar to that of other women in their society.¹³³ It is necessary to take full account of diverse and evolving identities and their expression, the individual's actual circumstances, and the cultural, legal, political, and social context within his or her country of origin or place of habitual residence.¹³⁴

2.8 Stigma and shame

Research shows that stigma, a sense of shame and/or a fear of rejection by one's family and community, can inhibit disclosure of relevant information.¹³⁵ In particular, applicants applying for international protection based on gender, sexual and gender-based violence, or their sexual orientation and/or their gender identity may feel ashamed and/or fearful of rejection by family and community.¹³⁶

Applicants submitting gender-related applications where relevant facts concern, for example, forced prostitution and trafficking, genital mutilation, or forced abortion¹³⁷ may feel unable or reluctant to disclose information for many reasons.¹³⁸ These reasons include, but are not limited to, the effects of trauma, other mental health problems, stigma and shame, lack of trust in authorities, fear of rejection or ostracism, and fear of serious harm as a reprisal. Such factors may explain why an applicant is reluctant to identify the real reasons for the application, or the true extent of the persecution suffered and/or feared.¹³⁹

Statistical data or reports on the incidence of gender-based violence may not be available due to under-reporting of cases or lack of prosecution. In certain countries, the authorities may be unwilling to issue documentation to women regarding events that are considered private, or if obtaining such documentation might place a person at risk of serious harm.¹⁴⁰ Survivors of gender-based violence are often held morally

¹³² UNHCR, *Guidelines No. 9*, para. 3 and para. 14. See also UNHCR, *Ensuring Gender Sensitivity in the Context of Refugee Status Determination and Resettlement. Module 2: Ensuring Gender Sensitivity in Refugee Status Determination – Procedural Issues*, October 2005, p. 59: “male homosexuals, for example, in some societies also find themselves in breach of both gender roles and social rules and are persecuted as a result.”

¹³³ H Crawley, *Gender-Related Persecution and Women's Claims to Asylum*, The Fahamu Refugee Programme, “many lesbians have effectively been denied the right to sexual orientation because they have been forced into marriage.”

¹³⁴ UNHCR, *Guidelines No. 9*, para. 14 citing UNHCR, *Summary Conclusions: Asylum-Seekers and Refugees Seeking Protection on Account of their Sexual Orientation and Gender Identity*, para. 5.

¹³⁵ D Bögner, J Herlihy, C Brewin, ‘Impact of Sexual Violence on Disclosure during Home Office Interviews’, *British Journal of Psychiatry*, vol. 191, no. 1, 2007, p. 75; J Millbank, “‘The Ring of Truth’: A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations”, *International Journal of Refugee Law*, vol. 21, no. 1, 2009, p 1–33 at p. 14; Asylum Aid, ‘I feel like as a woman, I am not welcome’: A gender analysis of the UK asylum law, policy and practice, *Women's Asylum News: Issue no. 107, December 2011–January 2012*. See also, UNHCR, *Note du Haut Commissariat des Nations Unies pour les réfugiés relative à l'évaluation des demandes d'asile introduites par des femmes*, 14 December 2012.

¹³⁶ UNHCR, *Guidelines No. 1*. Note that gender-related claims may be brought by either women or men, although due to particular types of persecution, they are more commonly brought by women. See also UNHCR, *Women and Girls Fleeing Conflict: Gender and the Interpretation and Application of the 1951 Refugee Convention*, September 2012, p. 44; UNHCR, *Handbook for the Protection of Women and Girls*, January 2008, section 4.2.6, p 137–8; Asylum Aid, *Unsustainable: The Quality of Initial Decision-making in Women's Asylum Claims*, January 2011.

¹³⁷ Applications that relate to the applicant's sexual orientation contain a gender element. In such cases, the applicant may have refused to adhere to socially or culturally defined roles or behaviour expectations attributed to his or her sex. UNHCR, *Guidelines No. 1*, para. 16.

¹³⁸ D Bögner, J Herlihy, C Brewin, ‘Impact of Sexual Violence on Disclosure during Home Office Interviews’, *British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 75–81; D Bögner, C Brewin, J Herlihy, ‘Refugees’ Experiences of Home Office Interviews: A Qualitative Study on the Disclosure of Sensitive Personal Information’, *Journal of Ethnic and Migration Studies*, vol. 36, no. 3, 2009, p 519–35.

¹³⁹ UNHCR, *Guidelines No. 1*, para. 35; See also Irish Council for Civil Liberties, Women's Committee, *Women and the Refugee Experience: Towards a Statement of Best Practice*, Irish Times, 2000, p. 18; see also AZ (*Trafficked women*) Thailand v Secretary of State for the Home Department, CG [2010] UKUT 118 (IAC), 8 April 2010, para. 116.

¹⁴⁰ Swedish Migration Board (Migrationsverket), *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection*, 28 March 2001, p. 15.

culpable for the act, which has been deemed culturally unacceptable and shameful.¹⁴¹ Applicants who have been sexually assaulted may suffer trauma, the symptoms of which include, amongst others, self-blame, shame, memory loss, and distortion.¹⁴²

Applicants may have grown up in a culture where their sexual orientation and/or gender identity is considered shameful or taboo and hence they may not have disclosed these aspects to even family members.¹⁴³ Some LGBTI individuals, for example, may harbour such deep shame and/or internalized homophobia that they deny their sexual orientation and/or adopt verbal and physical behaviours in conformity with heterosexual norms and roles.¹⁴⁴ Applicants from highly intolerant countries may, for instance, not readily identify themselves as LGBTI individuals.¹⁴⁵ They may have already been stigmatized, isolated, or marginalized in their country of origin, place of habitual residence or in their own community. Research has shown that such experiences and feelings may make LGBTI individuals reluctant to disclose relevant material facts.¹⁴⁶ This has been acknowledged in international jurisprudence,¹⁴⁷ national jurisprudence¹⁴⁸ and judicial guidance,¹⁴⁹ as well as national policy guidance.¹⁵⁰

Stigma may also account for a lack of documentary or other evidence. Stigma attached to gender, sexual and gender-based violence, and sexual orientation and/or gender identity contributes to incidents going unreported.¹⁵¹ People may not report incidences of harm or threatened harm to the authorities, or the authorities in certain countries may be unwilling to issue documentation about what they consider taboo.¹⁵² Indeed, obtaining documentary evidence may place some people at risk of prosecution in countries where, for example, women and girls may be sentenced for adultery after being raped, or where adultery and/or homosexuality are criminalized.¹⁵³ COI regarding these types of violence can, therefore, be especially under-reported and/or scarce or impossible to obtain.¹⁵⁴

¹⁴¹ Swedish Migration Board (Migrationsverket), *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection*, 28 March 2001, p. 15

¹⁴² UKBA, Asylum Instructions, *Guidelines: Gender Issues in the Asylum Claim*, September 2010.

¹⁴³ UNHCR, *Guidelines No. 9*, para. 63 (i)–(viii); J Millbank, ‘From Discretion to Disbelief: Recent Trends in Refugee Determinations on the Basis of Sexual Orientation in Australia and the United Kingdom’, *The International Journal of Human Rights*, vol. 13, no. 2/3, 2009, p 391–414.

¹⁴⁴ L Berg, J Millbank, ‘Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants’, *Journal of Refugee Studies*, vol. 22, no. 2, 2009, p 195–223.

¹⁴⁵ UNHCR, *Guidelines No. 9*, para. 63 (i)–(viii).

¹⁴⁶ D Bögner, J Herlihy, C Brewin, ‘Impact of Sexual Violence on Disclosure during Home Office Interviews’, *British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 75–81.

¹⁴⁷ *V.L. v. Switzerland*, CAT/C/37/D/262/2005, 20 November 2006, para. 8.8.

¹⁴⁸ *Refugee Appeal No. 74665*, New Zealand: Refugee Status Appeals Authority, 7 July 2004: The Appeals Authority accepted that the applicant’s original false application and submission of false documents was a pretext to mask what the applicant believed he could not reveal, namely his sexual orientation.

¹⁴⁹ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, paras 4.5, 4.6 and 5.6.

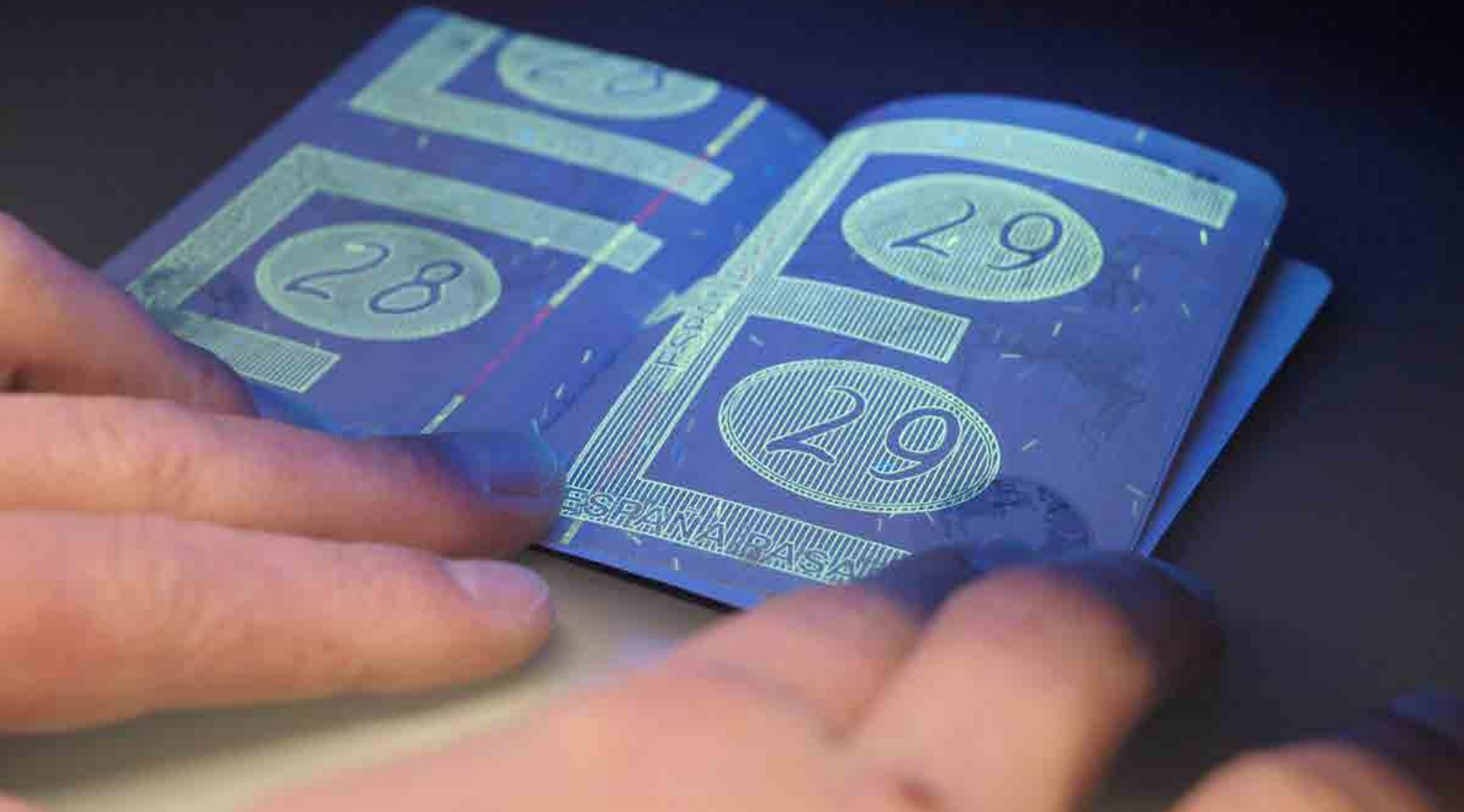
¹⁵⁰ UKBA, Asylum Instructions, *Gender Issues in the Asylum Claim*, September 2010, p. 18; UKBA, Asylum Instructions, *Gender Identity issues in the Asylum Claim*, v. 1.0, 08 June 2011, p. 12; UKBA, Asylum Instructions, *Sexual Orientation Issues in the Asylum Claim*, v. 4.1, 08 June 2011, p. 10; Verslag van een algemeen overleg, vastgesteld 24 juli 2012, kamerstuk 19 637 nr. 1570. The Minister stated in regards to ‘coming out’: “Gisteren heb ik gezegd dat dat wat mij betreft een nieuw feit oplevert. Dit komt niet in de Vreemdelingencirculaire te staan, maar het komt wel in het Kamerstuk. Ik doe die toezegging dus niet zomaar. Het is wel degelijk een punt waarmee wij rekening gaan houden.” The Aliens Circular was amended later, on September 27 2012, Besluit van de Minister voor Immigratie, Integratie en Asiel van 18 september 2012, WBV 2012/21, published Staatscourant nr. 19403, 27; see also D Bögner, J Herlihy, C Brewin, ‘Impact of Sexual Violence on Disclosure during Home Office Interviews’, *British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 75–81; Swedish Migration Board (Migrationsverket), *Guidelines for Investigation and Evaluation of Asylum Cases in Which Persecution Based on Given Sexual Orientations is Cited as a Ground*, 28 January 2002, p. 14.

¹⁵¹ UNHCR, *Guidelines No. 9*, para. 66

¹⁵² Swedish Migration Board (Migrationsverket), *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection*, 28 March 2001, p. 15; D Bögner, J Herlihy, C Brewin, ‘Impact of Sexual Violence on Disclosure during Home Office Interviews’, *British Journal of Psychiatry*, vol. 191, no. 1, 2007, p. 75.

¹⁵³ Swedish Migration Board (Migrationsverket), *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection*, 28 March 2001, p. 15.

¹⁵⁴ UNHCR, *Guidelines No. 9*, para. 66. See also UNHCR, *Guidelines No. 1*, para. 36 (x).



2.9 Other aspects of the applicant's background such as age, urban or rural background, profession, socio-economic status, religion

The age of the applicant is another relevant factor decision-makers should take into account. Due to the limited resources available to this research, the full impact of age could not be analysed. This will be done through the follow up CREDO project.

The research sample included applications by adults for whom material facts related to when they were children and their age at that time was a factor to be taken into account by the decision-maker. The report provides some specific examples of when this factor was taken into account.

Applicants for international protection come from a vast range of social backgrounds. Some may have come from remote rural villages, others from large urban centres. Some may have laboured on self-sufficient agricultural holdings or in the home, and others may have occupied senior positions in their profession. Some applicants may have had access to media, travelled, and socialized with others in their country of origin or place of habitual residence, while others may have had no such access and have led isolated lives. Some applicants may adhere to a particular religion or custom that guides their actions.

These are only some of the factors that will influence the testimony of an applicant, but it is vital that interviewers take them into account when framing interview questions to probe credibility and when assessing credibility. The importance of such factors for the assessment of credibility has been recognized in judicial guidance.¹⁵⁵

¹⁵⁵ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 4.3.

3. Factors Affecting the Decision-Maker

The decision-maker is required to adhere to the standards set out in Chapter 2, The Credibility Assessment: Purpose and Principles, when conducting an assessment of credibility. The following paragraphs outline just some of the factors that relate to the decision-maker himself or herself that may affect his or her ability to assess an application.

3.1 The decision-maker

Decisions granting international protection are some of the most difficult to make. The scarcity of independent evidence confirming or supporting an applicant's testimony is common and, as such, many decision-makers must make a life or death decision based only on a credibility assessment of the applicant's statements.

The objectivity and impartiality requirement calls for an approach to the credibility assessment that minimizes subjectivity. Subjectivity can be thought about in three key areas:

- ❶ the decision-maker's thinking processes;
- ❷ the decision-maker's individual and contextual circumstances; and
- ❸ the decision-maker's state of mind.

Just as consideration of the individual and contextual circumstances of the applicant are crucial to the credibility assessment, so too is an awareness by the decision-maker of the influence of his or her own individual and contextual circumstances on the decision-making process.

3.1.1. The decision-maker's thinking processes

Established research suggests that *gut instinct* can more often than not lead us away from a correct decision. Psychological science has shown that when we think, we use *two systems*.¹⁵⁶ This means that when we are concentrating and motivated, we are better able to deliberate and think through problems. When we are distracted, hurried, or mentally depleted, including low glucose levels,¹⁵⁷ however, we are more likely to rely on *fast thinking*¹⁵⁸ and non-verbal information.¹⁵⁹ This gives rise to a number of biases, of which decision-makers may be unaware.

¹⁵⁶ Known as a 'dual-processing' model, where an individual processes information on a conscious and unconscious level simultaneously. See for example S Chaiken, Y Trope, *Dual-Process Theories in Social Psychology*, New York: Guilford Press, 1999.

¹⁵⁷ D Kahneman, *Thinking, Fast and Slow*, London: Allen Lane, 2011, p 41–4. See also S Danziger, J Levav, L Avnaim-Pesso, *Extraneous Factors in Judicial Decisions*, Proceedings of the National Academy of Sciences of the United States of America, 2011. A study of parole judgments in Israel showed a marked effect of taking a break to eat: rulings immediately after a food break were much more likely to be in line with the status quo (i.e. refusal of parole).

¹⁵⁸ D Kahneman, *Thinking, Fast and Slow*, London: Allen Lane, 2011.

¹⁵⁹ M A Reinhard, S L Sporer, 'Verbal and Nonverbal Behaviour as a Basis for Credibility Attribution: The Impact of Task Involvement and Cognitive Capacity', *Journal of Experimental Social Psychology*, vol. 44 no. 3, 2008, p 477–88.

For example, when a person has decided on a conclusion, he or she is more likely to believe the evidence that supports that conclusion, even if it is unsound.¹⁶⁰ In other words, starting with a belief, intuition, or hunch that a claim is false, research then shows that anything fitting that conclusion will be more likely to be accepted than anything that contradicts it. There is also a tendency, what is known as the *halo effect*, that can lead a person to either believe or not believe everything.¹⁶¹ Thus, the sequence in which information is delivered and/or gathered matters greatly here. The halo effect increases the weight of first impressions, sometimes to the point that subsequent information is treated as irrelevant. In other words, first impressions may distort fact-finding insofar as the fact-finder may give greater weight to evidence that supports his or her initial intuition or impression, even if that evidence is unreliable.

Decision-makers must work to be aware of when their fact-finding, reasoning, and decisions are being guided or influenced primarily by intuition rather than by consideration of the entirety of the available facts.

3.1.2. The decision-maker's individual and contextual circumstances

Another way in which decisions can be inappropriately subjective is through the unacknowledged influence of the decision-maker's own background, age, gender, sexual orientation and/or gender identity, culture, religion, beliefs, values, social status, education, and life experiences. Decision-makers are individuals, each with their own personal opinions, values, perceptions, attitudes, preferences, prejudices, and biases based on their psychological development, knowledge, and life experiences within a certain culture or cultures and/or contextual circumstances.

It has been suggested that decision-makers necessarily approach their tasks from the perspective of their own background and life experiences – asking themselves “*what would I, or someone I know do in this situation?*”¹⁶² However, such an approach may fail to take account the different life experiences, personal circumstances, and psychological responses of the applicant,¹⁶³ and the extraordinary circumstances from which applicants have fled and are unwilling to return.

An individual's subjective experiences of life influence his or her intuition or *gut feelings*. Consequently, if decision-makers rely on such feelings to evaluate the life experiences of applicants whose experiences are, by and large, alien to their own, these feelings are likely to be flawed. It may be normal for people to base their intuitive feelings and opinions about almost everything they encounter based on their own limited life experiences.¹⁶⁴ There may be a tendency to believe statements because they are linked by logic or association to beliefs or preferences that the decision-maker holds, or that come from a trusted source. Indeed, some intuition may draw on skills and expertise acquired through repeated experience. Other intuition, by contrast, which may be subjectively indistinguishable from the first, may simply draw on limited life experience.¹⁶⁵

¹⁶⁰ This is based on the principle of ‘confirmation bias’. See R S Nickerson, ‘Confirmation Bias: A Ubiquitous Phenomenon in Many Guises’, *Review of General Psychology*, vol. 2, no. 2, 1998, p 175–220.

¹⁶¹ AllPsych Online Dictionary defines the halo effect as *the tendency to assign generally positive or generally negative traits to a person after observing one specific positive or negative trait, respectively* – since coherence, especially everything fitting together neatly, is important to us.

¹⁶² R Graycar, ‘The gender of judgments: an introduction’, in M Thornton (ed.), *Public and Private Feminist Legal Debates*, Melbourne: OUP, 1991, p 262–82.

¹⁶³ J Herlihy, K Gleeson, S Turner, ‘What Assumptions about Human Behaviour Underlie Asylum Judgments?’, *International Journal of Refugee Law*, vol. 22, no. 3, 2010, p 351–66.

¹⁶⁴ D Kahneman, *Thinking, Fast and Slow*, London: Allen Lane, 2011, p 45, 97.

¹⁶⁵ D Kahneman, *Thinking, Fast and Slow*, London: Allen Lane, 2011, p. 185.

Considerable caution is required when assessing the behaviour, norms, including gender norms, and customs of people from different cultures; events that occur in a different cultural context; and the practices and procedures of the political, judicial, and social systems of other countries.¹⁶⁶ Behaviour and perceptions of risk are relative, culturally as well as individual.¹⁶⁷ There is also a risk that a decision-maker may be overly influenced by his or her own views of what is or is not plausible; a person's own background, culture, customs, gender, and societal norms will inevitably have influenced such views.¹⁶⁸ The Federal Court of Canada has cautioned about the perils of drawing inferences from cultural generalizations and relying on stereotypical profiles.¹⁶⁹ A decision-maker must “*look through the spectacles provided by the information he has about conditions in the country in question.*”¹⁷⁰

Speculative reasoning that reflects the decision-maker's personal theory of how the applicant could or should have acted, or how certain events could or should have unfolded, also violates the principle of objectivity unless it has been based on independent, reliable, and objective sources.

3.1.3. The decision-maker's state of mind

It is vital that decision-makers neither prejudice credibility nor approach the task with scepticism or a *refusal mind-set*, for otherwise they may distort the gathering of the facts and the assessment of the applicant's statements.

Studies have shown that a person's mood and physical state may influence his or her thoughts and actions. Some decision-makers informed UNHCR that when they consider an applicant has lied during interview, they tend to take such behaviour personally; they disclosed that it makes them feel *angry, irritated, insulted, annoyed, and agitated*. This is very likely to affect how they assess the rest of the applicant's statements.

The antidote to subjectivity in both individuality and thinking processes is awareness. Assessing credibility requires interviewers and decision-makers to engage in self-assessment so that they recognize the extent to which their own emotional and physical state, values, views, assumptions, prejudices, and life experiences influence their decision-making.¹⁷¹ It is critical that determining authorities and individual decision-makers have a basic understanding and awareness of these influences so that they can take steps to minimize subjectivity and partiality as far as possible.¹⁷²

¹⁶⁶ Immigration and Refugee Board of Canada, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, Section 2.3.5, p. 34.

¹⁶⁷ EAC Module 7, section 4.2.20.

¹⁶⁸ *Y v Secretary of State for the Home Department*, [2006] EWCA Civ 1223, 26 July 2006. See also R Graycar, ‘The gender of judgments: an introduction’, in M Thornton (ed.), *Public and Private Feminist Legal Debates*, Melbourne: OUP, 1991 p 262–82.

¹⁶⁹ Immigration and Refugee Board of Canada, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, Section 2.3.5, p. 35.

¹⁷⁰ *Y v Secretary of State for the Home Department*, [2006] EWCA Civ 1223, 26 July 2006, para. 27.

¹⁷¹ R Thomas, *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication*, Oxford: Hart Publishing, 2011, p. 166; J Millbank, ‘“The Ring of Truth”: A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations’, *International Journal of Refugee Law*, vol. 21, no. 1, 2009; A Macklin, *Truth and Consequences: Credibility Determination in the Refugee Context*, International Association of Refugee Law Judges, 1998 Conference.

¹⁷² R Graycar, ‘The gender of judgments: an introduction’, in M Thornton (ed.), *Public and Private: Feminist Legal Debates*, Melbourne: OUP, 1995, p. 267: “*What judges know about the world, how they know the things they do, and how the things they know translate into their activities as judges’ is extremely important. Maybe if we could educate judges to make them aware of their prejudices, then at least they could be on guard for when they start to affect their judgments. Perhaps they may even start to think differently.*” Training programmes on the credibility assessment instruct decision-makers to set aside their own ‘personal baggage’ see EAC Module 7, section 4.2.22.

3.2 Political, societal and institutional context

It is important to recognize that many decision-makers work in a societal, political and/or institutional context geared towards preventing irregular immigration and ensuring that the asylum system is not abused by people submitting false claims.

In some EU Member States, the authority responsible for determining applications for international protection may form part of the governmental body responsible for immigration and border control. These governmental bodies are likely to operate under an EU and/or national imperative to prevent and/or reduce irregular immigration. In addition, in some EU Member States, the press coverage on and political debates about asylum may contribute to a public perception of asylum as countering measures to prevent irregular migration. In this context, the determining authorities and decision-makers may be concerned that the applications they face are based on fabricated evidence. This concern is reflected at the highest level of the EU, where the European Council has declared that while the Common European Asylum System (CEAS) should be “*based on high protection standards, due regard should also be given to fair and effective procedures capable of preventing abuse.*”¹⁷³

Such a background may consciously or unconsciously influence the mind-set and attitudes of decision-makers and interviewers responsible for the credibility assessment.

Although decision-makers expressed their intention to start the examination with an open mind,¹⁷⁴ some also expressed the view that they think the majority of applicants are economic migrants.¹⁷⁵ Legal practitioners in one discussion opined that decision-makers tend to view their task as *keeping the gates closed*, rather than providing *protection*.¹⁷⁶

Societal, political, and institutional pressure to prevent the abuse of the asylum system may subconsciously influence the mind-set of decision-makers, so that they approach the credibility assessment with scepticism and disbelief.¹⁷⁷

It is, therefore, vital that decision-makers recall that their task is to uphold fundamental human rights and their objective is one of protection, namely to identify applicants who qualify for international protection. Furthermore, it is crucial that determining authorities take appropriate steps, as necessary, to ensure an institutional mind-set that is protection-oriented and an institutional culture that is *protection-sensitive*.

¹⁷³ Council of the European Union, *The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens*, OJ (2010/C 115/01), 2010, p. 32.

¹⁷⁴ Decision-makers interviewed by UNHCR reported that they considered that they had no particular view before entering asylum interviews. Decision-maker B stated “*I go in with an open mind.*” Interview 2; Decision-maker F stated, “*I tend to do research before each case and read the screening interview. But I have no formed opinion about them*” (Interview 6). Similar views were stated by decision-maker A: “*You can’t afford to premeditate. You would have to probe otherwise you’ll lead yourself down a bad path, it can ruin the entire interview preparation if you have a particular standpoint before entering an interview*” (Interview 1).

¹⁷⁵ For example, decision-maker A stated: “*I think 90% of the time they are economic migrants*” (Interview 1); other decision-makers stated: “*Every person who comes to claim asylum is not an asylum seeker, they are economic migrants. Someone has said to me straight away that they have come for economic reasons*” (Interview 3); and: “*Generally they are coming for nothing more than economic reasons*” (Interview 4); one decision-maker stated: “*Applicants lie and abuse the immigration system, they abuse the benefits system; it is quite apparent to me what is happening here. When you are exposed to this, you become highly cynical*” (Interview 5).

¹⁷⁶ Meeting with legal practitioners took place on 22 June 2012.

¹⁷⁷ G Coffey, ‘The Credibility of Credibility Evidence at the Refugee Review Tribunal’, *International Journal of Refugee Law*, vol. 15, no. 3, 2003, p 377–417 at p. 417: “*When an asylum seeker who is in fact a Convention refugee is disbelieved there is a failure on a number of levels. There is a miscarriage of justice and a betrayal of the principle of asylum. There is a failure to bear witness to the asylum seeker’s experience of persecution, and consequently an unwitting completion of the persecutor’s project – to render the victim of persecution discredited and silent. It behoves us to ensure that survivors of persecution are not unjustifiably disbelieved.*”

3.3 The repetitive nature of the task

Recognition is given to the fact that it is a challenge to remain objective and impartial, especially given that decision-makers within determining authorities are called upon repeatedly to assess applications, often within limited time-frames and sometimes for many applicants from the same countries of origin. Given the repetitive nature of the task, there is a risk that decision-makers will tend, consciously or unconsciously, to categorize applications into generic case profiles¹⁷⁸ with predetermined assumptions regarding credibility.¹⁷⁹ Of the decision-makers interviewed in one Member State, a majority stated that when they heard similar stories over and over again they believed the story was false.¹⁸⁰

None of the decision-makers interviewed mentioned an appreciation of the possibility that similar accounts by applicants might be an indicator of credibility.

Previous findings about the credibility or lack of credibility of similar applications from the same country of origin or place of habitual residence should not result in a predetermined assumption about the outcome. Conversely, that one application is substantively different from others relating to the same country of origin or habitual residence should not result in a predetermined assumption about credibility. In this regard, it is worth noting that each application must be assessed individually, impartially, and objectively, even in the context of country guidance relating to ‘at risk’ and not ‘at risk’ groups.

3.4 Case-hardening, credibility fatigue, emotional detachment, stress and vicarious trauma

Routine exposure to narratives of torture, violence, or inhuman and degrading treatment can take its psychological toll on decision-makers. Examiners interviewed by UNHCR testified to the psychological stress of repeatedly listening to and/or reading accounts of claimed persecution.

For example, one decision-maker stated:

“I had one interview where the applicant had left her children in Gambia and at the end of the interview she broke down. I was affected by how distressed she was at the interview. I have had interviews where there have been graphic photographs. There are after-effects of doing the interview, even now the things I have heard prey on my mind.”¹⁸¹

¹⁷⁸ J Herlihy, S W Turner, ‘The Psychology of Seeking Protection’, *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p. 191 on stereotypes.

¹⁷⁹ One decision-maker stated: “Over a period of time you can’t help but have a stereotype. I try to remain objective to see what the person says. But you can’t block out preconceived ideas of people from that nationality. You can’t do this job for too long because you build up a preconception about things” (Interview 3); similarly, another decision-maker stated “It’s quite hard sometimes. I don’t think you should do this job very long. You get hardened to it, the same stories coming through build up a preconception” (Interview 6); a senior decision-maker also commented that “similar stories mean that [decision-makers] get a bit bored, that isn’t the right frame of mind to be examining a case” (Interview 8).

¹⁸⁰ Decision-maker A stated “Instinctively I think it’s false, you think to yourself here we go again” (Interview 1). Decision-maker E stated “In the case of Afghans, every Afghan fears the Taliban; every Afghan has a brother conscripted by the Taliban. This changes the starting point before interviews, you know the applicant fears the Taliban, you think to yourself this is the standard run on the mill claim. It’s false” (Interview 5). Decision-maker D stated “It’s false, often people know other people that have used that story to get a grant” (Interview 4). Decision-maker C stated “Well, it’s hard to believe if you know the answers before you’ve asked them the questions” (Interview 3). One decision-maker noted the difficulty of the task: “You have to remind yourself that this is an individual case, look at the background factors of each case – they can’t all be lying” (Interview 6).

¹⁸¹ Interview 3.

Another decision-maker stated that “*you hear horrific things all the time, it’s an intense thing. It has an effect on you.*”¹⁸²

Interviewers and decision-makers may suffer psychological distress from their exposure to such evidence – so-called vicarious trauma – and employ natural coping strategies that can involuntarily compromise their impartiality.¹⁸³

Interviewers and decision-makers may find the content of the evidence so horrific that they are tempted to reject it as unimaginable, fabricated, and therefore lacking credibility.¹⁸⁴ Other recent research noted that “*it becomes increasingly difficult to approach each case afresh and to avoid creating hierarchies of suffering which demand ever higher levels of abuse to incite sympathy.*”¹⁸⁵ Disbelief is a very human coping strategy, but it undermines objectivity and impartiality.

Emotional detachment may be viewed as essential in maintaining objectivity. However, decision-makers have to be careful that such detachment does not translate into disbelief and a reluctance to engage with the applicant’s narrative.¹⁸⁶ Two decision-makers informed UNHCR that they try to cope with traumatic accounts through emotional detachment. For example, as one decision-maker stated, “*my emotional attachment to interviews is limited. I am there to take information, so I am very passive, cold even.*”¹⁸⁷

Interviewers and decision-makers can, therefore, become cynical, *case-hardened* or suffer *credibility fatigue* as a result of disengagement and the sheer volume of applications and evidence assessed. As one experienced adjudicator stated, “[*w*]e must be on our guard against credibility fatigue, as much as against being deceived by false claims.”¹⁸⁸

UNHCR’s research revealed that awareness existed among some decision-makers of *case-hardening*, *credibility fatigue* and *burn-out*.¹⁸⁹ Some decision-makers interviewed noted that a counselling service or

¹⁸² Interview 6; similarly, another decision-maker said: “*Sometimes it is extremely upsetting, it does affect you*” (Interview 4).

¹⁸³ For example, examiners may seek to avoid exposure to evidence causing further distress and this may distort their questioning of the applicant during interview and/or their pursuit of further relevant supporting evidence. See D Bögner, J Herlihy, C Brewin, ‘Impact of Sexual Violence on Disclosure during Home Office Interviews’, *British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 75–81 at p. 79.

¹⁸⁴ J Cohen, ‘Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers’, *International Journal of Refugee Law*, vol. 13, 2001, p 293–309 citing R F Mollica’s chapter, ‘The trauma story: the psychiatric care of refugee survivors of violence and torture’, in F M Ochberg, (ed.), *Post Traumatic Therapy and Victims of Violence*, 1998, New York: Brunner/Mazel: “*Mollica showed that the interviewer’s own mental protective devices will be employed to resist the negative effects of hearing about upsetting events.*” See also C Rousseau, F Crépeau, P Foxen, F Houle, ‘The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-Making Process of the Canadian Immigration and Refugee Board’, *Journal of Refugee Studies*, vol. 15, no. 1, 2002, p 43–70 for examples of direct avoidance, denial and trivialization in Canadian refugee tribunal members.

¹⁸⁵ H Baillot, S Cowan, V Munro, *Research Briefing: Rape Narratives and Credibility Assessment (of Female Claimants) at the AIT*, April 2012, p. 6. The research cites the view of a presenting officer: “*to start with, it was quite traumatic ... and then after a while, I suppose once you’ve read a lot of these cases and you tend to sort of get past the stage where they might, they’re probably not telling the truth anyway. ... I don’t know if you become hardened to it, well perhaps you do a little bit; you learn ways of dealing with it.*”

¹⁸⁶ H Baillot, S Cowan, V Munro, *Research Briefing: Rape Narratives and Credibility Assessment (of Female Claimants) at the AIT*, April 2012, p. 6. See also C Westaby, ‘Feeling Like a Sponge: The Emotional Labour Produced by Solicitors in their Interactions with Clients Seeking Asylum’, *International Journal of the Legal Profession*, vol. 17, 2010, p 153–74, on emotion management in UK asylum lawyers.

¹⁸⁷ Interview 5.

¹⁸⁸ Sir Nicholas Blake, President of the UTIAC, ‘The Arrival of the Upper Tribunal Immigration and Asylum Chamber’ (Tribunals Service, 11 February 2010) 2; See also H Baillot, S Cowan, V Munro, *Research Briefing: Rape Narratives and Credibility Assessment (of Female Claimants) at the AIT*, April 2012, p. 6.

¹⁸⁹ Interview of 23 January 2012.

helpline might provide much needed support:¹⁹⁰ “I was feeling overwhelmed. You feel like a production line. I would have definitely used a service like that;” and “if there were a counselling service, it would be beneficial especially for those dealing with issues like human trafficking.”

Some decision-makers interviewed noted that an opportunity for peer review may assist in ensuring impartiality and ensuring against case-hardening and cynicism. In one Member State, decision-makers noted that in the past there had been peer review consultation groups, but at the time of this research the opportunity for such review depended on the working methods and *atmosphere* within particular units; and any such review occurred informally.¹⁹¹ Moreover, a course entitled *Intervision*, during which cases are discussed and feedback given has been offered to personnel.¹⁹² Other decision-makers mentioned that they were able to pass a case-file to another decision-maker if they felt they would be unable to assess the credibility in a professional manner.¹⁹³

UNHCR encourages Member States to ensure that adequate and accessible support mechanisms that address the psychological impact of decision-making are in place for interviewers and decision-makers. Determining authorities may also wish to consider the possibility of rotating staff off decision-making duties for short periods of time.¹⁹⁴

UNHCR’s research in the three Member States in the study underlined the importance of decision-makers being self-aware and understanding how their thought processes, individual background and physical and mental state affect their assessments of credibility. Moreover, it underlined the importance of determining authorities having in place adequate and accessible support mechanisms, as well as strategies which address the psychological impact of the decision-makers’ tasks. UNHCR’s research also highlighted that while jurisprudence and guidance acknowledges the relativity of culture, few court rulings have articulated the impact of the other factors on decision-making. This emerges in contrast to academic research examining those factors.

¹⁹⁰ The determining authority in the UK has an employee assistance programme that provides a confidential self-referral service, which is independent of the determining authority’s human resources department and line management. A free phone number can be called by decision-makers at any time of the day or night, 365 days a year, to obtain assistance with emotional or practical issues. It is of utmost importance that all decision-makers are aware of the availability of such a service, and any barriers to accessing it identified and addressed. It should be noted here, however, that the UK research found that the decision-makers interviewed were unaware of this service. Also the Africa Section of the determining authority in Belgium was, at the time of UNHCR’s research, piloting a project entitled *Take Care* designed to prevent stress and the loss of empathy amongst decision-makers; and in the Netherlands, there is a team which can be accessed through the manager of a unit which provides care. *Bedrijfs Opvang Team (BOT, company relief team)*.

¹⁹¹ Interview of 27 March 2012.

¹⁹² Information obtained through AUA policy officer.

¹⁹³ Interview of 2 February 2012, Interview of 31 January 2012.

¹⁹⁴ UNHCR, *Quality Initiative Project*, First Report, p.9, recommendation 9; UNHCR, *Quality Initiative Project*, Second Report, para. 3.9.2, p. 24.

4. Conclusion

UNHCR's review of guidance in the three Member States of focus revealed some helpful references to the need to consider the individual and contextual circumstances of the applicant. However, in general terms, UNHCR's research suggested that the credibility assessment undertaken by determining authorities may not be sufficiently informed by and/or in line with the substantial body of relevant empirical scientific evidence which exists in the above-mentioned fields. UNHCR's research revealed that often the written internal notes and decisions in individual cases did not acknowledge relevant individual and contextual circumstances which might affect aspects of the credibility assessment. As such, it was not always clear from the case file materials whether the applicant's individual and contextual circumstances had been taken into account by the decision maker as relevant. This, of course, does not necessarily mean that such factors were not taken into consideration, but the absence of such reference and the nature of conclusions drawn by decision makers often gave the impression of a failure to take such factors into account and/or an insufficiently informed understanding of the impact of such factors.

CHAPTER 4

Gathering the Facts

1. Introduction - Substantiation of the Application	85
2. Who has the Duty to Substantiate the Application?	86
3. The Applicant's Duty in Principle to Substantiate the Application	89
3.1 What needs to be submitted by the applicant to substantiate the application?.....	89
3.2 Documentation and other evidence 'at the applicant's disposal'	92
3.2.1 Meaning of the term 'documentation at the applicant's disposal'	93
3.2.2 Meaning of the term 'satisfactory explanation'	96
3.3 Duty of the applicant to substantiate the application 'as soon as possible'	97
3.3.1. The meaning of 'as soon as possible' in state practice.....	98
3.3.2 The requirement to submit 'as soon as possible' and the individual and contextual circumstances of the applicant	102
4. The Duty of the Determining Authority with Regard to Substantiation of the Application	104
4.1 Provision of information and guidance to the applicant.....	105
4.1.1 Taking into consideration the applicant's background when providing guidance	106
4.1.2 Providing guidance on the type of documentary and other evidence that may be relevant.....	107
4.2 Providing guidance through the use of appropriate questioning during the interview.....	110
4.2.1 Use of 'general knowledge' questions to probe credibility	113
4.2.2 Assessment of responses to questions testing 'general knowledge'	114
4.2.3 Assumptions underlying the use of 'general knowledge' questions	116
4.3 Provision of reasonable opportunity for an applicant to clarify potentially adverse credibility findings.....	119
4.3.1 The right to be heard	121
4.3.2 Cooperation requirement.....	124
4.4 The determining authority's duty to gather evidence bearing on the application by its own means.....	126
4.4.1 Gathering country of origin information (COI)	128
4.4.2 Gathering the facts and the principle of rigorous scrutiny	131
5. Conclusion.....	134

1. Introduction - Substantiation of the Application

It is well established that the challenges inherent in the process of fact-finding are particularly acute in the examination of applications for international protection. The reality facing decision-makers of the EU Member States' determining authorities, and indeed decision-makers world-wide, is that there is often a paucity of documentary or other evidence to support an applicant's statements. Moreover, the applicant's statements and other evidence as exist may be fragmentary and uncertain. Further, the potential consequences of an error in the determination of international protection may be extremely grave. As a result, there is no requirement that relevant facts asserted by the applicant have affirmatively to be 'proven'.¹ Indeed, Article 4 QD, relating to the assessment of facts and circumstances of applications for international protection, does not use the words 'prove', 'proof' or 'burden of proof'. It refers to the duty to 'substantiate the application'.² Therefore, for the purposes of this report, the concept of 'substantiation' is used rather than the concepts of 'proof' and 'burden of proof'.

The term 'substantiate' is not defined in the Qualification Directive. UNHCR's research in the three Member States of focus indicates that it has also not been defined as such in their national jurisprudence, administrative provisions, or policy guidance. However, as further explored in this chapter, the wording of Article 4 (1) and (2) QD, as well as the wording used in Article 4 (5) QD, suggests that 'to substantiate' simply means to provide statements and submit documentary or other evidence in support of an application.³ This is, therefore, the meaning attributed to the term for the purposes of this report.

This chapter addresses the issue of who has the duty to substantiate the application, what is required in terms of substantiation, and the relevance of this to the credibility assessment.

¹ Note that in Australia, the courts have determined that the general rule that the burden of proof is the obligation "or duty of affirmatively proving a fact or facts in dispute on an issue raised between parties in a cause of action" is inappropriate in the context of the determination of refugee status. *Yao-Jing Li v MIMA* (1997) 74 FCR 275 288 (24 April 1997); *VHAU of 2002 v MIMIA* (2003) FCA 376 (2 May 2003), Merkel J [18]; S. Norman, 'Assessing the Credibility of Refugee Applicants: A Judicial Perspective', *International Journal of Refugee Law*, vol. 19, no. 2, pp. 273-92, 2007; Dutch Council of State, 27 January 2003, (AB2003, 286), RV1974-2993.57, JV2003/103; LJN: AF5566: "In the assessment of the asylum claim, made by the Minister, it is not about the question of if and how much the statements about the facts asserted by the applicant can be proven. Often, an applicant is unable to support his or her statements with convincing proof or evidence, which cannot reasonably be expected of either" (unofficial translation).

² Article 4 (1) QD: "Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to **substantiate** the application for international protection" (emphasis added). See also UNHCR, *Handbook*, para. 203: "After the applicant has made a genuine effort to **substantiate** his story there may still be a lack of evidence for some of his statements" (emphasis added).

³ Article 4 (2) QD states that the 'elements' referred to in paragraph 1 consist of the applicant's statements and all documentation at the applicant's disposal regarding a listed number of issues. Article 4 (5) QD: "Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence." It is noted that the ordinary meaning of the term 'substantiate' includes "to provide evidence to support ... something": <http://oxforddictionaries.com/definition/substantiate>. Of note is the fact the term 'substantiate' does not prescribe the extent or quality of evidence necessary to persuade a decision-maker of the credibility of any given statement.

2. Who has the Duty to Substantiate the Application?

The first sentence of Article 4 (1) QD states that: “Member States **may** consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection.”⁴

Emphasis is added to highlight the discretionary rather than mandatory nature of this provision. The three Member States surveyed in this research consider it the duty of the applicant to submit all the elements needed to substantiate the application for international protection.⁵

UNHCR acknowledges the general legal principle that the duty to substantiate the application lies with the person submitting a claim.⁶ However, in the context of the determination of international protection needs, an adaptation of the general principle is required, and both UNHCR and the European Court of Human Rights have emphasized that the duty to substantiate the application rests only ‘in principle’ with the applicant.⁷

The UNHCR Handbook further explains that:

“Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest of necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application”⁸ (emphasis added).

The European Court of Human Rights has also stated that, “**in principle**, the applicant has to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to

⁴ Article 4 (1) of the recast QD is the same as Article 4 (1) of the 2004 Qualification Directive with a minor editorial amendment.

⁵ In Belgium, Article 22 of the Royal Decree on CGRS procedures states: “*The applicant submits to CGRS as soon as possible all original documents at his disposal that he deems useful to substantiate his asylum claim*” (unofficial translation). In the Netherlands, Article 31 section 1 Aliens Act 2000 states: “*An application for the issue of a residence permit for a fixed period [...] shall be rejected if the alien has not made a plausible case that his application is based on circumstances which, either in themselves or in connection with other facts, constitute a legal ground for the issue of the permit.*” The IND Aliens Act Implementation Guidelines (2010) Vc 2000 C14/2.2 (in the version of WBV 2010/10) explains: “*In principle the asylum seeker is obliged to produce evidence regarding the asylum claim. This is stated in Article 31, subsection 1, Aliens Act 2000. Also Article 4, subsection 1, first sentence of Directive 2004/83/EU and UNHCR Handbook 195 to 197 and 210 state this principle*” (unofficial translation). IND Working Instructions 2010/14, para. 2: “*In principle the asylum seeker is obliged to produce evidence regarding the asylum claim.*” In the UK, Immigration Rule 339I states: “*it is the duty of the person [claiming asylum] to submit to the Secretary of State as soon as possible all material factors needed to substantiate the asylum claim.*” This is supported by the UKBA, Asylum Instruction on Credibility that states: “*the burden of substantiating a claim is on the applicant, who must prove to the required standard that they qualify for international protection.*” See UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 10; UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, p. 9, para. 3.2.

⁶ UNHCR, *Handbook*, para. 196: “*It is a general legal principle that the burden of proof lies on the person submitting a claim.*” UNHCR, *Note on Burden and Standard of Proof*, para. 6: “*According to general legal principles of the law of evidence, the burden of proof lies on the person who makes the assertion.*” EAC Module 7, section 2.2.5: “*It is a general legal principle that the burden of proof lies on the person claiming a right or stating something.*” In this regard, the UN Committee against Torture (CAT) has also stated that it is for the complainant to collect and present evidence in support of his or her account of events: see for example, *E.V.I. v. Sweden*, CAT/C/38/D/296/2006, 2 May 2007, para. 11.6.

⁷ UNHCR, *Handbook*, para. 195; *R.C. v. Sweden*, no. 41827/07 (Judgment), 9 March 2010.

⁸ UNHCR, *Handbook*, para. 196.

be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3”⁹ (emphasis added).

Accordingly, in relation to Article 3 ECHR cases, the Court acknowledged the difficulties applicants faced to obtain direct documentary evidence, and ruled that they should be required to do so only “to the greatest extent practically possible”.¹⁰ The EAC¹¹ and national jurisprudence¹² have drawn similar conclusions. Of particular importance is the Irish Supreme Court ruling of 2002, which states that the duty to substantiate the application lies, initially, with the person submitting a claim for asylum. However, this duty is also ‘shared’ with the person assigned to examine such a claim.¹³

In contrast, UNHCR’s research revealed national jurisprudence stating, without qualification, that the ‘burden of proof’ lies with the applicant.¹⁴ Nevertheless, one judge informed UNHCR that, to acknowledge the reality on the ground, it might be time for a change in this approach given that, in practice, the determining authority uses its own means to gather evidence bearing on the application.¹⁵ In addition, in October 2012, the European Court of Human Rights held that the Belgian national authorities’ dismissal of relevant documentary evidence presented by the applicant as non-probative without verifying its authenticity was at odds with the close and rigorous scrutiny expected of national authorities.¹⁶ The Court noted in this connection that the authorities could easily have verified the authenticity of the evidence by contacting UNHCR.

In the Netherlands, for example, the general principle laid down in legislation provides that an application will be rejected if the applicant does not make it plausible that his or her application is based on circumstances that, by themselves or in connection with other facts, form a legal basis for granting international protection.¹⁷ Dutch policy guidance explains that “*in principle the asylum seeker is obliged to produce evidence regarding the asylum claim*”¹⁸ (emphasis added). The determining authority has a duty to

-
- ⁹ *R.C. v. Sweden*, no. 41827/07 (Judgment), 9 March 2010, para. 50; The ECtHR has further stated that “[t]he level of persuasion necessary for reaching a particular conclusion and, in connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake.” *Nachova and Others v. Bulgaria*, no. 43577/98 and 43579/98, ECtHR, 6 July 2005, para. 147.
- ¹⁰ *Said v. The Netherlands*, no. 2345/02, ECtHR, 5 July 2005, para. 49.
- ¹¹ EAC Module 7, section 2.2.7: “Considering the inherent difficulties for asylum applicants to support their claim with written documents, the burden of proving the need for international protection is not fully placed on the applicant.”
- ¹² For instance, Ireland: *Imafu v Minister for Justice, Equality and Law Reform and Others*, [2005] IEHC 416, 9 December 2005; Swedish Migration Court of Appeal (*Migrationsöverdomstolen*) UM 540-06, 2007-03-19; Supreme Court of Spain 5051/2006, 19 February 2010; Italy: Corte Suprema di Cassazione, Sezioni Unite Civili, 21 ottobre 2008, sentenza n. 27310: “Art. 3 of the d.lgs. 19 November 2007, n. 251, [...], puts the examining authority into an active and integrating position in the inquiry of the application, detached from the dispositive principle of the civil procedure and free from estoppels or procedural impediments, with the **possibility to gather information and acquire all available documents**, in order to verify the existence of the conditions for international protection” (unofficial translation); see also Corte Suprema di Cassazione, Sezione Civile VI, 10 gennaio 2013, ordinanza n. 563/2013.
- ¹³ *Z v Minister for Justice, Equality and Law Reform, James Nicholson sitting as the Appeals Authority, Ireland, the Attorney General*, IESC 14, 1 March 2002: “While there is obviously an onus on an applicant to substantiate her story in so far as she can, it can in many cases be difficult to do so in any documentary way given the circumstances in which many persons leave their country of origin. The onus in these cases is however one which is shared with the Tribunal, and it follows that simply because the applicant has failed to substantiate her story in the opinion of the Tribunal, she is not necessarily to be disbelieved, since the Tribunal itself would share the task of substantiation to an extent.”
- ¹⁴ Belgian Council of State 139.515, 19.01.2005, para. 2.1.2.2; Belgian Council of State 190.508, 16.02.2009, para. 2.4.3. Conseil du Contentieux des Etrangers, *Rapport Annuel 2009–2010*, p. 71; CCE/RVV 69.017, 21.10.2011, para. 2.3; CCE/RVV 67.749, 30.09.2011, para. 2.7.
- ¹⁵ Interview with CCE/RVV judge, 7 June 2012. Indeed, there is an appeal judgment, which recognizes that there is a shared burden of proof when the applicant cooperates and provides credible statements: CCE/RVV 66.037, 01.09.2011.
- ¹⁶ *Singh and Others v. Belgium*, no. 33210/11 (Chamber judgment, final), ECtHR, 2 October 2012; D Baldinger, *Rigorous Scrutiny versus Marginal Review: Standards on Judicial Scrutiny and Evidence in International and European Asylum Law*, Oisterwijk: Wolf Legal Publishers, 2013, Chapter 6.
- ¹⁷ IND Aliens Act 2000 Article 31 (1); Dutch Council of State (30 November 2004, (200405142/1); LJN: AR8684) has interpreted this paragraph as placing on the applicant the burden of making “the facts and circumstances underlying his or her application plausible.”
- ¹⁸ IND Working Instructions 2010/14, para. 2. IND Aliens Act Implementation Guidelines (2010) Vc 2000 C14/2.2 (in the version of WBV 2010/10): “*In principle the asylum seeker is obliged to produce evidence regarding the asylum claim.*” Dutch Council of State, 28 December 2011, (200105344/1); Dutch Council of State, 7 August 2007, (200703619/1).

gather necessary information as a corollary to its administrative law duty to examine applications carefully.¹⁹ The Ministry of Foreign Affairs does gather general COI, which is available to the determining authority.²⁰ Moreover, guidance also provides that the determining authority may assist the applicant by conducting, for example, a language analysis, an examination of the validity of documents, an age assessment, and obtaining an individual country report.²¹ Such steps have been viewed by the courts as compensating for the evidentiary difficulties faced by applicants.²²

It is important to recall that the first instance determination of eligibility for international protection is not an adversarial process, and there is no subject of dispute between the applicant and the determining authority.²³ Bearing this in mind, in some cases, it may be for the determining authority to gather evidence by its own means, including any evidence that supports the application.²⁴ This is due to several factors inherent to the asylum process: the manifest difficulties for applicants to provide information supporting their statements with documentary and other evidence; the gravity of the possible consequences of an erroneous determination; the fact that the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the decision-maker; the duty of the determining authority to conduct a close and rigorous examination of the application; the requirement that the determining authority's credibility findings have an evidentiary basis; and the greater resources that are generally available to the determining authority to gather evidence compared to the applicant.

The following paragraphs, therefore, consider the nature and extent of the applicant's duty in principle to substantiate the application; the responsibilities of the determining authority to facilitate and assist the applicant in the substantiation of the application; and to gather evidence, including where necessary in support of the application, by its own means. They further examine how these duties and responsibilities relate to the credibility assessment.

¹⁹ Article 3:2 of the General Administrative Law Act: "*When preparing an order an administrative authority shall gather the necessary information concerning the relevant facts and interests to be weighed.*" Official translation, see www.rijksoverheid.nl and <http://www.government.nl/> (for English translation).

²⁰ The determining authority must compare the applicant's statements with all that is known from independent sources about the situation in the country of origin, and must base the assessment on interviews with other applicants in comparable situations: IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.3 (in the version of WBV 2010/10).

²¹ IND-werkinstructie nr. 2010/10 (AUB): Wijze van opstarten van onderzoek en/of het stellen van vragen bij onderzoek tijdens asiel procedure, para. 5.2 (hereinafter IND Working Instructions 2010/10), and IND Working Instructions 2010/14, para. 4.1 (a) and (e): "*The IND may seek to examine whether there are reasons to grant the application, for example in the form of a language analysis, age test or by requesting an individual report from the Minister of Foreign Affairs. The IND is not obligated to do this.*" Article 42, section 4, Aliens Act 2000 states that the period for decision making can be extended when advice from or an examination by third persons or the public prosecutor is needed for the assessment. According to the IND Aliens Act Implementation Guidelines, third persons are the Ministry of Foreign Affairs (when an official individual report is required), the authorities of third countries, UNHCR, medical advisers and the Office for Country Information and Language Analysis of the IND, which uses experts.

²² Dutch Council of State, 18 December 2009 (200901087) JV2010/65; LJN: BK8644, para. 2.1.2.

²³ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 66. For further principles in this regard see Chapter 2 – Credibility Assessment: Purpose and Principles.

²⁴ EAC Module 7, section 2.2.7: "*This shared responsibility aims at providing the decision maker with a qualitatively and quantitatively solid material from which the decision will be made.*"

3. The Applicant's Duty in Principle to Substantiate the Application

Pursuant to Article 4 (5) QD where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when, *inter alia*:

- (a) the applicant has made a genuine effort to substantiate his application;
- (b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements.

Application of this provision is clearly relevant to the credibility assessment. As such, it is essential to have an understanding of the nature and scope of the applicant's duty to substantiate the application.

3.1 What needs to be submitted by the applicant to substantiate the application?

Article 4 (2) QD lists the relevant elements required for the substantiation of an application for international protection. These consist of the applicant's statements and all the documentation at the applicant's disposal regarding his or her age, background (including that of relevant relatives), identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents, and the reasons for applying for international protection.²⁵

A brief observation should be made here regarding the inclusion of 'travel route' amongst the issues listed in Article 4 (2) QD. The travel route taken by the applicant may be pertinent to the determining authority's consideration of the applicability of *Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national* (the Dublin Regulation), and to the admissibility of the application pursuant to the Asylum Procedures Directive. Moreover, Member States have a broader interest in gathering information regarding migration routes. UNHCR considers however that the travel route is rarely a fact which is material for the examination of an application for international protection. Nevertheless, UNHCR's research showed that the applicant's statements and other evidence relating to the travel route have a significant bearing on the way credibility is assessed in the practice of some Member States.

In this regard, it should be noted that in the Netherlands, the non-credibility of the applicant's statements about the travel route may be considered to undermine the credibility of the applicant's statements about the reasons for the application,²⁶ even though the travel route is not a material fact.²⁷ If the applicant is unable to submit a travel document, the credibility of his or her statements may be considered undermined in advance if his or her explanations regarding the absence of the document(s) are not considered consistent, plausible, and consistent with known information. In such cases, his or her statements about the travel

²⁵ Article 4 (2) recast QD.

²⁶ IND Aliens Act Implementation Guidelines (2010) Vc C4/3.6.3; IND Working Instruction 2010/14.

²⁷ IND Aliens Act Implementation Guidelines (2010) Vc C4/3.6.3. IND Working Instruction 2010/14.

route taken have to be consistent, detailed, and verifiable.²⁸ With regard to the latter, the applicant may be required, for example, to describe his or her arrival in the Member State, the transport vehicle, and the place of arrival.²⁹ In such cases, the ability to recall the colour of the boat, or the seats in the aeroplane or train may be considered relevant indicators of the credibility of the applicant's statements concerning the travel route.

Evidence submitted to substantiate an application may include anything that asserts, confirms, supports, or bears on the relevant facts. Evidence may be oral and/or documentary,³⁰ including written, graphic, digital, and visual materials, and COI. Evidence may also encompass exhibits such as physical objects and bodily scarring, as well as audio and visual recordings.

The Netherlands and the UK reflect Article 4 (2) QD in their national law or regulations.³¹ Dutch guidance specifies that applicants demonstrate a genuine effort to substantiate their applications when, *inter alia*, they submit as many relevant documents as possible to support their statements. This concerns documents in the broadest sense, including official documents, pictures, electronic data, and indicative evidence such as tickets.³² UK guidance also provides a non-exhaustive list of documentary evidence that may be available for and relevant to individual cases.³³

At the time of writing this report, Belgium had not transposed Article 4 (2) QD. Belgian legislation requires applicants to submit all the 'original documents' at their disposal that they 'deem useful' to substantiate their application.³⁴ Clearly, applicants cannot be expected to know what is 'useful' without guidance from the determining authority. The impact of this legislative language in practice is further discussed below under the section on provision of information and guidance. Moreover, the legislation does not explicitly mention the applicant's statements as evidence capable of substantiating an application. However, as mentioned below, it was clear that, in practice, the applicant's statements are considered to constitute the primary source of evidence. UNHCR has expressed concern about proposed legislative changes in Belgium relating to the duty to substantiate, credibility, and the benefit of the doubt.³⁵

It is important to emphasize that the applicant's duty to substantiate the application does not entail a duty to provide documentary or other evidence in support of every relevant fact asserted by the applicant.³⁶ The duty in principle of the applicant to adduce evidence in support of an application should not be too strictly applied in light of the evidentiary challenges inherent in the special situation in which applicants for international protection find themselves.³⁷ A decision-maker thus cannot disbelieve the statements of an applicant merely because he or she furnishes no documentary or other evidence to confirm or support

²⁸ IND Aliens Act Implementation Guidelines (2010) Vc C4/3.6.3.

²⁹ IND Aliens Act Implementation Guidelines (2010) Vc C4/3.6.3.

³⁰ UNHCR, *Note on Burden and Standard of Proof*, para. 5.

³¹ Dutch Aliens Decree 2000, Article 3.111 (1); Dutch Aliens Regulations 2000, Article 3.45; IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.2 (in the version of WBV 2010/10); IND Working Instructions 2010/14, para. 4.1.

³² IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.2 and C4/3.6.2 (in the version of WBV 2010/10) provides examples of relevant documentation.

³³ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, section 3.2: Evidence Submitted by Applicants.

³⁴ Royal Decree on CGRA/CGVS procedures, Article 22.

³⁵ UNHCR, *Commentaires du Haut Commissariat des Nations Unies pour les réfugiés relatifs aux: – projet de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et la loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers (ci-après « projet de loi monocaméral »), et – projet de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, et modifiant la loi du 27 décembre 2006 portant des dispositions diverses (ci-après « projet de loi bicaméral »)*, 29 January 2013, pp. 20–8.

³⁶ Article 4 (5) QD. UNHCR, *Handbook*, para. 203: "it is hardly possible for a refugee to 'prove' every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized."

³⁷ *Said v. The Netherlands*, no. 2345/02, ECtHR, 5 July 2005; *Matsiukhina and Matsiukhin v. Sweden*, no. 31260/04, ECtHR, 21 June 2005; *N. v. Sweden*, no. 23505/09, ECtHR, 20 July 2010

(aspects of) his or her testimony.³⁸ This is illustrated in UK policy as well as Dutch guidance.³⁹ However, it must be noted that in the Netherlands, if an applicant does not submit all the documents that the determining authority considers necessary for the assessment of the application, the applicant is considered accountable for the lack of documents. This may be considered to undermine the credibility of the applicant's statements in advance and a more stringent threshold of credibility ('positive persuasiveness') may be imposed with regards to the applicant's statements. This means that the applicant has to be more convincing in his or her statements than would otherwise be the case.⁴⁰

UNHCR's research has highlighted the need to stress that applicants' statements about themselves constitute evidence capable of substantiating the application.⁴¹

UNHCR's review of decisions revealed some good practice where the applicant's statements were clearly regarded as evidence capable of substantiating the application and were accordingly assessed for credibility.⁴² However, in two Member States, some written decisions reviewed seemed to indicate that the applicant's statements had not been considered as evidence. Some decisions also did not recognize that each asserted material fact does not necessarily need to be supported by documentary or other evidence. Indeed, in a number of cases reviewed, the reasoning in written decisions implied that applicants were expected to corroborate asserted material facts with documentary or other evidence.⁴³ UNHCR observed decisions that stated, for example, '*you have failed to provide any evidence*' or '*your failure to provide any evidence*' in relation to a material fact, when to the contrary, it was clear from the report of the personal interview that the applicant had provided substantial statements in relation to that material fact.⁴⁴ It is of further concern that, in these cases, it appeared that the credibility of the applicant's statements with regard to those material facts was then not assessed.

In one illustrative case, the decision stated:

*"You have adduced no reliable evidence as to which clan you are actually from."*⁴⁵

³⁸ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 2.2 states: "There is no requirement in law that evidence must be independently corroborated before it can be accepted by the Tribunal", and Canadian Guidelines: Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Protection*, 31 January 2004, p. 54.

³⁹ UKBA, *Asylum Instructions, Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010; UKBA, *Asylum Instructions, Considering Asylum Claims and Assessing Credibility*, February 2012: "What the applicant presents in writing and verbally at asylum interviews will often be the only primary evidence in support of the claim. [...] The applicant does not have to prove each material fact with documentary or other evidence. It is possible to substantiate a claim and satisfy the burden of proof when unable to provide independent, corroborative evidence about past and present events, where a coherent and plausible account, not contradicted by available objective information relevant to the claim is provided. For example, an applicant does not have to provide medical or other evidence of past torture for a claim that torture took place to be accepted"; and IND Aliens Act Implementation Guidelines (2010) Vc 2000 C14/2.4 (in the version of WBV 2010/10). This reproduces the determination of the Dutch Council of State, 27 January 2003, (200206297), para. 2.4.3: "In general it is sufficient when the statements of the applicant are plausible. Therefore the asylum seeker is in the first place expected to substantiate his claim with documents. Nevertheless, the assessment of credibility is not about the question if and how much the statements the alien put forward to substantiate his claim can be proven. Often, an applicant shows not being able to support his statements by convincing proof, which cannot reasonably be expected either" (unofficial translation).

⁴⁰ IND Working Instructions 2010/14, para. 4.1 (b). See also para. C14/2.4 of the IND Aliens Act Implementation Guidelines (2010) Vc 2000 C14/2.4 (in the version of WBV 2010/10), which states that the requirements of Article 3.35, section 3 Aliens Regulation 2000 (the provision transposing Article 4 (5) QD) will generally be considered not to be satisfied if a circumstance set out in Article 31 (2) (a) to (f) applies, unless the applicant's statements are positively persuasive. For further discussions on the threshold of credibility, see Chapter 7.

⁴¹ Article 4 (2) QD: "The elements referred to in paragraph 1 consist of the **applicant's statements** [...]" (emphasis added). This has been transposed literally in Article 3.45 of the Dutch Aliens Regulations 2000 and in the UK in Immigration Rule 339I, which instead refers to 'material factors': "The material factors include: (i) the **person's statement** on the reasons for making an asylum claim or on eligibility for a grant of humanitarian protection or for making a human rights claim." It should be noted that in Belgium, Article 4 of the Royal Decree on Immigration Department procedures, which transposes Article 4 (2) QD, does not refer to the applicant's statements as evidence substantiating the application.

⁴² IRQ01MRS, GUI02FRS, INT02AFGM.

⁴³ IRN01MNP, IRN01FBP, IRN02MAP, AFG05MNP, IRN02MNP, IRQ01MNP.

⁴⁴ INTSYR01M, IRN02F, SOM08M, IRQ04F, SOM05M, IRQ01M, IRN02F, AFG02F, IRN08M, IRQ05M, AFG07M, IRN03M, IRQ09M, SOM04M, IRQ07F, IRN03M.

⁴⁵ SOM08M.

Yet, the decision did not explain why the following statements, provided by the applicant in the personal interview, were not considered to constitute reliable evidence:

Interviewer: “What sub clan are you with?”

Applicant: “Rer Sheikh.”

Interviewer: “What are the origins of the Rer Sheikh?”

Applicant: “They are from the Arab countries.”

Interviewer: “What origin Arab clan do Rer Sheikh relate to?”

Applicant: “Yabadaleh.”

Interviewer: “How do Rer Sheikh differentiate themselves from other Reer Hamar sub clans?”

Applicant: “We are all known as Gibil Ad which is Shanshriya, Reer Amud, all are Reer Hamar.”

Interviewer: “How do the Reer Sheikh differ from other sub clans in Reer Hamar?”

Applicant: “You would know only by the sub clan, otherwise we are all the same. We are all known as Gibil Ad.”

Interviewer: “Where are the Rer Sheikh traditionally found?”

Applicant: “Partly from Shingani and Dafeed.”⁴⁶

UNHCR wishes to emphasize that it is critical that national policy guidance underline that the applicant’s duty to substantiate the application does not entail a duty to provide documentary or other evidence in support of every material fact asserted by the applicant. The statements of the applicant constitute evidence capable of substantiating an application and should be assessed with regard to credibility.

3.2 Documentation and other evidence ‘at the applicant’s disposal’

Article 4 (1) QD provides that Member States may consider it the duty of the applicant to submit ‘*all the documentation at the applicant’s disposal*’. It should also be noted that pursuant to Article 11 (2) (b) APD, Member States ‘*may provide that applicants for asylum have to hand over documents in their possession relevant to the examination of the application, such as their passports*’ (emphasis added). This reflects UNHCR’s guidance states that the applicant should “[m]ake an effort to support his statements by any **available** evidence and give a satisfactory explanation for any lack of evidence. If necessary he must make an effort to procure additional evidence”⁴⁷ (emphasis added).

This research project sought to establish how each of the three Member States of focus interpreted the terms ‘*documentation at the applicant’s disposal*’ used in Article 4 (2) QD⁴⁸ and ‘*satisfactory explanation*’ (for a lack of relevant elements) used in Article 4 (5) (b) QD.⁴⁹

⁴⁶ SOM08M.

⁴⁷ UNHCR, *Handbook*, para. 205 (a) (ii).

⁴⁸ Article 4 (2) QD: “The elements referred to in paragraph 1 consist of the applicant’s statements and all documentation at the applicant’s disposal.”

⁴⁹ Article 4 (5) (b) QD: “All relevant elements at the applicant’s disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other elements.”

3.2.1 Meaning of the term ‘documentation at the applicant’s disposal’

In the examination of the interpretation given to the term ‘*documentation at the applicant’s disposal*’, UNHCR found that it is understood to mean more than documentation in the applicant’s possession.⁵⁰ Both Dutch legislation and UK policy guidance indicate that evidence is considered to be at the applicant’s disposal when the applicant may reasonably be expected to obtain it.⁵¹

In one Member State, the guidance provided to applicants suggests that the latter should not only submit all relevant documents in their possession, but should also do everything in their power to gather evidence in support of the application – if need be with the assistance of family members or other contacts in the country of origin, place of habitual residence, or elsewhere.⁵² When an applicant is unable to submit evidence that the authorities consider he or she can reasonably be expected to submit, the applicant must at least demonstrate that he or she did everything in his or her power to obtain the evidence. When he or she cannot adequately demonstrate this, “*the account in support of an asylum application can be considered not credible*.”⁵³

In contrast, UNHCR’s review of case files in another Member State indicated that applicants were rarely asked to prove what efforts they had made to obtain relevant documentation. However, UNHCR’s research indicated that where an applicant had been able to provide some documentary evidence from the country of origin, or place of habitual residence, in support of particular aspects of his or her claim, the decision-maker might expect the applicant to obtain further evidence to support other aspects of the claim. This is illustrated by the following decisions:

*“In addition, it is noted that you have failed to provide sufficient documentary evidence to back up your claim. It is considered that this is especially pertinent in your case as you have displayed that you have been able to provide a good deal of documentary evidence. Therefore it is believed that you have had the opportunity to obtain a document from your former employer which would help to establish the validity of your claim.”*⁵⁴

*“You have claimed that your mother was admitted to hospital for a week before she died there. Bearing in mind the fact that you were able to provide other evidence obtained from Afghanistan, it is considered reasonable to expect you to provide some evidence to confirm this [...]”*⁵⁵

⁵⁰ It should be noted that the official Dutch language version of Article 4 (2) QD and the Aliens Regulation transposing Article 4 (2) QD use the term ‘*bezitten*’ meaning ‘possess’ rather than the term ‘at the applicant’s disposal’, as used by the Working Instruction. The difference in wording is not considered to be of any significance according to the District Court the Hague, sitting in Amsterdam, 18 March 2010 (AWB 10/7932); LJN: BL9790. This decision was not quashed by the Council of State, 7 June 2010, (201002887).

⁵¹ With regards to the Netherlands, see Article 4:2 General Administrative Law Act: “*The applicant shall also supply such information and documents as required for a decision on the application as it is reasonable to expect him to be able to obtain*” (official translation). With regards to the United Kingdom, see UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 10; UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 3.2: “*invite the applicant to submit further evidence where this would be material to the claim and he may reasonably be expected to be able to do so (e.g. Media reports, medical evidence etc.)*.” A similar reference to ‘reasonable’ is made in the UKBA, Asylum Instructions, *Conducting the Asylum Interview*: “*Interviewers should not hesitate to invite an applicant to submit supporting evidence which he may reasonably be expected to be able to obtain.*”

⁵² OE/DV, Information Brochure on the Asylum Procedure, p. 4. In addition, UNHCR observed that some applicants are asked to ‘prove’ what efforts were made to obtain relevant evidence. For example, in one case the applicant was asked to submit a tracking document from the company allegedly delivering documentation to demonstrate that the evidence had been dispatched from the country of origin, IRQ02MNP.

⁵³ CCE/RVW 54.933, 26 January 2011.

⁵⁴ AFG09F.

⁵⁵ AFG04M.



In addition, in some cases reviewed, the decision-maker concluded that, since the applicant had been able to provide *some* evidence, it could be expected that she should have been able to produce documentary evidence to support *all* aspects of the claim.⁵⁶

As such, it appeared that the submission of some documentary evidence supporting some material facts was considered to undermine the credibility of those asserted material facts that were not supported by documentary evidence.⁵⁷ Such reasoning is of concern because UNHCR's review of cases revealed that, on the whole, decision-makers in these cases did not request an explanation from the applicant for the lack of specific documentary evidence and appeared to base their finding on an assumption that the specific evidence was available.

UNHCR's research also revealed that some applicants may be placed in a catch-22 situation whereby it may be considered adverse to their case if they provide no documentary evidence at all.

⁵⁶ IRN02F, IRN02MAP. A Macklin, *Truth and Consequences: Credibility determination in the Refugee Context*, International Association of Refugee Law Judges, Conference in Ottawa, Canada, 1998, in which it is stated that some decision-makers may be suspicious if no documentation is furnished, but they may also be suspicious if documentation is furnished because the documents are suspected to be false or may be discounted on the assumption that genuine documents can be obtained illicitly.

⁵⁷ It may also be indicative of not appreciating that the availability of evidence in support of a fact will not be the same for each material fact. Moreover, in some cases in the sample where an explanation was sought, the explanation given was not considered credible although no reasons were given for this finding IRN02F, AFG02F. For example: "*Moreover, you claim that your husband was killed as he was shot while trying to escape from prison however, you have provided no evidence to substantiate this aspect of your claim in the form of a death certificate. You claim that 'unfortunately in Afghanistan no one certifies anything. All they told my father was that my husband tried to run away and they shot him'. However, this is not considered to be a credible explanation for your failure to provide any evidence to substantiate this aspect of your claim.*" AFG02F.

The research indicated that some determining authorities have high and onerous expectations of what documentary evidence applicants should possess and/or should reasonably be able to obtain and submit in support of their applications. Decision-makers seem to assume that those in need of international protection, for example, will:

- (a) know in advance of flight from the country of origin, or place of habitual residence, that documentary or other evidence will be relevant if he or she applies for international protection in another country;
- (b) know what specific documentary evidence will be relevant, and take this evidence with them on the journey to the putative country of asylum, looking after it carefully and keeping it in their possession at all times, regardless of the needs of family remaining in the country of origin, or place of habitual residence, the hazards of the journey, or advice or instructions from others;
- (c) not place trust in the advice of agents or others - but will place trust in national authorities;
- (d) not willingly dispose of or surrender any documentary or other evidence unless subject to coercion or force.

Such assumptions raise empirical questions about how people actually behave when fleeing in fear and how they decide whom to trust.⁵⁸

The relevant individual and contextual circumstances of the applicant also need to be considered in this regard. These include the applicant's age, gender, sexual orientation and/or gender identity, ethnic background, and may be compounded by his or her cultural background, education, social status, and/or the situation in the country of origin, or place of habitual residence. For example, it would be unreasonable to expect a female applicant to submit certain identification documentation if, for instance, she has no access to identity documents and other relevant documentary evidence because the country of origin, or place of habitual residence, does not afford women full rights of citizenship. The same would apply if a male relative exercised control over documentation pertaining to her.⁵⁹ Likewise, it may be unreasonable to expect an applicant to have documentation attesting to sexual violence suffered because he or she may have been reluctant to seek medical assistance or to file a police report on account of a strong cultural stigma attached to sexual violence or other circumstances in the country of origin, or place of habitual residence.⁶⁰

The decision-maker should bear in mind that it may be more difficult for women and LGBTI individuals to obtain documentary evidence due to the nature of the harm they have endured, the nature of their activities, and their status in society.⁶¹ The applicant's own testimony is the primary and often the only source of evidence, especially where persecution is at the hands of family members or the community. Applicants should never be expected or asked to bring in documentary or photographic evidence of intimate acts.⁶²

What is more, unreasonably high expectations of applicants to submit documentary evidence may unwittingly encourage applicants to submit documentary evidence, including false documents, in support of all asserted material facts at all costs.

⁵⁸ Especially after extreme experiences such as torture, which is designed to break down a person's ability to trust another. S Turner, 'Torture, refuge and trust', in D E Valentine and J C Knudsen (eds.), *Mistrusting Refugees*, Berkeley: University of California Press, 1995.

⁵⁹ Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module: Gender-Related Claims*, October 2012, para. 8.

⁶⁰ UNHCR, *Guidelines No. 9*, paras. 64–6; UNHCR, *Guidelines No. 1*, para. 37; Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module: Gender-Related Claims*, October 2012, para. 8.

⁶¹ Swedish Migration Board (Migrationsverket), *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection*, 28 March 2001, p. 15; Swedish Migration Board (Migrationsverket), *Guidelines for Investigation and Evaluation of Asylum Cases in Which Persecution Based on Given Sexual Orientations is Cited as a Ground*, 28 January 2002; Irish Council for Civil Liberties (ICCL), Women's Committee, *Women and the Refugee Experience: Towards a Statement of Best Practice*, June 2000, p. 18.

⁶² UNHCR, *Guidelines No. 9*, para. 64 and UNHCR, *Guidelines No. 1*, para. 37. Swedish Migration Board (Migrationsverket), *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection*, 28 March 2001 p. 15.

UNHCR considers that an applicant is only required to make an effort to support his or her statements by any available evidence⁶³ and the applicant only needs to adduce evidence to the extent practically possible.⁶⁴ Yet, UNHCR's research indicated that some determining authorities may have onerous expectations regarding what documentary or other evidence an applicant should possess and/or should be able to obtain and submit in support of their applications. It is of particular concern that some of these expectations appear to derive from speculations about the availability of specific evidence in the country of origin, or place of habitual residence, and/or unfounded assumptions about human behaviour and interaction.

UNHCR urges decision-makers to take into account fully the applicant's individual and contextual circumstances, including the circumstances in the country of origin or place of habitual residence, when determining what documentary evidence an applicant can reasonably be expected to submit and in assessing whether an explanation for a lack of documentary evidence is satisfactory.

3.2.2 Meaning of the term 'satisfactory explanation'

In the Netherlands, case law provides that it is reasonable to expect applicants to bring all relevant documentation with them from their country of origin, or place of habitual residence, unless the threat of persecution or risk of serious harm was so acute that it prompted a sudden and precipitate flight.⁶⁵ UNHCR reviewed cases where applicants' explanations as to why they had not brought certain documents from their country of origin, or place of habitual residence, on account of having to flee, was not accepted because twenty days⁶⁶ and three days⁶⁷ had elapsed between the declared onset of the fear of persecution and departure from the country. This was considered not to constitute an acute situation precipitating flight.

In a number of other cases reviewed, applicants had asserted that they had not taken their documentation on the journey because their agent had advised them that they risked detention in the transit country of Turkey if they had such documents in their possession. This explanation was not accepted because, according to the written decision, the applicant could have requested protection from UNHCR in Turkey.⁶⁸

UNHCR observed that, in some cases, certain explanations for the absence of documents were accepted, whereas in other cases dealt with by the same asylum authority, the same explanations were not accepted. It was unclear from the circumstances of the cases, based on the material in the case files, why the assessments had differed.⁶⁹

For example, in the cases reviewed, the applicants had explained that they did not have identity documents because there was no functioning authority in the country of origin (Somalia) to issue such documents. This was accepted as a satisfactory explanation for the lack of documentation in some cases⁷⁰ but not in others.⁷¹

National guidelines in the Netherlands stipulate that applicants are expected to keep their documents carefully both during their journey and in the Member State. Any claim by the applicant to have lost

⁶³ UNHCR, *Handbook*, para. 205 (a) (ii).

⁶⁴ *Said v. The Netherlands*, no. 2345/02, ECtHR, 5 July 2005, para. 49.

⁶⁵ Dutch Council of State, 15 March 2005, (200500388) JV2005/185, RV2005/53.

⁶⁶ IRQ01FAP, IRN01MBP.

⁶⁷ AFG03MNP.

⁶⁸ AFG01MBP, IRN03MNP, IRQ02FNP. Moreover, the issue of whether the applicant could have requested protection in a transit country is not relevant in the assessment of the credibility of the applicant's statements. In one case reviewed, it was considered that the applicant should have asked his wife for his marriage certificate during his journey from the country of origin, although it was not stated how he could have done this. SOM03MNP.

⁶⁹ In another example involving two reviewed cases, the applicants had explained that they had not brought documentation, such as registration of domicile and food coupons, from the country of origin, or place of habitual residence, because these documents were needed by family that had remained in the country of origin. In one case, this explanation was considered unsatisfactory although no reason was stated (IRQ01FNP). By contrast, in the second case, the explanation was accepted as satisfactory, IRQ05MNP.

⁷⁰ SOM02FNP, SOM01MAP.

⁷¹ SOM01FNP, SOM02MNP.

relevant documentation in a country that is deemed safe, or following arrival in the Member State, will almost never be considered satisfactory and the applicant will be held accountable for the absence of the documentation.⁷² The assumption appears to be that, notwithstanding potentially hazardous journeys, people fleeing persecution and serious harm should know that they should have and keep their documents carefully secured.⁷³

UNHCR found that decision-makers sometimes reached an adverse conclusion on the absence of documentary evidence without providing the applicant with an opportunity to explain the lack of documentary evidence. Where an explanation was sought, based on the material in the case files, some decisions on whether or not to accept explanations given appeared arbitrary and/or were not reasoned. Often, it was unclear whether the applicant's individual and contextual circumstances had been taken into account.

In essence, a finding that an explanation for a lack of evidence is unsatisfactory should mean that the decision-maker considers that the evidence is available and at the applicant's disposal, but has not been submitted.⁷⁴ It is important that decision-makers recall that under Article 4 (5) (b) QD a satisfactory explanation is required. Determining whether an explanation is satisfactory, in effect, means assessing the credibility of any explanation offered in accordance with the credibility indicators listed in Chapter 5 and taking into account the relevant factors set out in Chapter 3.

3.3 Duty of the applicant to substantiate the application 'as soon as possible'

The first sentence of Article 4 (1) QD states: "*Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection*" (emphasis added). It is widely recognized that corroboration is one of the most effective means of supporting the credibility of an applicant's statements. In the interests of ensuring a correct credibility assessment, it is therefore important that determining authorities offer applicants sufficient time to obtain documentary or other evidence, when this can reasonably be obtained, and could assist in the assessment of credibility.

3.3.1. The meaning of 'as soon as possible' in state practice

The three Member States of focus in this research consider that it is the duty of the applicant to submit evidence 'as soon as possible'. What this means in practice is intrinsically linked to national procedures and

⁷² IND Aliens Act Implementation Guidelines (2010) Vc 2000 C4/3.6.3 (in the version of WBV 2010/10).

⁷³ Implementation of this guideline was viewed in one case in which the female applicant claimed that her husband had kept her documentation but that he had been lost during the journey. This explanation was deemed unsatisfactory on the grounds that she was expected to take care of her own documents, AFG01FNP. It was not clear from the materials in the case file whether cultural and/or gender-related factors had been taken into account.

⁷⁴ In this regard, it should be noted that in the Netherlands, the decision-maker is required to determine whether the applicant is 'accountable' for any lack of documentation deemed necessary by the determining authority for the assessment of the application. Dutch guidance instructs decision-makers, when assessing the applicant's accountability for a lack of documentation, to ask themselves the questions: (a) whether the applicant's explanations regarding an absence of documentation are consistent and credible, and (b) whether they are consistent with generally known facts. If the answer to either question is in the negative, the applicant may be held accountable for the absence of documents and the credibility of the applicant's statements are considered undermined in advance. Aliens Act 2000 Article 31 (f). See also IND Working Instructions 2010/14, 4.1 b) and IND Aliens Act Implementation Guidelines, (2010) Vc 2000 C4/3.6.3 (in the version of WBV 2010/10).

time frames. Therefore, it will inevitably vary from Member State to Member State and from procedure to procedure.⁷⁵

In Belgium, the time frame of the regular procedure has not been prescribed in legislation or administrative provisions. The average processing time at the determining authority (CGRA/CGRS) for applications registered in 2011 was 123 days, or four months from the registration of the application at the Immigration Department (OE/DV) until the date of the decision.⁷⁶ Legislation requires applicants to submit all relevant documents at their disposal at the point of registration of the application.⁷⁷ However, applicants may submit other documents during the course of the procedure up until a decision is taken. Based on UNHCR's sample of cases, it was noted that the period between the application and the registration interview was usually about two weeks, and often several months elapsed between the registration interview and the personal interview. A final written decision may be issued within a week of the personal interview.⁷⁸ The CGRA/CGRS informed UNHCR that with regard to applications registered from 2012 it had set itself the target to issue a written decision within three months of registration of the application.⁷⁹ This is, therefore, broadly the timeframe within which an applicant, whose application is examined in country, should substantiate the application. Annex 2.1 provides a flow chart of the Belgian procedure.

In the majority of the case files UNHCR reviewed in Belgium, the applicant submitted documentation for the first time at the personal interview, which was generally conducted several months after the registration of the application. UNHCR observed that when documents were submitted for the first time at the personal interview, the applicant was asked how the documentary evidence was obtained rather than why the evidence was not submitted earlier at registration of their application. None of the written decisions reviewed indicated that submission of evidence for the first time at the personal interview was considered to undermine credibility.⁸⁰ Moreover, upon request, the decision-maker has some discretion to grant a period following the interview within which further evidence may be submitted. If granted, applicants usually have five days within which to submit (additional) evidence. How much time is granted may depend on the kind of evidence to be submitted, as well as on the amount of time prior to the personal interview that was available.⁸¹

⁷⁵ In Belgium, Article 22 of the Royal Decree on CGRS procedures states: "*The applicant submits to CGRS as soon as possible all original documents at his/her disposal that s/he deems useful to substantiate his/her asylum claim*" (emphasis added). In the Netherlands, IND Aliens Act Implementation Guidelines (2010) Vc 2000 C14/2.2 (in the version of WBV 2010/10): "*The asylum seeker has the duty to tell the truth and cooperate fully with the accurate establishment of the facts. He also needs to inform the IND as soon as possible on all factual events and circumstances that are relevant for the decision on the application. Therefore, the asylum seeker needs to answer all the questions asked by the IND as precise[ly] as possible, and to submit as many relevant documents as possible to support his statements*" (emphasis added). In the UK, according to Paragraph 339I of the Immigration Rules: "*When the Secretary of State considers a person's asylum claim, eligibility for a grant of humanitarian protection or human rights claim it is the duty of the person to submit to the Secretary of State as soon as possible all material factors needed to substantiate the asylum claim or establish that he is a person eligible for humanitarian protection or substantiate the human rights claim, which the Secretary of State shall assess in cooperation with the person.*"

⁷⁶ CGRA/CGRS, 2011 Annual Report, p. 15 (21).

⁷⁷ Article 4 of the Royal Decree on Immigration Department procedures states: "*Immediately after applying for asylum, the applicant submits to [the ID] all documents at his disposal and that he deems useful to substantiate the application*".

⁷⁸ AFG05MSP, GUI10F, DRC01MRS.

⁷⁹ Interview with the Commissioner-General of the CGRA/CGRS, 27 June 2012.

⁸⁰ IRQ01MRS, IRQ03FRS, IRQ07FSP, IRQ08FSP, IRQ09M, IRQ10M, AFG02MRS, AFG04MSP, AFG06FSP, AFG09M, DRC03M, DRC08F, GUI03FRS, GUI05M, GUI07M, GUI08M, GUI10F.

⁸¹ Interview with Commissioner-General of the CGRA/CGRS on 31 August 2012. See also, CCE/RVW 75.313, 16.02.2012 in which it was decided that the ten months prior to the substantive interview was sufficient time for the applicant to gather and submit documentary or other evidence. UNHCR's sample of case files contained a few cases in which the applicant was requested to obtain additional evidence within a period following the personal interview: DRC10F (five days to submit a passport the applicant claimed she had given to her lawyer), GUI03FRS (three weeks to submit evidence that the alleged daughter was biologically her daughter).

In the Netherlands, legislation⁸² and case law of the Council of State⁸³ stipulate that the elements needed to substantiate the application should be submitted ‘at the application’, and not later than the decision-making phase. Annex 2.2 provides a flow chart showing the operation of the Dutch asylum procedure.

A minimum of approximately two and a half weeks may elapse between registration of an application and a final decision being issued by the determining authority, so there is potentially a very limited period within which the application can and must be substantiated. This, therefore, has implications for the credibility assessment.

First, this period may offer insufficient time for the applicant to obtain documentary or other evidence that might positively assist the credibility assessment.

Second, if the applicant is unable to produce a travel document, identity card or other document that the determining authority considers necessary for the assessment of the application within the timescale of the procedure, unless the applicant can make a plausible case that he or she is not accountable for the absence of the document(s), this may be considered to undermine the credibility of the applicant’s statements in advance and the applicant needs to be more convincing in his or her statements than when the applicant has submitted such documents.⁸⁴ In such cases, the applicant’s statements need to be ‘positively persuasive’, which, according to guidance, means that “*a heavier burden of proof rests with the applicant in order to demonstrate s/he needs protection.*”⁸⁵

Third, information and documentary or other evidence may be submitted at any point up until the determining authority takes a final decision; in some cases, the determining authority may extend the time limits within which evidence may be submitted.⁸⁶ However, in certain circumstances, even if information and/or documentary or other evidence is submitted within the normal time allotted to the general asylum procedure, the determining authority may consider it to have been submitted ‘too late’ and therefore disregard it.⁸⁷ ‘Late’ submission of evidence may also be considered to undermine credibility of the applicant’s statements if the applicant does not provide what is deemed a satisfactory explanation for the failure to disclose or submit the evidence earlier in the procedure.⁸⁸

At registration of the application, applicants are required to provide all available documentary evidence about their identity, nationality, and travel route, and any other relevant documentary evidence concerning the reasons for the application.⁸⁹ Applicants are advised, in a brochure given to them at registration, to obtain any (further) relevant documentary or other evidence before the general asylum procedure begins.⁹⁰ By law, applicants have at least six days between registration and the start of the procedure to recover from their journey and prepare for the procedure.⁹¹ Applicants, therefore, have a minimum of six days within which to obtain (further) relevant documentary or other evidence. The brochure informs the applicant

⁸² Article 3.111 section 1 IND Aliens Decree states: “**At the application** for the issue of a residence permit for a fixed period as meant in Article 28 of the Act, the alien submits all elements, among which the relevant documentary, needed to substantiate the application in order to assess in cooperation with the alien if a legal ground for the issuance of the permit is present” (emphasis added).

⁸³ Dutch Council of State, 31 October 2003, JV2004/11; LJN: AO2112 and Dutch Council of State, 27 December 2011, (201108202/1/V4) JV2012/95; LJN: BV0404.

⁸⁴ Article 31 (2) (f) IND Aliens Act. See Chapter 6 for further details.

⁸⁵ IND Working Instructions 2010/14, 4.1 (b). See Chapter 7 for further discussions on the thresholds of credibility.

⁸⁶ AFG04MNP, AFG05MNP, IRN02MNP, SOM01FNP.

⁸⁷ SOM03MNP, AFG01MNP, IRN01MNP, AFG03FNP, IRQ03MNP, IRQ01MNP, IRQ02FNP.

⁸⁸ For further discussion on late disclosure of evidence see Chapter 6.

⁸⁹ Article 3.109 (4) Aliens Decree 2000 and IND Aliens Act Implementation Guidelines (2010) Vc 2000 C9/2.1.1.1; Dutch Council of State, 15 March 2005, (200500388) JV2005/185, RV2005/53, para. 2.1.1: “*In principle the applicant is expected to submit documents regarding his identity, nationality and travel route at the moment of his application for a residence permit asylum for a fixed period. This also applies for documents on which base could be assessed if a legal ground exists for granting a permit.*”

⁹⁰ The brochure, ‘Before you Begin the Asylum Procedure’, provides applicants with information about the rest and preparation period that precedes the initiation of the general asylum procedure.

⁹¹ Article 3.109 (1) Aliens Decree 2000. Note that applicants who lodge applications at Schiphol Airport do not benefit from this rest and preparation period.

that an employee of the Dutch Refugee Council can assist them with this matter. However, an applicant may not meet his or her lawyer or an employee of the Dutch Refugee Council for advice until the day before the general procedure begins. As such, it may be extremely difficult for applicants to obtain relevant documentary or other evidence before the procedure begins.

With regard to the stipulated timelines of the procedure, there is an opportunity for some flexibility at the discretion of the decision-maker. Under very specific and limited circumstances, the determining authority may extend the procedure by six procedural days.⁹² The procedure may be extended, if, for example, the applicant or the interpreter is ill. An extension may also be granted if, at the beginning of the personal interview, the applicant states that his or her identity (and/or nationality) differs from that asserted at the initial interview.⁹³

UNHCR observed some cases in which the period to submit additional information following receipt of the report of the personal interview or receipt of the intended decision was extended⁹⁴ or the application placed in the extended procedure to provide more time for the submission of evidence.⁹⁵

However, the Dutch Council of State has held that the procedure does not have to be extended in order to await documentary evidence that, according to the applicant, is due to arrive shortly.⁹⁶ In a personal interview observed by UNHCR, it was made clear to the applicant that the procedure would not be extended to await documentary evidence that the applicant had merely declared was forthcoming:

Interviewer: “Have your original documents arrived already?”

Applicant: “No, I understood that I have to inform my lawyer immediately upon arrival of the documents.”

Interviewer: “We will not delay the decision on your application, the decision-making process will go on.”⁹⁷

In this regard, it is also worth noting that, in the Netherlands, documentary evidence that is obtained and submitted during the appeal stage may be considered inadmissible if it is considered that the evidence could have been obtained and submitted during the first instance procedure.⁹⁸

Applicants thereby face a catch-22 situation whereby information and evidence submitted in the latter stages of the eight-day procedure may be discounted as late, but if applicants delay registration of the application to ensure that relevant documentary or other evidence can be obtained and submitted in the early stages of the procedure, the delay in lodging the application may be considered to affect adversely the credibility of their statements in advance. Both scenarios demonstrate the heightened risk of a flawed credibility assessment.

In the UK, the determining authority aims to take a decision on applications examined in the regular procedure (New Asylum Model) within 30 days of their submission. This is, therefore, broadly the time frame within which an applicant must substantiate the application. A flow chart of the UK asylum procedure can be found in Annex 2.3. Applicants are asked at the screening interview whether they have identity and/or travel documents to submit, but they are not requested to submit any other documentary or other evidence

⁹² Article 3.110 section 2 and Article 3.115 section 1 Aliens Decree 2000. The explanatory memorandum to the changed Asylum procedure legislation (pp. 24–5) and the IND Aliens Act Implementation Guidelines Vc2000 C12/4.4 states that in cases where applicants give new statements about their identity, age, nationality, travel route, or asylum, which have a bearing on the assessment to be made, the procedure can be extended, but first it will be assessed if the claim can be found not credible because of the changed statements.

⁹³ IND Aliens Act Implementation Guidelines (2010) Vc 2000 C12/4.3.

⁹⁴ AFG04MNP, AFG05MNP, IRN02MNP, SOM01FNP.

⁹⁵ IRQ02MNP, IRQ04MNP.

⁹⁶ Dutch Council of State, 15 March 2005, (200500388) JV2005/185, RV2005/53.

⁹⁷ INR08IRNM.

⁹⁸ Dutch Council of State, 13 September 2010, (201003588) JV2010/410; LJN: BN7304, para. 2.2.2.



in support of their application at the screening interview. Instead, they are given a leaflet informing them that “[i]t is important that you submit any evidence or supporting information you have to assist your account at this time [at the substantive asylum interview] (or earlier if possible) to your Case Owner. You should submit evidence no later than 5 working days following your substantive asylum interview.”⁹⁹ Importantly, it is noted that this information is not orally communicated to the applicant at the screening interview. Therefore, it is possible that the applicant will be unaware of the opportunity to submit evidence at the screening interview. It is only once the applicant has reached the personal interview that he or she is finally asked: “Do you have any documents or other evidence that you wish to submit today?”¹⁰⁰

In accordance with guidance applicable until March 2012, applicants had five working days following the personal interview within which to submit any further evidence before a decision was taken.¹⁰¹ This guidance was revised and no longer provides a mandatory requirement for decision-makers to wait five days.¹⁰²

⁹⁹ *Important Information about the UK Asylum Process*, p. 4. Available in 17 languages.

¹⁰⁰ Statement of Evidence, Combined Interview and NINO Application Form.

¹⁰¹ UKBA, Asylum Instructions, *Conducting the Asylum Interview*, May 2008 (previous version 3.0 of the current UKBA, Asylum Instructions, 4.0). This Asylum Instruction was applicable for the case files reviewed in this research. Also, in UNHCR’s observation of interviews, applicants were advised about documentary evidence in a foreign language that is not translated. At the end of the personal interview the following compulsory statement was read out to applicants: “Any information which you submit must be in English, and any documents not in English must be translated and the original and the translation both submitted within this five day period”, Substantive Asylum Interview Record. Note that under the new policy guidance, this time period may be extended as agreed between the interviewer and the applicant.

¹⁰² Guidance now states: “By the end of the interview, interviewers should be satisfied, subject to any further research or information, that they have the information they need from the applicant for a sound decision to be made on the asylum and human rights aspects of the application. If they decide to ask for further evidence, this should be recorded and the applicant should be given a minimum of five working days in which to do so. If not, a decision may be taken as soon as possible after the interview.” UKBA, Asylum Instructions, *Conducting the Asylum Interview*, March 2012, section 4.9.

UNHCR's research revealed some cases in which the decision-maker demonstrated flexibility and offered the applicant additional time to provide evidence.¹⁰³ However, in other cases, such flexibility was not shown, with the result that the decision was taken without relevant documentary evidence that could have supported the material facts.

For example, in one case, the applicant and legal representative had clearly communicated to the decision-maker that documentary evidence supporting material facts was forthcoming, but the decision-maker did not await the evidence. The Iraqi applicant claimed to have been part of the Ba'ath Party and stated that his father was a high-ranking member of the former Republican Guards, as a result of which he was arrested and detained by Badr forces. At the personal interview, the applicant requested a further ten days to submit documents that would support his statements. Despite regular contact by the legal representative to keep the decision-maker updated on the status of the pending documents, correspondence showed that the applicant's legal representative was advised that the decision would not be placed on hold and the documents, when they arrived, could be utilized at the appeal stage.¹⁰⁴ In other cases, applicants had submitted documentary evidence in the original language and failed to provide translations within five working days. The decision-makers did not follow up with the applicants' legal representatives to check whether this translated evidence was forthcoming. As a result, evidence that was crucial to the material facts was not considered.¹⁰⁵

3.3.2 The requirement to submit 'as soon as possible' and the individual and contextual circumstances of the applicant

A few observations are worthy of note with regard to the meaning that should be attributed to '*as soon as possible*'.

Natural justice and basic principles relating to due process and a fair hearing dictate that evidence obtained in circumstances, or by a method, casting substantial doubt on its reliability, may be inadmissible.¹⁰⁶ Therefore, information gathered from an applicant, for example, if he or she is not in a fit state of physical and/or mental health to provide information, or in initial screening procedures that do not comply with procedural guarantees, may be unreliable.

The term '*as soon as possible*' should be interpreted with reference to the point in time at which the applicant is informed, in a language he or she understands, of his or her duty to substantiate the application.¹⁰⁷ However, presenting and gathering information and other evidentiary material, as well as the assessment of that evidence, is not a linear process in which the former simply precedes the latter. The assessment by the determining authority, in cooperation with the applicant, of the applicant's statements and any other evidence submitted may highlight the need to obtain further information or other evidence relating to relevant facts. The fact that the applicant may be requested or wish to provide additional relevant statements, or procure relevant additional documentary or other evidence after the assessment of the evidence begins, should also inform the interpretation of the term '*as soon as possible*' in the first sentence of Article 4 (1) QD.

Various other reasons may explain why an applicant may not disclose relevant information in a screening and/or personal interview. These reasons are explored in greater detail in Chapter 3, and should inform decision-makers' understanding of '*as soon as possible*'.

¹⁰³ SOM06FRS, AFG01MRS.

¹⁰⁴ IRQ10M.

¹⁰⁵ AFG03M, IRQ01M, IRQ04F.

¹⁰⁶ *Prosecutor v. Mucić et al.*, IT-96-21-T, Decision on Zdravko Mucić's Motion for the Exclusion of Evidence, 2 September 1997, cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague 2010, p. 84

¹⁰⁷ For further discussion on this point see section 5.1 below.

Documentary or other evidence may be difficult to obtain after arrival in the putative country of asylum. As stated above, the determining authority should take into account the applicant's individual and contextual circumstances, which include the circumstances in the country of origin, or place of habitual residence, in determining what documentary evidence it can reasonably expect the applicant to obtain, and the time that might be needed to obtain such evidence. Where determining authorities require that documentary evidence is submitted in the language of the Member State, both the means at the applicant's disposal to obtain a translation and the time necessary for translation should be taken into account. It is widely recognized that corroboration is considered one of the most effective means of supporting the credibility of the testimony of an applicant.¹⁰⁸ In the interests of ensuring a correct credibility assessment, it is therefore important that determining authorities offer applicants sufficient time to obtain documentary or other evidence when this can reasonably be obtained and could assist in the assessment of credibility.

In conclusion, it is clear that the term 'as soon as possible' is, in practice, defined by the time frame and arrangements of the procedure. As these vary from state to state, from procedure to procedure, and from decision-maker to decision-maker (where discretion and flexibility may or may not be exercised), some applicants inevitably have more time than others within which to substantiate their application. In some cases, the timescale for submission of evidence is so short that it is not conducive to the substantiation of the application. Despite international recognition of the evidentiary difficulties inherent in the special situation in which applicants for international protection find themselves, in practice, some applicants in some EU Member States may be required to substantiate their application a relatively short time after registration of the application.

UNHCR understands that determining authorities and decision-makers may work under political and institutional imperatives to meet targets for decision-making. However, expediency should not be achieved at the expense of fairness, justice, and fundamental human rights. With regards to the provision of both statements and documentary or other evidence, UNHCR urges determining authorities to ensure that the procedure allows, and policy guidance instructs, decision-makers to take into account the individual and contextual circumstances of the applicant, including the means at their disposal to obtain documentary or other evidence and translations, where required. UNHCR also urges determining authorities to exercise flexibility over time frames where necessary. In the interests of ensuring a correct credibility assessment, it is important that determining authorities have as much available and relevant information as possible.

¹⁰⁸ The Trial Chamber of the ICTR has "*emphasized that it is a matter of logic that a piece of evidence supported by another piece of evidence will have a greater probative value than unsupported evidence, of course with the exception of when both pieces of evidence lack credibility.*" See, P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague 2010, p. 80 referring to *Prosecutor v. Alfred Musema (Judgment and Sentence)*, ICTR-96-13-T, 27 January 2000, para. 53.

4. The Duty of the Determining Authority with Regard to Substantiation of the Application

The second sentence of Article 4 (1) QD states that, “*in cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.*”

The Court of Justice of the European Union (CJEU) has explained that, although “*it is generally for the applicant to submit all elements needed to substantiate the application, the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of determining the relevant elements of that application.*”¹⁰⁹

The notion of cooperation implies that the applicant and determining authority work together towards a common goal.¹¹⁰ The common goal is to gather as much relevant evidence as possible in order to have, as far as possible, a solid basis upon which to assess the credibility of the asserted facts and determine the need for international protection. The EAC states:

*“It is the duty of the asylum authority to assess the relevant elements of the application, in cooperation with the applicant. This is sometimes referred to as the burden of proof being shared between the parties. [...] This shared responsibility aims at providing the decision maker with a qualitatively and quantitatively solid material from which the decision will be made.”*¹¹¹

The CJEU has further explained what this means in practical terms:

*“This requirement that the Member State cooperate therefore means, in practical terms, that if, for any reason whatsoever, the elements provided by an applicant for international protection are not complete, up to date or relevant, it is necessary for the Member State concerned to cooperate actively with the applicant, at that stage of the procedure, so that all the elements needed to substantiate the application may be assembled.”*¹¹²

The process of gathering evidence for the application should be collaborative and entails far-reaching obligations for both the Member State and the applicant to communicate.¹¹³

¹⁰⁹ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 65.

¹¹⁰ Opinion of Advocate General Bot delivered on 26 April 2012, para. 59, in *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU.

¹¹¹ EAC Module 7, section 2.2.7.

¹¹² *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 66.

¹¹³ G Noll, *Evidentiary assessment and the EU qualification directive*, New Issues in Refugee Research, Working Paper no. 117, UNHCR, June 2005.

In terms of substantiating the application, the following paragraphs will suggest that the determining authority has a duty to:¹¹⁴

- ❶ provide information and guidance to the applicant with regard to his or her duty to substantiate the application and how to discharge this duty;
- ❷ provide guidance through the use of appropriate questioning during the interview;
- ❸ provide the applicant with an opportunity to clarify any potential adverse credibility findings; and
- ❹ use all means at its disposal to gather relevant evidence bearing on the application, including where necessary in support of the application.

These duties derive not only from the Qualification Directive, but also from the provisions of the Asylum Procedures Directive, the UNHCR Handbook, and the case law of the European Court of Human Rights, as well as from fundamental principles of EU law. These are discussed in more detail below.

4.1 Provision of information and guidance to the applicant

In the three Member States surveyed, applicants are initially informed that it is their duty to submit elements to substantiate the application for international protection via an information brochure.

In Belgium and the UK, applicants are given a brochure just before the initial screening interview with the Immigration Department (competent authority) and UKBA (determining authority) respectively.¹¹⁵ However, the information it contains on substantiating the application is not necessarily communicated orally and in full at this stage of the procedure. This means that if an applicant cannot read the brochure prior to the initial or screening interview because he or she is illiterate or not accustomed to dealing with administrative matters and papers; or the brochure is unavailable in a language he or she understands; or simply because there is insufficient time before the start of the initial or screening interview; the applicant may be inadequately informed of the procedure – including the duty to substantiate the application and/or how this duty may be fulfilled.

In the Netherlands, at the registration of an application for international protection, the applicant should receive an information brochure, which provides brief indications on how to substantiate the application.¹¹⁶ Prior to the initial interview, the following standard introduction should be read out to the applicant by the

¹¹⁴ EAC Module 7, section 2.2.9: “The burden of proof for the determining authority implies a duty of investigation, a duty of cooperation with the applicant in assessing the relevant elements of the application and the granting of the benefit of the doubt when applicable.”

¹¹⁵ In Belgium, three different brochures have been produced with the purpose of informing applicants for international protection: *Information Brochure on the Asylum Procedure*, produced by the Immigration Department (not available online); a CGRA/CGRS information booklet: *Women, Girls and Asylum in Belgium: Information for Women and Girls who Apply for Asylum*; and *Asylum in Belgium: Information Brochure for Asylum Seekers regarding the Asylum Procedure and Reception Provided in Belgium*, both available in 11 languages. In the UK, at the screening stage, applicants are given a leaflet: *Important Information about the UK Asylum Process*, available in 17 languages.

¹¹⁶ *Before you Begin the Asylum Procedure*, brochure jointly published by COA, IND, RVR, VluchtelingenWerk, July 2010: “Do you have documents that can prove your identity, such as a passport, identity card, birth certificate, or driving licence? Or do you have documents that can prove your travel route or your reason for requesting asylum, such as airline tickets, boarding pass, diplomas, judgment, or newspaper article? If yes, hand in these documents during the registration. If not, make sure that you obtain these documents before beginning your asylum procedure. An employee of ‘VluchtelingenWerk’ (Dutch Refugee Council) can assist you in this matter. [...] **Note!** Your personal information and your documents are important for the assessment of your application for asylum. Present exhaustive information and verify that the data is recorded completely and accurately. Never throw away personal documents.”

interviewer: “[you are] informed that if [you] possess any document which supports [your] identity, nationality, and travel route [you] need to submit these.”¹¹⁷ In addition, if an applicant has been identified as illiterate, the content of the information brochure should be explained to the applicant at the personal interview. In UNHCR’s observations of interviews in the Netherlands, it was noted that interviewers reminded applicants of the importance of submitting any relevant documentation.¹¹⁸

4.1.1 Taking into consideration the applicant’s background when providing guidance

The UNHCR Handbook provides that the applicant and the decision-maker share the duty to ascertain and evaluate all the relevant facts.¹¹⁹ This is reflected in the second sentence of Article 4 (1) QD.¹²⁰ UNHCR has further elaborated on the scope of determining authorities’ duty:

“[i]n view of the particularities of a refugee’s situation, the adjudicator shares the duty to ascertain and evaluate all the relevant facts. This is achieved, to a large extent, by the adjudicator being familiar with the objective situation in the country of origin concerned, being aware of relevant matters of common knowledge, **guiding the applicant in providing relevant information** and adequately verifying facts alleged which can be substantiated”¹²¹ (emphasis added).

In accordance with the duty of cooperation pursuant to Article 4 (1) QD and Article 10 (1) (a) APD, Member States must ensure that all applicants are informed in a language and manner they can understand of any obligation to submit elements to substantiate the application; and of the possible consequences of not complying with this obligation and not cooperating with the authorities. This information must be given in time for applicants to comply with the obligation. They must be informed of the time frame for fulfilling the obligation, as well as the means at their disposal for fulfilling the obligation to submit the elements.¹²²

First, the applicant cannot be expected to know that he or she has a duty in principle to substantiate an application for international protection, nor what he or she needs to do to substantiate the application.

¹¹⁷ Unofficial translation of initial interview template introduction.

¹¹⁸ Template of personal interview and verbatim reports of interviews observed.

¹¹⁹ UNHCR, *Handbook*, para. 196.

¹²⁰ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, paras. 65–6. See also the Opinion of Advocate General Bot delivered on 26 April 2012 in Case C-277/11, 26 April 2012, in which Advocate General Bot, referring to the *travaux préparatoires* of the Qualification Directive, noted that the European Commission was concerned that the duty, stated in the UNHCR Handbook, to ascertain and evaluate all relevant facts be ‘shared’ between the applicant and the Member State responsible for considering the application.

¹²¹ UNHCR, *Note on Burden and Standard of Proof*, para. 6.

¹²² Article 10 (1) (a) APD obliges Member States to ensure that applicants enjoy the following guarantee: “they shall be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequence of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, as well as the means at their disposal for fulfilling the obligation to submit elements as referred to in Article 4 of the Directive 2004/83/EC. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 11.” It is perhaps also worth noting that, pursuant to Article 11 (b), (d) and (f) APD, Member States may require an applicant to hand over documents in their possession that are relevant to the examination of the application; the competent authorities may search the applicant and the items carried by him or her; and they may record the applicant’s oral statements, provided that he or she has previously been informed thereof. See also EAC, Module 7, section 2.4.3.

Second, the applicant cannot be expected to know what facts and documentary or other evidence may be relevant.¹²³ The determining authority, therefore, has a duty to ensure that the applicant is assisted in this regard. Member States should inform applicants of their obligation pursuant to Article 4 (1) and (2) QD, and “*the means at their disposal for fulfilling the obligation to submit elements*” referred to Article 4 (2) QD.¹²⁴ This also derives from the duty of the determining authority to cooperate and communicate with the applicant in accordance with the second sentence of Article 4 (1) QD.¹²⁵ Moreover, UNHCR has stated that the examiner should “[e]nsure that the applicant presents his case as fully as possible and with all available evidence.”¹²⁶ In this regard, it should be noted that previous research has found that although male and female applicants receive the same information, there were more misunderstandings and erroneous assumptions about the procedure among female applicants.¹²⁷ The content of the information provided, the language used as well as the channel utilized to reach the applicant should be gender and age appropriate.¹²⁸

4.1.2 Providing guidance on the type of documentary and other evidence that may be relevant

As stated above, the applicant cannot be expected to know what type of documentary or other evidence may be relevant in support his or her application. Clearly, the type of documentary or other evidence that may be relevant will depend on the applicant and the nature of the facts that are asserted. Nevertheless, it is possible to provide general indicative guidance to the applicant.

UNHCR observed that the brochures provided to applicants in the Netherlands and the UK indicated some of the types of documentary or other evidence that might be useful to support an application.¹²⁹

UNHCR notes that Belgian legislation requires the applicant to submit all ‘original documents’ at his or her disposal that the applicant ‘deems useful’ for substantiating the application.¹³⁰ The appeal body in Belgium

¹²³ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 66. See also the Opinion of Advocate General Bot delivered on 26 April 2012 in Case C-277/11, 26 April 2012, paras. 64 and 65: “64. The Member State is also subject to this duty of cooperation. It can be explained, in my view, in view of the difficulties with which an applicant for individual protection may be faced when making out his case. 65. First, it is unlikely that the applicant will always be in a position to determine whether his application meets the conditions set out in the Geneva Convention or in Directive 2004/83 and that he will be familiar with other human rights legislation underpinning other forms of international protection; he is unlikely to be in a position to submit, at the outset, the evidence most appropriate to consideration of his application.”

¹²⁴ Article 10 (1) (a) APD.

¹²⁵ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 66. See also G Noll, *Evidentiary assessment and the EU qualification directive*, New Issues in Refugee Research, Working Paper no. 117, UNHCR, June 2005, p. 4: “The duty to communicate ensures that the applicant gains sufficient understanding of what the Member State regards as ‘all elements needed to substantiate the application’. [...] The applicant cannot be expected to provide all elements without some guidance from the Member State – guidance given via the cooperative relevance assessment.”

¹²⁶ UNHCR, *Handbook*, para. 205 (b) (i).

¹²⁷ European Union Agency for Fundamental Rights (FRA), *The Duty to Inform Applicants about Asylum Procedures: The Asylum-Seeker Perspective*, Thematic Report, September 2010, p. 34.

¹²⁸ European Union Agency for Fundamental Rights (FRA), *The Duty to Inform Applicants about Asylum Procedures: The Asylum-Seeker Perspective*, Thematic Report, September 2010, p. 9: “Female applicants should receive information in an accessible and understandable language, which makes it clear to them that gender-based claims can be relevant under the refugee convention, on the basis of Article 9 of the Qualification Directive (2004/83/EC).” CGRA/CGRS, *Women, Girls and Asylum in Belgium: Information for Women and Girls who Apply for Asylum*, June 2011, available in nine languages.

¹²⁹ *Important Information about the UK Asylum Process* is available in 17 languages.

¹³⁰ Article 22 of the Royal Decree on CGRA procedures states: “The applicant submits to CGRS as soon as possible all original documents at his/her disposal that **he deems useful** to substantiate his asylum claim. At each interview at the CGRS, the applicant is required to submit all the documents at his/her disposal” (emphasis added). Unofficial translation of the original text: “Le demandeur d’asile transmet le plus rapidement possible au Commissaire général toutes les pièces originales dont il dispose et **qu’il estime utiles** à l’appui de sa demande d’asile. Lors de chaque audition au Commissariat général, le demandeur d’asile est tenu de présenter à nouveau toutes les pièces dont il dispose.” Article 4 of the Royal Decree on Immigration Department procedures states: “Immediately after applying for asylum, the applicant submits to [the Immigration Department] all documents at his disposal and that he deems useful to substantiate his application.” Unofficial translation of original text: “Dès l’introduction de la demande, le demandeur d’asile communique au délégué du Ministre qui a l’accès au territoire, le séjour, l’établissement et l’éloignement des étrangers dans ses compétences tous les documents dont il dispose et qu’il juge utiles pour appuyer sa demande.”

has held that it is not the duty of the determining authority to indicate which documentary evidence should be submitted. It has held that it is the duty of the applicant to substantiate the application as much as possible, and the determining authority cannot be expected to ask for specific documentary evidence.¹³¹ Moreover, as the Council of State confirmed in 2005,¹³² the appeal body has stated that because an applicant was not asked to submit particular evidence is not a satisfactory explanation for the applicant not having done so.

UNHCR observed the impact of this legal position in practice in the course of its research. A number of cases were reviewed in which an absence of specific documentary evidence was considered to undermine the credibility of an asserted material fact, even although the applicant had neither been advised to submit that evidence nor been asked to explain the absence of that documentary evidence.¹³³

For example, in one case, the applicant had submitted an identity document and driver's licence to corroborate his statements regarding his identity; in addition, he had submitted a letter allegedly from the Ministry of Interior confirming his employment with the ministry as a translator. The applicant was not requested or advised to submit any further documentary evidence of his employment. However, the final written decision stated that the lack of additional documentary evidence relating to his employment undermined the credibility of his assertion regarding his employment:

“You did not make your statements credible with documents either, even though in your case, one could reasonably expect that you should dispose of the necessary documents that could provide you with access to the building where you worked when you passed the checkpoint – that you mentioned yourself. [...]. The only document that you submitted in this regard is the letter that you declare was supplied by the Ministry of Interior that confirms that you worked for them.”¹³⁴

On the other hand, UNHCR did observe some examples of good practice where the interviewer invited the applicant to submit specific documentary evidence.¹³⁵

UK guidance for the determining authority on credibility states:

*“It is for the Interviewer to test available evidence and, if appropriate, **invite submission of further evidence material to the claim that may reasonably be expected to be provided** (e.g. media reports, medical evidence etc.). Timescales should be agreed and actively managed to ensure the case is concluded in a timely manner”¹³⁶ (emphasis added).*

However, the review of case files showed that interviewers sometimes did not take the opportunity to invite the applicant to submit evidence that might reasonably be obtained and that would be beneficial to deciding the claim.¹³⁷ In the following case, the interviewer neither requested a medical report nor advised the applicant that one would be helpful in his claim, yet the refusal letter stated that:

¹³¹ CCE/RVV 60.434, 28.04.2011.

¹³² CCE/RVV 65.541, 11.08.2011, refers to Belgian Council of State 144.744, 20.05.2005.

¹³³ IRQ08FSP, AFG04MSP.

¹³⁴ AFG09M.

¹³⁵ GUI03FRS (medical evidence that biological daughter), IRQ01MRS (documentary evidence of complaint filed with police), GUI01MRS & GUI07M (applicants asked to obtain identity documents from Guinea).

¹³⁶ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012 para. 3.2; similarly, UKBA, Asylum Instructions, *Conducting the Asylum Interview*, March 2012, states: “Interviewers should not hesitate to **invite an applicant to submit supporting evidence which he may reasonably be expected to be able to obtain**, and to do so within a specified timescale” (emphasis added). It should also be noted that the term ‘reasonably be expected’ must be applied with reference to the individual and contextual circumstances of the applicant. This is especially relevant for claims made by women and children, as well as claims involving gender-based violence and sexual orientation and/or gender identity, as is illustrated in Chapter 3 – The Multi-Disciplinary Approach to the Credibility Assessment.

¹³⁷ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 10; UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 9.

“It is not considered credible that you would not be consistent in regards to detailing the ailments which are core to your whole asylum claim. [...] Further you have not provided the Home Office with any documentary evidence, in the form of medical reports that substantiate your claim that you suffer from any serious or debilitating medical conditions. As a result, this part of your claim is not accepted.”¹³⁸

Several case files reviewed showed that interviewers asked the applicant whether they had particular documents in their possession, for example, in the following case the applicant was asked:

Interviewer: *“Do you have any of the newspaper articles where it was reported?”*

Interviewer: *“Do you have any documents from the Court?”*

Interviewer: *“Do you have any of the reports?”¹³⁹*

This line of questioning appeared to suggest that these documents might be helpful in supporting the applicant’s claim. However, the applicant was not asked at any stage, including during the interview itself, whether he could obtain this documentary evidence and he was not advised that pursuit of this evidence might assist his claim.¹⁴⁰

UNHCR did observe some good practice in which the determining authority invited the applicant to submit specific documentary evidence. For example:

Interviewer: *“In your Witness Statement you say your mother was taken to hospital after beating, which hospital? Do you have any evidence of her admittance to hospital?”*

Applicant: *“Because I wasn’t there at the time but I can enquire to produce these documents from hospital. I had left by then.”*

Interviewer: *“Any evidence you can produce would be helpful please send such information in to me – hospital records etc.”*

Interviewer: *“Do you have any documents that prove your identity or nationality?”*

Applicant: *“Not at the moment but I have documents in Kabul.”*

Interviewer: *“Again, if you can get hold of these and send them in it will assist your claim.”*

The interviewer also advised the applicant to speak to representatives about obtaining a medical report regarding a scar.¹⁴¹

UNHCR encourages the good practices observed in some of the case files reviewed through its national research. UNHCR is concerned that some decision-makers reach a finding of non-credibility with regard to a material fact on the basis that the applicant did not submit specific documentary evidence, when the applicant was neither advised or requested to submit that documentary evidence, nor asked to explain the absence of the document.

¹³⁸ AFG06M.

¹³⁹ AFG03M.

¹⁴⁰ Regarding documentation that may confirm or support the asserted identity of the applicant, in a recent case before the European Court of Human Rights, the three applicants had submitted to the national authorities a copy of a driving licence, two original employment books and an original birth certificate in support of their asserted identity. The determining authority, and thereafter, the national appeal body concluded that the applicants had not ‘proved’ their identities due to a lack of identification documents. The European Court of Human Rights held that whilst the submission of an original passport may be the best way for applicants to substantiate their identity, due to the circumstances in which applicants find themselves, this is not always possible. Therefore, other documents, such as those submitted by the applicants in this case, might be used to support the asserted identity. See *F.N. and Others v. Sweden*, no. 28774/09, ECtHR, 18 December 2012, para. 72. See also *Singh and Others v. Belgium*, no. 33210/11 (Chamber judgment, final), ECtHR, 2 October 2012.

¹⁴¹ AFG04M.

4.2 Providing guidance through the use of appropriate questioning during the interview

The personal interview is an essential component of the asylum procedure. It should provide the applicant with the opportunity to fully explain the reasons for the application; it should give the determining authority a crucial opportunity to identify all the material facts; to gather, as far as possible, from the applicant all the necessary information related to those material facts; as well as to probe the credibility of the asserted material facts.¹⁴² The personal interview will only achieve this if it is conducted in a manner, and in conditions, which are conducive to the most complete and accurate disclosure by the applicant of the reasons for the application for international protection. Contradictions, inconsistencies, a lack of detail, and omissions in the applicant's statements may be indicative of short-comings in the conduct and environment of the interview rather than being indicative of non-credibility.

In this research, UNHCR observed personal interviews and reviewed interview transcripts to assess whether interviewers' questioning skills allowed the applicant to substantiate the application and provided the basis for a full and appropriate credibility assessment.

The study suggested that, through the use of appropriate questions, interviewers generally guided the applicant so that the relevant material facts were identified and pertinent information regarding the material facts was provided.¹⁴³ UNHCR observed that some interviewers explicitly encouraged applicants to talk as much as they could and provide as many details as possible,¹⁴⁴ whereas others asked the applicant to keep answers as brief as possible and explained that the applicant would be prompted for further information if required.¹⁴⁵

UNHCR also observed the use of open, probing, and closed questioning that when combined, gave the applicant the opportunity to substantiate his or her claim and facilitated the interviewer to gather the relevant facts and materials.¹⁴⁶ UNHCR found that, on the whole, interviewers' questions, when posed in this combination of ways, served to effectively gather as much information as was possible.

UNHCR found that, generally, questioning was coherent and that some interviewers used a technique called signposting to indicate shifts in the focus of their questioning: "*Now I'm going to ask you some questions about ...*"¹⁴⁷ However, UNHCR also noted some cases in which the focus of the questioning changed abruptly from one question to the next.¹⁴⁸ An NGO and lawyers in that Member State expressed the view that some inconsistencies in the applicant's statements may result from abrupt changes in the focus of questioning.¹⁴⁹

¹⁴² UNHCR, *APD Study*, March 2010.

¹⁴³ For example, INT01AFGM, INT02AFGM, INT05DRCM, INT06GUIM, INT07IRQMRS, INT08DRCF, INT09GUIF, INT10GUIM, INT01SOMF, INT07IRNM, AFG03MNP, IRQ01MBP, NT02SOMM. In some cases, the interview focused on facts that UNHCR did not consider material to the claim. For example, in one case a total of ten questions were asked throughout the course of the interview relating to the applicant's delay in claiming asylum, despite the applicant explaining on each occasion that he "*did not know anything about asylum seeking in this country*".IRN05M

¹⁴⁴ INT05DRCM, INT06GUIM.

¹⁴⁵ INT01SYRM.

¹⁴⁶ UNHCR observed that some interviewers used techniques to ensure that all the relevant material facts were identified and all the necessary information elicited. For example, some interviewers used what are termed 'trawling' and 'summaries' in UK guidance. 'Trawling' is where the interviewer checks whether there are any other material facts that the applicant has not mentioned during the interview by asking, for example, "*Are there any other reasons?*" or "*Have you experienced any problems on account of [your political opinions, political activities, ethnicity, religion, personal lifestyle, or work]?*"

¹⁴⁷ AFG03MNP, IRQ01MBP, SOM07F, IRN10M, INT10LIBM, INT03SUDM.

¹⁴⁸ SOM02MNP, SOM03MNP.

¹⁴⁹ Interview with lawyers on 30 March 2012; interview with NGO on 20 March 2012.

UNHCR nevertheless observed that, in some cases, the interviewers' questions (and statements) were laden with the views of the interviewer, and appeared to express implied or overt disbelief during the interview. The following examples illustrate this:

*"I don't believe you were detained, tell me why else you fear return to your country?"*¹⁵⁰

*"How come you don't know the answer after three years of study, while I knew it after an afternoon of reading?"*¹⁵¹

*"You say you left Iran because your life was in danger yet you did not claim asylum whilst in safe countries, this makes it hard for me to believe your claim."*¹⁵²

*"I find it hard to believe that soldiers linked to the temporary administration of the time would keep you in prison for 1 year without any reason."*¹⁵³

*"I don't believe you drove the car on the rims of the tyres."*¹⁵⁴

Such expressions of disbelief create an environment of incredulity that may inhibit disclosure by the applicant of further relevant information. Indeed, in one case, UNHCR recorded an exchange between the interviewer and the applicant in which the interviewer not only expressed disbelief regarding an asserted fact that was not material to the application but became quite hostile, raising his voice:

Interviewer: *"The letter didn't concern me until you told me that you could get amended versions of the letter. It sounds to me like you were not studying, that you decided a long time ago not to go back to Syria and then you brought your family here. **That's the truth, isn't it?**"*

Applicant: "No."

Interviewer [raises voice]: *"**That is the truth.**"*

Applicant: *"No, I am upset that you do not believe my version of events."*¹⁵⁵

Although the above extract represents a one-off case, it is particularly concerning because of the overt disbelief on the part of the interviewer, and the accusatory and intimidating tone. UNHCR's review of case files, in the three Member States surveyed, indicated that interviewers generally avoided insensitive or unnecessarily intrusive questions.¹⁵⁶

¹⁵⁰ GUI09M.

¹⁵¹ IRQ05MSP.

¹⁵² IRN08M.

¹⁵³ SOM10MRS.

¹⁵⁴ INT08IRNM.

¹⁵⁵ INT01SYRM, bold italics are used where particular words were emphasized by the interviewer. It was also of particular concern that the applicant was asked to provide a signature approving the contents of the interview record without having been given a chance to read the document, which in fact did not include the above mentioned extract.

¹⁵⁶ With regard to guidance, see for example, the UKBA, Asylum Instructions, *Gender Issues in the Asylum Claim*, September 2010, para. 1.3, which states: "Interviewers should be ready to ask searching questions while being sensitive to the difficulties an applicant may have in disclosing all the relevant information." With regard to applicants claiming to have faced torture or serious ill-treatment the UKBA, Asylum Instructions, *Conducting the Asylum Interview*, March 2012, para. 4.3 states: "[...] it is important that the applicant is asked for detailed information about when, where, how, and by whom the torture was inflicted. Interviewers should phrase their questions carefully, so as to get as full an account as possible, while taking care not to cause undue distress." There is a piece of interim (temporary) guidance that was specifically drafted for a pilot that looks at the assessment of claims from applicants who claim to be torture victims. The UKBA, *Handling Claims Involving Allegations of Torture or Serious Harm: Interim Casework Instruction (Non Detained Pilot)*, 18 July 2011, provides direction regarding the questioning of applicants who claim to be victims of torture: "The traumatic nature of torture means that particular care and sensitivity is required when interviewing applicants who claim to be victims of torture. A torture victim's potential shame, distress, embarrassment and humiliation about recounting their experiences are difficulties which may need to be overcome. Many find it particularly difficult in the atmosphere of officialdom. Those who have suffered at the hands of their own authorities may distrust officials here, despite travelling to this country to seek refuge. In many ways, this is an intractable problem but common sense, awareness and sensitivity can reduce its influence."

UNHCR observed interviews and reviewed interview records that suggested that some of the questioning was also non-intimidating and sensitive.¹⁵⁷ For example, in the following case the interviewer asked:

*“I understand it is difficult to talk about but can you give me an indication of what else happened to you in detention? [...] Thank you for talking about that. I know it was difficult.”*¹⁵⁸

This line of questioning is particularly important with claims involving gender-based violence, sexual orientation and/or gender identity, as well as with people suffering from trauma, and those who may have been trafficked. Presenting a non-confrontational, comfortable, and non-threatening interview space can make the disclosure of material facts and evidence easier for both the applicant and decision-maker.

In this regard, gender appropriate interviewing will enhance the provision of a reasonable opportunity for the applicant to discharge his or her duty to substantiate their claim. This becomes particularly important when the application raises gender issues.¹⁵⁹

Moreover, questioning must take into account the applicant’s individual and contextual circumstances, for not taking the applicant’s background into account may render his or her statements an unreliable basis upon which to assess credibility. For instance, male-oriented questioning may not elicit relevant information from a female applicant.¹⁶⁰ Also, in cases involving gender-based violence or sexual orientation and/or gender identity, applicants may not readily disclose relevant information due to, for instance, feelings of shame, social stigma, fear of ostracism, and reprisals. Questioning should be sensitive. Respect for the human dignity of the applicant should be a guiding principle at all times.¹⁶¹

In addition, in their verbal and non-verbal communication, interviewers should remain impartial and objective throughout the interview.¹⁶² It is important that the interviewer be aware of his or her own individual and contextual circumstances that impact on his or her perspectives and thought processes. For instance, his or her cultural, educational and/or societal background may lead to unfounded assumptions about human behaviour and memory.

In conclusion, in a number of cases reviewed, the interviewing techniques employed sufficed to elicit the relevant facts in sufficient detail to provide the basis for the credibility assessment. However, there were some notable exceptions, particularly in interviews that relied on closed ‘general knowledge’ questioning to probe the credibility of asserted facts.

¹⁵⁷ For example: IRQ05M, IRQ04F, INT05IRQM, INT07IRNM, INT06IRQE.

¹⁵⁸ IRQ04F.

¹⁵⁹ UNCHR, *APD Study*, March 2010, pp. 20, 22. See also UNHCR, *Handbook for the Protection of Women and Girls*, p. 138: “Women and girls may be reluctant to discuss the details of the persecution they have faced with male interviewers or interpreters and/or even with other family members present. They may not want their husband and family to know about the persecution they have suffered. They may therefore remain silent about experiences or fears which relate directly to their need for international protection.”

¹⁶⁰ UNHCR, *Guidelines No. 1*, para. 36 (vii): “Women who have been involved in indirect political activity or to whom political opinion has been attributed, for example, often do not provide relevant information in interviews due to the male-oriented nature of the questioning. Female claimants may also fail to relate questions that are about ‘torture’ to the types of harm which they fear (such as rape, sexual abuse, female genital mutilation, ‘honour killings’, forced marriage, etc.)” Swedish Migration Board (Migrationsverket), *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection*, 28 March 2001, pp. 11–12: “Women act less frequently in the public arena, and a woman may often be kept ignorant of the political activity of her husband and relatives. A line of questions that only concerns political activity, narrowly defined, may therefore have little relevance for a woman, and perhaps also lead to a direct misunderstanding. Questions should therefore be structured so that they are easy to understand, and encompass a broader spectrum. For example, women can act as a link for political information, or may have hidden wanted persons or actively violated social rules or norms. Concepts such as political activity and persecution may have to be couched in other words in order to better fit into the individual woman’s conceptual universe.” See also UKBA, *Asylum Instructions, Gender Issues in the Asylum Claim*, September 2010.

¹⁶¹ UNHCR, *Guidelines No. 9*, para. 60 (vii). See also D Bögner, J Herlihy, C Brewin, *Impact of Sexual Violence on Disclosure during Home Office Interviews*, *British Journal of Psychiatry*, vol. 191, no. 1, pp. 75–81, 2007, at p. 77.

¹⁶² Article 8 (2) (a) APD. See UNHCR, *Guidelines No. 9*, paras. 60 (iii) and (v).

4.2.1 Use of ‘general knowledge’ questions to probe credibility

On the basis of UNHCR’s research across the three Member States of focus, the use of ‘general knowledge’ questions to probe the credibility of an asserted material fact appears to be common. UNHCR’s research indicated that general knowledge questions are used primarily to probe the credibility of the applicant’s asserted place of origin, ethnicity, and religion.

UNHCR observed that in one Member State, in cases concerning applicants who asserted to originate from Afghanistan, Iraq, or Somalia, the interviews were generally dominated by closed questions probing the applicant’s general knowledge of the alleged country and/or region of origin. Such questions may relate to landmarks, geography, history, politics, militant factions, media, and people, or to what one determining authority described as the ‘trivia’ of life in that location. Indeed, in one interview which UNHCR observed, the applicant was not given an opportunity to speak freely of the reasons for the application.¹⁶³

UNHCR’s research revealed some variation across the three Member States of focus with regard to the circumstances in which ‘general knowledge’ questions are used. In one Member State, according to a review of the case files, it appeared that questions testing the applicant’s general knowledge were primarily posed where doubt existed about the applicant’s asserted origin, ethnicity, or religion.¹⁶⁴

However, UNHCR’s research showed that in another Member State such questioning to test knowledge clearly did not constitute a ‘fall-back’ method of probing credibility in the absence of other corroborative evidence. Instead, UNHCR observed, even when valid identification documents attesting to origin were submitted, an applicant could be questioned at length to determine his or her knowledge of the asserted country and region of origin.¹⁶⁵ Indeed, UNHCR’s research revealed that documentary or other evidence submitted in support of an asserted country or region of origin may not be assessed if the applicant’s responses to questions assessing his or her general knowledge of that country or region are considered not credible. In such cases, questions to assess the applicant’s general knowledge constituted the sole method of probing the credibility of the asserted fact.¹⁶⁶

UNHCR also noted that general knowledge questioning on an applicant’s asserted origin may be more extensive in cases where acceptance of the applicant’s origin could, based on country-specific policy guidance, qualify the applicant for international protection.¹⁶⁷ Likewise, where applicants assert that they belong to a group defined by country policy guidance as ‘high risk’, their general knowledge of the group may be probed through extensive questioning.¹⁶⁸

UNHCR noted that in one Member State in particular, a significant proportion of the time allocated for the personal interview could be dedicated to testing the applicant’s knowledge of the asserted place of origin. For example, in one four-hour interview observed, the applicant was asked questions probing his knowledge of the claimed region of origin for three hours and ten minutes. Fifty minutes were dedicated to questioning the applicant on the other asserted material facts related to the reasons for the application.¹⁶⁹ In this Member State, extensive questioning on diverse aspects of the relevant issue is encouraged in order to attain a broad overview of the applicant’s knowledge and to counter a situation whereby the credibility of an asserted material fact may be considered undermined by a few inaccurate responses by the applicant.¹⁷⁰ This

¹⁶³ INT07IRQMRS.

¹⁶⁴ INT01SOMF, INT03IRNM, AFG01FNP, AFG05MNP, IRN01FNP, IRN02MNP, IRN03MNP, IRQ02FNP, IRQ02MNP, IRQ04MNP, IRQ05MNP, SOM02FNP, SOM03MNP, AFG01MBP, IRN01FBP, IRN03MBP, IRQ02MBP, SOM01MAP, IRQ01FNP, IRQ02MBP, IRQ01FAP, SOM01FNP, SOM02MNP, SOM01MNP.

¹⁶⁵ GUI03FRS, DRC01MRS, INT02AFGM.

¹⁶⁶ The requirement to base the credibility assessment on the entirety of evidence is discussed in Chapter 2 – Credibility Assessments: Principles and Purpose and Chapter 7 – Approaches to the Credibility Assessment.

¹⁶⁷ UNHCR, *Safe at Last?*, pp. 75–7.

¹⁶⁸ Applicants with the following ‘profiles’, for example, a Christian from Baghdad, a Jehovah’s Witness from Baghdad, a Sunni Muslim in Basra, a Guinean Catholic convert, a Guinean homosexual, or a Congolese homosexual.

¹⁶⁹ INT01AFGM.

¹⁷⁰ CGRA/CGVS, Draft guidance on interview strategies and risk assessment (Afghanistan), February 2011.

extended use of ‘general knowledge’ questioning is also indicative of the relative importance attached to this method of probing credibility. Thus, it is clear that ‘testing’ knowledge in order to probe the credibility of certain material facts is considered helpful by some determining authorities in assessing the credibility of those facts.

Questions may be devised to probe not merely whether the applicant originates from the asserted country and region, but also whether he or she was resident at the time the relevant facts were asserted to have taken place and to determine whether the applicant has recently been resident in that place or whether he or she left a significant time ago. The latter aim arises from a concern that, for example, people who originate from a particular country, but who left that place and have been resident in a third country, may assert facts that occurred in their country of origin even although they were not present at that time.

In one case, for example, a series of questions on Somalia and Mogadishu was put to an applicant. While the decision-maker accepted the applicant’s general level of knowledge of the country and area of origin, the applicant was not considered to have met the expected level of ‘contemporaneous’ knowledge of Mogadishu. The written decision stated:

“[...] it is noted that when pressed for more contemporaneous information about Somalia, the responses you gave were distinctly less accurate and detailed. In particular you struggled to identify recently established universities and hotels, radio and news media available in the city of Mogadishu. [...] Your lack of contemporaneous knowledge of Mogadishu however is not consistent with your claim to have lived there continuously until October 2010. This inconsistency undermines your credibility as a reliable witness and gives reason to doubt your claim to have been recently living in Mogadishu.”¹⁷¹

UNHCR’s research revealed that in one Member State, applicants whose claims relate to their sexual orientation and/or gender identity may be questioned on their knowledge of the legal provisions relating to LGBTI individuals in the country of origin, or place of habitual residence, as well as the situation of the LGBTI community in the Member State.¹⁷² The assessment of credibility in such cases needs to be undertaken in an individualized and sensitive way. Useful areas of questioning may include the applicant’s experiences of, for example, self-identification, childhood, self-realization, gender identity, non-conformity, religion as well as their family, romantic, sexual and community relationships, and are usually more likely to help the decision-maker ascertain the applicant’s sexual orientation or gender identity.¹⁷³ UNHCR has stated that both open-ended and specific questions, crafted in a sensitive and non-judgmental manner, may allow the applicant to explain his or her claim in a non-confrontational way.

4.2.2 Assessment of responses to questions testing ‘general knowledge’

On the basis of all the material in the case files, it was not clear from some of them reviewed how the decision-maker assessed the knowledge the applicant could reasonably be expected to possess.¹⁷⁴ It was often unclear in what way, if at all, the applicant’s individual and contextual circumstances had influenced the level of knowledge expected. In one Member State, it was often unclear whether a material fact had been accepted or not based on the applicant’s responses to questions or on other evidence.¹⁷⁵

¹⁷¹ SOM08M.

¹⁷² CGRA/CGVS draft internal guidance on asylum claims where sexual orientation or gender identity is given as a reason for application.

¹⁷³ UNHCR, *Guidelines No. 9*, paras. 62–3.

¹⁷⁴ IRN04M, AFG05M, IRN03M, SOM05M.

¹⁷⁵ AFG01FNP, AFG05MNP, IRN01FNP, IRN02MNP, IRN03MNP, IRQ02FNP, IRQ02MNP, IRQ04MNP, IRQ05MNP, SOM02FNP, SOM03MNP, AFG01MBP, IRN01FBP, IRN03MBP, IRQ02MBP, SOM01MAP, IRQ01FNP, IRQ02MBP, IRQ01FAP and AFG01FNP, IRN03MNP, SOM01FNP, SOM02MNP, SOM01MNP.

In one Member State, in a minority of the files, COI was added as evidence that an applicant's response to a particular question was either correct or incorrect.¹⁷⁶ However, this was not the case in the majority of case files where internal notes and written decisions indicated that answers were assessed based on the level of detail provided and spontaneity of the response rather than on their accuracy.¹⁷⁷

In the other two Member States, the review of case files showed that responses to questions evaluating knowledge were assessed against COI reports either through the decision-makers' own research on the internet, since websites were cited, or through reference to the department responsible for country information.¹⁷⁸

In one case, the decision-maker based a finding that the applicant lacked the knowledge expected of someone of his asserted religion on inconsistencies between the information cited and an article in Wikipedia:

“However, it is clear from the objective evidence that you have been unable to provide an accurate account of a story from the book of Daniel. It is noted from the objective evidence that you have failed to provide certain key elements of the story. For example you have failed to identify that Daniel was a government official at the court of King Nebuchadnezzar II (Wikipedia article on Daniel). [...] As a result it is not believed that you have displayed knowledge that is consistent with your claim to be a genuine follower of a Christian faith, namely the Jehovah's Witnesses.”¹⁷⁹

In the same case the applicant's knowledge was also discounted on grounds that the knowledge had been previously acquired:

“Based on the available objective evidence it is believed that you have attempted to recount a story from the book of Daniel. First it must be noted that the Prophet Daniel is also recognised in the Muslim faith. It is believed that this can account for some of your background knowledge.”¹⁸⁰

In one Member State, the review of case files indicated that the applicant's responses to the knowledge test at interview was sometimes accepted as proof of asserted nationality,¹⁸¹ whereas the level of knowledge required to accept an applicant's asserted religion appeared more difficult to satisfy.¹⁸²

In light of the above, an observation should also be made about the abundance of general knowledge information available to the public domain on the internet and in other media. UNHCR observed that, notwithstanding an applicant's correct and detailed response to questions posed by the interviewer, his or her knowledge could be discounted by the decision-maker on the grounds that the information is widely and publically available.¹⁸³ For example:

¹⁷⁶ For example, GUI06M.

¹⁷⁷ For example, IRQ08FSP, AFG01MRS.

¹⁷⁸ AFG06M, IRQ09M, IRN01M, AFG04M, IRN10M, AFG05M, SOM05M, IRQ10M, AFG07M, IRN04M, IRN07F, AFG08M, IRN08M, SOM07F, AFG10F, SOM03MRS, IRQ05M, SOM06MRS, IRN06MRS.

¹⁷⁹ IRN09M.

¹⁸⁰ IRN09M

¹⁸¹ Nationality was accepted: AFG06M, IRQ09M, IRQ01M, AFG04M, IRN10M, AFG05M, IRQ10M, AFG07M, IRN06MRS, IRN04M, IRN07F, AFG08M, IRN08M, SOM07F, AFG10F, SOM03MRS, IRQ05M, SOM06MRS, AFG03M. Nationality was accepted based on visa/passport: AFG01MRS, AFG02F, AFG03M, SOM02M, SOM04M, IRN01FRS, IRN02F, IRN05M, IRQ02M, IRQ04F, SOM10MRS, IRN09M, IRQ06MRS, IRQ07F, IRQ08F. Only in Somali cases was nationality not accepted based on the knowledge test; SOM01F, SOM08M, SOM09M, SOM05M.

¹⁸² In the cases in which conversion to a religion was the core of the applicant's claim, the level of knowledge displayed by the applicant was not accepted – IRN05M, IRN09M, IRN03M.

¹⁸³ SOM01FNP, SOM01MNP.

“You were also able to draw the KDP logo and name some of the important KDP members such as Abdulla Hassan Zada however this information is considered to be widely available in the public domain.”¹⁸⁴

Non-governmental stakeholders expressed the view that the above-mentioned practice was common in written decisions and applicants face a catch-22 situation whereby insufficient knowledge is used as an indicator of a lack of credibility in asserted material facts. However, where the applicant demonstrates sufficient knowledge, it is discounted as being available in the public domain – and therefore learnt for the purposes of the application.¹⁸⁵

It should be noted that in the Netherlands, when the applicant is required to be positively persuasive, one mistake in response to a question assessing general knowledge in relation to a material fact may suffice to determine that the claim is not credible. For example, if an applicant is asked to name three villages in a particular area, and only one named village is correct, according to the Council of State, the determining authority can reasonably conclude that the claim is not positively persuasive.¹⁸⁶

4.2.3 Assumptions underlying the use of ‘general knowledge’ questions

The use of general knowledge questions is based on assumptions about what people should know and be able to recall. Decision-makers must be careful to ensure that they do not have unreasonable expectations of what applicants should ordinarily know or remember. An awareness of the functioning and frailties of human memory is, therefore, essential.

As explained in greater detail in Chapter 3, there is a normal wide-ranging variability in human need and ability to record and recall factual information.¹⁸⁷ For example, a lack of knowledge about one’s asserted religion may not be necessarily indicative of a lack of credibility. It may simply indicate that relevant factual information has not been learned, or an inability to recall particular details of such information.¹⁸⁸

Moreover, there is a consensus from a wealth of studies that certain facts are generally difficult to recall. For example, proper names, dates, times (including duration, frequency and sequence) are difficult to remember. Humans have a particularly poor visual memory for common objects, which are better remembered in terms of their function.¹⁸⁹ This is relevant when a credibility assessment is based on general knowledge questions that ask applicants to describe common objects such as currency, identity cards, car licence plates, or local buildings and monuments. For example, in one case reviewed, the interviewer asked the applicant the following questions to test his knowledge of the alleged country and city of origin:

¹⁸⁴ IRN10M.

¹⁸⁵ The meeting with stakeholders was held on 21 June 2012.

¹⁸⁶ Dutch Council of State, 30 May 2011 (201011349/1); LJN: BQ7859, para. 2.2.3; see also a similar reasoning in Dutch Council of State, 4 April 2011 (201008219/1/V1) JV2011/245; LJN: BQ0748 and Dutch Council of State, 24 December 2009 (200906274).

¹⁸⁷ J Cohen, ‘Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers’, *International Journal of Refugee Law*, vol. 13, no. 3, pp. 293–309, 2001, citing E Tulving, ‘Episodic and semantic memory’, pp. 381–403, in E. Tulving and W. Donaldson (eds.), *Organization of Memory*, New York: Academic Press, 1972.

¹⁸⁸ A Baddeley, M W Eysenck, M C Anderson, *Memory*, Hove: Psychology Press, 2009.

¹⁸⁹ H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, pp. 469–511 at p. 480; See Chapter 3: Credibility Assessment - A multi-disciplinary approach for further information.

“Can you tell me all the different values of banknotes in X starting with the smallest? ... What colour are these different notes? ... How long have notes of these values been around? ... Name the bridges that cross the river in the centre of X. ... What’s the number of the main road leading south of X? ... How many rivers or waterways pass through the centre of X? ... What’s the oldest mosque in X? ... Who is the Mayor of X?”¹⁹⁰

Many of us would struggle to answer such questions about our home country, city, or town not because we do not live there, but simply because such factual information is either not retained accurately in memory or is difficult to recall. Indeed, it is not uncommon for a person who has simply visited a city or town to possess more general factual information about that place than a person who has always lived in it, probably because they have had to engage actively with maps and directions in a way that someone who has grown up there has never done.

As explained fully in Chapter 3, there are many beliefs and assumptions about what general knowledge people are able to remember, but when these assumptions are carefully tested many are unfounded. Decision-makers need to be familiar with the findings of scientific research in order to have realistic expectations of applicants’ memory and to plan their interviews accordingly.

UNHCR’s review of case files and observation of interviews indicated that some interviewers appeared to take into account the applicants’ individual and contextual circumstances when posing questions to ascertain their knowledge.¹⁹¹ For example, in one case, the applicant asserted that he was a farmer, and the questions posed to probe the credibility of his assertion to originate from a specific region of Afghanistan concerned nearby villages, the agriculture of the area, dams, and the prices of local goods.

In the majority of case files reviewed in one Member State, it appeared unclear in what way, if at all, the applicants’ individual and contextual circumstances had influenced the nature of the questions posed or the level of knowledge expected from them.¹⁹²

In cases reviewed in another Member State, although information had been gathered regarding, for example, the applicant’s gender, educational background, health, job, and social status, this information did not appear to have been used to tailor general knowledge questions appropriate to the individual’s circumstances. For example, in one case reviewed, the applicant had completed his secondary school education and then worked with his father in the family tailoring business. He was asked the following questions aimed at probing the credibility of his asserted city of origin:

“How many universities are in X? ... When were these universities established? ... When was the last university opened?”¹⁹³

In another case reviewed, given the applicant’s individual and contextual circumstances, the questions posed to probe the credibility of the applicant’s origin and ‘recent stay’ did not appear reasonable. The applicant was unable to provide an answer to many of the questions posed. However, the assessment of her responses did take her background into account; the decision-maker’s internal note accepted her asserted origin as credible, reasoning that her inability to answer many of the questions was because she was a housewife and had never attended school.¹⁹⁴

¹⁹⁰ IRQ10M.

¹⁹¹ AFG06FSP, AFG04MSP, INT01AFGM, INT03IRNM.

¹⁹² Although it should be noted that relevant individual and contextual circumstances were recorded in a so-called ‘reference frame’ in an internal note on each application.

¹⁹³ SOM08M.

¹⁹⁴ GUI03FRS. In other cases reviewed, the questions posed and the consequential assessment of credibility based on the applicant’s responses did not appear to take into account or acknowledge the applicant’s individual and contextual circumstances, for example, AFG08M, AFG10F.

It is a legal requirement that applications for international protection are examined on an individual basis. This means that both the questions put to applicants as well as the assessment of their responses must fully take into account the individual and contextual circumstances of the applicant.¹⁹⁵ In addition to an understanding of human memory, circumstances such as the applicant's age, gender, sexual orientation and/or gender identity, mental and physical health, level of education, status, cultural, socio-economic, religious and other background factors should be taken into account in determining what questions an individual applicant should be asked, how these questions should be framed, and what constitutes reasonable knowledge.

UNHCR noted that while guidance in the three Member States of focus did not highlight key considerations regarding human memory, the guidance helpfully confirmed the need to take into account other individual and contextual circumstances. Draft internal guidance in Belgium stresses that the applicant should be asked questions which he or she can reasonably be expected to answer given his or her background, origin, age, gender, sexual orientation and/or gender identity, level of education, and socio-economic environment. The guidance further highlights that questions that probe knowledge usually derived from books will often not be of use if the applicant is uneducated or illiterate.¹⁹⁶ Similarly, UK guidance for the determining authority states that interviewers must ensure that:

“any questions asked during the asylum interview are carefully prepared, are tailored to the individual case and do not expect an unrealistic level of specialist knowledge. For instance, just because somebody claims to have recently converted to Christianity does not mean they will be able to remember how many books there are in the Bible or list the twelve disciples.”¹⁹⁷

In conclusion, UNHCR's research indicated that general knowledge questioning was prevalent in the practice of the three Member States surveyed. In one Member State it was sometimes used as the sole method of probing the credibility of asserted facts and such questioning could dominate the personal interview. An over-reliance on such questioning becomes problematic when it takes place at the expense of due consideration of other available evidence that may confirm, support or refute the applicant's account and/or identify and elicit sufficient information about the relevant facts.

Moreover, UNHCR is concerned that such questioning is used inappropriately to probe the credibility of facts such as sexual orientation and/or gender identity, and is based on subjective stereotyping and unfounded assumptions about human behaviour and interaction. More generally, in a significant number of cases, it did not appear that the applicant's individual and contextual circumstances were taken into account in devising the questions and/or in the assessment of the applicant's responses. As a consequence, the questions were considered to constitute an unreliable indicator of credibility. More broadly, UNHCR recalls that the assessment of credibility should not be reduced to a test of memory.

¹⁹⁵ Article 8 (2) (a) APD: “Member States shall ensure that: (a) applications are examined and decisions are taken individually, objectively and impartially.” Article 4 (3) QD provides that the “assessment of an application for international protection is to be carried out on an individual basis”.

¹⁹⁶ CGRA/CGVS draft internal guidance on interview strategies and risk assessment (Afghanistan), February 2011 and CGRA/CGVS draft internal guidance on asylum claims where sexual orientation or gender identity is given as a reason for application.

¹⁹⁷ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012.

4.3 Provision of reasonable opportunity for an applicant to clarify potentially adverse credibility findings

It is very possible that a perceived lack of detail, omission, inconsistency, or implausibility in the information provided by the applicant is not in fact real, but may be legitimately explained. As the credibility assessment should be based, as far as possible, on reliable evidence, it is of crucial importance that the determining authority affords applicants a reasonable opportunity to clarify issues which may potentially lead to adverse credibility findings. Moreover, any explanations offered by the applicant should be duly considered before a final decision is taken on the application.

UNHCR's research indicated that the extent to which applicants are afforded an opportunity to explain an apparent inconsistency varies from Member State to Member State, and from application to application. Guidance in all three Member States surveyed encourages interviewers to raise apparent adverse credibility indications during the personal interview. In some Member States, this may not be a requirement encompassing all significant adverse credibility indications. Moreover, in some national asylum procedures, whether the applicant is afforded an opportunity may depend on whether the inconsistency is identified before, during, or after the personal interview.

In the cases reviewed by UNHCR, interviewers did not identify or point out to the applicant *any* inconsistencies, discrepancies, and omissions with regard to the applicant's account during the personal interview. However, inconsistencies, discrepancies, and omissions were referred to in the written decision.¹⁹⁸ The following example illustrates this point:

*"In your screening interview you stated you were arrested for anti-regime reasons. However, in your Asylum Interview you claimed that you were arrested because the authorities could not find your brother but they could possibly get information from you and that when you were detained you were interrogated about your brother. [...]. You have advanced no information that this arrest was due to any anti-regime activity on your part. Again, although this inconsistency was not addressed to you at interview it is considered reasonable that you would provide a consistent account of the reason for your arrest in Iran."*¹⁹⁹

Similarly, in another case the decision-maker highlighted an inconsistency that could have been identified and put to the applicant during the personal interview:

*"You claimed during your Screening Interview that you left Somalia in May 2005, however during your Asylum Interview you claimed that you last lived in Somalia in 1996. Your evidence is inconsistent and it is considered that this undermines the credibility of your account. It is not accepted that you left Somalia as you claim."*²⁰⁰

An inability on the part of interviewers to identify inconsistencies, discrepancies, and omissions at interview and to put them *all* to the applicant may be due to a range of factors. These may include poor preparation; insufficient time to prepare in advance of the interview; a lack of focus on the details of the applicant's account during the course of the interview; and/or a tendency to defer the identification of adverse credibility indicators until after the interview, denying the applicant the opportunity to put forward explanations that should be considered in the credibility assessment.

¹⁹⁸ IRN08M, SOM04M, IRN04M, AFG05M, AFG07M, IRQ01M, AFG02F, SOM08M, IRQ10M, SOM01F, SOM02M.

¹⁹⁹ IRN08M.

²⁰⁰ SOM04M.

In a significant number of cases reviewed in one Member State in particular, even though one or two inconsistencies were identified and put to the applicant during the personal interview, the subsequent written decision referred to a greater number of inconsistencies, which had not been put to the applicant.²⁰¹ For example, in the following case the applicant was asked one question regarding an inconsistency during the personal interview:

“You said at screening that you were abused by your mother’s fiancé. However you said at Q50 that he was a friend of your mother’s, not her fiancé. Could you explain?”²⁰²

The written decision letter, however, identified a series of ‘inconsistencies’ that were not put to the applicant at the interview.

“You claim that after your father’s kidnapping, problems started between your parents and your father consequently abandoned you. When asked why you have not tried to contact him, you stated ‘I never knew his address or phone number and my mother refused to tell me.’ [...] However, in your Bio Data information you were able to name the district in Baghdad where he lives. This is inconsistent. [...] It is therefore not accepted that you have lost contact with your father and do not know where he lives.

You claim that you were kidnapped. You said you were walking to school when you were kidnapped. You added that the school was a ten to fifteen minute walk from your house. However you later stated that you were not allowed to leave the house unaccompanied in Iraq. This is inconsistent. [...]

You claim that the X sent threats to your house. When asked when the threats started you said it ‘Started when they kidnapped my father’. You then said the first threat came ‘after I was kidnapped’ which you had previously said occurred a month after your father’s kidnap. This is inconsistent. [...]”

Encouragingly, UNHCR also observed in one Member State that the structure of the procedure offers applicants the opportunity to review the reports of interviews and intended decisions, and to submit any corrections or additional information. The period to submit corrections and/or additional information following receipt of the report of the personal interview or receipt of the intended decision was extended,²⁰³ or the application was placed in the extended procedure to provide more time for the submission of evidence.²⁰⁴

However, as stated above, the Dutch Council of State has held that the procedure does not have to be extended in order to await documentary evidence the applicant informs is due to arrive.²⁰⁵

UNHCR’s review of case files revealed that in two Member States surveyed, applicants were often afforded no opportunity to explain an apparent inconsistency with COI that was nevertheless relied on to support a finding of non-credibility.²⁰⁶ According to UNHCR’s research, this is of particular concern given the prevalence of negative credibility findings derived from an inconsistency between the applicant’s statements and COI obtained by the determining authority. Not allowing the applicant the opportunity to address any potentially significant adverse credibility findings based on this indicator may be due, in part, to the fact that general and/or specific COI is gathered or scrutinized with more focus after the personal interview. Therefore, inconsistencies are only identified after the personal interview.²⁰⁷

²⁰¹ INT01SYRM, INT05IRNF, INT08TURKM, IRN09M, SOM09M, IRN10M, AFG10F, IRN07F, AFG03M, IRQ02M, SOM05M, AFG04M, IRN06MRS, IRN02F, SOM07F, AFG09F, IRN05M, IRQ06MRS, IRQ04F, AFG06M.

²⁰² IRQ04F.

²⁰³ AFG04MNP, AFG05MNP, IRN02MNP, SOM01FNP.

²⁰⁴ IRQ02MNP, IRQ04MNP.

²⁰⁵ Dutch Council of State 15 March 2005, (200500388) JV2005/185, RV2005/53.

²⁰⁶ GUI09M, GUI06M, GUI04M, GUI08M, GUI05M, AFG04MSP, IRQ09M, IRQ09M, IRN04M, SOM09M, IRN10M, IRQ05M, IRQ02M, SOM05M, IRQ01M, IRN02F, IRN08M, AFG08M, AFG0F, IRN05M, IRQ08F, AFG06M, SOM01F, IRQ10M, IRN09M, IRN03M, SOM07F, SOM04M, SOM02M, SOM08M, IRN03M, AFG10F.

²⁰⁷ Interview with the Commissioner-General of the CGRS, 27 June 2012.

4.3.1 The right to be heard

The right to be heard, and of defence, is part of the general principles of EU law.²⁰⁸ The right to be heard is affirmed in Article 41 of the European Charter of Fundamental Rights, which provides for the “*right of every person to be heard, before any individual measure which would affect him or her adversely is taken*”. The CJEU has affirmed the importance of this provision and its broad scope of application in the EU legal order, considering that the right must apply in all proceedings that are liable to culminate in a measure adversely affecting a person, including national procedures to determine qualification for international protection.²⁰⁹ In a case, specifically concerning a procedure to determine qualification for subsidiary protection, the CJEU stated: “*The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely.*”²¹⁰

This is of particular relevance in national procedures to determine qualification for international protection.²¹¹ At the national level, jurisprudence²¹² and guidance²¹³ both within the EU and beyond support the principle that the applicant should be afforded an opportunity to address apparent inconsistencies that may be the source of adverse credibility findings.

National legislation in Belgium requires the interviewer to raise in the personal interview any identified inconsistencies between the applicant’s statements and earlier statements, and to note the applicant’s response.²¹⁴ The determining authority informed UNHCR that the official memorandum on this legislative provision states that the determining authority may legitimately base a negative decision on such an

²⁰⁸ Judgment of the CJEU in *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, wherein the Court makes reference to its own case law establishing these principles, notably: *Krombach v. Bamberski*, C-7/98, CJEU, 28 March 2000; *Sopropé – Organizações de Calçado Lda v. Fazenda Publica*, C-349/07, CJEU, 18 December 2008; *France v. People’s Mojahedin Organization of Iran*, C-27/09 P, CJEU, 21 December 2011; *Fulmen and Mahmoudian v. Council*, Joined Cases T-439/10 and T-440/10, CJEU, 21 March 2012.

²⁰⁹ *M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, 22 November 2012, para. 85, wherein the Court also makes reference to its own case law establishing these principles, notably: *Transocean Marine Paint Association v. Commission*, C-17/74, CJEU, 23 October 1974; *Krombach v. Bamberski*, C-7/98, CJEU, 28 March 2000; *Sopropé – Organizações de Calçado Lda v. Fazenda Publica*, C-349/07, CJEU, 18 December 2008; see also *M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Opinion of Advocate General)*, C-277/11, CJEU, 26 April 2012, para. 32: “*Consequently, the right to be heard must apply in relation to the procedure for examining an application for international protection followed by the competent national authority in accordance with rules adopted in the framework of the common European asylum system.*”

²¹⁰ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012 following a reference for a preliminary ruling by the High Court of Ireland, para. 87.

²¹¹ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Opinion of Advocate General Bot)*, C-277/11, CJEU, 26 April 2012, para. 43: “*Indeed, in this type of procedure [procedure for examining an application for international protection], which inherently entails difficult personal and practical circumstances and in which the essential rights of the person concerned must clearly be protected, the observance of this procedural safeguard is of cardinal importance. Not only does the person concerned play an absolutely central role because he initiates the procedure and is the only person able to explain, in concrete terms, what has happened to him and the background against which it has taken place, but also the decision will be of crucial importance to him.*”

²¹² The Regional Court in Košice in the Slovak Republic has underlined the need to give the applicant the opportunity to provide an explanation for any apparent inconsistencies and the need to assess any explanation provided: *V. B. v. Migration Office of the Ministry of Interior of the Slovak Republic*, Regional Court in Košice (Krajský súd v Košiciach), 5 Saz 2/03 18, September 2003. The Supreme Court of Slovenia has also recognized that it is “*standard administrative judicial practice*” that if the statements (or conduct) of an applicant for asylum bear important inconsistencies and discrepancies, the asylum authority has to give the applicant the possibility to explain these discrepancies or inconsistencies (I Up 500/2009 of 16 December 2009).

²¹³ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, paras. 3.3, 3.4, 3.6, and 9.5. See also Immigration and Refugee Board of Canada, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, para. 2.5.

²¹⁴ Article 17 §1 and §2 of the Royal Decree on CGRA/CGVS Procedures. Note that Article 15 of the Royal Decree on Immigration Department Procedures also requires the interviewer at the registration interview to raise any apparent inconsistencies between the statements of the applicant and the statements of any family members applying at the same time with the applicant and note the applicant’s response.

inconsistency even though this has not been raised with the applicant.²¹⁵ Moreover, national legislation does not explicitly guarantee the applicant an opportunity to comment on potentially adverse credibility findings arising from other inconsistencies (for example, inconsistencies between the applicant's statements and submitted documentary evidence, COI or other evidence obtained by the determining authority by its own means). UNHCR was informed that draft internal guidelines encourage interviewers to raise issues that may be the source of potentially adverse credibility findings during the personal interview, but these are not legally binding.²¹⁶

Similarly, UK guidance on asylum interviews requires interviewers to raise apparent inconsistencies during the personal interview:

“If, in the interview, a claimed material fact appears to be inconsistent with either the applicant's previous evidence or with generally known facts, or if what is being said appears to make no sense, he must be asked to explain or clarify this. If the applicant is not asked to explain and the application is then refused on credibility grounds, it will make for a weaker argument at the decision and appeal stage.”²¹⁷

Furthermore, UK policy guidance on credibility provides:

“At interview an applicant should be given the opportunity to explain their claim to a level of detail which a person who experienced a given incident might reasonably be expected to recall. This includes providing an opportunity to explain or clarify inconsistencies in their account or with generally known facts about the country of origin and issues around the validity of documents submitted in support of the claim.”²¹⁸

However, at the time of UNHCR's research, where there was independent country information that clearly contradicted material facts provided by the applicant, the UK guidance on credibility *did not require* decision-makers to put such contradictions to the applicant at the personal interview.²¹⁹

In this regard, it is worth noting that the EAC similarly makes an exception to the rule where an inconsistency is identified after the personal interview:

“Where there is an inconsistency, you should, put this to the applicant to give them the opportunity to explain their response. In some cases such inconsistencies between the applicant's statements and known information may not be discovered until after the asylum interview. In such a situation it may be appropriate to make a negative credibility finding but care should be used in using such an inconsistency.”²²⁰

²¹⁵ Meeting with the Commissioner-General of the CGRA/CGVS, 31 August 2012. J Milquet, M Wathélet, Arrêté royal du 18 août 2010 modifiant l'arrêté royal du 11 juillet 2003 fixant la procédure devant le Commissariat général aux réfugiés et aux apatrides ainsi que son fonctionnement: Rapport au Roi', *Moniteur Belge* (The Belgian official journal), no. 268 (3 September), pp. 56342–50, 2010, and in particular p. 56347: “Comme l'agent ne peut pas être tenu de confronter le demandeur d'asile à des contradictions susceptibles de n'apparaître qu'ultérieurement, seules celles qui apparaissent à l'agent au cours même de l'audition doivent être soumises pour réaction éventuelle au demandeur d'asile. Le fait de devoir confronter le demandeur à certaines contradictions n'implique pas que ce dernier doive être reconvoqué pour une nouvelle audition. Cet article n'interdit par ailleurs pas au Commissaire général de fonder une décision sur une contradiction à laquelle le demandeur n'a pas été confronté.”

²¹⁶ Meeting with the CGRA/CGVS, 7 June 2012. It should also be noted that the 'Interview Charter' also encourages the interviewer to address statements which appear contradictory, implausible, hesitant or evasive, although this document is not legally binding. See CGRA/CGVS, *Interview Charter*, January 2011, p. 14.

²¹⁷ UKBA, Asylum Instructions, *Considering the Asylum Interview*, March 2012, para. 4.1.

²¹⁸ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012; UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010 stated: “The decision maker must try to ensure that any inconsistencies in the claim are put to the applicant during the interview so that he has an opportunity to explain them. Any explanation given should then be acknowledged and considered in the overall assessment of internal credibility.”

²¹⁹ This was previously required in the UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, which stated: “However where there is objective country information that clearly contradicts the material facts, this is likely to result in a negative credibility finding. Decision makers should try to put such contradictions to the applicant at the asylum interview to allow him an opportunity to account for this discrepancy.”

²²⁰ EAC Module 7, sections 3.2.6 and 3.2.8.

UNHCR understands that Member States are mindful of the time and financial resources required to conduct the examination of applications for international protection. However, it is in the interests of both applicants and Member States to ensure that first instance decision-making is fair, just and that fundamental human rights are upheld. This may require the determining authorities to offer a further personal interview or otherwise provide a means of allowing an applicant to provide an explanation for apparent inconsistencies before a final decision is taken on the application.

UNHCR welcomes national guidance requiring interviewers to raise matters during the personal interview that may be the source of adverse credibility findings. However, a problem arises where the interviewer/decision-maker may only become aware of inconsistencies after the personal interview. This may be because the interviewer/decision-maker is able to scrutinize the applicant's statements and available documentary or other evidence more thoroughly after the personal interview; or because the applicant's statements appear to run counter to evidence – such as COI, other specific information, or the results of analyses of language and/or documentation – obtained after the personal interview.

The UK Asylum Immigration Tribunal has stated that, arguably, it would be unsafe to base adverse credibility findings on contradictions over certain minor or peripheral points that have never been put to the applicant and are not central to the whole basis of the case.²²¹

In the Netherlands, Article 4:7 General Administrative Law Act states:

“ 1. Before refusing all or part of an application for an individual decision an administrative authority shall give the applicant the opportunity to express his views if: a. the refusal would be based on information about facts and interests concerning the applicant, and b. this information differs from information the applicant has himself supplied on the matter. 2. Paragraph 1 does not apply if the difference from the application can only have minor significance for the applicant.”²²²

As such, in cases where the decision-maker is minded to deny international protection, if a fact an applicant asserts is not accepted as credible because of an inconsistency with COI, then this should be stated in the intended decision provided to the applicant. The applicant would thereby have an opportunity to offer any explanation in a written opinion that is forwarded to the decision-maker for his or her consideration before a final decision is taken. This should also be the case where the potentially adverse credibility finding is based on an inconsistency with an individual report of the Ministry of Foreign Affairs.²²³ Where a finding of a lack of credibility may be based on the result of language or document verification analysis, the report of the language and/or document verification analysis will be provided to the applicant. He or she in such cases can challenge the result of the analysis by submitting counter-evidence from another analysis or other information within six months.²²⁴ The general procedure may be extended when the determining authority is notified in a timely manner that the applicant intends to challenge the result.²²⁵

²²¹ AA (*Credibility, Totality of evidence, Fair Trial*) Sudan [2004] UKIAT 00152, 3 June 2004, para. 11; It should also be noted that national legislation in the UK requires the decision-maker to take into account particular behaviours as damaging the applicant's credibility; see Section 8, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Some of the behaviours may only be taken into account in the absence of a reasonable explanation and, therefore, the decision-maker must provide the applicant with an opportunity to offer an explanation during the procedure; see section 8 (3) (a), (c), (d) and (e). For further discussion on applicant behaviour see Chapter 6 – Assessing the Applicant's Behaviour.

²²² Official translation from www.rijksoverheid.nl

²²³ Individual reports are conducted by the Ministry of Foreign Affairs on the request of the determining authorities. The source information of the individual report, containing reports of the conducted research, is sent to the Ministry of Immigration, Integration and Justice. Not all the sources may be revealed in order to protect the working methodology and the safety of individual sources. Since 2008 these source documents are sent to the applicant and his or her lawyer as well, in order to give the applicant the opportunity to challenge any finding as soon as possible. See IND Working Instruction 2010/10. The Public Access Act (WOB; *Wet Openbaarheid Bestuur*) offers legal grounds for the applicant to start a procedure to obtain any source information that the Ministry is not willing to reveal. However, there are no known cases in which such a request with reference to the Public Access Act has been granted. See for example the European Court of Human Rights, *A. v. the Netherlands*, no. 4900/06, 20 July 2010.

²²⁴ IND Working Instructions 2010/10.

²²⁵ In one case reviewed by UNHCR the period to submit the written opinion on the intended decision was extended three times in order to obtain the results of a second analysis of language. However, upon expiry of the third extension period, a final decision was taken without requesting the lawyer to submit the written opinion: SOM01FNP.

It is positive that guidance in all three Member States surveyed encourages interviewers to raise apparent inconsistencies during the personal interview. However, in Belgium and the UK, a decision to reject an application for international protection may be based on an inconsistency, even though the applicant was not given the opportunity to explain the inconsistency during the asylum procedure. In the Netherlands, on the other hand, applicants are given the opportunity to comment on potentially adverse credibility findings when the determining authority is minded to reject the application for international protection.²²⁶

Given the individual and contextual circumstances that bear upon fact-finding, it is very possible that an apparent inconsistency in the evidence provided by the applicant is not in fact real, but may be legitimately explained. As the credibility assessment should be based, as far as possible, on reliable evidence, it is of cardinal importance that the determining authority affords applicants a reasonable opportunity to address issues that may be the source of potentially significant adverse credibility findings. Moreover, any explanations offered by the applicant should be considered before a final decision is taken on the application.

Conducting a fair and objective credibility assessment may require the determining authority to conduct a further interview with the applicant or otherwise provide the applicant with an opportunity to submit an explanation. Providing the applicant with the opportunity to clarify any apparent inconsistencies, omissions or implausibilities before a decision is made reduces the chances of a flawed credibility assessment as long as any explanation is given full consideration.

4.3.2 Cooperation requirement

It should be mentioned that it is critical that applicants also have an effective opportunity to review the written reports of any interviews conducted and submit any corrections or additional information and other evidence.²²⁷ The interview record is likely to be the primary source of evidence and, therefore, the primary basis for the assessment of credibility. An apparent inconsistency may result from an erroneous recording or mis-translation of the applicant's statements. An apparent lack of detail or omission may be due to not recording or translating all the statements made by the applicant. The scope for such errors is particularly acute when only a summary of the applicant's statements is recorded. Affording the applicant a reasonable and effective opportunity to review the record of the interview ensures an opportunity to identify and rectify any such errors. This is also an expression of the duty to cooperate set out in Article 4 (1) QD and the duty to exercise rigorous scrutiny.²²⁸ An audio recording of the personal interview or verbatim transcript may also assist to prevent disputes about what the applicant and, if present, interpreter said or did not say during the interview.

²²⁶ If not addressed during the personal interview, applicants have the opportunity to address perceived inconsistencies in the written report submitted in response to the 'intended decision'. AFG01MNP, AFG03FNP, AFG04MNP, IRN01FNP, IRN02MNP, IRQ01FNP, IRQ02FNP, IRQ01MNP, IRQ05MNP, SOM03MNP, IRN01MNP, IRQ03MNP.

²²⁷ UNHCR, *APD Study*, March 2010.

²²⁸ In this regard, it is perhaps worth highlighting that the Dutch asylum procedure offers applicants, assisted by their legal adviser, a procedural day within which to review the report of the initial interview and an additional procedural day within which to review the report of the personal interview, and submit any corrections and additional information: Article 3.113 Section 3 Aliens Decree 2000. In the IND Aliens Act Implementation Guidelines (2010) Vc 2000 C12/1 the term 'corrections and additions' is explicitly mentioned. The time frame of the General Asylum Procedure may be extended in very specific circumstances. If more time is required for an appropriate examination, the application may be referred to the prolonged procedure in which a decision should be taken within six months.

In a recent judgment, the CJEU ruled that Member States' duty to cooperate with an applicant, pursuant to the second sentence of Article 4 (1) QD:

*“cannot be interpreted as meaning that, where a foreign national requests subsidiary protection status after he has been refused refugee status and the competent national authority is minded to reject that second application as well, the authority is on that basis obliged – before adopting its decision – to inform the applicant that it proposes to reject his application and notify him of the arguments on which it intends to base its rejection, so as to enable him to make known his views in that regard.”*²²⁹

It is important that the applicant is given the opportunity to know of and comment on any significant inconsistency that may be relied upon to support a finding of a lack of credibility, so that he or she can address the accuracy, time-appropriateness, and/or relevance of the information obtained.²³⁰ In this regard, it needs to be borne in mind that COI may not be precise, comprehensive, or inclusive of different perspectives (for example gender, age, sexual orientation and/or gender identity) and different sources of COI may themselves be contradictory or bear discrepancies.

UNHCR's research indicated that the extent to which an applicant is afforded the opportunity to address potentially significant adverse credibility findings during the first instance procedures varies from Member State to Member State. In a significant number of decisions reviewed in this research, negative credibility findings were based on inconsistencies, which the applicant had not been given the opportunity to address during the procedure. As such, the applicant was not able to provide an explanation or mitigating circumstances before a final decision was taken. This would appear to be at odds with the principle of the right to be heard and of defence, which is to ensure that the applicant is able to submit observations and correct any errors and the competent authority is able to take into account all relevant information before a decision is taken.²³¹

UNHCR is of the view that providing an applicant with an opportunity to refute, explain, or assert mitigating circumstances in relation to an apparent inconsistency before a final decision is taken is part of the process of establishing the facts. It therefore falls within the ambit of Article 4 (1) QD, which concerns, as stated by the CJEU, *“the determination of the facts and circumstances qua evidence which may substantiate the asylum application.”*²³² As such, offering such an opportunity is an expression of the Member States' duty to cooperate with the applicant in the assessment of the relevant elements of the application pursuant to Article 4 (1) QD. It is of concern that guidance suggests that it may be appropriate to reach a negative credibility finding without affording the applicant the opportunity to explain the apparent inconsistency.

²²⁹ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 74.

²³⁰ UNHCR, *Building in Quality: A Manual on Building a High Quality Asylum System*, September 2011, section 1:26.

²³¹ *Sopropé – Organizações de Calcado Lda v. Fazenda Publica*, C-349/07, CJEU, 18 December 2008, para. 49.

²³² *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney-General*, C-277/11, CJEU, 22 November 2012, para. 68: *“It is thus clear that Article 4 (1) of Directive 2004/83 relates only to the first stage mentioned in paragraph 64 of this judgment, concerning the determination of the facts and circumstances qua evidence which may substantiate the asylum application.”*

4.4 The determining authority's duty to gather evidence bearing on the application by its own means

The duty to submit elements in support of an application for international protection lies in principle with the applicant, but “*it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application*”.²³³ Moreover, due to the individual and contextual circumstances of certain applicants, the determining authority may need to assume greater responsibility to gather evidence with respect to the application by its own means.²³⁴

The need to gather relevant COI is recognized in the laws and guidance of the three Member States surveyed. In Belgium, national legislation includes references to gathering information from different sources such as UNHCR.²³⁵ A number of support services are available to decision-makers,²³⁶ namely the Documentation and Research Centre (CEDOCA),²³⁷ the Legal Service²³⁸ and the Psychological Evaluation Unit.²³⁹ As previously stated, Belgian jurisprudence affirms that the burden of proof lies with the applicant.²⁴⁰ The Belgian Dutch language chamber of the appeal authority has often stated that it is not the duty of the determining authority to fill in the gaps in the evidence of the applicant.²⁴¹ On the other hand, UNHCR is aware of a decision of CCE/RVV, which stated that there is such a duty where an applicant cooperates sufficiently and where the oral evidence provided is truthful and coherent.²⁴² CCE/RVV has also held that the legal principle of the ‘duty of care’ obliges the determining authority to ensure that its decisions are based on correct fact-finding and in certain circumstances this will require action on the part of the authority to obtain sufficient information before taking a decision.²⁴³ On occasion, CCE/RVV has recognized that the

²³³ UNHCR, *Handbook*, para. 196; UNHCR, *Note on Burden and Standard of Proof*, para. 6.

²³⁴ For example, this may be particularly relevant when the applicant is a child. In this regard, see UNHCR, *Handbook*, para. 217 and UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08 (hereinafter UNHCR, *Guidelines No. 8*): “*Although the burden of proof usually is shared between the examiner and the applicant in adult claims, it may be necessary for an examiner to assume a greater burden of proof in children’s claims, especially if the child concerned is unaccompanied.*” It may also be relevant with regard to applicants with mental health problems. See UNHCR *Handbook* para. 210 on mentally disturbed persons: “*It will, in any event, be necessary to lighten the burden of proof normally incumbent upon the applicant, and information that cannot easily be obtained from the applicant may have to be sought elsewhere*”. Article 12 (3) APD: “*The personal interview may also be omitted where it is not reasonably practicable, in particular where the competent authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control. When in doubt, Member States may require a medical or psychological certificate.*” Also, in cases where the applicant’s sexual orientation and/or gender identity is a material fact. UNHCR, *Guidelines No. 9* and UNHCR, *Guidelines No. 1*, para. 37.

²³⁵ For example, Aliens Act, Article 57/6/1 and Article 57/7.

²³⁶ Article 3 of the Royal Decree on Immigration Department procedures.

²³⁷ In 2011, CEDOCA answered 1,758 case-related questions. At the end of 2011 the documentary intranet called ‘Glo.be’ contained 240,000 documents. CGRA/CGRS, 2011 Annual Report.

²³⁸ CGRA/CGRS, 2011 Annual Report, p. 17 (23).

²³⁹ CGRA/CGRS, 2011 Annual Report, pp. 5–6 (11–12).

²⁴⁰ Conseil du Contentieux des Etrangers, *Rapport Annuel 2009–2010*, p. 71. e.g. CCE/RVV 69.017, 21.10.2011: “*Waar verzoekster in haar verzoekschrift (zie p. 6) aanvoert dat er een ‘gedeelde bewijslast tussen de kandidaat-vluchteling en de asielinstanties die over zijn aanvraag moeten oordelen’ bestaat, herhaalt de Raad dat de bewijslast in beginsel bij de kandidaat-vluchteling berust die in de mate van het mogelijke elementen dient aan te brengen ter staving van zijn relaas en bij het ontbreken van dergelijke elementen, hiervoor een aannemelijke verklaring dient te geven. Het is vervolgens de taak van de persoon die de erkenning van de hoedanigheid van vluchteling moet onderzoeken om de waarde van de bewijselementen en de geloofwaardigheid van de verklaringen van de kandidaat-vluchteling te beoordelen*”. See also Belgian Council of State 139.515, 19.01.2005; Belgian Council of State 163.124, 04.10.2006; Belgian Council of State 190.508, 16.02.2009.

²⁴¹ CCE/RVV 69.519, 28.10.2011 : “*De commissaris-generaal moet niet bewijzen dat de feiten onwaar zouden zijn en het is evenmin zijn taak om zelf de lacunes in de bewijsvoering van de vreemdeling op te vullen*”; similar: CCE/RVV 73.834, 24.01.2012; CCE/RVV 70.439, 22.11.2011; CCE/RVV 73.798, 23.01.2012; CCE/RVV 74.347, 31.01.2012; CCE/RVV 22.422, 30.01.2009; CCE/RVV 15.335, 29.08.2008; CCE/RVV 72.597, 23.12.2011. All of these decisions refer to case law of the Council of State under the old asylum procedure: “*Bovendien verplicht geen enkele bepaling of beginsel de met het onderzoek van de asielaanvraag belaste instanties om de vreemdeling bij te staan in zijn inspanningen om het statuut van vluchteling te bekomen en de lacunes in diens bewijsvoering zelf op te vullen (RvS 16 november 2006, nr. 164.792).*”

²⁴² CCE/RVV 66.037, 1 September 2011.

²⁴³ CCE/RVV 61.581, 16 May 2011.

determining authority is a specialized agency with a documentation and research service at its disposal; and therefore it has held that the determining authority could have made greater efforts to obtain information.²⁴⁴

In the Netherlands, the determining authority may gather evidence in the form of a language analysis, age assessment, or DNA test to verify family ties, or by requesting an individual report from the Ministry of Foreign Affairs, but this is not obligatory.²⁴⁵ The guidance states that, in principle, evidence obtained during the interviews with the applicant should be sufficient information upon which to base a decision and that additional research should be reduced to a minimum, being required only when really necessary in order to decide on an application.²⁴⁶ Despite this guidance, from the cases reviewed across the three Member States, it appeared evident that more documentation verification procedures and language analyses were conducted in the Netherlands than in the other two Member States of focus.²⁴⁷

In reviewing case files in the Netherlands, UNHCR noted that in some cases decision-makers took steps to obtain evidence that supported the application, but in other apparently similar cases they did not on the grounds that it was the duty of the applicant to adduce the evidence. For instance, in cases where the applicant had not submitted documentary evidence supporting their asserted country of origin or place of habitual residence, and therefore there was an element of doubt regarding their origin, some applicants were offered a language analysis,²⁴⁸ whereas others were not.²⁴⁹ Indeed, in one case it was explicitly stated that a language analysis was not offered because it is the applicant's duty to adduce evidence of his country of origin.²⁵⁰ In three cases reviewed,²⁵¹ the applicants submitted evidence that could have been verified by requesting an individual report from the Ministry of Foreign Affairs, but such a request was not made and in one of those cases the decision-maker explicitly stated that it was the duty of the applicant to adduce further evidence.²⁵²

UNHCR has commented further that

*“[i]n view of the particularities of a refugee’s situation, **the adjudicator shares the duty to ascertain and evaluate all the relevant facts. This is achieved, to a large extent, by the adjudicator being familiar with the objective situation in the country of origin concerned, being aware of relevant matters of common knowledge, guiding the applicant in providing relevant information and **adequately verifying facts alleged which can be substantiated****”*²⁵³ (emphasis added).

Moreover, due to the individual and contextual circumstances of certain applicants, the determining authority may need to assume greater responsibility to gather evidence with respect to the application by its own means.

²⁴⁴ CCE/RVV 64.539, 08.07.2011.

²⁴⁵ IND Aliens Act Implementation Guidelines (2010) Vc 2000 C14/6.2 (in the version of WBV 2010/10); and IND Working Instructions 2010/14, para. 4.1.

²⁴⁶ IND Working Instructions 2010/10, para. 4.

²⁴⁷ In 2011, 141 requests were made for an individual report and 52 individual reports were produced. The number of requested individual reports was provided by the Immigration and Nationality Department Information and Analysis Centre (INDIAC), and the Advisory Committee on Migration Affairs (*Advies Commissie Vreemdelingen zaken* (ACVZ)) refers to statistics obtained from the Office for Country Information and Language Analysis (*Bureau Land en Taal* (BLT)) regarding the number of official individual reports produced. The BLT is a department working within the Immigration Service that supports decision-makers in the provision of country of origin information and organizing language analyses in individual cases.

²⁴⁸ IRQ01FAP, SOM01MAP, SOM01FNP.

²⁴⁹ SOM01MNP, SOM02MNP.

²⁵⁰ SOM01MNP.

²⁵¹ IRQ01MNP (the applicant submitted photos of the explosion of his shop. This fact could be checked in Iraq), IRN01MNP (the applicant submitted photos showing that his house had been sealed and written statements of witnesses testifying to this fact. These facts could have been checked in Iran), IRN03MBP.

²⁵² IRN01MNP.

²⁵³ UNHCR, *Note on Burden and Standard of Proof*, para. 6.

For instance, with regard to applicants with mental health problems, the UNHCR Handbook states: “It will, in any event, be necessary to lighten the burden of proof normally incumbent upon the applicant, and information that cannot easily be obtained from the applicant may have to be sought elsewhere.”²⁵⁴

Given how inherently difficult it is for applicants to provide information and support their statements with documentary and other evidence, and given the greater resources generally available to determining authorities for gathering evidence by comparison with those of the applicant, it is suggested that determining authorities may be required to produce evidence bearing on the application through their own means. This is pursuant to its duty to cooperate under Article 4 (1) QD, its duty to take into account COI under Article 4 (3) QD, its duty to dispel any doubts regarding the credibility of asserted material facts and to conduct a rigorous examination under Article 2 and 3 ECHR. Following a reference to the CJEU for a preliminary ruling regarding the scope of Member States’ duty of cooperation pursuant to Article 4 (1) QD, the CJEU stated:

“This requirement that the Member State cooperate therefore means, in practical terms, that if, for any reason whatsoever, the elements provided by an applicant for international protection are not complete, up to date or relevant, it is necessary for the Member State concerned to cooperate actively with the applicant, at that stage of the procedure, so that all the elements needed to substantiate the application may be assembled. **A Member State may also be better placed than an applicant to gain access to certain types of documents**”²⁵⁵ (emphasis added).

The EAC articulates the second sentence of Article 4 (1) QD as imposing a duty of investigation on Member States.²⁵⁶ The EAC explains that this duty entails an active role in researching and using relevant information by obtaining, for instance, COI, data from visas, files from family members, language testing, using appropriate internet sources, and making reasonable enquiries to verify information and documentary evidence while respecting the principle of confidentiality.²⁵⁷

4.4.1 Gathering country of origin information (COI)

UNHCR’s review of case files in one Member State revealed that, in many cases, no additional evidence was gathered or included in the case file by the decision-maker beyond the evidence obtained from the applicant.²⁵⁸ In some case files, a limited amount of general COI was included that related to only a fraction of the information and other evidence provided by the applicant.²⁵⁹ It was not possible to assess whether COI had been gathered impartially, for it was noted that, in those cases in which refugee status was refused, only COI supporting the non-credibility of asserted facts was included. In those cases in which refugee status was granted, only COI supporting the credibility of asserted facts was included in the case file.

UNHCR noted in another Member State that in a number of cases no reference was made to relevant country reports of the Ministry of Foreign Affairs or country-specific policy.²⁶⁰ In one case, the COI was misapplied.²⁶¹ UNHCR observed that often, COI was not referred to with regard to the credibility of specific material facts, but instead it was cited in general terms and in standard texts in the intended decision.

²⁵⁴ UNHCR, *Handbook*, para. 210 on mentally disturbed persons. Also, in cases where the applicant’s sexual orientation and/or gender identity is a material fact, see UNHCR, *Guidelines No. 9*, and UNHCR, *Guidelines No. 1*, para. 37.

²⁵⁵ *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, para. 66. *M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Opinion of Advocate General)*, C-277/11, 26 April 2012, para. 67.

²⁵⁶ EAC Module 7, sections, 2.2.1, 2.2.7, and 2.2.9.

²⁵⁷ EAC Module 7, section 2.4.1.

²⁵⁸ For example: AFG05MSP, IRQ03FRS, IRQ07FSP, IRQ10M, DRC03M, DRC06M, DRC07F, DRC08F, DRC09F, DRC10F, GUI03FRS, GUI10F.

²⁵⁹ AFG05MSP, IRQ03FRS, IRQ07FSP, DRC03M, DRC06M, DRC07F, DRC08F, DRC09F, DRC10F, GUI03FRS.

²⁶⁰ AFG01FNP, AFG03FNP, AFG04MNP, IRQ01MNP, IRQ05MNP.

²⁶¹ IRQ04MNP – on appeal the district court found that the applicant’s statement that men as well as women could face honour killings was consistent, rather than inconsistent (as found by the determining authority) with the COI.

UNHCR's review of case files also revealed that there were no cases in which a COI request was made. However, in three cases within the sample, the decision-maker relied on archival information supplied in response to previous COI requests. This information was outdated in relation to the facts asserted.²⁶²

In a number of cases reviewed in one Member State, COI was obtained and cited.²⁶³ This included the use of COI reports, Operational Guidance Notes (OGNs) and independent research conducted by decision-makers. Among these cases, a few files indicated that COI had been selectively used to support credibility findings.²⁶⁴ In these cases, parts of the COI report that supported the decision-maker's overall view were cited, irrespective of the information that followed in other parts of the same report:

“As the objective information above makes clear those Christians who openly evangelise or who are ordained as priests are most likely to attract the adverse attention of the Iranian authorities, while it is rare that ordinary members experience any problems, even obtaining jobs or passports. Furthermore those Muslims who have converted to Christianity live in the same way as those born to Christian parents and most Christian converts behave discreetly which generally avoids problems with the authorities. As such it is considered that if you return to Iran as a non-evangelising, ordinary Christian who is not a priest, you will not suffer persecution from the Iranian authorities.”²⁶⁵

The summary of the independent material in the above paragraph overlooked the following paragraph in the same COI report:

“The persecution of Muslim converts to Christianity has re-escalated since 2005. The Iranian police continue to detain apostates for brief periods and to pressurise them to recant their Christian faith and sign documents pledging they will stop attending Christian services and refrain from sharing their faith with others. There have also been increasing reports of apostates being denied exit at the borders, with the authorities confiscating their passports and requiring them to report to the courts to reclaim them. During the court hearings, they are coerced to recant their faith with threats of death penalty charges and cancellation of their travel documents.”²⁶⁶

The main grounds of appeal in the above mentioned case concerned the selective reading of the COI report. In the subsequent appeal (which was allowed), the judge found the applicant to be entirely credible in light of the leading case law in this area and the balanced information available.²⁶⁷ Stakeholders expressed the view that in their experience sections of a COI report that undermined the applicant's case were often quoted and highlighted while sections that corroborated the applicant's account were ignored.²⁶⁸

Guidance for the determining authority in the UK provides: *“The decision maker is required to conduct research into the applicant's country of origin to assess whether claims about past and present events are consistent with objective country information using, for example, information contained in Country of Origin Information Reports produced by COIS [countries of origin].”²⁶⁹*

²⁶² In IRQ10M the COI request was dated 2009; in SOM09M the COI request was dated 2007, and in AFG10F the COI request was dated 2008.

²⁶³ Some 28 cases reviewed. In just over a quarter of them, no country of origin information was cited.

²⁶⁴ IRN05M, IRQ04F, IRQ10M, SOM08M, SOM01F, IRN03M.

²⁶⁵ IRN05M, para. 13 of Refusal Letter.

²⁶⁶ United Kingdom: Home Office, *Country of Origin Information Report – Iran*, 28 June 2011, para. 19.47.

²⁶⁷ IRN05M, Appeal Determination.

²⁶⁸ Practitioners shared these views during a meeting held on 22 June 2012.

²⁶⁹ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 16; UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.2, p. 15.

Furthermore, the decision-maker may make a COI request²⁷⁰ and/or arrange for a language analysis test.²⁷¹ However, the guidelines do not provide decision-makers with the power to solicit other expert evidence of their own accord; this can only be suggested to the applicant or legal representative.

The credibility of the applicant's statements and other evidence submitted by the applicant has to be evaluated in light of what is generally known about the situation in the country of origin or place of habitual residence, as well as any specific COI.²⁷²

The UNHCR Handbook states: "*The applicant's statements cannot be considered in the abstract, and must be viewed in the context of the relevant background situation. Knowledge of conditions in the applicant's country of origin – while not a primary objective – is an important element in assessing the applicant's credibility.*"²⁷³

The determining authority, therefore, has a duty to obtain by its own means relevant general and specific COI. The scope of this duty is set out in a number of provisions in the APD and QD.²⁷⁴ It is also duly highlighted in the EAC: "*In general, as a decision-maker, you are expected to [...] be informed about the situation in the country of origin.*"²⁷⁵ As such, the decision-maker should obtain relevant, accurate, independent, impartial, reliable, and time-appropriate COI as a means to assess the credibility of the applicant's statements.

In this regard, relevant COI should neither be ignored nor misapplied. Thus, adhering to the principle of objectivity and impartiality, available COI that confirms or supports and not just refute asserted facts should be obtained.²⁷⁶ In a recent seminar, participants commented on the apparent selective use of COI by determining authorities. Several examples were given of occasions when COI appeared to have been edited following its use in an application granting international protection, "*which appears to undermine any claim that its function is purely investigative*".²⁷⁷

²⁷⁰ The UKBA intranet 'Horizon' describes this as the COI information: "*COI service responds to specific enquiries for information that is not available in existing COI products. The answers to requests are archived on the country information and guidance pages of Horizon. COI service will respond to requests within three days, but if the request is urgent, or is an appeals or detained fast track case, it will respond within 24 hours. However, for some requests it may take longer to reply if it needs to make enquiries through the Foreign & Commonwealth Office, in which case it will tell you the likely response time.*"

²⁷¹ UKBA, Asylum Instructions, *Language Analysis*, February 2013.

²⁷² *R.C. v. Sweden*, no. 41827/07, ECtHR, 9 March 2010, para. 54; *M.S.S. v. Belgium and Greece*, no. 30696/09, ECtHR, 21 January 2011.

²⁷³ UNHCR, *Handbook*, para. 42.

²⁷⁴ Article 8 (2) APD, Article 4 (5) (c) QD, Article 4 (3) QD; with reference to Article 4 (3) QD, the EAC, Module 7, section 2.2.10 states: "*Since the content of paragraph 3 needs to be taken into account in the assessment of the application – it is for the asylum authority to make sure that it is also covered by the investigation. Article 4 (3) can therefore be regarded as a burden placed on the Member State to investigate.*"

²⁷⁵ EAC Module 7, section 2.4.3.

²⁷⁶ Article 8 (2) (a) APD. Pursuant to Article 8 (2) (a) APD, which requires Member States to ensure that applications are examined and decisions taken objectively and impartially, when the determining authority gathers evidence as part of its duty to assess the evidence submitted by the applicant, it must ensure that it gathers any available evidence that might confirm, and not just refute the facts or question the credibility of the applicant's statements. See *S. N. v. Ministry of Interior Supreme Administrative Court* (Nejvyšší správní soud), 6 Azs 235/2004–57, 21 December 2005: "*[t]he applicant is not obliged to prove the persecution by other means than his own credible testimony. On the contrary, in case of doubts the administrative authority is obliged to gather all available evidence to refute or question the credibility of the applicant's testimony.*" It should be noted that although the judgment expressly refers to the obligation to gather evidence that might question or refute the credibility of the applicant, the general administrative law principle of material truth requires that the determining authority also obtains any evidence that might support the applicant's credibility. Therefore the reference to 'all available evidence' should be considered in the light of this principle.

²⁷⁷ Refugee Law Initiative (RLI), 'The Report of Proceedings of the Roundtable on Due Process Considerations relating to the Use of Country of Origin Information in Refugee Status Determination Procedures', roundtable jointly hosted on by the Refugee Law Initiative (RLI), the International Association of Refugee Law Judges (IARLJ) and UNHCR, University of London, 22 May 2012, p. 12.

4.4.2 Gathering the facts and the principle of rigorous scrutiny

According to Dutch administrative law, the determining authority has a duty to examine an application carefully and thoroughly, and when “*preparing an order an administrative authority shall gather the necessary information concerning the relevant facts and the interests to be weighed*”.²⁷⁸ In the context of the determination of international protection needs, this includes the duty to gather relevant COI, for the determining authority must compare the applicant’s statements with all that is known from objective, independent and reliable sources about the situation in the country of origin or place of habitual residence, and with assessments based on interviews with other aliens in comparable situations.²⁷⁹

By way of illustration, in one case the European Court of Human Rights held that the determining authority ought to have directed that an expert opinion be obtained on the probable cause of the applicant’s scars. This was required in circumstances where he had made out a *prima facie* case concerning their origin by providing medical evidence that was consistent with his statements: “*While the burden of proof, in principle, rests on the applicant, the Court disagrees with the Government’s view that it was incumbent upon him [the applicant] to produce such expert opinion.*”²⁸⁰

In another case, the European Court of Human Rights found that the national authorities had rejected documentary evidence that applicants had submitted in support of their application without sufficient investigation and that this was at odds with the close and rigorous scrutiny required.²⁸¹

The Court observed that the determining authority had had doubts about the credibility of the applicants’ claims to be Afghan nationals belonging to a Sikh minority. The applicants had arrived in Belgium with false passports, which they claimed had been arranged by a smuggler to whom they had given their original passports. However, they claimed to have submitted an original *taskara* (Afghan identity document) and copies of their original passports to the determining authority as evidence of their identity and nationality. The determining authority rejected the application on the grounds that the asserted Afghan nationality was not credible. This adverse credibility finding was based on one applicant’s insufficient knowledge of Afghanistan and the Pashto language, but without any additional investigation, such as the authentication of the documentary evidence submitted by the applicants. On appeal, the appellants had also submitted an email message from UNHCR in New Delhi, which stated, among other things, that the applicant had a valid Afghan passport issued by the Afghan Embassy in New Delhi and that the applicants had been under the protection of UNHCR in India. Copies of UNHCR attestations were also submitted. However, this documentation was not given any probative value on the grounds that it was considered easy to falsify such documents, and that the appellants had not provided the original passport.

The Court held that the national authorities’ dismissal of the documentary evidence as non-probative without verifying its authenticity – when this would have been easy to check with UNHCR – did not satisfy the duty of close and rigorous scrutiny expected of national authorities.²⁸²

²⁷⁸ Official translation of Article 3:2 of the General Administrative Law Act.

²⁷⁹ IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.3 (in the version of WBV 2010/10). The official reports of the Ministry of Foreign Affairs are considered to be accurate and the main source of independent and impartial information. However, in case of any doubt regarding the accuracy or completeness of an official report, the decision-maker should gather information from other appropriate sources with particular attention being given to the official reports of other countries, international organizations and NGOs. It is also possible to request expert investigation by third persons.

²⁸⁰ *R.C. v. Sweden*, no. 41827/07, ECtHR, 9 March 2010, para. 53.

²⁸¹ *Singh and Others v. Belgium*, no. 33210/11 (Chamber judgment, final), ECtHR, 2 October 2012. Press Release issued by the Registrar of the Court, ECHR 362 (2012), 02.10.2012.

²⁸² *Singh and Others v. Belgium*, no. 33210/11 (Chamber judgment, final), ECtHR, 2 October 2012, para. 104.

The European Court of Human Rights has emphasized that the assessment of a risk of treatment in violation of Articles 2 and/or 3 ECHR requires close and rigorous scrutiny.²⁸³ Hence, the assessment must be done in light of all the material placed before the Court or, if necessary, material obtained by its own means – *proprio motu*.²⁸⁴ Moreover, although in principle it is for the applicant to adduce evidence in support of his or her application, where such evidence is adduced, it is for the national authorities to dispel any doubts about it.²⁸⁵

It can be concluded from the aforementioned pronouncements of the European Court of Human Rights that the duty of close and rigorous scrutiny means that when a determining authority identifies an asserted material fact that can be confirmed or refuted if the determining authority makes reasonable enquiries to obtain evidence, not doing so could amount to an error of law. If any asserted material fact or the authenticity of relevant documentary evidence may be relatively easily verified by obtaining evidence from a reliable source or sources, then the duty of close and rigorous scrutiny requires the determining authority to do so where the credibility of the fact is in doubt.

In another case, the Court also noted that the obligation rested on the national authorities, and not on the applicant, to gather and verify relevant COI, including where this bears in favour of the applicant. It was found that the national authorities knew or ought to have known of the country conditions as the relevant facts were freely ascertainable from a number of sources.²⁸⁶

This case law is particularly pertinent because applicants are often not in a position to adduce further evidence to dispel doubts regarding the credibility of asserted facts. By contrast, determining authorities may have the means and the resources to obtain evidence that is not accessible to applicants.

The potential consequences on the part of determining authorities to not investigate the credibility of asserted facts carefully and diligently and, if necessary, to use the means at their disposal to produce relevant evidence was also starkly demonstrated in a case publicized in the British media in October 2012.

Reportedly, the determining authority rejected an application for protection by an Afghan applicant who claimed that he had formerly worked for the British armed forces as an interpreter in Afghanistan. He also asserted he had been injured in a Taliban attack that had killed a British serviceman and had been threatened with death if he returned to Afghanistan. The application was rejected on the grounds that his asserted identity and employment were not considered credible. The applicant had extensive bodily

²⁸³ *Shamayev and Others v. Georgia and Russia*, no. 36378/02, ECtHR, 12 April 2005, para. 448: “The Court considers it important to point out that an applicant’s complaint alleging that his or her extradition would have consequences contrary to Articles 2 and 3 of the Convention must **imperatively be subject to close scrutiny by a ‘national authority’**.” *M.S.S. v. Belgium and Greece*, no. 30696/09, ECtHR, 21 January 2011, para. 387; *M. and ors. v. Bulgaria*, no. 41416/08, ECtHR, 26 July 2011, para. 127; *Chahal v. The United Kingdom*, no. 70/1995/576/662, ECtHR, 15 November 1996; *NA v. The United Kingdom*, no. 25904/07, ECtHR, 17 July 2008, para. 111; *Jabari v. Turkey*, no. 40035/98, ECtHR, 11 July 2000; *Yoh-Ekale Mwanje c. Belgique*, no. 10486/10, ECtHR, 20 December 2011; *Hirsi Jamaa and Others v. Italy*, no. 27765/09, ECtHR, 23 February 2012. See also, T Spijkerboer, ‘Stereotyping and acceleration: gender, procedural acceleration and marginalised judicial review in the Dutch asylum system’, Chapter 5, pp. 97–9, in G Noll, (ed.) *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*, Leiden: Martinus Nijhoff, 2005.

²⁸⁴ *Cruz Varas and Others v. Sweden*, no. 46/1990/237/307, ECtHR, 20 March 1991, para. 75; *Chahal v. The United Kingdom*, no. 70/1995/576/662, ECtHR, 15 November 1996, para. 97; *H.L.R. v. France*, no. 24573/94, ECtHR, 29 April 1997, para. 37; *Salah Sheekh v. The Netherlands*, no. 1948/04, ECtHR, 11 January 2007, para. 136; *N. v. Finland*, no. 38885/02, ECtHR, 26 July 2005; *Vilvarajah and Others v. The United Kingdom*, no. 45/1990/236/302-306, ECtHR, 26 September 1991.

²⁸⁵ *F.H. v. Sweden*, no. 32621/06, ECtHR, 20 January 2009, para. 95: “In principle, the applicant has to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence is adduced, it is for the Government to dispel any doubts about it.”; *NA v. The United Kingdom*, no. 25904/07, ECtHR, 17 July 2008, para. 111; *R.C. v. Sweden*, no. 41827/07, ECtHR, 9 March 2010; *N. v. Sweden*, no. 23505/09, ECtHR, 20 July 2010.

²⁸⁶ *M.S.S. v. Belgium and Greece*, no. 30696/09, ECtHR, 21 January 2011, para. 358: “the Court considers that at the time of the applicant’s expulsion the Belgian authorities knew or ought to have known that he had no guarantee that his asylum application would be seriously examined by the Greek authorities.” para. 359: “The Government argued that the applicant had not sufficiently individualised, before the Belgian authorities, the risk of having no access to the asylum procedure and being sent back by the Greek authorities. The Court considers, however, that it was in fact up to the Belgian authorities, faced with the situation described above, not merely to assume that the applicant would be treated in conformity with the Convention standards but, on the contrary, to first verify how the Greek authorities applied their legislation on asylum in practice.” para. 366: the Court noted that “these facts were well known before the transfer of the applicant and were freely ascertainable from a wide number of sources.”

scarring, which, he asserted, was caused by shrapnel wounds. He had also submitted documentary evidence including photographs of his treatment in a field hospital in Afghanistan, his British Army identity cards as well as references from British army officers. The determining authority concluded that there was no evidence to indicate the cause of the scarring on the applicant's body, that the documentary evidence submitted could have been forged and that the asserted facts were not credible on account of discrepancies in the ID cards. However, a journalist was able to find, within 20 minutes, two independent and reliable sources that were able to confirm the applicant's account. It was reported that the determining authority could have easily verified the asserted material facts and authenticity of documents with the Ministry of Defence and other witnesses (formerly) from the military in the UK.²⁸⁷ Following widespread publicity of the case, the determining authority decided to review the application and protection has reportedly since been granted.²⁸⁸

²⁸⁷ Newsnight programme broadcast by the BBC on 2 October 2012. See also <http://www.bbc.co.uk/news/uk-england-leicestershire-20058317>; <http://www.bbc.co.uk/news/uk-england-leicestershire-19826818>; <http://www.dailymail.co.uk/news/article-2211760/Asylum-application-rejected-Afghan-interpreter-blown-Taliban-patrol-British-troops.html>.

²⁸⁸ <http://www.thisisleicestershire.co.uk/Afghan-interpreter-stay-Leicester-UK-Border/story-17158615-detail/story.html>

5. Conclusion

While the duty to substantiate the application rests with the applicant, it only does so ‘in principle’. The inherent difficulties facing applicants seeking to provide information and to support their statements with documentary and other evidence may require the determining authority to gather evidence and specific information bearing on the asserted relevant facts by its own means, including any evidence that supports the asserted facts.

UNHCR stresses that the applicant’s duty to substantiate the application does not entail a duty to provide documentary or other evidence in support of every material fact asserted by the applicant, and that the statements of the applicant constitute evidence capable of substantiating an application and should be assessed with regard to credibility.

It is critical that decision-makers take into account the applicant’s individual and contextual circumstances, including the circumstances in the country of origin or place of habitual residence, when determining what documentary evidence an applicant can reasonably be expected to submit and in assessing whether an explanation for a lack of documentary evidence is satisfactory.

As for the decision-maker’s duty to cooperate in gathering the facts of the application, this entails: the provision of information and guidance to the applicant with regard to his or her duty to substantiate the application and how to discharge this duty; the use of appropriate questioning during the interview to guide the provision of statements and other evidence by the applicant; the opportunity for the applicant to clarify any potential adverse credibility findings before a decision is made; and the use of all means at the decision-maker’s disposal to gather relevant evidence bearing on the application, including, where necessary, in support of the application.

A number of compelling factors may necessitate this duty to be active and communicated in many cases. These include the larger number of resources generally available to the determining authority; the shared duty of the determining authority to ascertain and evaluate all the relevant facts; the duty of the determining authority to conduct a thorough and rigorous assessment to dispel doubts about the credibility of asserted facts; and the gravity of the possible consequences of an erroneous determination. These elements may require the authorities to take active steps to gather such evidence in order to ensure an accurate assessment of the claim.

CHAPTER 5

Credibility Indicators

1. Introduction	137
2. Sufficiency of Detail and Specificity	138
2.1 Policy framework on sufficiency of details.....	138
2.2 Memory and sufficiency of details	139
2.3 The individual and contextual circumstances of the applicant and sufficiency of details	142
2.4 Shame and stigma and sufficiency of details.....	145
2.5 Other factors impacting on the level of detail	145
2.6 Questions of general knowledge and sufficiency of details.....	146
3. Internal Consistency of the Oral and/or Written Material Facts Asserted by the Applicant.....	149
3.1 Policy framework on internal consistency.....	150
3.2 Memory and internal consistency.....	151
3.3 The individual and contextual circumstances of the applicant and internal consistency.....	153
3.4 Consistency between earlier and later statements	154
3.5 State practice on consistency between earlier and later statements.....	156
3.6 Consistency of applicant's statements with supporting documentary or other evidence submitted by the applicant.....	160
3.7 Basing the credibility assessment on the entire evidence.....	161
4. Consistency of the Applicant's Statements with Information Provided by Family Members and/or Witnesses.....	165
4.1 Memory and consistency with information provided by family members and/or witnesses.....	165
4.2 Consistency with statements of other applicants	166
4.3 Individual and contextual circumstances and consistency with information provided by family members and/or witnesses	167
4.4 State practice on consistency with information provided by family members and/or witnesses.....	168
5. Consistency of the Applicant's Statements with Available Specific and General Information...169	169
5.1 Legal and policy framework.....	169
5.2 Guidance on use of 'external consistency'.....	170
5.3 The individual and contextual circumstances of the applicant and 'external consistency'.....	171
5.4 Consistency with country of origin information	173
6. Plausibility.....	176
6.1 Meaning of 'plausible'	176
6.2 The individual and contextual circumstances of the decision-maker	177
6.3 Use of plausibility in state practice.....	181
6.3.1 Subjective assumptions and speculation	181
6.3.2 Perception of risk.....	183
7. Demeanour.....	185
7.1 The individual and contextual circumstances	186
7.2 State practice on demeanour.....	189
8. Conclusion.....	191

1. Introduction

Member States are obliged to ensure that applications for international protection are examined and decisions are taken individually, objectively and impartially.¹ However, there is no infallible and fully objective means to determine whether an applicant's statements are genuine. In an effort to promote an effective and structured approach, and to minimize the scope for subjectivity in assessing the credibility of the material facts asserted by the applicant, international and national legal jurisdictions have utilized credibility indicators against which the applicant's statements and any other evidence submitted are assessed.

The study has highlighted and confirmed some of the inherent challenges in the effective use of credibility indicators, which are, necessarily, based on assumptions about human memory, behaviour, attitudes, perceptions of and responses to risk, and about how a truthful account is expected to be presented.² Some of these assumptions may be incorrect in individual cases and may reflect an inadequately informed understanding of the applicant's individual and contextual circumstances, in particular how these circumstances may affect memory and behaviour.

This chapter therefore considers the main indicators found to be used in the assessment of credibility by decision-makers, and highlights how these are interpreted in state practice. The sections below provide some insights into the meaning of these indicators, the assumptions that underlie them, some of the factors that need to be taken into account, and other key issues relating to implementation.

¹ Article 8 (2) APD: "Member States shall ensure that: (a) applications are examined and decisions are taken individually, objectively and impartially."

² J Herlihy, K Gleeson, S Turner, 'What Assumptions about Human Behaviour Underlie Asylum Judgments?', *International Journal of Refugee Law*, vol. 22, no. 3, 2010, p 351–66 at 351.

2. Sufficiency of Detail and Specificity

This indicator requires the decision-maker to assess whether the level and nature of the detail provided by the applicant reflects what would reasonably be expected from someone with the claimed individual and contextual circumstances (that is his or her age, gender, region of origin, education, and so forth), who is giving a genuine personal experience.³

The assumption underlying this indicator is that a person who is relating a lived experience will be able to recall and recount an experience in greater detail – including for example sensory details such as what he or she saw, heard, thought, or felt, about an event – than someone who has not had this experience.⁴ This then translates into the assumption that vagueness, brevity, or an inability to provide information about asserted material facts may, when the individual and contextual circumstances of the applicant have not been appropriately taken into account, be considered to cast doubt on the credibility of the asserted facts.⁵

This section therefore looks at the state practice on sufficiency of details, how the applicant's individual and contextual circumstances may impact the level of detail provided, and how memory as well as shame and stigma may need to be taken into account in relation to this indicator. Last, the section focuses on the 'questions of general knowledge' devised by some states and how sufficiency of detail is used in the assessment of the applicant's responses.

2.1 Policy framework on sufficiency of details

In the Netherlands, policy guidance for the determining authority explicitly states that in assessing whether the applicant's statements are credible, it should be determined, among other things, whether the applicant answered questions as fully as possible and can provide sufficient information, that is, information that he or she should reasonably be able to give on relevant events and circumstances. The guidance further states that it may be concluded that the statements are not considered consistent and plausible if the applicant makes vague and short statements.⁶

Similarly, UK policy guidance states that the *"level of detail with which an applicant sets out his claims about the past and present is a factor which may influence a decision maker when assessing internal credibility."*⁷ Further, it usefully highlights that:

³ A.S. v. Sweden, CAT/C/25/D/149/1999, 15 February 2001, para. 8.6.

⁴ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p.15; and UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 14, which provides that: *"It is reasonable to expect, subject to mitigating circumstances, that an applicant relating an experience that occurred to them will be more expressive and include sensory details such as what they saw, heard, felt or thought about an event, than someone who has not had this experience."* See also EAC, Module 7, section 3.2.

⁵ *Achmadov and Bagurova v. Sweden*, no. 34081/05, ECtHR, 10 July 2007, p. 20: *"The Court notes in this respect, as pointed out by the Government, that no specific details have been provided regarding the alleged ill-treatment to which the applicants maintained that they were subjected before January 2002."*

⁶ IND Working Instruction 2010/14, paragraph 4.1 (c).

⁷ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 15; UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p.13; See also UKBA, Asylum Instructions, *Gender Issues in the Asylum Claim*, September 2010, section 7.2 and UKBA, Asylum Instructions, *Conducting the Asylum Interview*, March 2012, section 4.3 (v4.5).

“decision makers should be aware of any mitigating reasons why an applicant is [...] unable to provide detail, or delays in providing details of material facts. These reasons should be taken into account when considering the credibility of a claim and must be included in the reasoning given in the subsequent decision. Factors may include the following (the list is not exhaustive): age; gender; mental health issues; mental or emotional trauma; fear and/or mistrust of authorities; feelings of shame; painful memories particularly those of a sexual nature and cultural implications. It is also important to consider whether a particular line of questioning was reasonable.”

Although the guidance goes on to state that, “[n]otwithstanding any mitigating circumstances, it is a reasonable expectation for an applicant to recount an event to the level of detail that can be reasonably expected of an individual who has experienced the claimed event,”⁸ UNHCR’s review of case files in the three EU Member States of focus confirmed that sufficiency of detail and specificity is used in practice as an indicator of the credibility of applicants’ statements.⁹

2.2 Memory and sufficiency of details

The way human beings record, store, and retrieve memories may also have an impact on the level of detail and the specificity of information that an applicant provides in his or her statements. In this regard, decision-makers must be careful to ensure that they do not have unreasonable expectations regarding what applicants should remember.

Empirical evidence indicates that temporal details, such as dates, frequency, duration, and sequence, are extremely difficult for anyone – not just applicants for international protection – to recall with any accuracy, if at all, even with regard to significant or traumatic events.¹⁰ Likewise, the fact that an event or a person is significant or considered to be ‘memorable’ does not necessarily mean that details will be remembered.¹¹

This would suggest that decision-makers should not assume that an inability to recall a date; or the number of times something occurred; or the frequency with which it occurred; or how long something lasted; or the exact order in which events occurred; is necessarily indicative of a lack of credibility.¹² However, UNHCR’s research found that some decision-makers may be disregarding existing scientific evidence about memory in their expectations of what applicants should remember.

For instance, an inability to recall temporal information would be considered indicative of a lack of credibility. For example, one decision-maker informed UNHCR that if the applicant is well-educated, he or she is expected to give exact dates about the events recounted, whereas this decision-maker did not expect accurate recall of dates from those with less education.¹³

⁸ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, p.13.

⁹ For example: AFG01MRS; AFG02MRS; AFG03FRS; AFG04MSP; AFG05MSP; AFG07M; AFG09M; IRQ08FSP; DRC03M; DRC05M; DRC06M; DRC07F; DRC08F; DRC09F; GUI01MRS; GUI04M; GUI05M; GUI06M; GUI08M; GUI09M; IRQ01MBP, AFG02FNP, AFG03MNP, AFG04MNP, AFG05MNP, IRN01FNP, IRN01MNP, IRN02MNP, IRQ02FNP, IRQ01MNP, IRQ02MNP, IRQ04MNP, IRQ05MNP, SOM01FNP, SOM02FNP, IRQ06MRS, SOM09M, AFG07M, AFG09F, AFG10F.

¹⁰ H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no.4, 2010, p 469–511 at p. 469.

¹¹ H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no.4, 2010, p 469–511 at p. 484.

¹² H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511; see also J Cohen, ‘Errors of Recall and Credibility of Testimony: Can Omissions and Discrepancies in Successive Statements Reasonably Be Said to Undermine Credibility of Testimony’, *Medico-Legal Journal*, vol. 69, no. 1, 2001, p 25–34. Decision-makers should bear in mind issues of cultural relativity. For example, certain ‘details’ relating to clock and calendar are emphasized in Western cultures but are not necessarily in other cultures.

¹³ INTO8IRNM.

In UNHCR's review of case files, it was noted that in a significant number of cases the decision-maker considered the applicant's inability to recall a date¹⁴ or duration¹⁵ as an indicator undermining credibility. For example, in the following case the applicant claimed to have received threats from a prominent individual in Afghanistan. The decision stated:

“It is considered that there are a number of issues regarding your claim. Firstly you were unable to state the date that X came to your house, just stating it was in Mizan. You were asked why you did not know and just stated ‘I don’t know what date was it.’ However it is reasonable to expect that you would know the date of such a significant event in your life, the event you claim that led to you to leave Afghanistan and the fact that you were unable to state this date undermines your credibility.”¹⁶

Research also demonstrates that it is difficult to recall verbal exchanges verbatim.¹⁷ Yet, UNHCR observed a case in which a discrepancy between the applicant and her son with regard to the exact wording used by men who had stopped them at a checkpoint was noted in the decision as one element undermining the credibility of the asserted fact.¹⁸ It may also be that the applicant comes from a culture where specificity of memory is not valued or taught in the same ways as in Western cultures.¹⁹

Moreover, decision-makers should not expect applicants to know or remember proper names and details about common objects, such as the design of currency (coins and notes), identity documents, etc.²⁰ People have a particularly poor visual memory for common objects because functional information is more important than visual or other sensory information.²¹ This is particularly relevant when general knowledge questions are used to probe credibility, for example, asking applicants to describe common objects such as currency, identity cards, car licence plates, local buildings, or monuments. A failure to describe such objects is not necessarily indicative of a lack of credibility, but may simply be indicative of a failure to retain such information in memory. Yet, UNHCR observed that a failure to provide detailed responses to questions focusing on common objects was considered indicative of a lack of credibility.²²

Empirical scientific evidence also suggests that decision-makers should not expect applicants to be able to accurately recall the details of repeated events accurately, as our memories of these tend to merge into a new generic or fused memories. Furthermore, in some cases, the memory of a more recent incident erases those of earlier yet similar ones.²³ However, UNHCR observed cases in which applicants were expected to recall the details of repeated events.

By way of illustration, in one case reviewed, a female applicant claimed to have been sexually abused repeatedly from a young age. Her inability to recall dates and days was considered to contribute to a finding of non-credibility with regard to this fact:

¹⁴ For example, AFG09M: it was noted that the applicant only remembered the month and not the exact date on which he was asked to participate in terrorist activities. Also: AFG05M, AFG07M, IRN05M, AFG10F, IRQ02M, SOM05M.

¹⁵ For example, IRQ02FNP: notwithstanding the applicant's illiteracy, she was expected to provide details regarding dates, months and durations.

¹⁶ AFG10F.

¹⁷ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no.4, 2010, p 469–511 at 480.

¹⁸ IRQ07FSP.

¹⁹ J Herlihy, L Jobson, S Turner, 'Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum', *Applied Cognitive Psychology*, vol. 26, no. 5, 2012, p 661–76.

²⁰ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no.4, 2010, p 469–511 at 480.

²¹ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no.4, 2010, p 469–511 at 480.

²² IRQ10M, SOM08M.

²³ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no.4, 2010, p 469–511 at 481.

“You were also vague about the details. At your substantive interview, you admitted that you do not know the dates or days of the week when he abused you. You said that he tried to abuse you in Syria but were unable to say when or provide any details. It is therefore not accepted that you were sexually abused.”²⁴

In this case, it was unclear from the written decision whether the decision-maker had taken into account any of the relevant individual and contextual circumstances, for example:

- the fact that dates, frequency, duration, and sequence are extremely difficult for anyone to recall with any accuracy, if at all, even with regard to significant or traumatic events;²⁵
- the fact that when incidences are repeated, regardless of whether they are significant or mundane, a generic memory fusing the separate specific instances may be formed.²⁶ This makes it extremely difficult for anyone to recall separate incidences accurately that happened repeatedly;²⁷
- the fact that the alleged incidences of sexual abuse took place over an extended period of time; and the impact of the passage of time on memory and normal forgetting;
- the approximate age of the applicant at the time when the abuse was alleged to have started, and the impact of age on memory;
- the fact that the applicant had claimed to be the victim of sexual violence, and the possible impact of trauma on memory (see below);²⁸ and
- the possible impact of shame and stigma on testimony relating to sexual violence.²⁹

Another apparent assumption is that traumatic experiences will be remembered clearly and in detail.³⁰ However, scientific empirical evidence demonstrates that memory of traumatic events can be significantly impaired and, in some cases, there may be no memory at all.³¹ Post-traumatic stress disorder or other mental ill-health may explain vagueness and brevity. This has been recognized by the Committee against Torture:

“In the Committee’s view, the vagueness referred to by the State party can be seen as a result of the psychological vulnerability of the complainant mentioned in the report; moreover, the vagueness is not so significant as to lead to the conclusion that the complainant lacks credibility.”³²

²⁴ IRQ04F.

²⁵ H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at 469.

²⁶ J Cohen, ‘Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers’, *International Journal of Refugee Law*, vol. 13, no. 3, 2001, p 293–309 referring to F C Bartlett, *Remembering: A Study in Experimental and Social Psychology*, Cambridge: CUP, 1932; and J A List, ‘Age and Schematic Differences in Reliability of Eyewitness Testimony’, *Development Psychology*, vol. 22, no. 1, 1986, p 50–7.

²⁷ S Bidrose, G S Goodman, ‘Testimony and Evidence: A Scientific Case Study of Memory for Child Sexual Abuse’, *Applied Cognitive Psychology*, vol. 14, no. 3, 2000, p 197–213 at p. 209.

²⁸ Indeed, the interview record noted that the applicant had stated “I suffered a psychological condition and became frightened”: IRQ04F, Substantive Interview Record. See also, UKBA, Asylum Instructions, *Gender Issues in the Asylum Claim*, September 2010, section 8, (revised); Asylum Aid, *Comisión Española de Ayuda al Refugiado (Spain – coordinator), France terre d’asile (France), Consiglio Italiano per i Rifugiati (Italy) and the Hungarian Helsinki Committee (Hungary), Gender Related Asylum Claims in Europe: Comparative Analysis of Law, Policies and Practice Focusing on Women in Nine EU Member States*, May 2012, p 77–84; Asylum Aid, *Lip-Service or Implementation: The Home Office Gender Guidance and Women’s Asylum Claims in the UK*, March, 2006, p. 85; Legal Action for Women, et al., *A ‘Bleak House’ for Our Times – An Investigation into Women’s Rights Violations at Yarl’s Wood Removal Centre*, London: Crossroads Women’s Centre, 2005, p 6–7.

²⁹ Swedish Migration Board (Migrationsverket), *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection*, 28 March 2001, p. 14: “The description of a chain of events can be made less detailed or specific because a woman may not want to remind herself about all the details and circumstances. This should be kept in mind when evaluating the information a woman provides.”

³⁰ J Herlihy, K Gleeson, S Turner, ‘What Assumptions about Human Behaviour Underlie Asylum Judgments?’, *International Journal of Refugee Law*, vol. 22, no. 3, 2010, p 351–66; J Herlihy, S Turner, ‘Asylum Claims and Memory of Trauma: Sharing our Knowledge’, *The British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 3–4 at p. 3.

³¹ For further information, refer to chapter 3; see also D Bögner, J Herlihy, C Brewin, ‘Impact of Sexual Violence on Disclosure during Home Office Interviews’, *British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 75–81.

³² *Falcon Rios v. Canada*, CAT/C/33/D/133/1999, 17 December 2004, para. 8.5.

2.3 The individual and contextual circumstances of the applicant and sufficiency of details

Many factors may explain why an applicant may not disclose or have knowledge of details of relevant facts: age at the time events took place and/or at the time of the asylum procedure, gender, sexual orientation and/or gender identity, education, cultural background, shame, fear, mistrust of authorities, trauma, depression, anxiety, are but a few. UK guidance reflects the various factors that influence a person's level of disclosure during an interview.³³

UNHCR's observations of interviews and subsequent decisions showed some examples of good practice where the age of the applicant was considered in determining the applicability of the sufficiency of detail indicator.³⁴ In one case the applicant recalled events that occurred when he was five years of age that prompted his family to flee Somalia. The internal note stated that:

“The context of this information is consistent with the claimant's assertions that he left Somalia with his family in 1991 and went to stay in Jomvu, Kenya because of the violence. His recollections of these incidents are vague due to his age[...].”³⁵

In another case, UNHCR observed that the applicant's age was acknowledged as a relevant factor but discounted as a mitigating circumstance:

“Given you claim to be around fifteen years old when you left Afghanistan, your age is no excuse for you to have such a lack of knowledge of your father's role with the Taliban. Such a complete lack of knowledge would lead to the conclusion that your father was not involved with the Taliban. Consequently, the aspect of your claim that you fled Afghanistan after your whole family was killed by the Taliban after your father left is not accepted.”³⁶

Gender and social constraints may restrict a female's access to information and/or her knowledge about certain events and activities. In certain cultures, men do not share information about their professional, political, military, or even social activities with their female relatives and this may account for a female applicant's lack of knowledge.³⁷ In some cases, the written decision reflected that such factors had been considered, but were discounted as an unsatisfactory explanation.³⁸

³³ UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 15. “Decision makers must be aware of and take into account, the profile the applicant. This is relevant both in assessing the level of knowledge they can reasonably be expected to have and the effect other factors such as age, gender, social background and underlying medical or psychological factors will have on the applicant's ability to recall certain facts. For example, the more active the applicant claimed to be in a political party the greater the expectation that they would be able to provide more detailed information. Any explanation given should then be acknowledged and considered in the overall assessment of internal credibility.”

³⁴ AFG02MNP.

³⁵ INT02SOMM.

³⁶ AFG08M.

³⁷ UKBA, Asylum Instructions, *Gender Issues in the Asylum Claim*, September 2010. See also UNHCR, *Guidelines on the Protection of Refugee Women*, July 1991, para. 72: “Understand that women in many societies do not have specific information about the activities of the men in their families. Gaps in their knowledge should not be construed as lack of credibility unless there is other evidence of such lack of credibility.”

³⁸ For example, in AFG10F, the applicant, a female, who asserted she was from Afghanistan, stated several times during the personal interview that she hardly ever left her home and that her husband rarely spoke to her about his activities outside the home. The fact that the applicant could not name the President of Afghanistan and did not know whether there had been any elections since the fall of the Taliban regime was considered indicative of the fact that she had not been recently resident in Afghanistan. In addition to the applicant's age in this case, the applicant's inability to provide the requested detail may have been due to her gender, culture, and social status in her country of origin or place of habitual residence rather than the non-credibility of the asserted fact. The decision stated: “To such simple questions an answer may be expected, even from women who say they have lived a very isolated life.”



In the case of an Iraqi woman who claimed that her husband worked in the Iraqi Republican Guard, the claimant repeatedly asserted that she did not know the details of his job, training, superiors, colleagues, and the operations. This was because, as an uneducated woman, her husband had never told her about his work and activities, and because she could not sit in on the conversations of the men where such issues might be discussed. Nevertheless, her inability to provide details of her husband's activities was considered indicative of a lack of credibility:

“It is very unlikely that your husband served for the Republican Guard during 16 years and you can only provide so little information about this. You indicate that nothing about this was told to you as a woman [...]. This explanation however is not sufficient. Even more because you were given the chance to tell everything you knew about your husband's function and you couldn't say more than that he was a metal worker and when he came home [...]. One could expect that you, as his wife, would be able to say more about this, even if this would be minor facts that you might have heard from your husband, his family or your friends. Furthermore your husband was part of the army. Therefore, one could expect that you as spouse with six children of a man who has served the former regime would not be uninterested by his actions. These findings raise a lot of questions.”³⁹

It is important to recall that social constraints governing gender roles may have limited a female applicant's access to information. The US training course on gender-related claims usefully notes that:

“A woman who may be at risk of persecution because of her relationship to a male family member may be unable to provide detail about the activities of the male family member that placed the family at risk. In many societies, it is normal for a male family member not to discuss his 'public' activities (such as political activities, or activities in a union or religious organization) with female members of the family, even with his wife.”⁴⁰

³⁹ IRQ08FSP. Also in DRC07F, the female applicant repeatedly stressed that she was only a woman and that her partner had not told her much about his activities as a human rights lawyer. The final decision stated that this was “no excuse” for her lack of knowledge.

⁴⁰ Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module on Gender-Related Claims*, October 2012, para. 7.1.1.

The training course also highlights that such constraints may also restrict a woman's role in a political organization so that even if she takes great risks to further the goals of the organization, her knowledge of the detailed workings and structure of the organization may have been limited by male members. Further, a woman's cultural and social background may also affect her ability to provide a detailed account. In some cultures, women may live secluded lives with little contact with strangers, and male relatives may speak on their behalf when in company. This may result in an applicant providing only short or limited answers to questions posed.⁴¹

It should also be borne in mind that the assumption that a person who is relating a genuine experience will tend to be more expressive and detailed is based on a Western cultural and gender perspective that may be alien to the applicant.⁴²

A lack of education can affect the applicant's capacity for self-expression, and this may explain a vague or halting account.⁴³ For example, in one case reviewed, the decision-maker explicitly noted that the applicant's errors and gaps in knowledge about her region of origin might be explained by the fact that she had never attended school and was a housewife.⁴⁴

In another case, the applicant stated that he had not attended school because his father had trained him as a fisherman. During the personal interview, the applicant was asked questions about significant places in Somalia, Somali currency and an island to which the applicant had fled.⁴⁵ There was no explicit recognition in the decision that the applicant's age and other factors such as his education, social status, language barriers, and life experiences might explain the inability to provide detail. The importance of taking into consideration the individual and contextual circumstances of the applicant was outlined in the appeal decision on this case, which was subsequently allowed. The judge stated:

“When the Appellant's answers about Somali money and his familiarity with it are considered fully I do not find this to be a shortcoming. The Appellant himself says at question and answer 182 that he has never spent Somali money and the only monies he has seen was that handled by his family. Given this, it is hardly surprising that he was unable to accurately describe the detail about the money. I have also taken account of the age, education and vulnerability of the Appellant when assessing his evidence overall. Looking at the whole of the evidence I do not consider it particularly significant that he should consider that the shoreline of Somalia is another island, given the fact he had never left his island. Similarly whilst I do not know the way in which harbour translates in Kibajuni or Swahili it is I think axiomatic (whatever the language) that if one has no experience of something it would be extremely difficult to translate/describe.”⁴⁶

⁴¹ Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module on Gender-Related Claims*, October 2012, para. 7.1.1 and 7.1.3.

⁴² J Herlihy, L Jobson, S Turner, 'Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum', *Applied Cognitive Psychology*, vol. 26, no. 5, 2012, p 661–76.

⁴³ Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module on Gender-Related Claims*, October 2012, para. 7.1.4

⁴⁴ GUI03FRS.

⁴⁵ SOM09M. The decision stated the following: *“It is noted that you were unable to confirm any further information over and above this general information on Somalia. In this regard, it is noted that you were only able to name four major places in Somalia, that you could not name the areas in Northern Somalia, that you were unable to describe Somali banknotes and could not name the President of Somalia prior to the current President. Furthermore it is noted that you described the 100 Shilling banknote as being of a mud colour and having a lady and a child on one side and grain, possibly wheat, corn or rice on the other side, which is inconsistent with the actual description of the Shilling banknote. [...] It is noted that during your asylum interview you incorrectly stated that there is no harbour for ships on Chula Island, as well as incorrectly stating that you are unable to see the Somali mainland from Chula Island.”*

⁴⁶ SOM09M, Appeal Determination, paras. 24 and 25.

2.4 Shame and stigma and sufficiency of details

UNHCR has long cautioned about the impact of shame or stigma on the level of disclosure.⁴⁷ Research equally shows that a sense of shame or stigma may inhibit disclosure of relevant information and details.⁴⁸ Applicants may struggle to address in detail certain experiences, such as past torture or sexual violence, trafficking, or issues such as sexual orientation and/or gender identity, they are by nature very private and/or the applicant may harbour deep feelings of shame and/or fear of rejection or reprisals by others.⁴⁹

The US training course on gender-related claims highlights that “*because persecution directed against women may involve sexual harm, you need to be sensitive to the possibility that a woman is reluctant to provide detail about certain experiences because those experiences may be difficult to discuss, particularly with a male officer or through a male interpreter.*”⁵⁰

In one case reviewed by UNHCR, the decision-maker noted that the fact that the applicant had provided detailed information regarding his detention, but had provided little detail regarding the sexual abuse suffered during detention, was considered indicative of the credibility of the asserted facts, bearing in mind the effect of traumatic events on memory encoding and recall.⁵¹

2.5 Other factors impacting on the level of detail

Insufficiency of detail in an applicant’s account may also simply be a reflection of a lack of awareness on the part of the applicant that specific details are relevant and would support the application. This lack of awareness may be due to something as simple as a lack of space on an application form suggesting that only a brief outline of facts is required. Or it may be due to a lack of or inadequate guidance provided to the applicant regarding the significance and desirability of detail. It may result from a problem of communication. For example, in one case reviewed the decision-maker recognized that the applicant’s vague responses may have been due to her failure to understand the questions clearly.⁵²

Insufficiency of detail may also result from a failure on the part of the interviewer to pose clear or appropriate questions to elicit detail.⁵³ In other words, decision-makers should ensure that they do not simply expect the disclosure of details by the applicants and then make adverse credibility findings based on the fact that

⁴⁷ UNHCR, *Guidelines No. 1*, para. 35. UNHCR; *Guidelines No. 9*, paras. 3 and 59; UNHCR, *Guidelines No. 7*, para. 48.

⁴⁸ J Herlihy, S Turner, ‘Asylum Claims and Memory of Trauma: Sharing our Knowledge’, *The British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 3–4 at p. 4; D Bögner, J Herlihy, C Brewin, ‘Impact of Sexual Violence on Disclosure during Home Office Interviews’, *British Journal of Psychiatry*, vol. 191, no.1, 2007, p. 75; J Millbank, “‘The Ring of Truth’: A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations”, *International Journal of Refugee Law*, vol. 21, no. 1, 2009, p. 14; D Bögner, C Brewin, J Herlihy, ‘Refugees’ Experiences of Home Office Interviews: A Qualitative Study on the Disclosure of Sensitive Personal Information’, *Journal of Ethnic and Migration Studies*, vol. 36, no. 3, 2009, p 519–35; Asylum Aid, “‘I Feel Like as a Woman, I am not Welcome’: A gender analysis of UK asylum law, policy and practice”, *Women’s Asylum News: Issue no. 107, December 2011–January 2012*, p 1–4, December 2011; Irish Council for Civil Liberties, *Irish Times, Women and the Refugee Experience. Towards a Statement of Best Practice*, June 2000, p. 18.

⁴⁹ UKBA, Asylum Instructions, *Guidance for the Competent Authorities for Cases of Potential Trafficking*, October 2010, p. 21: “*Moreover, as a result of trauma, victims in some cases might not be able to recall concrete dates and facts and in some cases their initial account might contradict their later statement. This is often connected to their traumatic experience.*” Immigration Equality, *Guidance for Adjudication of Lesbian, Gay, Bisexual, Transgendered and HIV Asylum Claims Materials*, 2004, p. 14: “*Remember that for anyone in any setting, talking about something as private as sexual orientation is very difficult. [...] Officers should be sensitive to the difficulty of this subject matter and should not automatically conclude that an applicant lacks credibility because s/he is shy about discussing sexual orientation.*”

⁵⁰ Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module on Gender-Related Claims*, October 2012, para. 7.1.2.

⁵¹ IRQ02MSP.

⁵² DRC02FRS.

⁵³ J Herlihy, L Jobson, S Turner, ‘Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum’, *Applied Cognitive Psychology*, vol. 26, no. 5, 2012, p 661–76.

the level of detail expected or required was not offered. In other words, decision-makers should ensure that they do not simply expect the applicant to disclose the details.

This is reflected in national jurisprudence, which states that credibility should not be impugned on grounds of a lack of detail if questioning during the interview is not tailored to elicit details.⁵⁴ For example:

*“Given that the appellant appeared before him, if he had thought that the appellant needed to give more detail than he had, he should have sought such details and if the appellant had not provided the detail then the Adjudicator could properly have concluded that he had been evasive in his evidence. To describe a person’s evidence as vague and use that as a ground of disbelief is, in our view, quite unsatisfactory unless of course the areas of lack of detail, which cause concern, are clearly spelt out.”*⁵⁵

UNHCR’s review of interview records and observations of interviews in the three Member States surveyed found that, at times, the interviewer had not elicited relevant detail through appropriate questioning and then concluded that the absence of this detail undermined the credibility of the applicant’s statements.⁵⁶

2.6 Questions of general knowledge and sufficiency of details

Some determining authorities devise ‘general knowledge’ questions to probe the credibility of, for example, an applicant’s alleged place of origin, ethnicity, religion, or religious conversion.⁵⁷ The indicator of sufficiency of detail and specificity is applied in the assessment of an applicant’s responses to such questioning. The underlying assumption is that it is reasonable to expect a person to have a certain level of knowledge about matters relevant to the asserted material facts, bearing in mind their individual and contextual circumstances.⁵⁸

Academic literature has highlighted the pitfalls of using general knowledge questions to assess the credibility of facts. It has cautioned against basing assumptions of what an applicant should know on speculation, stereotyping, or the decision-maker’s own cultural, gender, educational and social references,⁵⁹ and doing so without a careful and informed assessment of what knowledge an individual applicant could reasonably be expected to possess.

⁵⁴ *Ali v. the head of the State Agency for Refugees*, Supreme Administrative Court of Bulgaria (*Върховен административен съд*), 14106/2009, 10 June 2010; *Y. A. v. Ministry of Interior*, Supreme Administrative Court of Czech Republic (*Nejvyšší správní soud*), 6 Azs 50/2003-89, 24 February 2004; Administrative Court of Republic of Slovenia (*Upravno sodišče Republike Slovenije*), I Up 502/2010, 12 May 2010.

⁵⁵ *B v Secretary of State for the Home Department (DR Congo)* [2003] UKIAT 00012, 12 June 2003, cited in M Symes, P Jorro, *Asylum Law and Practice*, Haywards Heath: Bloomsbury Professional, 2010 (second edition), p. 58.

⁵⁶ IRN04M, SOM04M, AFG01M, SOM05M, AFG07M, AFG09M, IRQ03M, IRN05M, IRQ06MRS, SOM08M, SOM02M, IRQ04F, AFG06M. For example in AFG07M, the decision-maker came to the following conclusions within the written decision: “It is noted that you have not provided any specific dates as to when the government first started visiting you”, “You have provided no information as to how you escaped from detention”, and “It is noted that you have provided no evidence as to who these people were in government or why they would be specifically interested in you.” At the interview, however, the decision-maker had not put any specific questions to the applicant that would have elicited such detail. The fact that the applicant had not been questioned on these issues was not noted in the written decision.

⁵⁷ Chapter 4 on Gathering the Facts.

⁵⁸ UKBA, *Asylum Instructions, Considering Asylum claims and Assessing Credibility*, February 2012, p.15, para. 4.3.1.

⁵⁹ J Dutton, *What to Believe? A Critique of the Assessment of Plausibility in Asylum Applications*, October 2003. See also J Millbank, ‘From Discretion to Disbelief: Recent Trends in Refugee Determinations on the Basis of Sexual Orientation in Australia and the United Kingdom’, *The International Journal of Human Rights*, vol. 13, no. 2/3, 2009, p 391–414 at p. 400: Millbank reviewed appellate decisions and found that questions posed to applicants were based on stereotyping, assumptions about how gay and lesbian persons behave and failed to take into consideration a range of relevant factors such as culture social class, religion, education, family background, gender and socialization. T Spijkerboer, *Gender and Refugee Status*, Aldershot: Ashgate, 2000; S Jansen, T Spikerboer, *Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, September 2011; B J Einhorn, ‘Consistency, credibility and culture’, in J Ramji-Nogales, A Schoenholtz, P G Schrag, *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*, New York: New York University Press, 2009, p 187–202.

Moreover, one of the formidable difficulties relating to the applicability of this indicator is that an inability to recall detail may simply be indicative of the normal functioning of human memory. In this regard, decision-makers must be careful to ensure that they do not have unreasonable expectations regarding what applicants should know.

Decision-makers should also be aware of the assumption that detailed information provided is a valid indication of a genuine account; this could lead decision-makers to believe the account to be true due to the inclusion of a few trivial details.⁶⁰

Yet, UNHCR observed that a failure to provide detailed responses to these types of questions was considered indicative of a lack of credibility.⁶¹

Interviewer: *Can you tell me all the different values of banknotes in X starting with the smallest?*

Interviewer: *What colour are these different notes?*

Interviewer: *How long have notes of these values been around?*

Interviewer: *Name the bridges that cross the river X.*

Interviewer: *What's the oldest mosque in X?*

Interviewer: *What are the main hotels in X?*

An inability to recall dates in response to general knowledge questioning was also considered indicative of a lack of credibility. For example:⁶²

Interviewer: *How many universities are in X?*

Applicant: *About three altogether. One is called X near Y. Z near V. I can't remember the third.*

Interviewer: *When were these universities established?*

Applicant: *The X a long time ago when there was a government. The third university is SS near the stadium.*

Interviewer: *When was the last university opened?*

Applicant: *I can't remember.*

The written decision stated:

"[...] it is noted that when pressed for more contemporaneous information about Somalia, the responses you gave were distinctly less accurate and detailed. In particular you struggled to identify recently established universities..."

Some appeal bodies in the EU⁶³ and beyond⁶⁴ have urged caution in the application of this indicator to information provided by the applicant in response to such questions:

⁶⁰ B E Bell, E F Loftus, 'Trivial Persuasion in the Courtroom: The power of (a few) Minor Details', *Journal of Personality and Social Psychology*, vol. 56, no. 5, 1989, p 669–79, who report a mock trial study, showing that jurors were more likely to believe a witness who testified to seeing "a robber **wearing a green jumper**" as opposed to just "a robber" running away from the scene of a crime.

⁶¹ IRQ10M, SOM08M.

⁶² SOM08M.

⁶³ *S. N. v. the Ministry of Interior*, Supreme Administrative Court (SAC) of Czech Republic (*Nejvyšší správní soud*), 5 Azs 66/2008-70, 30 September 2008: The SAC emphasized that the applicant only had a secondary school education and was not a university professor of theology. Therefore, the questions of the determining authority which aimed to determine the applicant's credibility as to his religion were inappropriate. *L. O. v. Ministry of Interior*, Supreme Administrative Court of Czech Republic (*Nejvyšší správní soud*), 5 Azs 40/2009-74, 28 July 2009: the SAC underlined that the determining authority should have taken into account that the applicant was illiterate and without any school education when assessing his knowledge about significant rivers and administrative centres in his region of origin. In addition, the determining authority failed to consider the cultural differences and the resulting different ideas about what an individual should know about his country of origin.

⁶⁴ Canadian guidelines state that the case law requires decision-makers to be cautious about imposing too high a standard on the claimant's knowledge about matters such as politics, religion and the like. See Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, p. 38, para. 2.3.6.

*“The Tribunal should be mindful not to impose too high a standard when assessing an individual person’s level of knowledge. The Tribunal should not require a person to provide an unrealistic degree of precision and detail in statements if this knowledge would not be expected of a person in the position claimed by a person.”*⁶⁵

This is also reflected in UK guidance:

*“Decision makers must be aware of and take into account the profile of the applicant. This is relevant both in assessing the level of knowledge they can reasonably be expected to have and the effect other factors such as age, gender, social background and underlying medical or psychological factors will have on the applicant’s ability to recall certain facts. For example, the more active the applicant claimed to be in a political party, the greater the expectation that they would be able to provide more detailed information. Any explanation given should then be acknowledged and considered in the overall assessment of internal credibility.”*⁶⁶

*“A refugee claim should not be determined on the basis of a memory test.”*⁶⁷

Overall, UNHCR’s review of case files showed that sufficiency of detail and specificity is a commonly relied upon credibility indicator.⁶⁸ The research also indicated that decision-makers had unrealistic expectations regarding the level of detail the applicant should (be able to) provide regarding past events and facts. Written internal notes and decisions revealed that, in general, detailed and precise responses were considered indicative of credibility. By contrast, superficial, vague, or brief responses as well as an apparent failure to convey an impression that an experience had been ‘lived’ were considered indicative of non-credibility.

It is, therefore, essential that, decision-makers have an appropriate level of understanding about how human beings record, store, and retrieve memories, as a number of common assumptions about memory are incorrect. Further, it is vital that decision-makers also understand how other individual and contextual circumstances may influence the applicant’s ability to provide details.

UNHCR also observed that written decisions did not always acknowledge factors that might explain an insufficiency of detail or specificity. It was not always clear from the case file materials whether the decision-maker had taken into account the applicant’s individual and contextual circumstances when assessing the sufficiency of detail and specificity of the applicant’s statements. This, of course, does not necessarily mean that such factors were not taken into consideration, but the absence of such reference and the nature of the conclusions drawn by the decision-maker often gave the impression that such factors had not been taken into account. As such, it often appeared that decision-makers were unaware that a lack of detail or vagueness may be normal and may be due to factors wholly unrelated to the credibility of the applicant’s statements.

⁶⁵ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, 24 March 2012, para. 5.8.

⁶⁶ UKBA, *Asylum Instructions, Considering Asylum claims and Assessing Credibility*, February 2012, p. 15.

⁶⁷ *Sheikh v. Canada (Minister of Citizenship and Immigration)* [2000], IMM-315-99, para. 28 (Federal Court of Canada), cited in H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 469.

⁶⁸ For example: AFG01MRS; AFG02MRS; AFG03FRS; AFG04MSP; AFG05MSP; AFG07M; AFG09M; IRQ08FSP; DRC03M; DRC05M; DRC06M; DRC07F; DRC08F; DRC09F; GUI01MRS; GUI04M; GUI05M; GUI06M; GUI08M; GUI09M; IRQ01MBP, AFG02FNP, AFG03MNP, AFG04MNP, AFG05MNP, IRN01FNP, IRN01MNP, IRN02MNP, IRQ02FNP, IRQ01MNP, IRQ02MNP, IRQ04MNP, IRQ05MNP, SOM01FNP, SOM02FNP, IRQ06MRS, SOM09M, AFG07M, AFG09F, AFG10F.

3. Internal Consistency of the Oral and/or Written Material Facts Asserted by the Applicant

There is no agreed definition of the term ‘consistency’. For the purposes of this report, it is understood to comprise a lack of discrepancies, contradictions, and variations in the material facts asserted by the applicant.⁶⁹ ‘Internal’ consistency relates to consistency in the material facts asserted by the applicant:

- within an interview or within a written statement submitted to the determining authority;
- between earlier and later written and/or oral statements made to the determining authority;
- between written and/or oral statements made by the applicant, and documentary or other evidence submitted by the applicant to the determining authority.

The use of the indicator ‘consistency’ is based on an assumption that a person who is lying is likely to be inconsistent in his or her testimony, presumably because it is considered difficult to remember and sustain a fabricated story; and/or when challenged, it is assumed that individuals who are not telling the truth try to conceal their inconsistencies by altering the facts. The converse supposition appears to be that if applicants actually experienced the events they recount, and are genuine in their statements, then they will broadly be able to recall these events and related facts accurately and consistently.

However, this assumption cannot be applied as an absolute.⁷⁰ Jurisprudence has even acknowledged that, in certain circumstances, inconsistencies and inaccuracies may be a symptom of credibility rather than dishonesty: “*inconsistencies may, in certain circumstances, indicate truthfulness and the absence of interference with witnesses.*”⁷¹

This section therefore looks at the legal framework on internal consistency, as well as the implementation of this indicator in state practice when the applicant’s memory and individual and contextual circumstances are taken into account. The section also focuses on two relevant aspects, namely consistency between earlier and later statements, and the consistency of the applicant’s statements with supporting documentary or other evidence submitted by the applicant.

⁶⁹ EAC, Module 7, section 3.2: “*Inconsistency can be defined as: the relation between different parts in the statement that cannot both be true at the same time. [...] Discrepancy can be defined as ‘a difference between conflicting facts or claims or opinions’.*”

⁷⁰ J Herlihy, S Turner, ‘Should Discrepant Accounts Given by Asylum Seekers be Taken as Proof of Deceit?’, *Torture*, vol. 16, no. 2, 2006, p 81–92 at p. 83. J Cohen, ‘Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers’, *International Journal of Refugee Law*, vol. 13, no. 3, 2001, pp. 293–309: “[i]n the real world, we know that the most rigidly reproduced accounts may be so because they have been memorised from a script. Conversely, those with certain discrepancies may be so because they have been genuinely reconstructed from autobiographical memories.”

⁷¹ *Prosecutor v. Anto Furundzija (Trial Judgment)*, IT-95-17/1-T, 10 December 1998, para. 113. R Byrne, ‘Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals’, *International Journal of Refugee Law*, vol. 19, no. 4, December 2007, pp. 609–38.

3.1 Policy framework on internal consistency

It is clear from guidance in the Netherlands⁷² and the UK⁷³ that internal consistency is considered an indicator of credibility. The underlying assumption is set out in UK policy guidance:

*“It is reasonable to expect that an applicant who has experienced an event will be able to recount the central elements in a broadly consistent manner. An applicant’s inability to remain consistent throughout both written and oral accounts of past and current events may lead the decision maker not to believe the claim.”*⁷⁴

Consistency is also referred to as a possible indicator of credibility by UNHCR,⁷⁵ the European Court of Human Rights,⁷⁶ the UN Committee against Torture,⁷⁷ the International Criminal Tribunals,⁷⁸ and the EAC.⁷⁹

The European Court of Human Rights for instance accepts a certain degree of inconsistency in the statements and documents submitted by the applicant, as long as the “*basic story [is] consistent throughout the proceedings*” and that “*uncertainties do not undermine the overall credibility of his story.*”⁸⁰ National jurisprudence also recognizes that minor inconsistencies should not impugn the credibility of the applicant’s core submissions.⁸¹

The inconsistency must be sufficiently serious and relate to facts that are material or central to qualification for international protection.⁸² Minor inconsistencies should not generally be seen to undermine the credibility of the asserted fact. It suffices that the core factual submission or the essence of the claim is broadly

⁷² IND Working Instruction 2010/14, paragraph 4.1 (c), p. 5: “*In assessing whether the statements of the alien are credible, it should be seen, among other things, whether the alien: [...] gave statements that are coherent, **consistent** and plausible*” (emphasis added). “*For example, it could be concluded that the statements are not consistent and plausible if there are: - internal inconsistencies*”.

⁷³ *B v Secretary of State for the Home Department (DR Congo)* [2003] UKIAT 00012, 12 June 2003, para. 19: refers to the relevance of “*consistency on essentials or major inconsistencies.*” UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 15; UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 15, para. 4.3.1: “*Consideration of internal credibility requires an assessment of whether the applicant’s claim is internally coherent and consistent with past written and verbal statements, as well as being consistent with claims made by witnesses and/or dependants and with documentary evidence submitted in support of the claim. It is for the decision maker to assess how well the evidence submitted fits together and whether or not it contradicts itself.*”

⁷⁴ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 15; UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 15, para. 4.3.1.

⁷⁵ UNHCR, *Note on Burden and Standard of Proof*, para. 11. UNHCR, *Handbook*, para. 197: “*Allowance for such possible lack of evidence does not, however, mean that unsupported statements must necessarily be accepted as true if they are inconsistent with the general account put forward by the applicant.*”

⁷⁶ *Said v. The Netherlands*, no. 2345/02, ECtHR, 5 July 2005, para. 51; *M. v. Sweden*, no. 22556/05, ECtHR, 6 September 2007.

⁷⁷ CAT General Comment No. 1: Implementation of Article 3 of the Convention in the Context of Article 22 (*Refoulement and Communications*). Adopted at the Sixteenth Session of the Committee against Torture, on 21 November 1997 (contained in document A/53/44, annex IX), para. 8 (g) states “*Are there factual inconsistencies in the claim of the author? If so, are they relevant?*” See for example, *A.K. v Australia*, CAT/C/32/D/148/1999, 11 May 2004, para. 6.2.

⁷⁸ *Prosecutor v. Juvénal Kajelijeli (Judgment and Sentence)*, ICTR-98-44A-T, 1 December 2003, paras. 39–40: The Trial Chamber further noted that inconsistency is a relevant factor “*in judging weight but need not be, of [itself], a basis to find the whole of a witness’ testimony unreliable*” (originally from Delic case).

⁷⁹ EAC, Module 7, section 3.2.

⁸⁰ *R.C. v. Sweden*, no. 41827/07, ECtHR, 9 March 2010, para. 52.

⁸¹ *Matter of X*, United States Executive Office for Immigration Review (EOIR), 9 August 2011[human trafficking], p. 8: “*In the Court’s view, it seems likely that much of the discrepancy between the respondent’s testimony and her statement can be accounted for by cultural and linguistic nuances surrounding the definition of the word “rape.” It is true that these issues do not explain why specific facts [...] were included and described in some detail in the respondent’s statement that she later unequivocally stated were not true. However, given that these details are relatively minor and that the respondent candidly admitted against her interest that they were not true even when presented with her previous statements, the Court finds these inconsistencies insufficient to support a finding that the respondent is not credible.*”

⁸² Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, p 23 and 31.

consistent. This has been recognized repeatedly by the international judicial and monitoring organs.⁸³ National jurisprudence also recognizes that minor inconsistencies should not impugn the credibility of the applicant's core submissions.⁸⁴

Similarly, the ICTY does not consider that minor discrepancies discredit testimony when the witness has described “*the essence of the incident charged in acceptable detail.*”⁸⁵ The Trial Chamber has explicitly stated:

“*the Trial Chamber recognises the difficulties which survivors of such traumatic events have in remembering every particular detail and precise minutiae of these events and does not regard their [minor inconsistencies] existence as necessarily destroying the credibility of other evidence as to the essence of the events themselves.*”⁸⁶

In its review of case files, UNHCR noted that minor inconsistencies relating to precise figures could be used to reject the core aspects of an applicant's account. For example, the following written decision stated:

“*It is also noted that you have provided an inconsistent account of encountering the authorities, initially stating that you were stopped by two Ettela'at members but then stating that you were beaten by four people. While this inconsistency in your account was not addressed to you, it is considered reasonable that you would provide a consistent account of how many members of the security forces you encountered. Therefore, in light of the inconsistent and incredible account you have provided it is therefore not accepted that you attended a demonstration in Iran on 14th February 2011 or that you were caught by members of the security forces before escaping from them.*”⁸⁷

3.2 Memory and internal consistency

Psychological research shows that when anyone recounts an experience more than once, discrepancies inevitably arise.⁸⁸ This is because memories are reconstructions influenced by time, what is known, the context in which they are recalled, the psychological state of the person when they are recalled, and the wording and manner of the retrieval cue, for example, the question in an interview. As such, it is normal that discrepancies may arise between the statements of an applicant.

⁸³ However, it is noted that in the USA the REAL ID Act 101 (a) (3) (codified at 8 U.S.C. 1158 (b) (1) (B) (iii) (2006) states “Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on [...] the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, **without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor.**” S Rempell, ‘Gauging Credibility in Immigration Proceedings: Immaterial Inconsistencies, Demeanor, and the Rule of Reason’, *Georgetown Immigration Law Journal*, vol. 25, no. 2, 2011, p. 377.

⁸⁴ *A v. the head of the State Agency for Refugees*, Supreme Administrative Court of Bulgaria (Върховен административен съд), 11774/2007, 30 June 2008; *L. O. v. Ministry of Interior*, Supreme Administrative Court of Czech Republic (Nejvyšší správní soud), 5 Azs 40/2009-74 28 July 2009: “*minor discrepancies are not by themselves capable to refute the applicant's allegations*”.

⁸⁵ *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Trial Judgment)*, IT-96-23-T and IT-96-23/1-T, 22 February 2001, para. 564 cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague, 2010, p. 96.

⁸⁶ *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Trial Judgment)*, IT-96-23-T and IT-96-23/1-T, 22 February 2001, para. 679 cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague, 2010, p. 96 footnote 292.

⁸⁷ IRN08M.

⁸⁸ M. Conway, E. Holmes, *Memory and the Law: Recommendations from the Scientific Study of Human Memory*, Leicester: The British Psychological Society Press, 2008.

When consistency is used as an indicator of credibility, it is therefore essential that decision-makers appreciate that inconsistency is not necessarily indicative of a statement lacking credibility, and may indeed reflect an applicant who is simply trying to remember what they actually experienced.

Inconsistency may simply indicate that the applicant is exhibiting the normal traits of human memory. As such, it is worthwhile to recall that psychologists have considered that a person demonstrates a high degree of consistency when he or she directly contradicts only 20 per cent of his or her previous testimony.⁸⁹ Decision-makers should therefore expect to find inconsistencies in an applicant's account.

As mentioned above, temporal information such as dates, frequency, and duration of events is particularly difficult to recall accurately.⁹⁰ Yet, UNHCR observed that one of the most common inconsistencies cited in the decisions reviewed related to temporal information. In a significant number of cases reviewed, the decision-maker considered the applicant's inconsistent recall of the number of times something occurred⁹¹ or a date⁹² or duration⁹³ as an indicator undermining credibility.

Psychological research suggests that our recall of temporal information is often based on estimation and guesswork. For example, we use estimates to date events or to determine their duration, frequency, and sequence. If asked again, we will estimate again and may come up with a different response.⁹⁴ Discrepancies in recall of temporal information are, therefore, normal and indeed likely and are thus not necessarily an indicator of non-credibility. For example, in one case reviewed, an inconsistency regarding dates was held to undermine the credibility of the asserted fact:

“You claim to have discovered in either December 2009 or alternatively December 2010 that the reason your house had been raided was because X had been arrested and that photographs of you and her had been taken by the authorities and she had also been questioned about you by the authorities. It is considered that your confusion about the dates that you received the message from X regarding her arrest is a serious discrepancy in your account as it plays such a crucial role in your claim and as such this has damaged the credibility of your claim.”⁹⁵

In the subsequent appeal, the judge stated: *“I do not find the core of the appellant's claim to be impugned by peripheral inconsistencies such as the date X told him of her experiences.”⁹⁶*

In another decision, a female applicant claimed to have been sexually abused from a young age. Inconsistencies in temporal information were considered to contribute to a finding of non-credibility with regard to this fact:

⁸⁹ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 510 citing J C Yuille, J L Cutshall, 'A case study of eyewitness memory of a crime', *Journal of Applied Psychology*, vol. 71, no. 2, 1986, p 291–301.

⁹⁰ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 471.

⁹¹ For example, AFG04MSP: *“it was noted that there was a discrepancy regarding how many times the applicant claimed to have been threatened by the Taliban.”* AFG08M: *“it was noted that there was a contradiction regarding how often the applicant claimed to have gone to the district centre for shopping”.*

⁹² AFG05M, AFG07M, IRN05M, AFG10F, IRQ02M, SOM05M, DRC08F.

⁹³ DRC08F: the applicant provided inconsistent information regarding the period of time she spent in prison (3, 5, or 9 days). The final decision states that *“It is not comprehensible that you would give three versions of your detention. Even if stress or forgetfulness could explain certain errors, this is not the case here because you assert different days. To declare that you were detained for 3 days or 9 days is very different. Since these are experienced events, the fact that you gave three different versions seriously undermines the credibility of your declarations concerning this detention.”*

⁹⁴ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 491.

⁹⁵ IRN05M.

⁹⁶ IRN05M, Appeal determination.

“You said you were fourteen when he first abused you. You then said the first time he abused you was in 2004, when you were twelve years old. This is inconsistent.”⁹⁷

From the written decision, it was not possible to deduce whether the decision-maker, in attributing weight to the temporal inconsistency, took into account other relevant individual and contextual circumstances, such as the applicant’s young age at the time of the alleged facts, the impact of the passage of time on memory, and the impact of any trauma, triggered by the abuse, on memory.

3.3 The individual and contextual circumstances of the applicant and internal consistency

It is indeed essential that decision-makers understand how the individual and contextual circumstances of the applicant may influence his or her ability to provide a consistent account.

The UN Committee against Torture has consistently noted that complete accuracy is seldom to be expected by victims of torture or those who suffer from post-traumatic stress disorder.⁹⁸ Even if the inconsistency relates to a material fact, the evidence may still be accepted as credible.⁹⁹

In the *Furundzija* case, for example, the Trial Chamber of the ICTY attached no significance to inconsistencies in the sequence of events and identities of those involved and were referred to as “*minor and reasonable*” inconsistencies. As the witness herself testified understatedly that in horrific moments of fear, “*one does not analyse too much*”.¹⁰⁰

There is ample evidence that memories of traumatic events, such as sexual violence, differ from normal memories,¹⁰¹ and that the need to cope with traumatic experiences affects traumatic memory.¹⁰² Sensory encoding, dissociation, circumscribed memory retention, recall deficit, avoidance and poor concentration are all symptoms of post-traumatic stress disorder.¹⁰³

The effects of mental ill-health on the ability to recall memories may explain inconsistencies in an applicant’s statements. Applicants who are depressed, or who suffer from an anxiety disorder, may experience difficulty recalling past events or recalling events consistently.¹⁰⁴ UNHCR’s research revealed some cases in which the applicant’s mental ill-health was taken into account in the credibility assessment. In one such case, the applicant had informed the interviewer during his interview that he could not concentrate. He had submitted a medical certificate issued by a psychologist testifying that he was experiencing difficulty concentrating and was sometimes confused. The internal evaluation form on the case noted that the incorrect and slow

⁹⁷ IRQ04F.

⁹⁸ *Alan v. Switzerland*, CAT/C/16/D/21/1995, 8 May 1996. *Kisoki v. Sweden*, CAT/C/16/D/41/1996, 13 May 1996; and *C.T. & K.M. v. Sweden*, CAT/C/37/D/279/2005, 17 Nov. 2006.

⁹⁹ *Halil Haydin v. Sweden*, CAT/C/21/D/101/1997, 16 December 1998; Communication No. 101/1997, views adopted on 20 November 1998.

¹⁰⁰ *Prosecutor v. Anto Furundzija (Trial Judgment)*, IT-95-17/1-T, 10 December 1998, para. 116.

¹⁰¹ J Herlihy, S Turner, ‘The Psychology of Seeking Protection’, *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at p. 176; D Bögner, J Herlihy, C Brewin, ‘Impact of Sexual Violence on Disclosure during Home Office Interviews’, *British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 75–81.

¹⁰² J Cohen, ‘Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers’, *International Journal of Refugee Law*, vol. 13, no. 3, 2001, p 293–309.

¹⁰³ J Herlihy, S Turner, ‘Should Discrepant Accounts Given by Asylum Seekers be Taken as Proof of Deceit?’, *Torture*, vol. 16, no. 2, 2006, p 81–92 at p. 85.

¹⁰⁴ J Herlihy, S Turner, ‘Should Discrepant Accounts Given by Asylum Seekers be Taken as Proof of Deceit?’, *Torture*, vol. 16, no. 2, 2006, p 81–92; J Herlihy and S Turner, “*Should discrepant accounts given by asylum seekers be taken as proof of deceit?*”, *Torture*, Vol. 16, No. 2, 2006, pp. 81-92 at p. 90.

responses given by the applicant were assessed in the light of his mental ill-health and were not deemed to constitute an indicator of non-credibility.¹⁰⁵

In another case, the applicant's mental ill-health was acknowledged but dismissed as a mitigating factor. In this case, during the personal interview the applicant had said that she had a headache and that she could not remember her period in detention well as it was a difficult time. She had submitted evidence constituting of a medical certificate issued by a psychologist certifying that she was experiencing post-traumatic stress disorder, which could be related to the sexual trauma she experienced in the country of origin. Her application was rejected and the decision stated that:

*“ [the determining authority] finds it incomprehensible that you would give three different versions of your detention. Even if stress and memory loss could explain certain errors, this is not the case here since you make a mistake of several days. To declare to have been detained in a place for three days or to declare to have been detained there for nine days, is very different. Given that these are events that you experienced yourself, the fact that you gave three different versions seriously undermines the credibility of your statements about this detention.”*¹⁰⁶

The medical certificate was dismissed as *“this certificate is only based on your statements and does not give proof of the truthfulness of your statements.”*

It was unclear from the materials in the case file whether the decision-maker had fully taken into account any possible effects of the conditions of detention on the applicant's ability to record information, such as time and dates to memory, the impact of trauma on memory, and/or the fact that recall of dates and duration is nearly always, based on estimation and guesswork. Such an inconsistency may be indicative of a person trying to remember – in a state of pain (headache) and poor concentration – what they have actually experienced.

An applicant's lack of or limited education may also explain some inconsistencies. UNHCR reviewed one case in which the appeal authority had twice annulled the decision of the determining authority, noting that the applicant's illiteracy might explain certain inconsistencies.¹⁰⁷ In another case, notwithstanding the fact that the applicant had been identified as illiterate, she was, however, expected to provide a consistent account detailing dates, months, and durations.¹⁰⁸

3.4 Consistency between earlier and later statements

In some Member States, statements made by the applicant in the context of, for example, initially requesting asylum, registering an application for international protection, or providing basic background information, may be assessed as part of the whole evidence in support of the application. An assessment of such initial statements when compared with facts asserted and other evidence submitted during, the personal interview and/or meeting with the determining authority to substantiate the application in terms of Article 4 (2) APD, may reveal apparent inconsistencies.

¹⁰⁵ IRQ02MRS.

¹⁰⁶ DRC08F.

¹⁰⁷ GUI10F.

¹⁰⁸ IRQ02FNP.

The question of how much weight to attach to such initial statements and any inconsistencies within those statements or with later statements is controversial.¹⁰⁹ The EAC states:

“For example, a screening interview that was conducted at the port when the applicant has just landed after a long flight may be more reliable than a fully substantive interview held at a later stage. But others believe that on the contrary the determining authority should wait for some time before starting the interview to let the claimant rest and recover from an exhausting trip. Before reaching an adverse credibility finding you must assess how reliable the document/evidence is.”

Initial statements may have been made in difficult circumstances, including soon after arrival at the border of the putative country of asylum, upon apprehension by the police, or following detention. These statements may have been made to an authority with no responsibility for, or competence in, determining applications for international protection and without any of the procedural guarantees that adhere to asylum procedures.

Research has also shown that second recall of a memory may produce an elaboration of the original version with few verbatim repetitions and new details added.¹¹⁰ This may explain differences between earlier and later statements made by an applicant. Furthermore, when people retell events they may take a different perspective for different audiences and purposes.¹¹¹ This should be borne in mind when comparing an applicant's earlier statements made in the context of, for example, a preliminary interview or self-completion form, with later statements made in a personal interview.

The approach of the ICTR is instructive as it has faced a similar challenge in determining the probative value of statements made before the Pre-Trial Chamber and those delivered before the Trial Chamber. In this regard, the Trial Chamber considered it essential to take into account the circumstances under which pre-trial statements were made.¹¹² Such an approach would require the decision-maker in the asylum procedure to take into account the circumstances under which the applicant's initial statements were made.

Such an approach has also been reflected in national jurisprudence. For example, the Supreme Administrative Court of Lithuania has recognized that a lack of awareness of the purpose of an initial interview on the part of an applicant, and a lack of interpretation and legal advice may mean that no probative weight should be attached to such initial testimony.¹¹³

Relevant case law from EU Member States provides further guidance in this regard. The Supreme Court of the Slovak Republic has held that undue probative weight should not be attached to statements given by the applicant to the police when apprehended given the applicant's statements to the determining authority, which included three interviews, were consistent.¹¹⁴ The Court has also held that the fact that an applicant

¹⁰⁹ EAC Module 7, section 3.2.

¹¹⁰ S J Anderson, G Cohen, S Taylor, 'Rewriting the Past: Some Factors Affecting the Variability of Personal memories', *Applied Cognitive Psychology*, vol. 14, no. 5, 2000, p 435–54; J Herlihy, P Scragg, S Turner, 'Discrepancies in Autobiographical Memories: Implications for the Assessment of Asylum Seekers: Repeated Interviews Study', vol. 324, no. 7333. *British Medical Journal*, 2002, p 324–7.

¹¹¹ B Tversky, E J Marsh, 'Biased Retellings of Events Yield Biased Memories', *Cognitive Psychology*, vol. 40, no. 1, 2000, p 1–38; M Eastmond, 'Stories as Lived Experience: Narratives in Forced Migration Research', *Journal of Refugee Studies*, vol. 20, no. 2, 2007, p 248–64.

¹¹² *Prosecutor v. Alfred Musema (Judgement and Sentence)*, ICTR-96-13-T, 27 January 2000, paras. 85–6 confirming the reasoning of *Prosecutor v. Jean-Paul Akayesu (Trial Judgement)*, ICTR-96-4-T, 2 September 1998, para. 137 and *Prosecutor v. Georges Anderson Nderubumwe Rutaganda (Judgement and Sentence)*, ICTR-96-3-T, 6 December 1999, para. 19 cited in P Levricova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague, 2010, p. 77–82.

¹¹³ *A.Z. and A.V. v. Migration Department*, Vilnius Regional Administrative Court (*Vilniaus apygardos administracinis teismas*), Supreme Administrative Court of Lithuania (*Lietuvos vyriausiasis administracinis teismas*), A822-959/2011, 28-05-2010, 05-05-2011.

¹¹⁴ *L. L. v. Migration Office of the Ministry of Interior of the Slovak Republic*, Supreme Court of the Slovak Republic (*Najvyšší súd Slovenskej republiky*), 1 Sža 9/2007, 16 October 2007.

provides brief information at an initial interview and later provides greater detail and specificity during the personal interview cannot be considered an inconsistency.¹¹⁵

Furthermore, the Irish High Court has supported the general principle that “*the fact that some important detail is not included in the application form completed by the applicant when he/she first arrives is not of itself sufficient to form the basis of an adverse credibility finding.*”¹¹⁶

In this regard, in the Netherlands a distinction is made between statements made to the determining authority and statements made to other authorities. While the indicator of inconsistency may be applied with regard to statements made to the determining authority,¹¹⁷ inconsistency may not be used as an indicator of a lack of credibility if it relates to inconsistencies between statements made by the applicant during the registration interview with the Royal Netherlands Police and later statements made by the applicant to the determining authority.¹¹⁸

Beyond the EU, in a number of cases the Federal Court of Canada has pointed out the pitfalls of relying on port of entry notes, for example, and unduly on inconsistencies within an application as a reason for a finding of lack of credibility.¹¹⁹

Moreover, the US training course on gender-related claims notes that due to some women’s limited literacy skills, coupled with the fact that women in some societies may be accustomed to having male relatives conduct public activities for them, female applicants may sign or mark statements that have been completed by a male relative without being able to review its accuracy. It is suggested that decision-makers enquire into the circumstances under which statements by female applicants were made and whether they had the opportunity to review the content.¹²⁰

3.5 State practice on consistency between earlier and later statements

The three Member States surveyed for this research conduct a preliminary interview, the purpose of which is mainly to gather information on the background of the applicant, information on any previous applications for international protection, travel route details, and travel documents. Such interviews may request, in brief, the reasons for applying for international protection without elaborating on the grounds. In the Netherlands and the UK, the determining authority conducts this preliminary interview and in Belgium, it is the competent authority of the Immigration Department (OE/DV).

In Belgium, the Immigration Department conducts a registration interview using an OE/DV questionnaire to gather information on the applicant’s identity and travel route, including any relevant documents. The OE/DV also provides a separate questionnaire from the determining authority (CGRA/CGVS), which poses questions about whether the applicant has been arrested or detained, has been convicted by a court,

¹¹⁵ *S. H. v. Migration Office of the Ministry of Interior of the Slovak Republic*, Supreme Court of the Slovak Republic (*Najvyšší súd Slovenskej republiky*), 1Sža/56/2010, 13 July 2010 (in connection with the rectification order of 17 August 2010).

¹¹⁶ *Skender Memishi v The Refugee Appeals Tribunal, Rory McCabe, The Minister for Justice, Equality and Law Reform, The Attorney-General, and Ireland*, [2003] IEHC 65, 25 June 2003.

¹¹⁷ Dutch Council of State 7 March 2012, (201007907/1/V3) JV2012/184; L.JN: BV9262.

¹¹⁸ Article 3.109 (3) Aliens Decree 2000. UNHCR’s review of case files in the Netherlands (for instance AFG03MNP and IRN02MNP) revealed that in those cases where the intended decision referred to inconsistencies between statements made in the interview at the Royal Netherlands Police and statements made to the determining authority, objections were raised in the written response to the intended decision, and such references were omitted from the final first instance decision.

¹¹⁹ Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, p. 27.

¹²⁰ Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module on Gender-Related Claims*, October 2012, para. 7.2.

or has been active in an organization or party, and if so, his or her role, the period of activity, and whether this relates to his or her fear of return. The questionnaire then asks the applicants for their reasons, in brief, for the asylum claim.¹²¹ Applicants may complete the questionnaire themselves and return it to the determining authority, or they may do so with the assistance of an OE/DV official and interpreter.¹²² If applicants opt for the latter, the official asks them to indicate briefly the most important reasons for their unwillingness to return to the country of origin or place of habitual residence.¹²³ The brevity of the response required is dictated in part by the ten lines available on the questionnaire to answer the question, as well as by the fact that the OE/DV official has limited time in which to complete the interview.¹²⁴

Notwithstanding the declared brevity of the responses required, UNHCR observed cases in which a discrepancy between information provided during the registration interview and the subsequent personal interview was considered to undermine the credibility of the fact, and the explanation given by the applicant that he was required to be brief during the registration interview was not accepted as satisfactory. For example:

“Furthermore it is clear that at the Immigration Department you mentioned one visit of the Sayed and Taliban before your brother decided to flee, while now it appears that they came to visit twice before your brother left the house with the documents. You explain that at the Immigration Department you could not completely explain your story and had to limit yourself to the most important elements [...], which is not convincing. Above contradictions undermine the credibility of your claim.”¹²⁵

Similarly, in another case, the fact that the applicant omitted to mention a relevant fact in the questionnaire was cause to question the credibility of that fact, notwithstanding the fact that the applicant was not asked why she had not mentioned it in the questionnaire:

“Furthermore, you declare having been abused during your detention (interview of 15 May 2012, p. 13), while in your questionnaire filled out and signed by yourself, on 24 March 2012, under different questions about your fear of risk in case of return, you don’t mention or refer to this element. Since this is such an important fact, CGRS cannot believe that you could have forgotten to mention this and consequently, the credibility of this fact can reasonably be questioned.”¹²⁶

¹²¹ “Question 4. What do you fear in case of return to your country of origin? What do you think could happen in case of return? Question 5. Why do you think this? Which facts indicate this fear or the risk? State very **briefly** an overview of the most important facts” (emphasis added).

¹²² It should also be noted that lawyers are not allowed to assist applicants in person during the registration phase at the Immigration Department, and the OE/DV information brochure does not advise the applicant with regard to the completion of the CGRA/CGVS questionnaire. An information brochure developed by CGRA/CGVS and Fedasil explains: “Immediately after registration of your asylum application, the Immigration Department caseworker will ask you to complete a questionnaire. It is important that you complete this properly. The Commissioner General for Refugees and Stateless Persons (CGRS) bases its preparations for the hearing on the details that you enter in this questionnaire.” However, this brochure is given to the applicant after arrival in the reception centre, and at this point in time, it is likely that the questionnaire has already been completed during the registration interview. See Office of the Commissioner General for Refugees and Stateless persons (CGRA/CGVS), Fedasil, *Asylum in Belgium: Information Brochure for Asylum Seekers Regarding the Asylum Procedure and Reception Provided in Belgium*, 2010, p. 6.

¹²³ Interview with the acting head of the asylum service of the Immigration Department, 4 June 2012.

¹²⁴ Interview with the acting head of the asylum service of the Immigration Department, 4 June 2012.

¹²⁵ AFG04MSP.

¹²⁶ INT09GUIF.

Moreover, in this case, there was no explicit acknowledgment of the fact that:

- the question posed in the questionnaire was general and not framed to elicit detailed information;¹²⁷
- the questionnaire indicated that a brief response was required;¹²⁸
- at the stage when the applicant completed the questionnaire, she might not have known what facts would be considered “important” for the examination of the application;
- applicants may fail to relate questions about persecution to the types of gender-based harm they fear (such as rape, sexual abuse, female genital mutilation, honour killings, or forced marriage);¹²⁹
- while the decision-maker recognized that the questions in the self-completing questionnaire were different from those posed in the personal interview, there was no reference to the fact that recall is influenced by the nature of the question used to elicit information and that memories are susceptible to suggestion,¹³⁰ or to the variation in recall between information elicited in face-to-face interviews compared with self-completed forms;¹³¹
- applicants with gender-related applications may be unable or reluctant to disclose relevant information for a number of reasons. These include the effects of trauma, other mental health problems, stigma and shame, a distrust of authorities, operating under conditions that are not conducive to disclosure, fear of rejection or ostracism, and fear of serious harm as a reprisal.¹³²

UNHCR also observed one case in which the decision-maker noted that the fact that the applicant waited until the end of the personal interview to disclose information about sexual abuse suffered while in detention, and had asked the interpreter and his lawyer to leave the interview room before doing so, was considered indicative of the credibility of the asserted fact.¹³³

In the Netherlands, an inconsistency between statements made by the applicant in the initial interview and the detailed interview may be used as an indicator of a lack of credibility.¹³⁴ However, the applicants should only be requested to provide bio-data and information concerning their travel route during the initial interview. By law, questions related to the reasons for the application are reserved for the detailed asylum interview.¹³⁵ In this regard, it is positive to note that guidance underlines that inconsistencies between statements made in the initial interview and the subsequent detailed interview may not be held against the applicant; the decision-maker must take into account whether the inconsistency relates to a statement made in the initial interview concerning the reasons for the application, as that is not the purpose of this initial

¹²⁷ “Question 5. Why do you think this? Which facts indicate this fear or the risk?”

¹²⁸ “Question 5. Why do you think this? Which facts indicate this fear or the risk? State very **briefly** an overview of the most important facts” (emphasis added).

¹²⁹ UNHCR, *Guidelines No. 1*, para. 36 (vii). M McPherson, et al., ‘Marginal Women, Marginal Rights: Impediments to Gender-Based Persecution Claims by Asylum-seeking Women in Australia’, *Journal of Refugee Studies*, vol. 24, no. 2, 2011, p 323–47 at p. 333: “obstacles to disclosure of GBP [gender-based persecution] may start with the application form itself”.

¹³⁰ G Gisli, *The Psychology of Interrogations, Confessions and Testimony*, Chichester: J Wiley and Son, 1992; J W Schooler, D Gerhard and E F Loftus, ‘Qualities of the Unreal’, *Journal of Experimental Psychology, Learning, Memory and Cognition*, vol. 12, no. 2, 1986, p 171–81. J Herlihy, S Turner, ‘The Psychology of Seeking Protection’, *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at p. 181.

¹³¹ H Evans Cameron, ‘Refugee Status Determinations and the Limits of Memory’, *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 506.

¹³² UNHCR, *Guidelines No. 1*, para. 35. See also Swedish Migration Board (Migrationsverket), *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection*, 28 March 2001, p. 15; D Bögner, J Herlihy, C Brewin, ‘Impact of Sexual Violence on Disclosure during Home Office Interviews’, *British Journal of Psychiatry*, vol. 191, no. 1, 2007, p 75–81; Irish Council for Civil Liberties, Irish Times, *Women and the Refugee Experience. Towards a Statement of Best Practice*, June 2000, p. 18: “Women fleeing from cultures where preserving their virginity or marital dignity are essential may find it particularly difficult to discuss sexual abuse as they may already feel that they have dishonoured their family. They may face ostracism if the details of the abuse become known.”

¹³³ IRQ02MSP.

¹³⁴ Dutch Council of State, 8 October 2002 (200204720/1) JV 2002/414; Dutch Council of State, 14 February 2003 (200300012/1) JV 2003/158.

¹³⁵ Dutch Aliens Decree 2000 (Vreemdelingenbesluit 2000), Article 3.112, section 2: “The initial interview takes place according to a Ministerial Decree set template of questions. The template of questions does not contain questions regarding the reasons for the application.” This practice was confirmed by UNHCR’s audit of case files, with the exception of case IRN02FBP.

interview.¹³⁶ However, the applicant is expected to provide all the relevant facts during the detailed personal interview. The submission of relevant information, either as a correction or addition to the interview transcript, or in the opinion on an intended decision, may be considered an indicator of non-credibility.¹³⁷

The UK determining authority also conducts a screening interview. The primary purpose of this interview is to gather bio-data, information about the travel route, and brief reasons for the application. Prior to the initial screening interview, a compulsory statement is read out to the applicant by the interviewer which states:

*“The questions I am about to ask you relate to your identity, background and travel route to the United Kingdom. The information you will be asked to provide will be used mainly for administrative purposes. You will not be asked at this stage to go into detail about the substantive details of your claim as, if appropriate, this will be done at a later interview. However, some details you will be asked to provide may be relevant to your claim.”*¹³⁸

Notwithstanding the clear indication that the applicant is not expected to go into detail about the reasons for the claim, stakeholders have revealed that disclosure during the personal interview of a fact that was not mentioned in the screening interview is often taken to constitute an inconsistency impugning the credibility of the fact.¹³⁹ UNHCR observed such an example during its research. In this case, the interviewer at the screening interview had recorded that the applicant was in such a poor state of health that an ambulance had been offered, but the applicant had instead opted to proceed with the screening interview. The written decision on the applicant’s application stated:

*“The fact that at your screening interview you never once made mention of the fact that you fled Afghanistan in fear of your life due to these events [events mentioned at the personal interview] they are therefore not considered credible.”*¹⁴⁰

Incidentally, it was not clear from the written decision whether the information available to the decision-maker regarding the applicant’s health at the screening interview was taken into account.

In another study undertaken on Tribunal Adjudication, a judge has explained:

*“It is one thing to find a clear discrepancy between something said at a screening interview and something said later – it is quite another to attack an appellant’s credibility on the basis that she did not give a full account of her claim at the screening interview especially when the purpose of screening interviews is not to collect the full details about an individual’s asylum claim.”*¹⁴¹

Similarly, a UK Tribunal has stated:

*“The purpose of that [screening interview] is to establish the general nature of the claimant’s case so that the Home Office official can decide how best to process it. [...] However it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for asylum. It would not normally be appropriate for the Secretary of State to ask supplementary questions or to entertain elaborate answers [...]. Further the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered when any inconsistencies between the screening interview and the later case are evaluated.”*¹⁴²

¹³⁶ IND Working Instruction 2010/14, 4.1 (c).

¹³⁷ Dutch Council of State 27 April 2012, (201109421) JV 2012/310.

¹³⁸ UKBA, Screening Interview Form.

¹³⁹ Meeting with stakeholders on 21 June 2012.

¹⁴⁰ AFG06M.

¹⁴¹ R Thomas, *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication*, Oxford: Hart Publishing, 2011, p.143.

¹⁴² YL (*Rely on SEF*) China [2004] UKIAT 00145, 8 June 2004, para. 19.

In reviewing case files, it was often difficult for UNHCR to assess whether the decision-maker had taken into consideration the circumstances in which testimony had been delivered. For example, in one case, serious communication problems between the interviewer and the applicant were identified during the personal interview. The applicant was, therefore, offered a second personal interview with a different interviewer. However, in the written decision on the application, contradictions between the first and second personal interviews were determined to undermine the credibility of certain material facts, without any mention of how the identified communication problems affected the reliability of the evidence provided in the first personal interview.¹⁴³

3.6 Consistency of applicant's statements with supporting documentary or other evidence submitted by the applicant

It is widely recognized that consistency with supporting documentary or other evidence is considered one of the most effective indicators of the credibility of an applicant's testimony. Documentary or other evidence may confirm the applicant's statements so that the relevant asserted facts can be accepted. Alternatively, without confirming the asserted facts, documentary or other evidence may lend support to their credibility.

This is underlined in Dutch guidance: *"The credibility of an asylum story is certainly greater if the alleged facts are substantiated by documents such as arrest warrants, articles in newspapers (for example, if one states to have been mentioned in the newspaper as 'wanted') or summons of court and the like."*¹⁴⁴

However, as addressed in Chapter 2 - Credibility Assessment: Purpose and Principles, it is important to recall that there is no requirement for all applicant's statements to be confirmed or corroborated by documentary or other evidence.¹⁴⁵ This is in recognition of the fact that, because of their circumstances, it is often impossible for applicants to adduce corroborative evidence in support of their applications.¹⁴⁶

¹⁴³ IRN02MNP.

¹⁴⁴ IND Aliens Act Implementation Guidelines (2010) C4/3.6.3. Guidance further states that in assessing whether the statements of the applicant are credible, it should be seen, among other things, whether the applicant can substantiate his or her statements through documents: IND Working Instruction 2010/14, para. 4.1 (c). The Trial Chamber of the ICTR has also "emphasized that it is a matter of logic that a piece of evidence supported by another piece of evidence will have a greater probative value than unsupported evidence, of course with the exception of when both pieces of evidence lack credibility." P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague, 2010, p. 80 referring to *Prosecutor v. Alfred Musema (Judgement and Sentence)*, ICTR-96-13-T, 27 January 2000, para. 75.

¹⁴⁵ Article 4 (5) QD. UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, section 3.2: "The applicant does not have to prove each material fact with documentary or other evidence." Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, 24 March 2012, para. 2.2: "There is no requirement in law that evidence must be independently corroborated before it can be accepted by the Tribunal." *Skender Memishi v The Refugee Appeals Tribunal, Rory McCabe, The Minister for Justice, Equality and Law Reform, The Attorney-General, and Ireland*, [2003] IEHC 65, 25 June 2003.

¹⁴⁶ UNHCR, *Handbook*, para. 196: "Often, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents.", and at para. 197: "The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself." UNHCR, *Note on Burden and Standard of Proof*, para. 10: "[G]iven the special situation of asylum seekers, they should not be required to produce all necessary evidence. In particular, it should be recognized that, often, asylum-seekers would have fled without their personal documents. Failure to produce documentary evidence to substantiate oral statements should, therefore, not prevent the claim from being accepted if such statements are consistent with known facts and the general credibility of the applicant is good." *Matter of X*, United States Executive Office for Immigration Review (EOIR), 9 August 2011 [human trafficking], p. 8: "[...] there is no evidence in the record corroborating the central elements of the respondent's claim: that she was trafficked from the DRC to Belgium, forced into prostitution, and abused. However, given the respondent's relative isolation and lack of connections in the DRC and Belgium, the underground, criminal nature of the respondent's claimed persecutors, and the speed with which she claims to have made her escape, the Court cannot find that it would have been reasonable under the circumstances for the respondent to have provided further corroborative evidence."

Based on a review of the case files in the three Member States, it was observed that consistency of documentary or other evidence submitted by the applicant with the facts asserted by the applicant was considered an indicator of the credibility of the asserted fact, whereas an inconsistency was considered indicative of non-credibility.¹⁴⁷

3.7 Basing the credibility assessment on the entire evidence

Moreover, from the review of case files, it was sometimes difficult to deduce with certainty whether the credibility assessment had been conducted in light of all the available relevant evidence relating to the application. UNHCR's review of case files highlighted a number of cases in which, from the materials in the case file, it appeared that the credibility assessment was, or may have been, based on only a portion of the relevant evidence available.

UNHCR's research indicated that some decision-makers may not fully understand how to incorporate available documentary or other evidence into the credibility assessment of an individual material fact.

In one Member State, UNHCR reviewed some written decisions that did not mention whether specific documentary evidence submitted by the applicant had been taken into account.¹⁴⁸

In another Member State, UNHCR observed that although the written decisions referred to all the documentary or other evidence adduced by the applicant, the evidence submitted in support of an asserted material fact was often not assessed on the basis that the applicant's statements alone are able to be considered credible¹⁴⁹ or not credible.¹⁵⁰ Rather than assessing the documentary and other evidence together with the oral statements and reaching a credibility conclusion on the basis of all the available evidence bearing on the fact, non-credibility findings were sometimes based solely on the oral evidence. This finding was given as the reason for not assessing the other available evidence. The written decisions often stated that documentation submitted was given no value because "*it had not been supported by credible statements.*"¹⁵¹

For example, in the following case the applicant asserted that she feared persecution on account of her husband's employment with the Republican Guard. She submitted documentary and other evidence in support of the asserted fact that her husband had worked with the Republican Guard. The written decision stated that this fact was not considered credible because the applicant's statements about her husband's employment lacked detail and revealed a lack of knowledge about his employment. With regard to the documentary and other evidence that had been submitted, the decision stated:

*"The identity documents, food ration cards, marriage certificate and inhabitants card confirm your identity and origin, elements that are not questioned for the moment. Concerning your husband's documents (an army badge, a military voucher booklet, a transfer request, a letter of distinction, a death certificate) it should be noted that these documents only have value when they are supported by credible statements, which is here not the case."*¹⁵²

¹⁴⁷ For example: AFG01MRS; IRQ01MRS; IRQ02MRS; IRQ03FRS; IRQ07FSP; DRC01MRS; DRC03M; DRC05M; GUI02FRS; GUI03FRS; IRN04MAP, IRQ01MBP, IRQ02MBP, IRQ02FBP, IRQ03MBP, IRQ01FNP, AFG09F, IRN08M.

¹⁴⁸ IRQ01MNP (photographic evidence), IRQ05MNP (crime report, declaration of the examining judge), IRN01MNP (photographic evidence and written statements of witnesses), IRN02MNP (identity document).

¹⁴⁹ AFG05MSP, AFG06FSP, DRC03M, DRC05M, DRC06M, DRC08F, GUI10F, GUI05M.

¹⁵⁰ AFG05MSP, AFG08M, AFG09M, IRQ05MSP, IRQ06MSP, IRQ07FSP, IRQ08FSP, IRQ10M, DRC05M.

¹⁵¹ IRQ09M, IRQ05MSP.

¹⁵² IRQ08FSP.

Moreover, where the applicant's oral evidence concerning his or her country of origin, or place of habitual residence, and/or recent stay in that country are determined not to be credible, then not only was documentary evidence not taken into account, but the credibility of other asserted material facts relating to that country of origin, and/or relating to the period of time in which the applicant claimed to be in the country of origin or place of habitual residence, were considered not to be credible. The finding of a lack of credibility with regard to the applicant's country of origin, or place of habitual residence and/or recent stay, may be based solely on the applicant's responses to questioning on his or her knowledge of the country of origin or place of habitual residence, notwithstanding the submission of documentary evidence in support of the asserted material fact.¹⁵³ UNHCR was informed that when the applicant's claimed origin or recent stay in the country of origin is not considered credible, examination of the application is halted.¹⁵⁴ This is illustrated by the following decision:

“Since your alleged stay in Qarabagh cannot be found credible, the problems you claim that occurred there can also not be found credible. You submitted a taskara to substantiate your statements. Given your fraudulent statements about your stay in Afghanistan, no value can be given to this document. Additionally, CGRS is in possession of information that forged identity documents are widely available in Afghan cities or Peshawar (information was added to the administrative file). Since you made fraudulent statements, you make it impossible for CGRS to get a clear view of your profile, your places of residence during the last years, your possible residence status in third countries or the reasons you left these third countries. Consequently, you make it impossible for the authorities to make a correct assessment of your need for protection.”¹⁵⁵

UNHCR reviewed a number of decisions relating to applicants who claimed to be from Afghanistan, which stated that documentary evidence submitted by the applicant had been given no probative value due to country of origin information indicating extensive corruption and the availability of forged documents.¹⁵⁶ NGOs and lawyers expressed concern that, due to specific country of origin information on the extent of corruption and forgery of documents, decision-makers may have formed the impression that all documents submitted by applicants from those countries are forged or obtained through corruption, with the result that they are given no probative value and discounted from the assessment of credibility.¹⁵⁷

UNHCR has noted elsewhere that while documentary evidence may be given no probative value in the examination of an application for international protection, it may be relied upon to arrange the forced return of the applicant to the claimed country of origin or habitual residence.¹⁵⁸

Conversely, UNHCR also noted a number of cases in which the applicant's identity and recent stay in the country of origin was deemed credible with reference solely to the applicant's oral evidence and without reference to any

¹⁵³ AFG08M.

¹⁵⁴ Belgian Council of State 219.313, 10 May 2012.

¹⁵⁵ AFG08M. See also AFG10, AFG05MSP, AFG08M, AFG09M, IRQ05MSP, IRQ06MSP, IRQ07FSP, IRQ08FSP, IRQ10M and DRC05M.

¹⁵⁶ AFG07M, AFG08M, AFG09M. In these cases a CEDOCA report named 'Subject Related Briefing. Afghanistan. Forged documents and corruption' was added to the file. CEDOCA informed UNHCR that it has also produced subject related briefings on Iraq, Guinea and DRC which also explain that there is extensive corruption and forgery of documents in those countries: meeting with Head of CEDOCA, 24 May 2012.

¹⁵⁷ NGO meeting organized at UNHCR office in Brussels on 5 June 2012; Interview with lawyers at UNHCR office in Brussels, 8 June 2012.

¹⁵⁸ UNHCR Représentation régionale du HCR pour l'Europe de l'Ouest, *Propositions en matière de protection des réfugiés, des bénéficiaires de la protection subsidiaire et des apatrides en Belgique*, 12 October 2011, p. 4 : “En outre, certaines interprétations et l'évaluation de la crédibilité faites par les instances responsables du traitement des demandes d'asile méritent également une attention spécifique. En particulier, l'apparent manque de cohérence entre les instances d'asile et l'OE concernant la nationalité de l'intéressé est interpellant. Il n'est pas rare en effet, qu'une personne dont les instances d'asile rejettent la demande jugeant la nationalité non crédible sans véritable examen de la crainte de persécution ou du risque réel d'atteintes graves, soit renvoyée vers le pays dont elle affirme avoir la nationalité ou que l'on attende d'elle qu'elle y retourne.”

of the substantial documentary evidence submitted in support of the facts.¹⁵⁹ For example, in one case, the applicant had submitted an original identity card, documentary evidence of his nationality, a copy of his address card, a copy of his ration card, a copy of his birth certificate, and an original certificate of his status as single in support of asserted facts regarding his identity, origin, and ‘recent stay’. The internal evaluation form referred only to his oral evidence and no reference was made to the documentary evidence that had been submitted.¹⁶⁰ In some other cases reviewed, documentary evidence submitted was taken into account.¹⁶¹

Decision-makers should be careful if they are considering dismissing documentary evidence on the basis of COI of a general nature. While widespread corruption and the availability of fraudulent documents may be characteristic of a particular country, this clearly does not mean that documentation submitted by an applicant is forged or has been obtained through corruption. In this regard, it should be noted that in a recent case, the European Court of Human Rights found that the national authorities had rejected the documentary evidence the applicants had submitted in support of their applications without sufficient investigation and that this was at odds with the requirement of close and rigorous scrutiny.¹⁶² In this case, the determining authority had rejected the applications on the grounds that the applicants’ asserted Afghan nationality was not credible. The adverse credibility finding was based on one applicant’s insufficient knowledge of Afghanistan and of the Pashto language. However, no additional investigation into the documentary evidence submitted by the applicants was carried out and it was given no probative value on the grounds that it was considered easy to falsify such documents. The Court held that the national authorities’ dismissal of the documentary evidence as non-probative without verifying its authenticity, when this would have been easy to do so, did not satisfy the duty of close and rigorous scrutiny expected of national authorities.¹⁶³

In one Member State, decision-makers in many of the cases reviewed considered the documentary evidence in isolation from the material fact to which it related.¹⁶⁴ For example, in one case the applicant submitted three ‘night letters’, which he had received from the Taliban. There was no consideration of these documents by the decision-maker when considering the credibility of the asserted material fact that the applicant had received threats from the Taliban. Instead, a generic reason was provided for attaching no weight to the document: “*these documents do not support your claim that you would face persecution if returned to Afghanistan.*”¹⁶⁵ The documentary evidence, therefore, appeared to have had no bearing on the material fact in question.

UNHCR observed that medical evidence submitted by the applicant in support of asserted facts may not be referred to in the written decision.¹⁶⁶ In one case, the applicant provided medical evidence that was consistent with his account of detention and torture by the authorities in the country of origin. Moreover, following a medical screening by an Asylum Practice Nurse, a report that raised concerns about the applicant’s mental health was also submitted. Yet, no reference was made to the medical evidence or the information from the nurse in the written decision.¹⁶⁷

UNHCR further noted that medical evidence may be disregarded on the grounds that the report was produced upon the request of the applicant,¹⁶⁸ or because it is considered that the evidence does not confirm a causal link between the medical condition and the asserted fact – even though the evidence may

¹⁵⁹ For instance AFG03FRS: The applicant had submitted what she claimed was an original taskara for herself and her children. However, the internal note does not mention whether any value was given to these documents which were tendered as confirmation of identity and origin, but her origin was deemed credible on the basis of her responses to extensive questions testing her knowledge of the claimed country of origin.

¹⁶⁰ IRQ01MRS.

¹⁶¹ DRC01MRS, IRQ03FRS, IRQ02MRS.

¹⁶² *Singh and Others v. Belgium*, no. 33210/11, ECtHR (Chamber judgment, final), 2 October 2012.

¹⁶³ *Singh and Others v. Belgium*, no. 33210/11, ECtHR (Chamber judgment, final), 2 October 2012, para. 104.

¹⁶⁴ AFG05M, IRQ02M, IRQ95M, SOM05M, IRQ01M, IRN08M, IRQ08F, SOM02M, IRQ04F, SOM01F, IRN09M.

¹⁶⁵ AFG05M.

¹⁶⁶ IRQ02MRS, AFG03M, IRQ10M.

¹⁶⁷ IRN08M.

¹⁶⁸ DRC08F.

be consistent with, and support the credibility of the asserted fact.¹⁶⁹ In one case, the applicant submitted medical evidence that he had undergone an eye-operation in the Member State as a result of injuries suffered when arrested and beaten in Guinea. The written decision simply stated that the evidence did not prove anything relevant for the application.¹⁷⁰

UNHCR did observe a case in which the medical evidence that had been submitted was referenced in the decision:

“It is noted that the psychiatric report notes that: [the applicant] also suffers from Post Traumatic Stress Disorder [...] [the applicant] underlying mental health problems have been caused by his early childhood traumatic experiences including his detention, torture, separation from his family, homelessness and struggle to survive as a young child and then a young adult. [...]”

This psychiatric finding is considered to be consistent with your account [...]. Therefore in light of the issues discussed above and having considered your claim carefully in the round, it is considered [...] that your claim to have been detained, mistreated and subsequently released by the Kuwaitis in the aftermath of the Iraqi invasion in 1991 is probably true.”¹⁷¹

UNHCR recalls that although evidence may not confirm an asserted material fact, it may be consistent with and support the applicant's statements, and is therefore of relevance. A recent judgment by the Court of Appeal in the UK is also worth mentioning because it held that expert medical evidence remains 'independent' and of probative value, notwithstanding its inherent reliance on the applicant's account.¹⁷²

UNHCR's review of case files in all three of the Member States in question showed the utilization of internal consistency as an indicator of credibility, and of inconsistency as indicative of non-credibility. Conversely, however, UNHCR's observation of interviews revealed that decision-makers may equate consistency with a rehearsed testimony. The review also indicated that inconsistencies between information provided in the preliminary (screening) and subsequent (detailed) personal interviews may be considered indicative of non-credibility, and consistency considered indicative of credibility.

UNHCR's research findings suggested that decision-makers' general expectations concerning the consistency of applicants' testimony may not be sufficiently informed by the wealth of scientific evidence that exists on human memory and recall of facts and events. It was not generally apparent from the case file materials reviewed that decision-makers were aware that inconsistency in recall is normal.

Moreover, it was not always clear from the case-file materials whether the decision-maker had taken into account the applicant's individual and contextual circumstances and/or procedural circumstances when assessing the consistency of his or her statements. Often, there was no explicit acknowledgement of the possible impact of these circumstances. This, of course, does not necessarily mean that such factors were not taken into consideration, but the absence of such reference and the nature of the conclusions drawn by the decision-maker often gave the impression that such factors had not been taken into account. In some cases, an applicant's individual and contextual circumstances were explicitly acknowledged, but dismissed as a mitigating circumstance because of an unfounded assumption about the functioning of memory. Only in a minority of cases was an individual or procedural circumstance acknowledged and taken into account as a mitigating circumstance.

Notwithstanding the caution expressed in the EAC that decision-makers should not adopt a 'microscopic' approach to the assessment of credibility, UNHCR's review of case files revealed that minor inconsistencies relating to issues such as dates, duration, and frequency of events, numbers, and verbatim statements were considered to undermine the credibility of the asserted fact.

¹⁶⁹ DRC03M, GUI10F.

¹⁷⁰ GUI05M.

¹⁷¹ IRQ05M.

¹⁷² *R (on the application of AM) v Secretary of State for the Home Department* [2012] EWCA Civ 521, 26 April 2012..

4. Consistency of the Applicant's Statements with Information Provided by Family Members and/or Witnesses

As part of the credibility assessment, the determining authority may obtain and compare information and evidence provided by any family members and/or witnesses with the statements made by the applicant for international protection. Consistency in the facts asserted by the applicant with any statements made by dependants, other family members, or witnesses may be considered an indicator of credibility.¹⁷³

The assumption underlying this indicator is that an applicant's personal and contextual circumstances can be verified through family members; a lived experience can be recalled and recounted in the same way by all those present.

The EAC Module states: “*You may find discrepancies between: Different written applications for example a witness statement and the interview record; [b]etween the applicant and family members or supporting witnesses.*”¹⁷⁴

4.1 Memory and consistency with information provided by family members and/or witnesses

As mentioned in Chapter 3 - Credibility Assessment: A Multi-disciplinary Approach, there is a wide-ranging variation in the human ability to attend to, retain, and retrieve memories. Therefore, decision-makers should expect to see evidence of this variability in the differences between the information furnished by the applicant and family members or other witnesses. We tend to recall only those aspects of an event that capture our attention, and the type of information that captures our attention is subjective.¹⁷⁵ Therefore, although an event may be experienced by more than one person, each person's recall of that event is likely to differ in some respects. Moreover, as our long-term autobiographical memories are an interpretation influenced by and reconstructed according to what is known, different people's memories of the same event may change over time. Memory is also influenced by the nature of the question or cue used to elicit information, and by the interviewer's personality, mood, and perceived intentions.¹⁷⁶ Given that family members and witnesses may have been interviewed by different interviewers, and the questions posed may have differed, is also a relevant factor to bear in mind.

¹⁷³ It was beyond the scope of this research project to inquire into the circumstances in which dependant applicants are offered the opportunity of a personal interview and the purpose of the interview.

¹⁷⁴ EAC Module 7, section 3.2.1.

¹⁷⁵ H Evans Cameron, 'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, 2010, p 469–511 at p. 484; M. Conway, E. Holmes, *Memory and the Law: Recommendations from the Scientific Study of Human Memory*, Leicester: The British Psychological Society Press, 2008.

¹⁷⁶ E.g. J Baxter, J Boon, C Marley, 'Interrogative pressure and responses to minimally leading questions', *Personality and Individual Difference*, vol. 40, no. 1, 2006, p 87–98; J Herlihy, S Turner, 'The Psychology of Seeking Protection', *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92.

As such, decision-makers should expect to find inconsistencies when comparing the evidence of one or more people. It is essential that decision-makers appreciate that inconsistency is not necessarily indicative of a statement lacking credibility and may simply reflect persons who are trying to remember what they actually experienced. Therefore, the assessment should not focus on inconsistencies relating to minor or peripheral facts. Rather, the question decision-makers should ask themselves relates to how the information provided by the applicant and his or her family members holds up in light of the other credibility indicators.

4.2 Consistency with statements of other applicants

The ‘consistency’ indicator does not require decision-makers to assess the consistency of the applicant’s statements about the situation in the country of origin against the evidence derived from interviews with other applicants. Indeed, there was no indication from UNHCR’s review of case files in the three Member States of focus that decision-makers assess the consistency of applicants’ statements with those of other applicants.

However, in an interview with UNHCR, one decision-maker stated that the facts asserted by an applicant were consistent with those of other applicants from Afghanistan and this, together with the detail of the account, contributed to a finding of credibility regarding the material facts.¹⁷⁷

The Dutch guidance explains that: *“this overview gives the IND the possibility to conduct a comparatively [sic] and thus objective assessment. This passage within the policy is therefore not intended to mean that the statements of the alien are compared with those of other aliens to then directly draw conclusions from them.”*¹⁷⁸

This clarification is important. In this regard, it is worth noting relevant parts of UNHCR’s advice in relation to gender-related claims. UNHCR states that because the usual types of evidence used in other refugee claims may be less readily available, for example as a result of the under-reporting of cases or lack of prosecution, alternative forms of information might assist. These might include written reports or oral testimonies from other women in a similar situation, or from non-governmental or international organizations, as well as any other independent research.¹⁷⁹

Interviews with some decision-makers revealed that when an applicant’s testimony shares common features with the testimony of other applicants, there is a tendency to consider this as indicative of a manufactured and rehearsed account that lacks credibility. For example, interviewee A stated: *“Instinctively I think it’s false, you think to yourself ‘here we go again’.”*¹⁸⁰ Interviewee E stated: *“In the case of Afghans, every Afghan fears the Taliban, every Afghan has a brother conscripted by the Taliban. This changes the starting point. Before interviews, you know the applicant fears the Taliban, you think to yourself this is the standard run of the mill claim. It’s false.”*¹⁸¹ Interviewee D stated: *“it’s false, often people know other people that have used that story to get a grant.”*¹⁸² Interviewee C stated: *“Well, it’s hard to believe if you know the answers before you’ve asked them the questions.”*¹⁸³

¹⁷⁷ INT02AFGM.

¹⁷⁸ IND Working Instruction 2010/14, paragraph 4.1 (d).

¹⁷⁹ UNHCR, *Guidelines No. 1*, para. 37.

¹⁸⁰ Interview 1.

¹⁸¹ Interview 5.

¹⁸² Interview 4.

¹⁸³ Interview 3.

4.3 Individual and contextual circumstances and consistency with information provided by family members and/or witnesses

With regard to the individual and contextual circumstances that should be taken into account when assessing the consistency of information provided by more than one person, all the relevant factors, as they relate to all the people, involved should be taken into account. Differences between the accounts of different people may be due to differences in, for example, their age, gender, position and role in the family, education, social status, etc.

Due to gender and cultural reasons, adult dependants in many asylum cases are likely to be women whose protection status may depend on the outcome of an application by an adult male relative. Consequently, it is important to reiterate, in this context, that women may not have knowledge of the professional, political, military, or other social activities of their male relative.¹⁸⁴ Therefore, when a female dependant is interviewed primarily to probe the credibility of facts asserted by a male relative, this factor should be borne in mind. This is equally relevant when the statements and other evidence of a female applicant are compared with the statements and evidence of a related male applicant.

In this regard, UK policy guidance states the need to “*understand that women in many societies do not have specific information about the activities of the men in their families. Gaps in their knowledge should not be construed as lack of credibility unless there is other evidence of such lack of credibility.*”¹⁸⁵

In addition, where an applicant’s reasons for applying for international protection relate to gender, past sexual violence, domestic violence, or their sexual orientation and/or their gender identity, it should be borne in mind that for reasons of shame and stigma, they may not have disclosed the sexual violence, domestic violence, or their sexual orientation and/or gender identity to even family members.¹⁸⁶ Moreover, applicants may have already been marginalized or ostracized by their family and/or community, and therefore family or community members may not be willing to support their applications.¹⁸⁷

These and other relevant individual and contextual circumstances should be considered when comparing the statements and evidence of different people.

¹⁸⁴ UNHCR, *Guidelines on the Protection of Refugee Women*, July 1991, para. 61: “A second problem arises when women are interviewed about the claims to refugee status made by male relatives. A wife may be interviewed primarily to corroborate the stories told by her husband; if she is unaware of the details of her husband’s experiences (for example, the number of her husband’s military unit), the entire testimony may be discounted as lacking in credibility. Yet, in many cultures, husbands do not share many details about military or political activities with their wives.” Swedish Migration Board (Migrationsverket), *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection*, 28 March 2001, p. 14.

¹⁸⁵ UKBA, Asylum Instructions, *Gender Issues in the Asylum Claim*, September 2010. Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module on Gender-Related Claims*, October 2012: “A woman who may be at risk of persecution because of her relationship to a male family member may be unable to provide detail about the activities of the male family member that placed the family at risk. In many societies, it is normal for a male family member not to discuss his ‘public’ activities (such as political activities, or activities in a union or religious organization) with female members of the family, even with his wife.”

¹⁸⁶ UNHCR, *Guidelines No. 9*, para. 63 (i)–(viii).

¹⁸⁷ Asylum Aid, ‘Claiming Asylum on the Basis of Your Sexuality: The Views of Lesbians in the UK’, *Women’s Asylum News: Issue no. 115*, January/February 2013, p. 4; Immigration Equality, *Guidance for Adjudication of Lesbian, Gay, Bisexual, Transgendered and HIV Asylum Claims Materials*, 2004, p. 10.

4.4 State practice on consistency with information provided by family members and/or witnesses

Guidance in both the Netherlands and UK refers to consistency with information provided by family members and/or witnesses as an indicator of credibility.

Dutch guidance explains that it may be concluded that the applicant's statements are not consistent and, therefore, not credible if there are external inconsistencies (contradictions with statements of family or others).¹⁸⁸ UK guidance specifies that:

*“Consideration of internal credibility requires an assessment of whether the applicant's claim is [...] consistent with claims made by witnesses and/or dependants.”*¹⁸⁹ As part of the assessment of internal credibility, the guidance notes that decision-makers should be aware of any mitigating circumstances.¹⁹⁰

UNHCR's sample of case files included only a small number involving family members. Nonetheless, a review of these case files indicated that, in practice, consistency between the statements of family members is used as an indicator of credibility.¹⁹¹

Nevertheless, in one Member State, it was noted that when the applicant's statements were consistent with those of family members or friends, the statements by the family members or friends were not given any value because they were considered to be partial and biased.¹⁹² Yet they *were* taken into account when there were inconsistencies.¹⁹³

In some cases, where the family member had been interviewed before, the applicant was given the opportunity to address any inconsistencies or discrepancies between their statements.¹⁹⁴ But in other cases, the applicant was not afforded such an opportunity. The inconsistencies between the statements were nevertheless cited in the written decision.¹⁹⁵

Personal interviews of dependants should not be conducted with the aim of establishing contradictions and inconsistencies. In particular, UNHCR cautions against a reliance on the statements of children to undermine the credibility of statements by a parent or parents. If any inconsistencies that are material to the determination of the principal applicant's claim arise during an interview with family members or dependants, the principal applicant should be given the opportunity to clarify these.

UNHCR's review of case files indicated that consistency with information provided by other applicants and/or witnesses about the situation in the country of origin, or place of habitual residence, is not an indicator decision-makers use. However, in interviews some decision-makers revealed that when an applicant's testimony shares common features with the testimony of other applicants, there is a tendency to consider this as indicative of a manufactured and rehearsed account that lacks credibility. UNHCR recalls that written reports and/or oral evidence provided by other similarly located refugees may constitute a useful source of information in particular for cases where COI may be lacking.

¹⁸⁸ IND Working Instruction 2010/14, paragraph 4.1 (c).

¹⁸⁹ UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 15, para. 4.3.1.

¹⁹⁰ UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 15, para. 4.3.1: “In assessing the internal credibility of a claim, decision makers should be aware of any mitigating reasons why an applicant is incoherent, inconsistent and unable to provide detail, or delays in providing details of material facts. These reasons should be taken into account when considering the credibility of a claim and must be included in the reasoning given in the subsequent decision. Factors may include the following (the list is not exhaustive): age; gender; mental health issues; mental or emotional trauma; fear and/or mistrust of authorities; feelings of shame; painful memories particularly those of a sexual nature and cultural implications. It is also important to consider whether a particular line of questioning was reasonable.”

¹⁹¹ For example, AFG03FRS, AFG05MSP, IRQ07FSP, DRC03M, IRN05MAP, IRN01BP, IRN03MBP, IRQ03FBP, IRQ03MBP, SOM01FBP, AFG04M, IRN09M, IRQ01M, AFG09F, AFG10F, AFG03M, IRN07F. In two cases the decision-maker reviewed interview records of family members whose account shared common features. In both cases this was considered an indicator of consistency. Similarly, UNHCR reviewed three cases in which consistency with the statements of family members was considered indicative of credibility (IRQ03FBP, SOM01FBP, IRQ02FBP).

¹⁹² DRC03M, GUI10F.

¹⁹³ AFG04MSP, AFG10F and IRQ07FSP.

¹⁹⁴ IRQ08FSP, IRQ07FSP, AFG10F, IRQ05MSP.

¹⁹⁵ AFG05MSP, DRC03M.

5. Consistency of the Applicant's Statements with Available Specific and General Information

This indicator requires that the credibility assessment of the material facts that asserted by the applicant is also assessed in light of what is generally known about the situation in the country of origin or place of habitual residence; accurate, objective, and current COI; as well as any specific information or other expert evidence such as medical, anthropological, linguistic, and document verification analysis reports.

5.1 Legal and policy framework

This indicator is embedded in the EU Asylum *acquis* under the provisions of Article 4 (5) (c) of the Qualification Directive: “*the applicant's statements [...] do not run counter to available specific and general information relevant to the applicant's case.*”

UNHCR guidance also provides that “*the applicant's statements cannot [...] be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin – while not a primary objective – is an important element in assessing the applicant's credibility.*”¹⁹⁶

Policy guidance in the UK and the Netherlands also refers to external consistency. Guidance for the determining authority in the UK notes that: “*material facts should be consistent with generally known facts and country of origin information. The decision maker is required to conduct research into the applicant's country of origin to assess whether claims about past and present events are consistent with objective country information.*”¹⁹⁷

There is no further explanation in the guidance of the meaning of ‘generally known facts’.¹⁹⁸

Dutch guidance states that, in assessing whether the applicant's statements are credible, consideration should be given to whether those statements match information from objective sources.¹⁹⁹ It specifies that a comparison of the applicant's statements with all that is known about the situation in the country of origin from official reports and other sources, and what has previously been researched and considered

¹⁹⁶ UNHCR, *Handbook*, para. 42.

¹⁹⁷ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 16; UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 15, para. 4.3.2.

¹⁹⁸ The only reference is in the context of guidance relating to what should be taken into account when considering applying the benefit of the doubt: “*When decision makers are considering giving an applicant the benefit of the doubt much may depend on the general credibility of the applicant's account. This includes: The overall consistency and coherence of the applicant's account and consistency with generally known facts, such as the known situation in the country of origin, taking into account all mitigating circumstances*” (emphasis added). UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 14, para. 4.3.4.

¹⁹⁹ IND Working Instruction 2010/14, paragraph 4.1 (c).

in response to interviews with other applicants in similar situations, is an important element in assessing credibility.²⁰⁰

UNHCR's review of case files indicates that information gleaned from earlier visa applications, for example, may be considered to constitute known facts.²⁰¹ In this regard, the determining authority in Belgium informed UNHCR that reference to 'generally known facts' is only rarely made in practice.²⁰²

The EAC defines this indicator as 'external credibility', meaning consistency with COI, known facts and other pieces of evidence provided by either the applicant or the determining authority.²⁰³

5.2 Guidance on use of 'external consistency'

The EAC curriculum states that:

*"[where] there is objective country of origin information to support the applicant's evidence about a material fact, but there is no evidence to contradict the applicant's account, the account is externally credible and there is no serious reason to doubt the applicant's general credibility, the claimed fact can be accepted. [...] Objective country of origin information which clearly contradicts the claimed material fact(s) is a negative external credibility indicator."*²⁰⁴

The guidance in the Netherlands further provides that where an applicant's statement regarding a fact is inconsistent with authoritative sources, for example, the content of an official report of the Minister of Foreign Affairs, this is a strong argument for the conclusion that the applicant's statement regarding this fact is not credible.²⁰⁵

The guidance for the UK determining authority states that:

*"[w]here there is objective country information to support the applicant's account of a past or present event, and the applicant's account is internally consistent, the material fact may be accepted by the decision maker. However, where there is objective country information that clearly contradicts the material facts, this is likely to result in a negative credibility finding."*²⁰⁶

²⁰⁰ IND Working Instruction 2010/14, paragraph 4.1 (d). IND Aliens Act Implementation Guidelines (2010), section C14/2.3: "The following elements play a role in the assessment of credibility: [...] A comparison of the statements with all that is known from objective sources about the situation in the country of origin and what has been assessed and decided in interviews with other aliens in comparable situations."

²⁰¹ IRN03MNP, IRQ01FNP. UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, section 3.2, which refers to visas as a source of evidence.

²⁰² Interview with Head of Dutch language section of the legal department of CGRA/CGVS, 24 May 2012; and interview with regional coordinator for Middle East and Asia of CGRA/CGVS, 6 June 2012. UNHCR did not observe any reference to 'generally known facts' in the decisions reviewed.

²⁰³ EAC Module 7, section 3.2.

²⁰⁴ EAC Module 7, section 3.2.

²⁰⁵ IND Working Instruction 2010/14, paragraph 4.1 (c).

²⁰⁶ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 16; UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 15, section 4.3.2.

5.3 The individual and contextual circumstances of the applicant and ‘external consistency’

When applying the ‘external consistency’ indicator to assess the credibility of information provided by applicants, decision-makers must do so bearing in mind their individual and contextual circumstances. Applications must be examined individually and objectively.²⁰⁷

Therefore, any information relied upon for the credibility assessment should be objective.²⁰⁸ Moreover, the information should be reliable and time appropriate.

In comparing the applicant’s statements and other evidence submitted with available specific and general COI, it should be borne in mind that much COI is general in nature and might not report specific events. A document that contains general information may not suffice to support, refute, or otherwise bear on facts relating to a specific, individualized event or issue.²⁰⁹

A lack of accurate, objective, and current COI regarding an asserted material fact is not necessarily indicative of a lack of credibility.²¹⁰ As noted in UK guidance:

“There may be instances where a lack of objective country information results in the decision maker being unable to make a finding on whether a past or present event described by the applicant occurred as claimed. The absence of objective country information to support a material fact does not necessarily mean that an incident did not occur. Much will depend on the scale of the incident, the country situation and the ability of the media or other organisations to report the incident. If the past or present event is material to the claim, a decision will have to be made as to whether the applicant should be given the benefit of the doubt on this aspect of their claim in line with Lord Justice Sedley’s comments that all factors capable of having a bearing have to be given their due weight.”²¹¹

The EAC notes that, in addition, “countries circumstances can change rapidly, and the most recent country of origin information (COI) report (most of which are frequently updated) may not reflect the current situation.”²¹²

In particular, there may be very little reliable information available on regions experiencing high levels of indiscriminate violence due to the limited presence on the scene of independent media and civil society. This also applies to the conditions under which people, as well as organizations such as hospitals, mortuaries, the police, etc., are operating in the region.²¹³

²⁰⁷ Article 8 (2) (a) APD: “Member States shall ensure that: (a) applications are examined and decisions are taken individually, objectively and impartially.”

²⁰⁸ EAC Module 7, section 3.2.8. According to Dutch guidance, in assessing whether the statements of the applicant are credible, it should be determined whether the applicant provides information which matches information from objective sources: Aliens Act Implementation Guidelines (2010), section C14/2.3 and IND Working Instruction 2010/14, paragraph 4.1 (c). The guidance further states that it may be concluded that the applicant’s statements are not consistent and, therefore, not credible if there are contradictions with authoritative sources: IND Working Instruction 2010/14, paragraph 4.1 (c). UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 16; UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 15, para. 4.3.2.

²⁰⁹ Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, p. 56, para. 2.4.4.

²¹⁰ CCE/RVV 44.471, 31.05.2010; CCE/RVV 44.467, 31.05.2010; CCE/RVV 45.928, 02.07.2010.

²¹¹ UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 15.

²¹² EAC Module 7, section 3.2.

²¹³ UNHCR, *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, July 2011. UNHCR, *Women and Girls Fleeing Conflict: Gender and the Interpretation and Application of the 1951 Refugee Convention*, September 2012, p 41–2: “getting accurate, up-to-date information on the situation of women and girls during a conflict can be extremely difficult, and if it is collected, it likely reflects under-reporting and therefore under-estimation.”

It should also be noted that general COI may lack a perspective on, for example, gender, gender identity, sexual orientation, or age.²¹⁴ Relevant and specific COI on the situation and treatment of women, children, and LGBTI individuals is often lacking. This may, for example, be due to a bias in the collation of information, or to the fact that international organizations and other groups are hampered in their ability to monitor and document abuses against certain groups, such as LGBTI individuals. Alternatively, stigma attached to issues such as gender-related violence, sexual orientation and/or gender identity, may result in incidents going unreported. A lack of relevant COI should not automatically lead to the conclusion that the asserted material facts are not credible.²¹⁵

The UKBA Independent Chief Inspector conducted a thematic review of the use of COI in the agency in 2011.²¹⁶ The inspection noted that:

“There is a risk that, if information on a particular social group or type of claim is not included in the COIS report and has not been captured as a result of previous individual claims, Case Owners could automatically assume there are no grounds for substantiating an applicant’s assertions. This is particularly important for some of the most vulnerable applicants such as those claiming persecution on the grounds of female genital mutilation or on the grounds of sexuality or gender. [...] Decisions made without the appropriate knowledge run the risk of being wrong decisions.”²¹⁷

In this regard, it is positive to note that in the UK, all COI reports contain a section on women and children. There are also sections on LGBTI individuals, for which there is specific guidance on coverage of LGBTI individuals in COI service products. Moreover, following a review in October 2011, the Independent Advisory Group on Country Information (IAGCI) is developing a gender checklist for use in UKBA COI reports, which will be applied and may lead to substantial structural changes to reports. Similarly, the reports of the Dutch Ministry of Foreign Affairs are based on terms of reference that focus attention on specific groups such as ethnic minorities and women.²¹⁸

²¹⁴ UNHCR, *Guidelines No. 1*, para. 37: “It is important to recognize that in relation to gender-related claims, the usual types of evidence used in other refugee claims may not be as readily available.” UNHCR, *Guidelines No. 8*: “Just as country of origin information may be gender-biased to the extent that it is more likely to reflect male as opposed to female experiences, the experiences of children may also be ignored.” UNHCR, *Guidelines No. 9*, para. 66.

²¹⁵ UNHCR, *Guidelines No. 9*, para. 66: “Relevant and specific country of origin information on the situation and treatment of LGBTI individuals is often lacking. This should not automatically lead to the conclusion that the applicant’s claim is unfounded or that there is no persecution of LGBTI individuals in that country.” S Jansen, T Spikerboer, *Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, COC Netherlands, Vrije Universiteit Amsterdam, September 2011, p 7 and 10.

²¹⁶ UKBA, *The Independent Chief Inspector of UKBA: The Use of Country of Origin Information in Deciding Asylum Applications – A Thematic Inspection*, October 2010–May 2011, para. 5.4.

²¹⁷ UKBA, *The Independent Chief Inspector of UKBA*, para. 6.13.

²¹⁸ *Expertise getoetst* (Advisory Committee on Migration Affairs, The Hague, *Evaluating Expertise: The Role of Expert Advice in the Asylum Procedure*, 6 July 2012) and ACVZ advice, *Transparant en Toetsbaar. Een advies over landeninformatie in het vreemdelingenbeleid* (Advisory Committee on Migration Affairs, The Hague, *Transparent and Verifiable, A Report on the Use of Country Information in Aliens Policy*, 5 September 2006).

5.4 Consistency with country of origin information

UNHCR's review of case files confirmed that, in practice, the credibility of applicants' statements is assessed against general and specific COI,²¹⁹ expert evidence such as the results of language analysis,²²⁰ age assessment,²²¹ or document verification procedures.²²² Due to the limited scope of this research, it was not possible to focus on language analysis, age analysis, or document verification as they relate to the assessment of credibility in the procedures of the three Member States under survey. This section therefore only discusses the use of COI.

It is important to recall in this context that COI must support the individual, objective, and impartial examination of the application.²²³ COI must be precise and up-to-date and obtained from various sources.²²⁴ The European Court of Human Rights has ruled in this regard that:

*“In assessing such material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations.”*²²⁵

The three Member States surveyed in this research provide decision-makers with instructions on how to ensure that the requirements of objectivity, reliability, and time-appropriateness are met in practice.²²⁶ Nevertheless, in a small number of cases reviewed, UNHCR noted that decision-makers appeared to conduct their own research without any recorded reference to recommended country of origin sources, instead relying solely on information from other websites that may not necessarily meet the criteria of

²¹⁹ AFG04MSP; AFG08M; AFG09M; AFG10F; IRQ05MSP; IRQ09M; GUI04M; GUI05M; GUI06M; GUI07M; AFG01MRS; AFG02MRS; AFG03FRS; IRQ01MRS; IRQ06MSP; DRC01MRS; DRC02FRS; GUI01MRS; GUI02FRS; GUI03FRS; GUI05M; GUI07M; GUI08M; GUI09M; INT06GUIM; INT08DRCF; IRN02FBP; AFG02FNP; IRQ01MNP; IRQ02MNP; IRQ04MNP; SOM01FNP; SOM02MNP; IRN05MAP; SOM01MAP; IRQ01MBP; AFG01MBP; IRN01FBP; IRN01MBP; IRN03MBP; IRQ02FBP; SOM01FBP; IRN02MNP; IRQ09M, IRN04M, SOM09M, IRN10M, SOM06FRS, IRQ05M, IRQ02M, AFG01MRS, SOM05M, IRN06MRS, IRQ01M, IRN02F, IRN08M, AFG08M, AFG09F, IRN05M, IRQ08F, AFG06M, SOM01F, IRQ10M, IRN09M, IRN03M, SOM07F, SOM10MRS, SOM04M, SOM02M, SOM03MRS, SOM08M.

²²⁰ SOM01FNP, INT03IRNM. During the period of UNHCR's research, of the three Member States surveyed, language analyses were only being utilized in practice in the Netherlands. According to INDIAC, 429 language analyses were conducted during 2011. Decision-makers in the UK stated that they had not used language analyses for some time due to lack of funding. However, the UK determining authority (UKBA) informed that funding for language analysis testing had been reinstated. UNHCR was informed that, in Belgium, the use of language analysis for the determination of origin is considered time consuming, expensive and limited in its applicability and therefore is very rare. Interview with Head of CEDOCA, 24 May 2012. In 2011, only one such test was conducted: interview with Head of CEDOCA, 19 June 2012. There were no cases reviewed by UNHCR in Belgium and the UK in which a language analysis had been conducted.

²²¹ AFG03MNP.

²²² IRQ04MNP, IRQ01FAP.

²²³ Art. 8 (2) (a) APD.

²²⁴ Art. 8 (2) (b) APD. *Salah Sheekh v. the Netherlands*, no. 1948/04, ECtHR, 11 January 2007, in which the national authorities relied on COI from only one single source, whereas the ECtHR relied on information from a variety of sources.

²²⁵ *NA v. The United Kingdom*, no. 25904/07 (Judgment), ECtHR, 17 July 2008, para. 120.

²²⁶ The updated UKBA, Asylum Instructions, *Considering the Asylum Claim and Assessing Credibility*, February 2012, provides that “it is best practice and a far more efficient use of resources to use research already conducted by COIs [countries of origin] and only, if absolutely necessary, should decision makers undertake independent research.” The guidance also cites other useful sources from which reliable material can be collated such as ‘UNHCR's Refworld’ and ACCORDs ‘ecoi.net.’: UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, p. 16. It should be noted that this information did not feature in the previous UKBA, Asylum Instructions, *Considering the Asylum Claim and Assessing Credibility*, July 2010. Dutch guidance provides that the official reports of the Ministry of Foreign Affairs are reliable, and when there is no official report an assessment may be based on the official country reports of other states and reports of international organizations and NGOs: IND Aliens Act Implementation Guidelines (2010) Vc 2000 C14/2.4. The Head of CEDOCA in Belgium informed UNHCR that protection officers are advised to research country of origin information in the internal database of CGRA/CGVS, provided by CEDOCA, and put individual questions to CEDOCA, before researching information on the internet. If relevant information is found on the internet that is not on the database, the information should not be used without first verifying its reliability with CEDOCA (Interview with Head of CEDOCA, 24 May 2012). CCE/RVV 55.603, 04.02.2011 in which the appeal body urged caution if reliance is placed on internet sources, and CCE/RVV 45.928, 02.07.2010 in which CCE/RVV confirmed that if the CGRA/CGVS relies on an anonymous source, CCE/RVV cannot verify the reliability of the source and the decision must be annulled.

independence, accuracy, reliability, and time-appropriateness.²²⁷ UNHCR also noted that in many of the cases it reviewed, the COI referred to appeared to be time-appropriate.²²⁸ However, in some cases the COI used did not appear to be time-appropriate.²²⁹

For example, in one case the applicant had asserted facts relating to November 2010. However, the decision-maker based a finding of external inconsistency on COI published in January 2010. Since the applicant had not been confronted with the inconsistency during the first instance procedure, the applicant had to resort to an appeal to point out that the COI the determining authority relied on was inaccurate because it was not updated, and to submit more recent COI that supported his statements.²³⁰ Such cases highlight the need for decision-makers to remain vigilant to ensure that COI is time-appropriate, and to give applicants an opportunity to explain any apparent external inconsistency.²³¹

With regard to the use of COI in the application of the ‘external consistency’ indicator, UNHCR noted that, in most case files reviewed, COI was not cited in relation to each material fact for which such information was relevant and available. UNHCR also noted that in many cases where refugee status was not granted, only COI supporting the a lack of credibility of asserted facts was cited, whereas in those cases in which refugee status was granted, only COI supporting the credibility of asserted facts was cited. In some cases, no COI was added to the case file at all.²³²

UNHCR also noted that some of the written decisions viewed did not relate or tailor the available and relevant COI sourced to the individual material facts. UNHCR observed that, in a significant number of cases, references to COI were general in nature and did not reveal the exact source – “*it appears from public sources that ...*”, or “*it is consistent/inconsistent with general public sources that ...*”²³³ – and/or only general information about the security situation in the country of origin was noted.²³⁴ In such circumstances, it was not possible to assess whether the evidence drawn from the COI actually supported the credibility finding.

On the other hand, UNHCR observed some written decisions that clearly referred to and sourced the COI supporting the credibility finding. The following example highlights good practice:

“Consideration has been given to the applicant’s claim that [...] she was attacked by two militia men. She claims a number of days before the attack she had witnessed two militia men fighting. She informed the newspaper of what happened and they published the story in the paper. When the militia came to her house to attack her, they asked her why she had written the story. They then dragged her out of her house and hit her in the face with the butts of their guns. [...] The militia left but warned her not to write anything in the newspaper again. Consideration has been given to journalists in Somalia, in particular it is noted that: ‘

Journalists have been repeatedly subjected to threats and short-term arbitrary detentions, particularly in Baidoa and Kismayo. Al-Shabaab has increasingly targeted civil society groups, peace activists, media and human rights organisations.’ (OGN Somalia July 2010, para 3.6.7)

[...] Therefore as the applicant has been consistent with the objective information [...] it has been accepted that she was a journalist in Somalia from the Ashraf clan, the applicant’s claim that she was attacked in 2007 by militia for reporting a story in a newspaper is accepted.”²³⁵

²²⁷ IRN10M, IRN09M, IRQ09M, AFG08M, IRQ01M.

²²⁸ AFG08M, AFG09M, AFG10M, IRQ05MSP, IRQ06MSP, GUI04M, GUI05M, GUI06M, GUI07M, GUI08M, GUI09M.

²²⁹ SOM09F, IRQ08F, IRQ10M, AFG10F.

²³⁰ IRQ09M.

²³¹ Chapter 4: Gathering the Facts discusses probing credibility in more detail.

²³² AFG05MSP, IRQ03FRS, IRQ07FSP, DRC03M, DRC06M, DRC07F, DRC08F, DRC09F, DRC10F, GUI03FRS.

²³³ IRQ01MNP.

²³⁴ IRQ10M, GUI10F.

²³⁵ SOM06FRS.

Where there is independent, objective, reliable, and time-appropriate COI that supports the applicant's asserted material facts, and there is no such information to contradict the applicant's account, the claimed fact may be accepted as credible.²³⁶

However, from the sample reviewed, it was evident that there was a tendency for some decision-makers to cite COI and ignore the content of this information. For example, in one case, COI was cited on the topic of the treatment of those who convert to a different religion. While parts of the COI supported the applicant's claim, the subsequent sentence stated that: "*Regardless of the objective information it is not considered that your claim is credible,*"²³⁷ thereby disregarding any indication that the COI supported the applicant's account.

Some non-governmental stakeholders found that COI was being used selectively to support negative credibility findings.²³⁸ Indeed, in some of the case files that UNHCR reviewed, the content of the written decision was indicative of such selectivity. For example, in one instance, the decision-maker sought to show that members of Al-Shabaab could not have targeted the applicant (a civilian) because he lived in a government controlled area of Mogadishu, and Al-Shabaab "*is an organised group which targets its attacks against government forces and officials.*" However, the same COI source that the decision-maker cited confirmed that "*Al Shabaab also carry out random killings of civilians in Mogadishu to create disorder and chaos.*"²³⁹ This was not mentioned in the written decision, which instead referred solely to Al-Shabaab killing Transitional Federal Government (TFG) soldiers.

UNHCR observed that, in several cases where a decision was taken not to grant international protection, the decision often did not refer to COI that supported a material fact, or did not mention material facts that were deemed to be credible. Only the information that was considered to support a finding of a lack of credibility was referred to in the decision. In other words, the decision did not refer to those material facts that were supported by available general and specific COI.

UNHCR also noted that, in practice, the consistency of facts furnished by the applicant with COI does not necessarily mean that the applicant's statements in relation to those facts will be considered credible. This is because the decision-maker may find the indicator inapplicable on the ground that the COI is widely known or in the public domain.

The High Court of Ireland stated that: "*the decision-maker must be alive to the possibility that a claimant is making use of events or information known to be verifiable to create the impression that he or she was present and involved when the claim is actually untrue.*"²⁴⁰

Independent, objective, reliable, and time-appropriate COI or other information that clearly contradicts or is inconsistent with material facts asserted by the applicant may be regarded as an indicator of the non-credibility of the fact(s), subject to a lack of a satisfactory explanation by the applicant, and the absence of other factors that may account for the discrepancy.

²³⁶ EAC, Module 7, section 3.2.

²³⁷ AFG09F.

²³⁸ Interview with lawyers on 8 June 2012; and meeting with NGOs on 5 June 2012. See also, Comité Belge d'Aide aux Réfugiés, *La crainte est-elle fondée? Utilisation et application de l'information sur les pays d'origine dans la procédure d'asile*, June 2011, p. 51.

²³⁹ SOM08M.

²⁴⁰ *K. v Refugee Appeals Tribunal*, High Court of Ireland [2011] IEHC 125, 25 March 2011.

6. Plausibility

The credibility indicator ‘plausibility’ is also listed in Article 4 (5) (c) of the Qualification Directive: “*the applicant’s statements are found to be [...] plausible.*” UNHCR’s handbook states that: “*The applicant’s statements must be coherent and plausible, and must not run counter to generally known facts.*”²⁴¹ In its *Note on Burden and Standard of Proof*, UNHCR adds that: “*Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed.*”²⁴²

6.1 Meaning of ‘plausible’

In the context of the credibility assessment, the intended meaning of the term ‘plausible’ lacks clarity. Indeed, some may consider ‘plausibility’ to mean no more than ‘credible’.²⁴³ The EAC asks: “*What does plausibility mean? The facts alleged by the applicant should be plausible i.e.: they should be **believable** and consistent*”²⁴⁴ (emphasis added). Such a definition in effect nullifies ‘plausibility’ as an indicator of credibility.²⁴⁵ A UK tribunal has highlighted a distinction between ‘plausible’ and ‘credible’, stating that: “*A story may be implausible and yet may properly be taken as credible; it may be plausible and yet properly not believed.*”²⁴⁶

The ordinary meaning of the term is: “*seeming reasonable or probable*”.²⁴⁷ The EAC also states that plausibility “*is when the applicant’s story is plausible – or not – with ‘common sense’.*” Within the list of examples of statements that may be considered not to be consistent and plausible, Dutch guidance refers to “*contradictions with authoritative sources*”, “*inconsistencies in behaviour*”, and “*unlikely events (disproportionately high degree of coincidence)*”²⁴⁸ (emphasis added). It also refers to “*strange or remarkable statements*”.²⁴⁹ Further, a UK tribunal has noted that the credibility assessment can involve a judgement, based on evidence or inferences, about the likelihood of something having happened; it also referred to ‘inherent likelihood’, ‘reasonableness’, and ‘improbabilities’.²⁵⁰ As such, UK guidance states that “*The plausibility of a fact is assessed on the basis of its apparent likelihood or truthfulness in the context of the general country information relevant to the applicants’ country of origin and/or their own evidence.*”²⁵¹

At the national level, attempts have been made to reduce the scope for such subjectivity by defining the meaning of this indicator more narrowly. For example, it has been suggested that “*a circumstance is*

²⁴¹ UNHCR, *Handbook*, para. 204.

²⁴² UNHCR, *Note on Burden and Standard of Proof*, para. 11.

²⁴³ In the context of the credibility assessment of past and present facts, according to Dutch guidance, the term ‘plausible’ is interchangeable with ‘credible’: IND Working Instruction 2010/14, para. 2, p. 2.

²⁴⁴ EAC, Module 7, section 3.2.

²⁴⁵ M Kagan, ‘Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determinations’, *Georgetown Law Journal*, no. 17, 2003, p 1–68.

²⁴⁶ *MM (DRC – Plausibility) Democratic Republic of Congo v Secretary of State for the Home Department*, [2005] UKIAT 00019, 27 January 2005, para. 16.

²⁴⁷ <http://oxforddictionaries.com/definition/plausible>

²⁴⁸ IND Working Instruction 2010/14, paragraph 4.1 (c).

²⁴⁹ IND Working Instruction 2010/14, paragraph 4.1 (c).

²⁵⁰ *MM (DRC – Plausibility) Democratic Republic of Congo v Secretary of State for the Home Department*, [2005] UKIAT 00019, 27 January 2005, paras. 15, 16, and 19.

²⁵¹ UKBA, *Asylum Instructions, Considering Asylum claims and Assessing Credibility*, February 2012, para. 4.3.6.

*'implausible' if it is beyond human experience of possible occurrences, that is to say, inherently unlikely.*²⁵² However, there has been some resistance to such an approach in the UK: *"we do not regard 'implausible' or 'inherently unlikely' as meaning 'beyond human experience or possible occurrence', nor do we regard that latter phrase as the relevant benchmark for an adverse conclusion as to plausibility or credibility."*²⁵³

With such uncertainties surrounding the meaning of 'plausibility', an assessment of whether facts presented by an applicant seem reasonable, likely or probable, or make 'common sense' risks becoming intuitive, based on subjective assumptions, preconceptions, conjecture, speculation, and stereotyping, rather than accurate, objective, and current evidence.²⁵⁴

6.2 The individual and contextual circumstances of the decision-maker

Psychologists believe that we make judgements either by referring to our own past experiences, or when facing a new complex situation, by comparing the circumstances with another known, more simple set of circumstances.²⁵⁵ Current psychological theories and empirical evidence suggest that these are the predominant mechanisms at work when relying on 'common sense' to make judgements.²⁵⁶ However, the combination of our past and second-hand experiences give us only a partial understanding of human experience and behaviour, and we risk considering alleged facts that fall outside our personal experiences, background, culture, values, and views as implausible.²⁵⁷

Human reactions to circumstances are wide-ranging and often unpredictable, particularly for refugees who may have had to face and endure extremely stressful situations. Decision-makers therefore confront a wide spectrum of human behaviour and experiences from other cultures on a daily basis. It has been suggested that some of our intuition may draw on skills and expertise acquired through repeated experiences.²⁵⁸ However, intuitions are only likely to be accurate when applied to an environment that is sufficiently regular to be predictable, and when, through prolonged exposure, there is an opportunity to recognize its regularities.²⁵⁹ Learning can only properly happen with feedback on which decisions were correct, which incorrect, and on what grounds. Without such feedback, *"expert decision makers"* are likely to become increasingly reliant on stereotypes and incorrect beliefs.²⁶⁰ In the environment in which asylum decision-

²⁵² *MM (DRC – Plausibility) Democratic Republic of Congo v Secretary of State for the Home Department* [2005] UKIAT 00019, 27 January 2005, para.12, referring to Federal Court of Australia, J Lee at para. 30 *W148/00A v Minister for Immigration & Multicultural Affairs* [2001] FCA 679, 22 June 2001.

²⁵³ *MM (DRC – Plausibility) Democratic Republic of Congo v Secretary of State for the Home Department* [2005] UKIAT 00019, 27 January 2005, para. 16.

²⁵⁴ J Millbank, "The Ring of Truth": A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations', *International Journal of Refugee Law*, vol. 21, no. 1, 2009, p. 17 in which it is suggested that this "difficulty is exacerbated in sexual orientation claims because there is rarely any external form of proof of group membership. Moreover, even when available, evidence such as photographs of lovers, membership of lesbian and gay community groups, or testimony by a counsellor, is often disregarded as self-serving or staged. Thus, overwhelmingly, it is the applicant's own testimony of his or her self-identity that founds the claim."

²⁵⁵ D Kahneman, A Tversky, 'Judgment under Uncertainty: Heuristics and Biases', *Science*, New Series, vol. 185, no. 4157, 1974, p 1124–31; D. Kahneman, *Thinking Fast and Slow*, London: Allen Lane, 2011, p 12 and 97: Kahneman suggests that we generate intuitive opinions on complex matters by substituting complex questions with a related easier question and we then answer the easier question without noticing the substitution.

²⁵⁶ J Herlihy, S Turner, 'The Psychology of Seeking Protection', *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at 190; D. Kahneman, *Thinking Fast and Slow*, London: Allen Lane, 2011, p 12 and 97.

²⁵⁷ R Graycar, 'The gender of judgments: an introduction', in M Thornton (ed.), *Public and Private Feminist Legal Debates*, Melbourne: Oxford University Press, 1991, p 262–82.

²⁵⁸ D. Kahneman, *Thinking Fast and Slow*, London: Allen Lane, 2011.

²⁵⁹ D. Kahneman, *Thinking Fast and Slow*, London: Allen Lane, 2011, p 239–40.

²⁶⁰ P A Granhag, L A Strömwall, M Hartwig, 'Granting Asylum or Not? Migration Board Personnel's Beliefs about Deception', *Journal of Ethnic and Migration Studies*, vol. 31, no. 1, 2005, p 29–50, at pp. 30–1.



makers work, therefore, there is a real risk that they may be relying on subjective judgements that simply draw on their own life experiences.²⁶¹

If indicators are based on unfounded subjective assumptions about how human beings should act and behave in particular circumstances, or on how people should perceive and respond to situations of risk, and if they equate to the decision-maker's limited knowledge with the truth, then they are likely to be flawed and to risk producing flawed credibility findings.

Resorting to 'common sense' is not an effective means of judging the plausibility of events, particularly in societies and countries that differ from one's own.²⁶² Considerable caution is required when assessing the behaviour, norms, and customs of people from different cultures, and the practices and procedures of their political, justice, and social systems.²⁶³ This is reflected in national jurisprudence.²⁶⁴ For example:

*"29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar."*²⁶⁵

²⁶¹ D. Kahneman, *Thinking Fast and Slow*, London: Allen Lane, 2011, p. 185.

²⁶² W Kälin, 'Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing', *International Migration Review*, vol. 20, no. 2, Special Issue: Refugees: Issues and Directions, Summer, 1986, p 230–41 at p. 236.

²⁶³ Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, p. 34, para. 2.3.5.

²⁶⁴ *S v. Federal Asylum Review Board*, Austrian Higher Administrative Court (Verwaltungsgerichtshof), 2001/01/0169, 25.03.2003..

²⁶⁵ *HK. v Secretary of State for the Home Department*, [2006] EWCA Civ 1037, 20 July 2006.

A fact is not implausible just because it would not happen in the decision-maker's own country.²⁶⁶ By way of example, UK policy guidance clearly states that a decision-maker must guard against regarding a fact as implausible merely because it would not seem plausible if it happened in the UK.²⁶⁷ The guidance continues: *"claims made by an applicant that appear implausible to a decision maker may nonetheless be true, and may be plausible when seen in the context of the attitudes and conditions of the applicant's country of origin."* This advice flows from the Court of Appeal expressing the view that, when making a finding of plausibility, the decision-maker must *"look through the spectacles provided by the information he has about conditions in the country in question."*²⁶⁸

In interviews with UNHCR, decision-makers reported that they found that the most difficult aspect of the credibility assessment was *"to put yourself in a different culture, get used to certain behaviour, how acceptable it is to do certain things."*²⁶⁹ Another decision-maker stated: *"I've lived in the UK all my life, I can only read reports. It's hard to make a finding on what life is really like for them."*²⁷⁰ Another decision-maker said *"Although I have travelled a lot, I still think from a Dutch perspective, so I need to make sure the story is put down in the right way."*²⁷¹

In this regard, it is instructive to recall that the international criminal law tribunals have considered expert anthropological evidence to be crucial in assisting decision-makers to understand the cultural and social backgrounds of the witnesses. The Supreme Administrative Court of Austria also highlighted the importance of such expert evidence when it pointed out, in relation to the plausibility of the complainant's statements about an alleged incident in August 1998, that the responding authority had not questioned the country expert who was present at the public hearing even though it was a crucial part of the authority's reasoning.²⁷²

A fact need not be implausible because it is exceptional or remarkable.²⁷³ Exceptional events occur.²⁷⁴ A fact may appear inherently implausible but be true, and another fact may appear wholly plausible but be untrue.²⁷⁵ This is reflected in national jurisprudence:

"72. On analysis of the tribunal's reasoning, I am unable to avoid the conclusion that the applicant's account has been rejected simply because the facts that he describes are so unusual as to be thought unbelievable. But, as Lord Justice Neuberger has pointed out, that is not a safe basis upon which to reject the existence

²⁶⁶ *Y v Secretary of State for the Home Department*, [2006] EWCA Civ 1223, 26 July 2006.

²⁶⁷ UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, para. 4.3.6.

²⁶⁸ *Y v Secretary of State for the Home Department*, [2006] EWCA Civ 1223, para 27.

²⁶⁹ Interview 3.

²⁷⁰ Interview 5.

²⁷¹ Interview 5.

²⁷² *S. v. Federal Asylum Review Board*, Austrian Higher Administrative Court (Verwaltungsgerichtshof), 2000/20/0269, 26 November 2003.

²⁷³ It should be noted that guidance in the Netherlands stated that *"Even (also) strange or remarkable statements may be involved in assessing the credibility of the statements and could (also) lead to the conclusion that the story is considered not plausible. Hereby it is important to give a clear conclusion whenever statements of the alien are considered to be strange or remarkable."* IND Working Instruction 2010/14, para. 4.1 (c).

²⁷⁴ During UNHCR's research, a judge reported that he had once considered a case which had been rejected at first instance because the applicant's claim that he had physically blown up (inflated) the tyres of his car in order to drive on was deemed implausible. During the court hearing, the appellant demonstrated how he had done it. This case is used in training to demonstrate that exceptional events do occur. Interview on 5 April 2012.

²⁷⁵ *Gheisari v Secretary of State for the Home Department*, [2004] EWCA Civ 1854, 16 December 2004, para. 10: *"We know that in real life the improbable, even the incredible, sometimes happens. The question for a tribunal of fact is not whether an event which has been described to it was likely to occur but is whether the event, however improbable (or for that matter however probable), did in fact occur."* And para. 21: *"Parts of the story may be inherently likely and parts inherently unlikely. The degree of likelihood may itself depend on witness assessment. What would be wrong would be to say, – and I agree with Sedley LJ, – that because evidence is inherently unlikely it inevitably follows that it is wrong. An unlikely description may, upon a consideration of the circumstances as a whole, including the judge's assessment of the witness and any explanations he gives, be a true one."* *HK. v Secretary of State for the Home Department*, [2006] EWCA Civ 1037, 20 July 2006, para. 72: *"On analysis of the tribunal's reasoning, I am unable to avoid the conclusion that the applicant's account has been rejected simply because the facts that he describes are so unusual as to be thought unbelievable. But, as Lord Justice Neuberger has pointed out, that is not a safe basis upon which to reject the existence of facts which are said to have occurred within an environment and culture which is so wholly outside the experience of the decision maker as that in the present case."*

*of facts which are said to have occurred within an environment and culture which is so wholly outside the experience of the decision maker as that in the present case.*²⁷⁶

A fact is not implausible because it would not occur in the personal life of the decision-maker. Instead, it might be wholly plausible when considered in the context of the applicant's gender, age, sexual orientation, gender identity, education, or social and cultural background. The US training programme on gender-related claims usefully notes that care needs to be exercised when evaluating the plausibility of asserted facts by an applicant from a different culture when behaviour or life choices are being evaluated. "*What may seem implausible behaviour to you could be plausible in the applicant's culture, or given the conditions in the applicant's country*";²⁷⁷ and:

*"the fact that an applicant testifies about events that may appear unlikely or unreasonable does not mean it is implausible that the events actually occurred. You must take care not to rely on your views of what is plausible based on your own experiences, which are likely to be quite different from the applicant's."*²⁷⁸

In addition, the Federal Court of Canada has cautioned against drawing inferences from cultural and gender generalizations and relying on stereotypical profiles.²⁷⁹ UK guidance stresses that decision-makers should not label or stereotype lesbian, gay, or bisexual persons.²⁸⁰ Similarly, the US training programme on adjudicating claims by LGBTI individuals warns decision-makers not to assume that an applicant must conform to a particular stereotype in order to be lesbian or gay.²⁸¹

Decision-makers should not be tempted to judge the credibility of an applicant's asserted age, ethnicity, or sexual orientation from his or her physical appearance.²⁸² The Canadian guidelines on assessment of credibility point out that the decision-maker's common sense is not sufficient to ground a conclusion about ethnicity based on appearance; other evidence must be available to support the conclusion.²⁸³ With regard to age, there are significant variations in the physical development of human beings. This is underlined by the fact that there is no accepted scientific or medical investigation by which a person's age can be assessed accurately.

²⁷⁶ *HK. v Secretary of State for the Home Department*, [2006] EWCA Civ 1037, 20 July 2006.

²⁷⁷ Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module on Gender-Related Claims*, October 2012, para. 7.3.

²⁷⁸ Refugee, Asylum and International Operations Directorate (RAIO), US Citizen and Immigration Services, *Guidance for Adjudicating LGBTI Refugee and Asylum Claims Training Manual*, 28 December 2011, section 7.1.1.

²⁷⁹ Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, para. 2.3.5. J Millbank, "The Ring of Truth: A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations", *International Journal of Refugee Law*, 2009, p. 19; and S Jansen, T Spikerboer, *Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, COC Netherlands, Vrije Universiteit Amsterdam, September 2011, p. 7.

²⁸⁰ UKBA, Asylum Instructions, *Guidelines on Sexual Orientation Issues in the Asylum Claim*, October 2010.

²⁸¹ Refugee, Asylum and International Operations Directorate (RAIO), US Citizen and Immigration Services, *Guidance for Adjudicating LGBTI Refugee and Asylum Claims Training Manual*, 28 December 2011, section 9.7. By way of illustration the training warns decision-makers not to assume that it is implausible for an applicant to be gay, lesbian or transgender if he or she is not familiar with LGBTI terms. It also notes "A man may identify as gay and not appear or consider himself effeminate. A woman may identify as lesbian and not appear or consider herself masculine. This does not mean that it is not plausible that he or she is gay or lesbian."

²⁸² UKBA, Asylum Instructions, *Guidelines on Sexual Orientation Issues in the Asylum Claim*, October 2010. The guidelines state that "stereotypical ideas of people – such as an 'effeminate' demeanour in gay men or a masculine appearance in lesbians (or the absence of such features) should not influence the assessment of credibility."

²⁸³ Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, para. 2.3.5.

6.3 Use of plausibility in state practice

Despite all the cautions regarding the application of ‘plausibility’ as an indicator, jurisdictions appear reluctant to discard it completely.²⁸⁴ In fact, UNHCR’s review of guidance and case files showed an extensive reliance on plausibility as an indicator of credibility.

UNHCR’s review of case files in the three EU Member States of focus confirmed that plausibility is used in practice as an indicator of the credibility of applicants’ statements.²⁸⁵

In addition, it should be noted that UK law and guidance advise taking the ‘plausibility’ indicator into account when considering the application of the benefit of the doubt.²⁸⁶ As such, the plausibility indicator should not be applied during the first stage of the credibility assessment when the internal (detail and consistency) and external (consistency) features of credibility are being assessed. It is only when an asserted fact is found to be internally credible but lacks external evidence to confirm it – thus rendering the asserted fact uncertain – that a decision must be made on whether to give the applicant the benefit of the doubt. Reference may then be made to whether the asserted fact is considered plausible.²⁸⁷

UNHCR’s research indicated that in only a very small number of cases were findings of implausibility based on (and cited with reference to) evidence such as COI.²⁸⁸ Instead, on the whole, internal notes and written decisions gave the impression that findings of implausibility were based on subjective assumptions, speculation, and subjective perceptions of risk. Moreover, it was often not evident from the case file materials that the applicant’s individual and contextual circumstances had been taken into account.²⁸⁹

6.3.1 Subjective assumptions and speculation

UNHCR’s review of guidance and case files indicated that decision-makers speculate on how the applicant or a third party ought to have behaved, or on how events could have or should have unfolded.

Written decisions reviewed by UNHCR in the Member States under survey suggested that decision-makers based their findings of plausibility on subjective speculation about how the applicant or others should have or could have behaved, rather than on inferences reasonably drawn from objective, independent, and reliable evidence. In reaching these conclusions, the decision-makers did not explicitly base their findings on evidence. For example:

- It was considered implausible that the applicant had converted to Christianity since he or she had not visited a church in the weeks following arrival in the putative country of asylum.²⁹⁰ It was not clear

²⁸⁴ *Y v Secretary of State for the Home Department*, [2006] EWCA Civ 1223, 26 July 2006, Keene LJ, para 26 “*In appropriate cases he [the decision maker] is entitled to find that an account of events is so far-fetched and contrary to reason to be incapable of belief.*”

²⁸⁵ For example, AFG02MRS; AFG04MSP; AFG06FSP; AFG07M; AFG09M; IRQ06MSP; IRQ07FSP; IRQ08FSP; DRC03M; DRC07F; INT03IRQM; INT04IRQF; INT09GUIF; AFG03FRS; AFG04MSP; AFG05MSP; AFG06FSP; AFG07M; AFG09M; IRQ06MSP; IRQ07FSP; DRC01MRS; GUI08M; INT03IRQM; INT04IRQF; INT07IRQM; IRN01MBP, IRQ01MBP, IRN02FBP, AFG01FNP, AFG02FNP, AFG03FNP, AFG05MNP, IRN01FNP, IRN01MNP, IRN02MNP, IRQ01FNP, IRQ02FNP, IRQ01MNP, IRQ05MNP, SOM03MNP, AFG09M, AFG06M, IRN04M, SOM09M, AFG07M, IRQ05M, AFG02F, IRN08M, IRQ01M, INT05IRNF.

²⁸⁶ Paragraph 339L (iii) and UKBA, *Asylum Instructions, Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.6: “*The plausibility of a fact is assessed on the basis of its ‘apparent likelihood or truthfulness in the context of the general country information relevant to the applicants country of origin and/or their own evidence (see MM (DRC – plausibility) Democratic Republic of Congo [2005] UKIAT 00019) and takes place when decision makers are giving consideration to applying the benefit of the doubt*” (emphasis added).

²⁸⁷ UKBA, *Asylum Instructions, Considering Asylum claims and Assessing Credibility*, February 2012, para. 4.3.4 on benefit of the doubt and general credibility.

²⁸⁸ GUI08M, AFG06M (albeit the COI information relied upon concerned a description of the Afghan army in 2010 whereas the applicant referred to events in 1990s).

²⁸⁹ AFG02F, AFG07M, INT05IRNF, IRN08M, AFG09M, AFG06M, IRN04M, SOM09M, IRQ05M, IRQ01M.

²⁹⁰ AFG01FNP.

why the decision-maker assumed that a person who had allegedly fled from a threat of persecution and/or serious harm and arrived in an alien environment and culture without speaking the language would visit a church in the weeks following his or her arrival.

- It was considered implausible that the applicant, a police officer, felt afraid when threatened because, as the decision-maker speculated, his police training would have trained him to be brave.²⁹¹ This was not explicitly based on evidence regarding the police training or the applicant.
- It was considered implausible that the applicant, as a woman, would have argued with her father-in-law in a patriarchal society. It was also considered implausible that an imam would transfer the applicant to the authorities, who offered the applicant time to reflect, even although such actions were confirmed by COI.²⁹²
- It was considered implausible that the neighbour's guards would not have acted to prevent the raid on the applicant's house.²⁹³ The speculative nature of this finding was one of the grounds upon which the decision was overturned on appeal.
- It was considered implausible that the police would not have recorded a threat made against the applicant as a crime because the applicant did not know the names of those who had threatened him or the number plate of their car.²⁹⁴ No evidence on police practice in the country of origin was cited.
- It was considered implausible that the security forces would have carried out a raid while they were tapping the phone.²⁹⁵ No evidence regarding the practice of the security forces in the country of origin was cited.
- It was considered implausible that the applicant's father never told him about his professional activities or his employer. The decision stated that, without doubt, his father would have told him everything so that his son could one day 'follow in his footsteps.'²⁹⁶ This appeared to be pure conjecture.
- It was considered implausible that the applicant was not attacked immediately upon refusing to take part in terrorist activities, but was instead attacked in a fitness room. It was considered implausible that his friend would offer to drive him home given that he had just refused to cooperate; it was considered implausible that there was no conversation in the car because music was playing; it was considered implausible that the applicant could still get away having been beaten for ten minutes.²⁹⁷ These findings were speculative and not based on the evidence.

Similarly, in one decision reviewed by UNHCR, the decision-maker appears to base a finding of implausibility on subjective speculation about how a third party (in this case the applicant's father) would have acted in relation to the applicants participation in hip-hop classes. The decision letter stated the following:

“It is considered implausible that your father, who would appear to be strictly enforcing his paternal rights in demanding who you will marry, would not be stricter with relation to your hip-hop dancing until you were out of the control of his household. This implausibility again negatively affects your credibility that he was harassing you about hip-hop dancing.”²⁹⁸

In another case viewed by UNHCR, the decision-maker utilized direct quotes from the applicant to reach a finding of implausibility, based on subjective speculation about whether certain events could have unfolded. The decision letter stated the following:

²⁹¹ IRQ05MNP.

²⁹² AFG01FNP.

²⁹³ AFG03FNP.

²⁹⁴ IRQ01MNP.

²⁹⁵ IRN02MNP.

²⁹⁶ AFG07M.

²⁹⁷ AFG09M.

²⁹⁸ INT05IRNF.

“It is noted that you were living at home alone with your children at the time when X came with five other police officers and as such it is considered that had X genuinely wanted to marry your daughter he had the means and the opportunity to kidnap her there and then. By your own admission you state ‘I was very scared of him, I thought if I tell him now he will kidnap her straightway.’ Indeed in light of your claim that ‘for a woman in Afghanistan without her husband it is very difficult to protect herself’, it is not considered plausible that X came to your house with five other police officers to demand your daughter marry him, yet then left and gave you a week to consider this.”²⁹⁹

Stakeholders also voiced their concern that decision-makers may draw conclusions from medical evidence when they lack the expertise to do so. For example, UNHCR viewed the following decision:

“It is also noted the medical assessment body map shows no marks or injuries to your body, although you claim you were beaten in detention, lashed with a belt and the side of your neck was burned with a heated belt hook. It is therefore considered implausible that you were arrested in Iran after the authorities searched your home looking for your brother.”³⁰⁰

6.3.2 Perception of risk

Decision-makers should not assume that applicants share their perception of risk, or their aversion to or preparedness to take risks. An action is not implausible simply because it is not within the decision-maker’s understanding of what particular risk a person would or would not take. UNHCR notes that some national jurisprudence specifically states that an adverse inference should not be drawn simply because the decision-maker considers an applicant’s actions to have been imprudent.³⁰¹ Nonetheless, UNHCR observed draft internal guidelines suggesting that behaviour the decision-maker considered incautious or reckless can form the basis of an implausibility finding.³⁰²

UNHCR’s review of case files also revealed decisions in which the decision-maker appeared to have made a subjective assessment based on his or her personal perception of risk:

- The decision-maker considered the asserted actions of the applicant to be implausible on the grounds that it is unlikely that the applicant would risk maintaining a relationship with his girlfriend given that the liaison was forbidden and the consequences, if it were revealed, would be dangerous.³⁰³
- The decision-maker considered it implausible that the applicant, knowing that some of her clients in her beauty parlour were related to Taliban members, would nevertheless speak against the Taliban in their presence.³⁰⁴
- The decision-maker considered it implausible that the applicant would have risked watching a Christian film in a Muslim house.³⁰⁵
- The decision-maker considered it implausible that the applicant would embark on becoming a Jehovah’s Witness knowing the risks involved, particularly since he was not completely convinced he wanted to become a Jehovah’s Witness:

²⁹⁹ AFG02F.

³⁰⁰ IRN08M.

³⁰¹ CCE/RVV 20746, 18.12.2008, “4.2. [...] De plus, concernant le motif relatif aux risques pris par le requérant en connaissance de cause, le Conseil estime qu’il manque de pertinence, puisqu’il ne peut pas être exigé d’un requérant qu’il modifie son comportement ou son identité afin d’éviter la persécution. La question n’est pas de savoir si un requérant peut éviter d’être persécuté, mais d’évaluer la gravité d’une violation possible de ses droits fondamentaux. [...]” See also CCE/RVV 20729, 18.12.2008.

³⁰² CGRA/CGVS guidelines on asylum claims in which sexual orientation or gender identity are cited as reasons for the application.

³⁰³ AFG04MNP.

³⁰⁴ AFG05MSP.

³⁰⁵ AFG01FNP.

“You stated that in the beginning you were not completely convinced in Iraq, but that you wanted to study the religion. It is very unlikely that, given the danger such a study entails in the context of Iraq, you would take this risk even though you were not completely convinced yet.”³⁰⁶

In conclusion, UNHCR’s research indicated that decision-makers’ judgements about whether asserted facts were plausible were often based on subjective assumptions, preconceptions, conjecture, and speculation rather than on independent, objective, reliable, and time-appropriate evidence.

If plausibility is to be used as an indicator of credibility, it is important that the assessment is conducted with reference to the entirety of the evidence and other indicators of credibility. A decision-maker may err if he or she rejects an application for international protection on the grounds of implausibility alone, notwithstanding the fact that the evidence was otherwise internally consistent and there was an absence of contradictory evidence from country or other expert evidence.

As recommended by the EAC, a finding of implausibility must be based *“on reasonably drawn, objectively justifiable inferences”*, and the examiner should not speculate on how events could have or should have unfolded, or how the applicant or a third party ought to have behaved. The decision-maker must give clearly articulated reasons for a finding that an account or fact is not plausible. He or she should also ensure that any such conclusion is supported by and referenced to the evidence, stating why any explanation offered by the applicant is considered insufficient to refute the conclusion of an adverse finding on credibility.³⁰⁷

³⁰⁶ IRQ05MSP.

³⁰⁷ *Matter of X*, United States Executive Office for Immigration Review (EOIR), 9 August 2011[human trafficking] p. 8: *“Without evidence in the record to support the contention that these facts are inherently implausible, though, the Court cannot find that her credibility is undermined by these facts.”*

7. Demeanour

The term ‘demeanour’ describes the outward behaviour and manner of a person, including their manner of acting, expression or reply (for example, hesitant, reticent, evasive, confident, spontaneous, or direct), tone of voice, modulation or pace of speech, facial expression, eye contact, emotion, physical posture, and other non-verbal communication.

Some courts have regarded the applicant’s demeanour during the personal interview and the manner in which he or she presents his or her testimony as relevant to assessing credibility. At times, however, this has made appellate bodies reluctant to interfere with first instance findings of credibility because the determining authority has had the opportunity to meet and observe the applicant, whereas the appellate bodies have not. For example, the European Court of Human Rights implicitly appears to accept that the demeanour of an applicant is a factor to be taken into account as part of the credibility assessment:

*“The Court observes, from the outset, that there is a dispute between the parties as to the facts of this case and that the Government have questioned the applicant’s credibility and pointed to certain inconsistencies in his story. The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one. It accepts that, as a general principle, **the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned**”³⁰⁸ (emphasis added).*

The use of demeanour as an indicator of credibility appears to be based on an assumption that certain demeanours are indicative of credibility or non-credibility, including how the individual sits or stands, his or her nervousness, the colouration of his or her skin during difficult questions, the pace of his or her speech, which may be interpreted as indicative of truthfulness or deception. However, this is an assumption that is highly flawed. As has been succinctly stated, a reliance on demeanour to determine whether someone is telling the truth is “*in most cases to attach importance to deviations from a norm when there is in truth no norm*”³⁰⁹.

³⁰⁸ R.C. v. Sweden, no. 41827/07, ECtHR, 9 March 2010, para. 52.

³⁰⁹ R Thomas, *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication*, Oxford: Hart Publishing, 2011, p. 149 referring to T Bingham, ‘The Judge as Juror: The Judicial Determination of Factual Issues’, *Current Legal Problems*, vol. 38, no. 1, 1985, p 1–27 at 10–11. This quotation is also cited in S Conlan, S Waters, K Berg, *Difficult to Believe: The Assessment of Asylum Claims in Ireland*, Irish Refugee Council, 2012, p. 15 referring to T Bingham, *The Business of Judging: Selected Essays and Speeches*, Oxford: Oxford University Press, 2000, p. 11: “[...] however little insight a judge may gain from the demeanour of a witness of his own nationality, he must gain even less when ... [t]he witness belongs to some other nationality and is giving evidence either in English as his second or third language, or even through an interpreter. Such matters as inflexion become wholly irrelevant; delivery and hesitancy scarcely less so.”

7.1 The individual and contextual circumstances

Demeanour is shaped by the individual's personality traits, age, gender, sexual orientation and/or gender identity, maturity, culture, social status, education, psychological and physical state, and situation in the context of the asylum procedure.³¹⁰ A determination of credibility by reference to demeanour has a subjective basis that will inevitably reflect the views, prejudices, personal life experiences, and cultural norms of the decision-maker.

There is always a danger of misinterpreting a person's demeanour, particularly in the context of cross-cultural and cross-linguistic communication.³¹¹ Demeanour varies between cultures.³¹² The classic example given is that in Western culture, a lack of eye contact may be considered indicative of dishonesty when in fact it may simply be indicative of the applicant's shy personality or fearfulness. Alternatively, it may reflect the applicant's culture (perhaps intersected by gender and age) and signify respect or deference to a person in authority.³¹³

Cultural differences and norms governing the behaviour of men and women may also influence an applicant's demeanour. Previous UNHCR research has found that 'correct' and 'incorrect' demeanours have a bearing on decision-makers' credibility findings in gender-related cases:

*“Within the case set, a number of claims were not accepted due to rulings of lack of credibility, either at the initial stages or on appeal. This was due to a number of factors, most often inconsistencies or perceived implausibilities in testimony, ‘incorrect’ demeanour (for example, being matter-of-fact when the adjudicator expects an applicant to be distressed), or lack of corroborative country of origin information. When found credible, it was often due to a combination of ‘correct’ demeanour, relative consistency in the applicant’s story and corroborative country of origin information.”*³¹⁴

UK guidance states that: *“Interviewers should be sensitive to the fact that gender and cultural norms may play an important role in influencing demeanour, for example how a woman presents herself physically at interview*

³¹⁰ Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, section 2.3.7, p. 39. See also W Kälin, 'Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing', *International Migration Review*, vol. 20, no. 2, Special Issue: Refugees: Issues and Directions, Summer 1986, p 230–41.

³¹¹ EAC Module 7, section 4.2.18: **“There is a big risk to interpret the applicant’s behaviours through our own cultural standards. Bad interpretation of demeanour is probably linked with gut feelings, when it is just one of the main objectives of this module to avoid the asylum applications to be assessed on gut feelings basis.”** United Kingdom, Asylum and Immigration Tribunal/Immigration Appellate Authority, *Immigration Appellate Authority (UK): Asylum Gender Guidelines*, 1 November 2000, para. 5.44: “Assessing demeanour of a witness may be particularly difficult where she is from a different country, is giving evidence either through an interpreter or in English which is not their first language.” Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, 24 March 2012, para. 6.1: “The Tribunal should also be aware of the effect of cultural differences on demeanour and oral communication. The Tribunal should exercise particular care if it relies on demeanour in circumstances where a person provides oral evidence through an interpreter or where a person is not before the Tribunal and can only be observed via a video-link.” *lao v. Gonzales*, 400 F.3d 530, 534 (7th Cir. 2005): “Demeanour can be an uncertain indicator of credibility, particularly in the asylum context where cultural differences and effects of trauma make it difficult to read non-verbal signals accurately. [...] The circumstances of an asylum interview, including the use of an interpreter, cultural assumptions, and the possible effects of past trauma, need to be taken into account as part of the totality of circumstances when considering an applicant’s demeanour as part of the overall credibility determination.” R Byrne, ‘Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals’, *International Journal of Refugee Law*, vol. 19, no. 4, December 2007, p 609–38: “In a cross-cultural and psychologically complex context, demeanor and manner of expression offer unreliable subjective indicators of credibility determination.”

³¹² R Cryer, *Witness Evidence Before International Criminal Tribunals, the law and practice of international courts and tribunals*, (2003), p 428-9, cited in P Levrincova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague, 2010, p. 127. EAC Module 7, section 4.2.20: “Nodding the head can indicate affirmation as well as negation.”

³¹³ Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module on Gender-Related Claims*, October 2012, para. 7.4: “In some cultures, keeping the head down and avoiding eye contact are signs of respect. For many women, making eye contact and speaking clearly and directly are considered highly inappropriate conduct and should not be viewed as indicators of lack of credibility.”

³¹⁴ UNHCR, *Women and Girls Fleeing Conflict*; Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module on Gender-Related Claims*, October 2012, para. 7.

e.g. whether she maintains eye contact, shifts her posture or hesitates when speaking. Demeanour alone is an unreliable guide to credibility.”³¹⁵

Previous research has noted that decision-makers frequently base their credibility findings on stereotypical, inaccurate, or inappropriate perceptions about the demeanour of women and girls.³¹⁶ Psychological research shows that decision-makers are more likely to believe those who express their emotions in ways they would expect, for example, a rape victim being visibly distressed.³¹⁷ The type and level of emotion displayed by a female applicant during the recounting of her experiences should not be used as an indicator of the credibility of her statements.³¹⁸ A lack of displayed emotion does not necessarily mean that the woman is not distressed or deeply affected by what has happened.³¹⁹

The presence or absence of stereotypical behaviour (or of a specific appearance) should not be relied on to conclude that an applicant does or does not possess a given sexual orientation or gender identity.³²⁰ No universal characteristics or qualities typify LGBTI individuals any more than they do heterosexuals.³²¹ UK policy guidance states that “stereotypical ideas of people – such as an ‘effeminate’ demeanour in gay men or a masculine appearance in lesbians (or the absence of such features) should not influence the assessment of credibility.”³²² Moreover, UNHCR has stated that it would also be inappropriate to expect an LGBTI couple to behave in a physically demonstrative manner at an interview in an attempt to establish their sexual orientation.³²³

The use of demeanour to judge deceptive behaviour is not only problematic in cross-cultural situations. A large body of psychological research has shown that the things people think are clues that someone is lying (such as gaze aversion, more hand movements, or being more hesitant) are not actually the things that liars do;³²⁴ indeed, there are very few reliable behavioural indicators to prove that someone is lying.³²⁵ Furthermore, studies show that looking for behavioural signs of deception may equate with looking for behavioural signs of anxiety (based on the assumption that a liar would be nervous).³²⁶ In the asylum context, this is clearly problematic because applicants may have good reason to be, and to appear, nervous.

The Appeals Chamber of the ICTY cautioned that the demeanour of the witness may have influenced the Trial Chamber and stated that it “must be careful to allow for the fact that, very often, a confident demeanour is a personality trait and not necessarily a reliable indicator of truthfulness or accuracy.”³²⁷ It referred to expert evidence to the effect that “the relationship between the certainty expressed by a particular witness is ‘more an aspect of personality than an aspect of the quality of what they saw or what they remember.’”³²⁸

³¹⁵ UKBA, Asylum Instructions, *Gender Issues in the Asylum Claim*, September 2010, para. 7.2.

³¹⁶ UNHCR, *Women and Girls Fleeing Conflict*, p. 43.

³¹⁷ G Kaufmann, G C B Drevland, E Wessel, G Overskeid, S Magnussen, ‘The Importance of Being Earnest: Displayed Emotions and Witness Credibility’, *Applied Cognitive Psychology*, vol. 17, no. 1, 2003, p 21–34.

³¹⁸ UNHCR, *Guidelines No. 1*, para. 36 (xi).

³¹⁹ United Kingdom, Asylum and Immigration Tribunal/Immigration Appellate Authority, *Immigration Appellate Authority (UK): Asylum Gender Guidelines*, 1 November 2000, section 5.44.

³²⁰ UNHCR, *Guidelines No. 9*, para. 60 (ii).

³²¹ UNHCR, *Guidelines No. 9*, para. 60 (ii).

³²² UKBA, Asylum Instructions, *Guidelines on Sexual Orientation Issues in the Asylum Claim*, October 2010.

³²³ UNHCR, *Guidelines No. 9*, para. 64.

³²⁴ Global Deception Research Team, ‘A World of Lies’, *Journal of Cross-Cultural Psychology*, vol. 37, no. 1, January 2006, p 60–74. See also J Herlihy, L Jobson, S Turner, ‘Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum’, *Applied Cognitive Psychology*, vol. 26, no. 5, 2012, p 661–76.

³²⁵ B M DePaulo, J L Lindsay, B E Malone, L Muhlenbruck, K Charlton, H Cooper, ‘Cues to Deception’, *Psychological Bulletin*, vol. 129, no. 1, 2003, p 74–118.

³²⁶ H Rogers, S Fox, J Herlihy, *The Importance of Looking Credible: The Impact of the Behavioural Sequelae of Post-Traumatic Stress Disorder on the Credibility of Asylum-Seekers* (under review).

³²⁷ *Prosecutor v. Kupreskic et al. (Appeal Judgment)*, IT-95-16-A, 23 October 2001, para. 138 cited in P Levricova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague, 2010, p. 126.

³²⁸ *Prosecutor v. Kupreskic et al. (Appeal Judgment)*, IT-95-16-A, 23 October 2001, para. 138 cited in P Levricova, *Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination*, dissertation, Charles University, Prague, 2010, p. 126.

An applicant's manner of expression may be confused or fragmented, not because he or she is lying, but because this is simply his or her manner of expression, or he or she is anxious, insecure, or stressed. This is unsurprising considering that the stakes are so high. An applicant may be bewildered by the process and by the new social and cultural environment.³²⁹ Furthermore, the applicant's manner can be affected by the interviewer's attitude and the way he or she structures and directs interaction with the applicant.³³⁰

This is reflected in UK policy guidance, which states: "*In making a credibility assessment, decision makers should not be influenced by subjective factors, for example if the applicant appears nervous or fearful at the interview, or entirely calm and rational.*"³³¹

Chapter 3 - Credibility Assessment: A Multi-disciplinary Approach explains that applicants who have experienced traumatic events may display a range of symptoms that might influence their demeanour. People who have suffered traumatic events often display avoidance symptoms; in other words, they avoid thinking and talking about the event, and/or avoid situations that might trigger recall.³³² This is a normal survival strategy that might affect demeanour. Applicants may experience dissociation, which may result in them appearing distracted or detached. They may display emotional numbing whereby they detach themselves emotionally from the facts they are relating. Applicants can appear indifferent, which could, without an understanding of this psychological strategy, mistakenly be interpreted as an indication of non-credibility.³³³ In cases involving torture or sexual violence, some applicants may be emotionally overcome when recalling the relevant facts, whereas others may exhibit no emotion at all.³³⁴ Applicants may react in ways that might appear strange to those unfamiliar with psychological coping mechanisms, for example, laughing, smiling, grinning, or deep silence.³³⁵

All these factors have prompted the US training programme on credibility to give decision-makers the following advice: "*Because there is such a wide variety of emotional reactions to recounting experiences of torture, you should not expect the asylum or refugee applicant to manifest any particular emotion when recounting traumatic experiences.*"³³⁶

³²⁹ W Kälin, 'Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing', *International Migration Review*, vol. 20, no. 2, Special Issue: Refugees: Issues and Directions, Summer 1986, p 230–41 at p. 232.

³³⁰ W Kälin, 'Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing', *International Migration Review*, Vol. 20, no. 2, Special Issue: Refugees: Issues and Directions, Summer, 1986, p 230–41 at p. 232.

³³¹ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 15; UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 15.

³³² American Psychiatric Association, *DSM-IV: Diagnostic and Statistical Manual of Mental Disorders*, Washington DC: APA, 1994.

³³³ J Herlihy, S Turner, 'The Psychology of Seeking Protection', *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p 171–92 at p. 177; L Wilson-Shaw, N Pistrang, J Herlihy, 'Non-Clinicians' Judgments about Asylum Seekers' Mental Health: How do Legal Representatives of Asylum Seekers Decide When to Request Medico-Legal Reports?', *European Journal of Psychotraumatology*, vol. 3: no. 18406, 2012.

³³⁴ Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module on Gender-Related Claims*, October 2012, para. 7.4.

³³⁵ EAC, Module 7, section 4.2.5.

³³⁶ Refugee, Asylum and International Operations Directorate (RAIO), US Citizenship and Immigration Services, *Asylum Officer Basic Training Module on Gender-Related Claims*, October 2012, para. 7.4.

7.2 State practice on demeanour

Notwithstanding the above-mentioned observations and widespread recognition that demeanour is an unreliable indicator of credibility,³³⁷ some determining authorities and appellate bodies still appear reluctant to totally abandon it as an indicator.³³⁸ Guidance reviewed by UNCHR cautions that demeanour is an unreliable indicator and highlights what factors should be borne in mind. However, the guidance ultimately permits demeanour to be utilized as an indicator, often in combination with other indicators.

The EAC Module reflects this practice. It suggests that a reliance on demeanour and non-verbal communication should be avoided.³³⁹ However, it states:

*“If demeanour is one of the basis for an adverse assessment of a person’s credibility you should clearly explain the evidence on which this finding is based. There must be a rational connection between the claimant’s demeanour and the conclusions drawn from it and the reasoning must be explained in your decision. [...] Demeanour can only be used if objectively explained in the decision and it can only be one of several other indicators of (lack of) credibility.”*³⁴⁰

The EAC Module also cautions that the applicant’s individual personality, cultural background, education, the possible effects of past trauma, and the use of an interpreter should all be taken into account.

Similarly, judicial guidance in Australia and Canada does not prohibit a reliance on demeanour as an indicator of a lack of credibility, but it instead seeks to diminish its role in the credibility assessment. It cautions that it is an unreliable indicator for a number of reasons, and asserts that any adverse assessment of credibility based on demeanour should clearly explain the evidence on which the finding is based. Furthermore, it should not generally be relied on as the sole indicator of non-credibility.³⁴¹ Likewise, US legislation explicitly states that “a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness.”³⁴²

UNHCR noted that there is no legal basis or policy guidance that permits the applicant’s demeanour to be used as an indicator of credibility or non-credibility in the Netherlands. The approach of the UK tribunals has been summarized as follows: “Where there are aspects of the way in which evidence was given which form part of an Adjudicator’s reasoning, it is for that Adjudicator to say how and why it did, as part of the reasons for

³³⁷ A Glass, ‘Subjectivity and refugee fact-finding’, in J McAdam (ed.), *Forced Migration, Human Rights and Security*, Oxford: Hart Publishing, 2008: “decision-makers should be discouraged from believing that experience on the job can give them a sixth sense about these things.”

³³⁸ R Thomas, *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication*, Oxford: Hart Publishing, 2011, p. 149; J Herlihy, S Turner, ‘The Psychology of Seeking Protection’, *International Journal of Refugee Law*, vol. 21, no. 2, 2009, p. 171–92 at p. 191; G Coffey, ‘The Credibility of Credibility Evidence at the Refugee Review Tribunal’, *International Journal of Refugee Law*, vol. 15, no. 3, 2003, p. 337–417 at p. 414.

³³⁹ EAC Module 7, section 4.2.18: “You should be aware that demeanour cannot be taken as an indicator of (lack of) credibility, particularly in the asylum context where cultural differences and effects of trauma make it difficult to ‘read’ non-verbal signals accurately.” Also, at 4.2.19: “An applicant’s demeanour should not be considered in evaluating credibility. Relying on demeanour and non-verbal communication to find a claimant not credible must be avoided.”

³⁴⁰ EAC Module 7, section 4.2.19.

³⁴¹ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, 24 March 2012, para. 6.1: “The Tribunal should exercise care if it makes adverse credibility findings based on demeanour. A person’s demeanour may be affected by any number of factors and circumstances set out in this paper.” Para. 6.2: “If demeanour has formed a basis for an adverse assessment of a person’s credibility, the Tribunal should clearly explain the evidence on which this finding is based.” Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, section 2.3.7: “The demeanour of a witness is not an infallible guide as to whether the truth is being told, nor is it determinative of credibility. It would be a rare case where demeanour alone would be sufficiently material to the claim to undermine the entire testimony in support of a claim. Generally, demeanour is one of several indicators of a lack of credibility. In general, the courts have attempted to diminish the role of demeanour in the final assessment of credibility.”

³⁴² REAL ID Act 101 (a) (3). See also S Rempell, ‘Gauging Credibility in Immigration Proceedings: Immaterial Inconsistencies, Demeanor, and the Rule of Reason’, *Georgetown Immigration Law Journal*, vol. 25, no. 2, 2011, p. 377.

*the decision. But it is an area for real caution.*³⁴³ Indeed, the courts have previously found that the applicant's demeanour was an inadequate basis for an adverse credibility finding.³⁴⁴

UNHCR's review of case files in two Member States did not reveal any cases in which the decision-maker, in the written decision, referred to demeanour as indicative of credibility or non-credibility. In the internal notes, which were reviewed, the decision-maker noted the applicant's demeanour and drew some possible conclusions regarding credibility, but opted not to rely on this factor in the written decision, though clearly such impressions may have influenced the assessment generally.³⁴⁵ In interviews conducted with decision-makers, some stated that they "*try not to take much notice of body language*"³⁴⁶ and that it is a "*peripheral thing*."³⁴⁷ This view was shared by several legal practitioners in one of the Member States who stated that they had seen no reference to demeanour in a credibility assessment for a long time.

UNHCR's review of case files in another Member State, by contrast, indicated that decision-makers commonly rely on demeanour as an indicator of credibility.³⁴⁸ For example, spontaneity,³⁴⁹ outward expressions of emotion,³⁵⁰ calmness,³⁵¹ and sobriety³⁵² were all considered indicative of credibility. In one case, the applicant's assertion to be a teacher was determined to be credible, in part because he answered questions "*in a typical way for a teacher*."³⁵³

While an applicant's demeanour may prompt or guide questioning, it is UNHCR's view that it should not be relied upon as an indicator of credibility or non-credibility. Where it is used, UNHCR urges decision-makers to exercise extreme caution, to fully take into account the individual and contextual circumstances of the applicant, and to ensure that demeanour is not determinative of non-credibility.

³⁴³ *MM (DRC-Plausibility) Democratic Republic of Congo v Secretary of State for the Home Department* [2005] UKIAT 00019, 27 January 2005, para. 18. See also that guidance for the appellate authority in the UK recognizes that individual, cultural and other differences and trauma all play an important role in determining demeanour but nevertheless states that the level and type of emotion displayed by a woman when recounting her experiences should play a limited role in assessing her credibility: Immigration Appellate Authority, *Asylum Gender Guidelines*, 1 November 2000, para. 5.44.

³⁴⁴ The Immigration Appeal Tribunal found that 'hesitancy', being closely linked to demeanour, was an inadequate basis to find that the appellant was not telling the truth: *B v Secretary of State for the Home Department (DR Congo)* [2003] UKIAT 00012, 12 June 2003.

³⁴⁵ AFG02FNP; IRQ02FNP.

³⁴⁶ Interview 6.

³⁴⁷ Interview 5.

³⁴⁸ AFG01MRS; AFG02MRS; AFG03FRS; AFG04MSP; AFG07M; IRQ02MRS; IRQ03FRS; DRC01MRS; DRC02FRS; DRC03M; DRC06M; DRC07F; DRC08F; GUI02FRS; GUI03FRS; GUI04M; GUI05M; GUI08M; INT07IRQM; INT06GUIM.

³⁴⁹ AFG01MRS, GUI02FRS.

³⁵⁰ AFG02MRS, GUI02FRS.

³⁵¹ IRQ02MRS.

³⁵² DRC01MRS.

³⁵³ AFG02MRS.

8. Conclusion

UNHCR's research confirmed that the determining authorities in the three Member States surveyed rely on a range of credibility indicators. There is, however, divergence in the credibility indicators most commonly used, as well as in the way specific indicators are described and interpreted.

This research identified five credibility indicators, which, when applied appropriately, may be used to guide decision-makers when they are deciding whether to accept an asserted material fact:

- (i) sufficiency of detail and specificity;
- (ii) internal consistency of the oral and/or written material facts asserted by the applicant (including the applicant's statements and any documentary or other evidence submitted by the applicant);
- (iii) consistency of the applicant's statements with information provided by any family members and/or other witnesses;
- (iv) consistency of the applicant's statements with available specific and general information, including COI, relevant to the applicant's case; and
- (v) plausibility.

The EAC Module structures these same credibility indicators under the headings of: internal credibility, external credibility, and plausibility.³⁵⁴ Notwithstanding the differences in terminology, these categorizations encompass the five indicators listed above. Internal credibility relates to the internal coherence and consistency of the applicant's statements; and the coherence and consistency of those statements with any other evidence submitted by the applicant, and/or information provided by any family members or witnesses. It also encompasses 'reasonable detail' as an indicator. External credibility relates to the consistency of the applicant's statements with COI, known facts, and other pieces of evidence provided by the applicant or by the determining authority.

In working with credibility indicators, it is vital to note that no one indicator is a certain determinant of credibility or non-credibility. Decision-makers must be aware of the assumptions that underlie each indicator, and understand the range of factors and circumstances that can render them inapplicable and/or unreliable in an individual case. As these factors span a range of fields, such as neurobiology, psychology, cultural and gender studies, anthropology, and sociology, the use of credibility indicators is most effective when informed by the substantial body of relevant empirical evidence that exists in these fields.

The research also indicated that some determining authorities may be applying a wider range of indicators, in particular a reliance in some jurisdictions on the demeanour of the applicant while presenting his or her claim as an indicator of credibility.

³⁵⁴ EAC Module 7, section 3.2.1. J Sweeney, 'Credibility, Proof and Refugee Law', *International Journal of Refugee Law*, vol. 21, no. 4, December 2009, p 700–26, who states that A. Weston, "A Witness of Truth" – Credibility Findings in Asylum Appeals', *Immigration and Nationality Law and Practice*, vol. 12, 1998, p 87–9 at p. 88, is often credited with identifying these categories which were then utilized in the UK's policy guidance.

CHAPTER 6

Assessing the Applicant's Behaviour

1. Introduction	195
2. Behaviour Considered Indicative of the Applicant's Lack of Fear of Persecution or Risk of Serious Harm	199
2.1 Delay in applying for asylum	199
Factors to take into account.....	200
2.2 Applicant did not apply for protection in safe third country	204
Factors to take into account.....	205
State practice on failure to apply in safe third country	206
3. Expected Behaviour in the Member State Considered Indicative of Credibility	208
4. Behaviour Considered Indicative of the Applicant's Propensity to Deception and Dishonesty	211
Factors to be taken into account.....	213
5. Conclusion.....	217

1. Introduction

UNHCR encourages a credibility assessment that focuses on the material facts asserted by the applicant and the effective use of credibility indicators to establish the credibility of the information provided by the applicant. In practice, it is observed that States may rely on a range of other factors, which are applied in a more general way, to support a finding regarding credibility, and to put in doubt statements that, when considered in light of the credibility indicators, would otherwise be accepted as credible.

UNHCR's research has revealed, in the practice of the three Member States surveyed, and in the EAC Module that an extensive and non-exhaustive range of behaviours are considered as potentially indicating the applicant's credibility or non-credibility, including delay in claiming asylum foreseen under Article 4 (5) (d) QD. These factors, which are also taken into account as part of the assessment of the 'general credibility of the applicant' under Article 4 (5) (e) QD may have a significant influence on the outcome. If certain behaviours are found to be present at the outset of the credibility assessment, they may result in the applicant's statements being considered questionable in advance. This may trigger the application of a higher threshold of credibility to the applicant's statements.

These behaviours can be grouped into three categories that include:

- ❶ Behaviour considered indicative of the applicant's lack of fear of persecution or risk of serious harm, thus suggesting that the applicant's statements about material facts are not credible. By way of example:
 - a. Behaviour in the country of origin or place of habitual residence being considered indicative of a lack of fear of persecution or risk of serious harm, such as a delay in the applicant's departure from the country of origin or place of habitual residence, or a failure to go into hiding upon realizing the risk of harm.¹
 - b. Delay in claiming asylum,² including:
 - i. Where the applicant has failed to apply for international protection at the earliest possible time, unless he or she can demonstrate a good reason for not having done so;³ or
 - ii. The applicant has claimed asylum only upon arrest;⁴ or

¹ Dutch Council of State 30 December 2011 (201100520). AFG01FNP, AFG04MNP, IRN01MNP, INT06IRQF, AFG06FSP, AFG09M, IRQ01MRS, GUI08M, INT09GUIF, INT06GUIM, AFG05MSP, IRQ09M, INT03IRQM, IRQ09M, IRQ01M.

² Article 31 (2) (c) of the Dutch Aliens Act 2000 and Article 3.35, para. 3, Dutch Aliens Regulation 2000; para. 339L (iv) UK Immigration Rules and Asylum Instructions on credibility, para. 4.3.4, February 2012. The application of these provisions was observed in the following cases reviewed: SOM03MNP, (implicitly in IRQ01FNP, IRN01MNP, IRN02FBP), IRN05M, IRQ06MRS, AFG08M, AFG07M, SOM02M, IRQ04F, IRQ05M, AFG05M, SOM04M. EAC Module 7, section 4.1.8, refers to delay in claiming asylum as a behaviour which may affect the personal credibility of the applicant.

³ Article 4 (5) (c) QD explicitly provides for this as a precondition for waiver of the need for documentary or other evidence in support of the applicant's statements. However, note Article 8 (1) APD: "Without prejudice to Article 23(4)(i), Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible." Article 23 (4) (i) allows Member States to prioritize or accelerate the examination of an application if "the applicant has failed without reasonable cause to make his/her application earlier, having had the opportunity to do so." The EAC Module 7, section 4.1.5, refers to Article 23 (4) (i) APD as a behaviour which may affect an applicant's credibility.

⁴ EAC Module 7, section 4.1.10: claiming asylum following arrest. Section 8 (6) (a) and (b) of the UK Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. INT08TURKM.

- iii. It is considered that the applicant is taking action merely to delay or frustrate the enforcement of an earlier or imminent decision that would result in his or her removal.⁵
 - c. The applicant did not apply for asylum in a safe third country.⁶
 - d. The applicant explicitly or implicitly withdrew an application in a third country before a decision was taken.⁷
 - e. The applicant previously applied for voluntary return to the country of origin or place of habitual residence.⁸
 - f. The applicant failed to attend a scheduled interview or otherwise comply with conditions imposed by the competent authorities unless there was good reason for the failure.⁹
- 2 Behaviour by the applicant in the Member State considered indicative of credibility. In this, the authorities may consider, for example, whether an applicant:¹⁰
- a. remains informed about the evolution of events occurring in the country of origin or place of habitual residence;
 - b. who asserts that he or she is an LGBTI individual, maintains contact with any alleged partner who remains in the country of origin or place of habitual residence;
 - c. who asserts that he or she is an LGBTI individual, keeps informed of the situation of LGBTI individuals in the putative country of asylum; and participates in the social life of LGBTI individuals; or
 - d. in the case of an adherent to a particular religion, publicly practises that religion in the putative country of asylum.

⁵ This is also an optional ground for the prioritization or acceleration of the examination of an application: Article 23 (4) (j) APD. The EAC Module 7, section 4.1.5, refers to Article 23 (4) (j) APD as a behaviour which may affect an applicant's credibility. See Section 8 (5) of the UK Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

⁶ EAC Module 7, section 4.1.9: Failure to claim asylum in the first available safe country. See Section 8 (4) of the UK Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This provision was implemented in the following cases reviewed: IRN04M, AFG07M, IRQ01M, IRN08M, IRQ10M, AFG08M, IRN06MRS.

⁷ EAC Module 7, section 4.1.11, refers to "applying for asylum in a different country and leaving before the determination of that claim." See UKBA Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4. IRQ05MSP.

⁸ UKBA Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4.

⁹ EAC Module 7, section 4.1.11: not complying with any conditions imposed by the immigration authorities. See Article 12 (6) APD: "Irrespective of Article 20 (1), Member States, when deciding on the application for asylum, may take into account the fact that the applicant failed to appear for the personal interview, unless s/he had good reasons for the failure to appear." See Article 31 (2) (b) of the Dutch Aliens Act 2000 and Section 8 (2) (c) of the UK Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

¹⁰ IRQ08FSP, AFG06FSP, GUI04M, GUI07M, GUI08M, GUI09M, GUI10F, DRC06M, DRC07F, DRC08F, DRC09F, INT04IRQF.

- ③ Behaviour considered indicative of the applicant's propensity to deception and dishonesty, and therefore considered indicative of non-credibility. This might include, for example:
 - a. Intentional submission of false information and/or documents as if valid.¹¹
 - b. The applicant filed another application for international protection stating other personal data.¹²
 - c. The applicant entered the territory of the Member State unlawfully, or prolonged his or her stay unlawfully and, without good reason, failed either to present himself or herself to the authorities and/or to file an application for asylum as soon as possible, given the circumstances of his or her entry.¹³
 - d. Destruction or disposal in bad faith of documentary evidence that would have helped to establish identity or nationality.¹⁴

As for the requirement under Article 4 (5) (e) QD that “*the general credibility of the applicant has been established*”, the EAC Module states that there “*are many types of behaviour that can damage the applicant's personal credibility*.”¹⁵ It suggests that eight of the fifteen optional grounds for prioritization or acceleration of the examination of an application, set out in Article 23 (4) APD, can also double as behaviour potentially damaging an applicant's credibility in the absence of a reasonable explanation.¹⁶

It is important to stress that Article 23 (4) APD provides an optional legal basis for the procedural prioritization or acceleration of the examination of an application. It does not, however, provide a legal basis for factors to be taken into account in the credibility assessment. Some of the elements set out in article 23 (4) APD may be considered in the overall credibility assessment, as part of the use of key credibility

-
- ¹¹ Article 31 (2) (d) and (e) of the Dutch Aliens Act 2000 and IND Aliens Act Implementation Guidelines, (2010) Vc 2000 C4/2.5; Dutch Council of State 30 December 2011 (201100520); District Court of the Hague 3 March 2003 (AWB 03/13656). See also Section 8 (2) (b) and (3) (b) of the UK Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. IRQ07FSP, IRQ01FAP, (implicit IRQ04MNP), IRN02MNP, AFG09F, SOM07F, SOM01F, AFG03M. This is explicitly cited as a behaviour that may affect an applicant's personal credibility in EAC Module 7, section 4.1.7.: submission of false documents. Note that this is also an optional ground for the prioritization or acceleration of the examination of an application under Article 23 (4) (d) APD: “*the applicant has misled the authorities by presenting false information or documents [...]*.” The EAC Module 7, section 4.1.5, refers to Article 23 (4) (d) APD as a behaviour which may affect an applicant's credibility.
- ¹² IRQ05MSP. This is explicitly cited as a behaviour that may affect an applicant's personal credibility in EAC Module 7, section 4.1.11: making separate applications under different names. Note that this is also an optional ground for the prioritization or acceleration of the examination of an application. Article 23 (4) (e) APD: “*the applicant has filed another application for asylum stating other personal data*”. The EAC Module 7, section 4.1.5, refers to Article 23 (4) (e) APD as a behaviour which may affect an applicant's credibility. See IND Article 31 (2) (a) of the Dutch Aliens Act 2000 and Section 8 (2) (a) and (b) of the UK Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Note also that the Federal Court of Canada has held that making multiple applications for protection under different identities is a proper basis for reaching a negative assessment of the overall credibility of the applicant: Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, section 2.3.8, p. 41.
- ¹³ EAC Module 7, section 4.1.11, refers to evading immigration control. Note that this is also an optional ground for the prioritization or acceleration of the examination of an application: Article 23 (4) (l) APD. The EAC Module 7, section 4.1.5, refers to Article 23 (4) (l) APD as a behaviour which may affect an applicant's credibility. See UKBA Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4. See Article 31 (2) (c) of the Dutch Aliens Act 2000.
- ¹⁴ Note that this is also an optional ground for the prioritization or acceleration of the examination of an application. Article 23 (4) (f) APD: “[...] *it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality*”. The EAC Module 7 refers to Article 23 (4) (f) APD as a behaviour which may affect an applicant's credibility: 4.1.5; IND Aliens Act Implementation Guidelines, (2010) Vc 2000 C4/3.6.3 and Section 8 (2) (a), (3) (c) and (d), of the UK Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. AFG10F, IRQ07FSP, AFG01FNP, AFG01MNP, AFG02FNP, AFG02MNP, AFG03MNP, AFG03FNP, AFG04MNP, AFG05MNP, IRN02MNP, IRN03MNP, IRQ02FNP, IRQ02MNP, IRQ03MNP, IRQ04MNP, IRQ05MNP, SOM01FNP, SOM02FNP, SOM01MNP, SOM02MNP, SOM03MNP, AFG01MBP, IRN01MBP, IRN02FBP, IRN02MAP, IRQ04F, AFG04M.
- ¹⁵ EAC Module 7, section 4.1.15.
- ¹⁶ EAC Module 7, section 4.1.5 lists, from APD Article 23 (4) (d): false or withholding of relevant information or documents on identity/nationality; (e): another asylum application filed with other data; (f): lack of reasonable proof or destruction/disposal of relevant document to establish the applicant's identity or nationality; (g): inconsistent, contradictory, improbable or insufficient representations making the claim of persecution unconvincing; (h): submission of a subsequent application raising no relevant new elements with respect to his or her particular circumstances or to the situation in his or her country of origin; (i): Failure without reasonable cause to make the application earlier, in spite of the opportunity to do so; (j): submission of an application to delay or frustrate the enforcement of an earlier or imminent decision which would result in his or her removal; (k): lack of compliance with obligations referred to in Article 4(1) and (2) of Directive 2004/83/EC or in Articles 11(2)(a) and (b) and 20(1) of the APD.

indicators. UNHCR cautions against reliance on specific elements referred to as reliable indicators of the credibility of statements given by the applicant.

It is, therefore, UNHCR's view that decision-makers should not refer to Article 23 (4) APD for the purposes of the credibility assessment. Some of the issues covered by Article 23 (4) APD, such as the presentation of false information in support of an application, a failure to provide relevant information and/or other evidence at the applicant's disposal, are considerations that can be taken into account in assessing the sufficiency of detail and consistency of an applicant's account. Where appropriate, they may also be used in assessing whether the applicant has made a genuine effort to substantiate the application.¹⁷ The issue of whether the applicant has made inconsistent, contradictory, implausible, or insufficient representations, as reflected in Article 23 (4) (f) APD, is already the focus of the credibility assessment and also falls within the ambit of Article 4 (5) (c) QD.

The EAC also states that where the applicant has a criminal record for deceit, it may affect his or her personal credibility.¹⁸ There is no cited legal basis for this. UNHCR could find no reference to this factor as relevant for the credibility assessment in the three Member States surveyed.¹⁹ Decision-makers should not assume that there is a discernible pattern to behaviour. An applicant may genuinely relate the reasons for an application for international protection, even though he or she may have a criminal record for deceit.

The EAC explains that when a decision-maker finds that certain behaviour is damaging the applicant's personal credibility, he or she should decide (based on the material facts specific to that case) what weight to attach to the finding.²⁰ However, it notes that these behaviours can rarely on their own lead to a conclusion that the applicant is entirely without credibility.²¹

It is not entirely clear whether the concepts of the 'general credibility of the applicant' and the 'personal credibility' of the applicant as espoused by the EAC are related, or whether the EAC is effectively promoting a separate step in the credibility assessment that calls for consideration of the applicant's personal credibility. With regard to the three Member States of focus, no legislation, case law, or policy guidance has defined the term 'general credibility of the applicant'.

This chapter, discusses some of the factors, other than those outlined as credibility indicators in Chapter 5, that influence the credibility assessment in practice, and that were particularly evident in the case files reviewed by UNHCR. A significant number of the behaviours outlined above appear to be based on assumptions about human behaviour, which will be discussed further in the following sections.

¹⁷ Note that these issues fall within the ambit of Article 4 (5) (a) and (b) QD.

¹⁸ EAC Module 7, section 4.1.11 refers to 'criminal record for deceit'. Canadian case law has held that it is permissible to take into account convictions for deceit as a factor in assessing an applicant's credibility, although there is also case law in which the Federal Court deemed it questionable to draw negative inferences as to the applicant's credibility based on criminal behaviour: Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Refugee Protection*, 31 January 2004, para. 2.3.8, p. 41.

¹⁹ Note, however, that in the Netherlands, the IND Aliens Act Implementation Guidelines, (2010) Vc 2000 C4/2.5 provide that if an applicant withholds information regarding his or her criminal record, this is a contra-indication for the grant of a status.

²⁰ EAC Module 7, section 4.1.15.

²¹ EAC Module 7, section 4.1.5.

2. Behaviour Considered Indicative of the Applicant's Lack of Fear of Persecution or Risk of Serious Harm

2.1 Delay in applying for asylum

Article 4 (5) (d) QD provides that where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when "*the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so.*"

All three Member States surveyed have transposed Article 4 (5) (d) QD. In addition, UK guidance on credibility includes among the actions that may undermine credibility "*a delay in making an application for asylum following arrival in the UK if the applicant is unable to provide a reasonable explanation for his actions.*"²²

UNHCR has noted that Article 4 (5) (d) QD could be read in a manner prejudicial to the rights of the applicant, depending on the meaning attributed to "*at the earliest possible time*" and "*good reason for not having done so.*"

The Belgian appeal authority has held that an applicant for international protection can be expected to apply at the earliest possible time, or at least be expected to find out how to apply immediately upon entering Belgium. A delay in applying for international protection has been interpreted as indicative of a lack of fear of persecution or risk of serious harm, and to undermine the credibility of the applicant.²³

Guidance for the determining authority in the Netherlands has interpreted "*at the earliest possible time*" to mean "*as soon as reasonably can be expected from the applicant.*" It is for the determining authority to decide what this means on a case-by-case basis. However, the guidance further indicates that '48 hours from arrival' is 'reasonable'.²⁴ The Council of State has ruled that if an applicant does not apply for international protection at the earliest possible time, the applicant has to be more convincing in his or her statements ('positively persuasive') than would otherwise be the case.²⁵

²² UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 17; UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, p. 18. Amnesty International, 'A Question of Credibility: Why so many initial asylum decisions are overturned on appeal in the UK', April 2013, p. 24: "*Section 8 of the 2004 Act came into force 1 January 2005 and requires decision makers to 'take into account as damaging to the applicant's credibility any behaviour they think is designed or likely to conceal information, mislead, or obstruct or delay a decision.'* [...] *The principle areas in which Section 8 was misapplied relate to: the consideration of whether there had been a delay in making an asylum claim; the application of mitigating circumstances; and changes in an individual's circumstances which led to a late application.*"

²³ CCE/RVV 63.756, 24.06.2011. In this case, the applicant had applied after two years of illegal stay on the territory. In another case, the applicant claimed asylum upon being detained. CCE/RVV 66.223, 05.09.2011.

²⁴ IND Aliens Act Implementation Guidelines (2010) Vc 2000 C4/3.3.

²⁵ Council of State 8 September 2011, JV2011/431; LJN: BT1929, Jurisprudentie Vreemdelingenrecht JV2011/431; LJN: BT1929, para. 2.2.3. This ruling thus widened the scope of application of the 'positively persuasive test' beyond the circumstances set out in Article 31 (2) (a) to (f) Aliens Act 2000. See section below on the threshold of credibility.

The European Court of Human Rights has concurred with state authorities in their reasoning that a failure to apply for asylum three years after entry into the putative country of asylum indicated that the applicant did not consider himself to be in strong need of protection.²⁶ Similarly, guidance in Australia²⁷ and Canada²⁸ refer to a delay in claiming asylum as a legitimate consideration in assessing respectively the “*applicant’s subjective fear of persecution*” and “*the statements and the actions of the applicant*.” Nevertheless, the Australian guidance underlines that:

“*A delay in applying for protection should not be the sole reason for doubting an applicant’s claims. There should be other reasons to support a finding that an applicant’s claims are not credible. The significance of delay will depend upon the particular circumstances surrounding the delay and the reasons given for the delay.*”²⁹

The underlying assumption appears to be that a delay in applying for international protection may be indicative of a lack of fear of persecution or risk of serious harm, and therefore will undermine the credibility of the asserted material facts. The EAC states that “[d]elay may point to a lack of subjective fear of persecution, the reasoning being that someone who was truly fearful would claim refugee status at the first opportunity.”³⁰ It also states that “[d]elay without a reasonable explanation is an important factor when assessing the personal credibility of an applicant”³¹ and suggests that the circumstance described in Article 23 (4) (i) APD may be considered as potentially undermining credibility.³²

Factors to take into account

This approach relies on an underlying assumption that people will always behave rationally. The rationality of the state, which expects people who fear persecution or serious harm would immediately engage with the proper legal procedures, may not apply in such a straightforward way in individual circumstances. For example, the notion that people might find it difficult to trust those in authority,³³ potentially based on experiences in their countries of origin or habitual residence, clearly implies a motivation not to engage with a system that will require some level of trust. For some people the need to avoid disclosure of past experiences, whether for personal or cultural reasons,³⁴ will be an overriding motivation. This may apply

²⁶ *M. v. Sweden*, no. 22556/05, ECtHR, 6 September 2007, para. 53: “*In the present case the Court is struck by various irregularities and inconsistencies in the applicant’s story, of which at least the following should be mentioned.*” para. 53: “*Firstly, the applicant failed to apply for asylum immediately upon his entry into Sweden. [...] the fact that the applicant waited three years before he applied for asylum indicated that he did not consider himself to be in a strong need of protection.*” para. 60: “*Taking these circumstances into account, the Court finds that the applicant has failed to provide a satisfactory explanation for the irregularities and inconsistencies in his story and cannot but endorse the Government’s observations as to the applicant’s general credibility.*” The late submission is not *per se* conclusive in the ECtHR’s assessment. It can be drawn from the paragraph 60 that a late application will be taken into account by the Court as an indicator of lack of credibility in the absence of a satisfactory explanation by the applicant.

²⁷ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 7.1: “*The period of time that has elapsed between an applicant’s arrival in Australia and the time when he or she claims protection may be considered when assessing the genuineness or extent of an applicant’s subjective fear of persecution or significant harm.*”

²⁸ Canadian Guidelines: Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Protection*, 31 January 2004, section 2.3.9, p. 43: A delay in applying for refugee protection is not necessarily a decisive factor, but it is a relevant element which may be taken into account, in the absence of a reasonable explanation for the delay, in assessing the statements and the actions of the applicant.

²⁹ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 7.2.

³⁰ EAC Module 7, section 4.1.8.

³¹ EAC Module 7, section 4.1.8.

³² EAC Module 7, section 4.1.5. Article 23 (4) APD does not concern the credibility assessment. Instead, it sets out the circumstances in which a Member State may decide to prioritize or accelerate the examination of an application. Article 23 (4) (i) APD sets out one of those circumstances: “*the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so.*”

³³ UNHCR, *Handbook*, para. 198.

³⁴ J Herlihy, S W Turner, ‘The Psychology of Seeking Protection’, *International Journal of Refugee Law*, vol. 21, no. 2, 2009, pp. 171–92, at p. 177. D Bögner, J Herlihy, C Brewin, ‘Impact of Sexual Violence on Disclosure during Home Office Interviews’, *British Journal of Psychiatry*, vol. 191, no.1, 2007, pp. 75–81; D Bögner, C Brewin, J Herlihy, ‘Refugees’ Experiences of Home Office Interviews: A Qualitative Study on the Disclosure of Sensitive Personal Information’, *Journal of Ethnic and Migration Studies*, vol. 36, no. 3, pp. 519–35.



regardless of their level of understanding of what they ought to be doing in terms of state procedures, assuming these are known to them. If other avenues are available, the emotional decision may be to delay or avoid engaging with the state authorities, even if they are aware that this may not afford them security or refuge in the longer term.³⁵

UNHCR wishes to stress that the facts asserted by an applicant for international protection may be credible, even though the application was not made at the earliest possible opportunity. There are many legitimate reasons why an applicant may not apply for international protection at the earliest opportunity.³⁶

It should not be assumed that the applicant knew of the opportunity to request international protection. An applicant may have remained, for some time, on the territory before becoming aware of the opportunity to request and obtain international protection. In the following case reviewed by UNHCR, however, this was not accepted as a 'reasonable explanation':

*"You state that you did not claim asylum earlier because you did not know anything about the asylum process in X and you did not have any information about the process either. However it is noted that you have a high level of education. As such it is not accepted that you did not find out how to claim asylum until February 2011."*³⁷

In this case, the reason given was not accepted as plausible, as the decision-maker appears to have equated a high level of education with knowledge of, or the means to obtain information about, the asylum process. In such considerations, decision-makers need to be cautious to ensure that their expectations are not unreasonable or based on speculative assumptions.³⁸

³⁵ As well as the psychological dimension outlined above, social and anthropological research on people's behaviours when they are on the move (leaving/travelling/arriving) is also relevant. See for instance S Khosravi, *"Illegal" Traveller: An Auto-Ethnography of Borders*, Basingstoke: Palgrave Macmillan, 2010.

³⁶ As well as the psychological reasons outlined above, social and anthropological research on people's behaviours when they are on the move (leaving/travelling/arriving) is also relevant. See for instance S Khosravi, *"Illegal" Traveller: An Auto-Ethnography of Borders*, Basingstoke and New York: Palgrave Macmillan, 2010.

³⁷ IRN05M.

³⁸ J Ensor, A Shah, M Grillo, 'Simple Myths and Complex Realities – Seeking Truth in the Face of Section 8', *Journal of Immigration Asylum and Nationality Law*, vol. 20, no. 2, 2006, p. 98. By way of example of a broader approach, in INT07IRNM, the decision-maker did take into account and accept the applicant's stated reason for the delay.

The foremost concern of a person in need of protection may understandably be to enter the Member State safely and securely. Therefore, it should not be assumed that a failure to apply for protection at the port of entry or upon arrival is indicative of a lack of credibility. The following decision, reviewed by UNHCR, illustrated not only an expectation that the applicant should apply for international protection upon arrival, but found that a two-year interval between the applicant's arrival and the application damaged the credibility of the claim: "*However, it is considered that your failure to claim asylum upon your arrival in X [in April 2008] and the fact that you further delayed your asylum claim until 19 July 2010 have damaged the overall credibility of your claim.*"³⁹

The decision-maker should consider whether the applicant's failure to apply for international protection at the earliest opportunity was due to a desire to achieve security, albeit temporary and in an irregular manner. The decision-maker should bear in mind the effects of disorientation, language barriers, anxiety, and/or fear in this regard. The applicant may have been under the control of the person who facilitated his or her journey and entry to the EU, or may be under the control of others who have cautioned against or prevented an application being lodged. Alternatively, an applicant may have delayed making an asylum claim through fear or mistrust of the authorities, or doubts about the procedure rendering a just outcome.⁴⁰ The decision-maker should also take into account the effect of any trauma experienced. The symptoms of trauma, including avoidance, dissociation, and shame, may mean that an applicant does not make an application for international protection until compelled by circumstances such as the threat of forced return.⁴¹

A delay may be explained by a reliance on other means of securing the right to remain in the EU.⁴² In the following case, the delay in making an application led the decision-maker to conclude:

*"It is noted that you arrived in X in 2007, however you did not claim asylum until 2010, once your marriage was no longer subsisting and your spouse visa had expired. You stated that you did not claim asylum earlier as you hoped to reconcile with your wife and that she would continue to sponsor you. However it is considered that if you were in fear for your life and in genuine need of international protection, you would have claimed asylum at the earliest opportunity."*⁴³

In the above example, the visa of the applicant's spouse had expired in 2009 and he claimed asylum a year later. In his subsequent appeal, which was granted, the judge noted that "*the applicant's claim was not belated because it lacked merit or because the applicant did not wish to make an honest disclosure but that he had a reasonable explanation in the form of an alternative route to remain in the UK.*"⁴⁴

The fact that an application was made when the applicant's temporary status was expiring, or the applicant was about to be removed from the territory, or the applicant was apprehended illegally on the territory, or only after receiving the advice of a lawyer, does not preclude the credibility of the asserted facts.⁴⁵

For example, in the case referenced below, the decision-maker placed great weight on the applicant's delay in making an asylum claim. The applicant had travelled to the Member State on a visitor's visa, which remained valid for two months. The applicant claimed that she did not apply for international protection on arrival as she had intended to return to the country of origin or place of habitual residence. But upon

³⁹ AFG07M.

⁴⁰ *R v Asfaw*, [2008] UKHL 31, 21 May 2008, see Lord Bingham at para. 22.

⁴¹ United Kingdom, Asylum and Immigration Tribunal/Immigration Appellate Authority, *Immigration Appellate Authority (UK): Asylum Gender Guidelines*, para. 5.43.

⁴² Canadian Guidelines: Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Protection*, 31 January 2004, section 2.3.9, pp. 50–1.

⁴³ SOM02M.

⁴⁴ SOM02M, Appeal Determination, para. 9.

⁴⁵ Canadian Guidelines: Immigration and Refugee Board of Canada, Legal Services, *Assessment of Credibility in Claims for Protection*, 31 January 2004, section 2.3.9, pp. 50–1. See also *V. H. H. v. Ministry of Interior*, Supreme Administrative Court (Nejvyšší správní soud), 5 Azs 24/2008-48, 15 August 2008: "*Thus, if the applicant has filed an application for international protection after he was threatened by deportation, but nevertheless meets the conditions for at least one form of international protection, it is clear that he did not file his application 'merely' for the purpose of avoiding deportation.*"

hearing that her father had initiated court proceedings against her in the country of origin or place of habitual residence, she had applied for international protection when her visa expired. The decision stated:

“It is considered that if you were truly in fear of your father forcing you into an arranged marriage you would have made your intentions not to return clear and claimed asylum earlier. Your actions in delaying in claiming asylum therefore are considered to damage the credibility of your account to now be in fear of your father.”⁴⁶

It was not clear from the decision why the applicant's explanation that she had awaited the expiry of her visa to apply for international protection was not accepted as a reasonable explanation.

The individual and contextual background of the applicant may also explain delays in lodging an application for international protection: his or her age, maturity, gender, sexual orientation and/or gender identity, education, religion, or social status, may provide reasonable explanations. It has been stated in relevant guidance in the UK that, for example, a woman's priority is to achieve safety and security for herself and/or family members. Therefore, she may not apply for protection while she is able to achieve safety, however temporary or illusory, through other means, whether legal or illegal.⁴⁷

The last clause of Article 4 (5) (d) QD requires that the decision-maker enquire into the reasons for any delay in applying for international protection by affording the applicant the opportunity to provide an explanation. The decision-maker should take any explanation offered into account, bearing in mind the applicant's individual and contextual circumstances. UNHCR's review of case files indicated that often the explanation offered by the applicant was not considered to be a reasonable explanation for not applying earlier.

UNHCR's research indicated that explanations were often not accepted as reasonable in practice. Explanations which were considered not to fulfil the 'reasonable explanation' defence included fear of being sent back to the country of origin or place of habitual residence,⁴⁸ the legal representatives working at full capacity so were therefore unable to assist the applicant with his claim,⁴⁹ insufficient money to pay a legal representative,⁵⁰ postponing the application until after surgery,⁵¹ an initial desire to request protection in another EU state,⁵² and attempting to resolve the problem in the interim.⁵³

UNHCR wishes to emphasize that an applicant should not be found lacking in credibility merely on the ground that he or she did not apply for international protection at the earliest possible time.⁵⁴ Neither should a delay in application constitute a ground to increase the threshold of credibility for the applicant.

⁴⁶ INT05IRNF.

⁴⁷ United Kingdom, Asylum and Immigration Tribunal/Immigration Appellate Authority, *Immigration Appellate Authority (UK): Asylum Gender Guidelines*, para. 5.43.

⁴⁸ IRQ04F.

⁴⁹ INT08TURKM.

⁵⁰ IRQ05M.

⁵¹ IRQ06MRS. In this case a series of reasons were provided by the applicant for not applying for asylum earlier which were considered inconsistent.

⁵² SOM03MNP.

⁵³ IRN01MNP. It should be noted that in INT07IRNM, the applicant's explanation was accepted. In this case, the asserted material facts were corroborated by reliable documentary evidence.

⁵⁴ UNHCR, *Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted* (OJ L 304/12 of 30.9.2004), 28 January 2005, p. 15: “UNHCR points out that a late submission should not increase the standard of proof for the asylum applicant.” It should be noted that Article 8 (1) APD states that “Without prejudice to Article 23(4)(i), Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.” Article 23 (4) (i) APD allows Member States to prioritize or accelerate the examination of an application if “the applicant has failed without reasonable cause to make his/her application earlier, having had the opportunity to do so.”

UNHCR encourages Member States to interpret Article 4 (5) (d) QD in accordance with the principles of UNHCR's Handbook.⁵⁵

It is clear that an applicant may be a refugee and/or in need of international protection even though the application for international protection was not lodged at the earliest possible time.⁵⁶ This is because there are many valid reasons, unrelated to the credibility of the reasons for the application, why an applicant may not apply for international protection at the earliest possible time. If the application of Article 4 (5) (d) QD is considered, the decision-maker should enquire into the reasons for any apparent delay by offering the applicant the opportunity to explain the delay. He or she should take any explanation offered by the applicant into account, bearing in mind the latter's individual and contextual circumstances.

2.2 Applicant did not apply for protection in safe third country

UNHCR has noted that some Member States may consider that a failure to apply for international protection in a 'safe third country' undermines the credibility of the applicant.⁵⁷ For example, UK legislation states that in determining whether to believe a statement made by or on behalf of a person who makes an application for international protection, the determining authority shall take account of the failure by an applicant to take advantage of a reasonable opportunity to apply for asylum while in a safe country as damaging the credibility.⁵⁸ Policy guidance states that:

*"[a]n applicant who has had a reasonable opportunity to make an asylum claim in a safe third country is expected to do so. A reasonable opportunity means that the applicant could have approached the authorities at the border or internally, as long as there is no reason to think that the claim would not have been received."*⁵⁹

The underlying assumption appears to be that a failure to apply for asylum in a third country may indicate a lack of fear of persecution or risk of serious harm – and therefore, by implication, be indicative of the non-credibility of asserted material facts.⁶⁰ The EAC states that: *"It is expected that a genuine applicant should apply for asylum in the first safe country. The country has however to be a signatory to the 1951 Geneva Convention and to fulfil its obligation in this matter."*⁶¹

⁵⁵ UNHCR, *Comments on the European Commission's Proposal for a Directive of the European Parliament and of the Council on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Beneficiaries of International Protection and the Content of the Protection Granted* (COM (2009)551, 21 October 2009), 29 July 2010.

⁵⁶ Note also Article 8 (1) APD which states that "[w]ithout prejudice to Article 23(4) (i), Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible."

⁵⁷ I Up 375/2008, Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije), 28 July 2008: The Administrative Court had agreed with the reasoning of the determining authority that the fact that the applicant did not apply for asylum in Macedonia, Bosnia and Herzegovina, Kosovo and Croatia before arriving in Slovenia was legally relevant for the assessment of the credibility of the applicant. The Supreme Court agreed with the position of the determining authority and the Court of First Instance that the applicant's longer stays in multiple countries, without at least trying to inform himself of the possibility to request asylum, showed without doubt a lack of subjective fear of persecution in his country of origin.

⁵⁸ UKBA, Section 8 (1) and (4) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

⁵⁹ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, Annex A, 12 February 2012, p. 62. The guidance further states: "For example it might be thought that someone who spent several weeks in France before coming to the UK must have had a reasonable opportunity to claim there. But this would not be reasonable if the applicant was imprisoned by smugglers throughout that time." EAC Module 7, section 4.1.9: "It is expected that a genuine applicant should apply for asylum in the first safe country. The country has however to be a signatory to the 1951 Geneva Convention and to fulfil its obligation in this matter."

⁶⁰ I Up 375/2008, Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije), 28 July 2008.

⁶¹ EAC Module 7, section 4.1.9.

Factors to take into account

First, UNHCR notes that there is no obligation in international law for a person to seek international protection at the first effective opportunity.⁶²

Second, the concept of a 'safe third country' has been developed in the framework of addressing state responsibilities for the determination of asylum applications. The consequences of a 'failure' to apply for asylum in a 'safe third country' are regulated by the Dublin II Regulation, and the APD in European states participating in those instruments.⁶³ Member States may not be required to examine an application for international protection if the relevant conditions of the Dublin Regulation and APD are satisfied. The 'safe third country' notion as set out in the APD provides that Member States may send applicants to third countries with which the applicant has a connection, as such making it reasonable for them to go there. The possibility must also exist to request refugee status and, if the applicant is found to be a refugee, it must be possible for him or her to receive protection in accordance with the 1951 Convention.⁶⁴

To consider a 'failure' to apply for asylum in a safe third country as a factor undermining the credibility of the applicant could alter the legal consequences of that failure significantly from those currently stipulated in EU law. The APD and Dublin Regulation now provide that a person who did not apply in a 'safe third country' may be removed to that country so that his or her application can be considered there on its merits. However, treating a failure to apply as potential grounds for dismissing the material facts could result in the rejection of the application without a full examination of its substance. This is contrary to the purpose of Dublin and of the concept of a 'safe third country', which aims to ensure that the applicant's claim will be examined on its merits in a fair and effective asylum procedure.⁶⁵

Third, a 'failure' to apply for asylum in a safe third country is not, in any case, necessarily indicative of a lack of fear of persecution and/or risk of serious harm in the country of origin or place of habitual residence. There are many reasons why an applicant may not apply for international protection in a third country. For example, the applicant may have paid an agent to facilitate his or her transport to a particular destination and the former may exercise control over the latter's movement. Other examples include lack of knowledge on the applicant's part of the travel route taken and the countries that will be transited;⁶⁶ ignorance of any opportunity to apply for protection in any of the countries transited; doubts about being able to access effective protection in a third country; lack of an effective opportunity to apply for protection in any of the third countries transited; wishing to apply for international protection in a particular Member State due to family or community ties, links or contacts in that country, or for many other reasons unrelated to deception or a lack of fear of persecution and/or risk of serious harm.

Fourth, an applicant's individual and contextual circumstances, including his or her age, maturity, gender, sexual orientation and/or gender identity, education, social status, and religion, may provide reasonable explanations for a 'failure' to apply for international protection in a third country. Previous research has shown that the gender of the applicant may not always be taken into account when considering this issue:

“A single mother with two children from Afghanistan was not accepted into the in-merit procedure based on the safe third country rule, because they came through Serbia. She appealed the decision, but she was not successful. In the judgement there is not a single sentence to indicate that her status as a single mother with children was taken into consideration.”⁶⁷

⁶² UNHCR, *Summary Conclusions on the Concept of “Effective Protection” in the Context of Secondary Movements of Refugees and Asylum-Seekers*, (Lisbon Expert Roundtable, 9–10 December 2002), February 2003, para. 11.

⁶³ UNHCR, APD Study, March 2010.

⁶⁴ In that third country, the applicant must not be at risk of persecution, *refoulement* or treatment in violation of Article 3 ECHR.

⁶⁵ *ST (Libya) v Secretary of State for the Home Department*, [2007] EWCA Civ 24, 12 January 2007, paras. 6–7.

⁶⁶ H Crawley, *Chance or Choice? Understanding Why Asylum Seekers Come to the UK*, Refugee Council report, January 2010.

⁶⁷ *Asylum Aid, Comisión Española de Ayuda al Refugiado (Spain – coordinator), France terre d’asile (France), Consiglio Italiano per i Rifugiati (Italy) and the Hungarian Helsinki Committee (Hungary), Gender Related Asylum Claims in Europe: Comparative Analysis of Law, Policies and Practice Focusing on Women in Nine EU Member States*, May 2012, p. 100.

In this regard, it is interesting to note that in other state practices, the fact that an applicant was in a third country prior to his or her arrival in the putative country of asylum, but did not apply for refugee status there, is a factor upon which a credibility finding may not be based.

State practice on failure to apply in safe third country

UNHCR's review of case files revealed that in one Member State, a failure to apply for asylum in a third country was not referred to as indicating non-credibility in any of the cases.

However, UNHCR observed cases in two Member States in which a failure to claim asylum in a third country was deemed to damage the applicant's credibility or contribute to a finding of non-credibility.⁶⁸

In the Netherlands, UNHCR observed a number of cases in which applicants had asserted that they had not taken their documentation on the journey to the Member State because they had been advised by their travel agent that they risked detention in the transit country (Turkey) if they had such documentation in their possession. This explanation was not accepted because, according to the written decision, the applicant could have requested protection from UNHCR in Turkey.⁶⁹ As a consequence, the applicant's statements concerning the reasons for the application, which were required to be positively persuasive, were undermined in advance. At the time of writing this report, to UNHCR's knowledge, there is no national legal or policy basis for taking into account a 'failure' to apply for protection in a third country in the credibility assessment. The determining authority, in the case in question, ruled that such factors should not be taken into account in decisions henceforth.⁷⁰

In the UK, the following written decision illustrates the current practice:

*"Before arriving in the United Kingdom, the claimant travelled through Greece where he was fingerprinted. This is considered a safe country under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. It is considered that the claimant failed to take advantage of a reasonable opportunity to make an asylum or human rights claim while in a safe country. Although it is considered that this has damaged the applicant's credibility under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, it is considered that this does not go to the core of the applicant's claim for asylum and does not provide sufficient basis to reject the applicant's claim in its entirety."*⁷¹

In the following case, the applicant was asked to provide an explanation for failing to claim asylum in a 'safe country' during his personal interview:

Interviewer: *Why didn't you claim asylum in Italy or Spain?*

Applicant: *'I was never alone in any of these countries always agent was with me and he was a frightening character. I had never been in contact with this kind of person.'*

Interviewer: *You say you left Iran because your life was in danger yet you did not claim asylum whilst in safe countries, this makes it hard for me to believe your claim, can you explain?*

Applicant: *'I was on my own for just a few hours in Spain. I had been told that if you go anywhere else that we give you the ticket for, they will send you back to Iran. I have never been around this kind of people. For nearly two months I was on my own and I didn't have the courage to do anything apart from what they asked me to do.'*⁷²

⁶⁸ AFG01MBP, IRN03MNP, IRQ02FNP, IRN04M, AFG07M, IRQ01M, IRN08M, IRQ10M, AFG08M, IRN06MRS.

⁶⁹ AFG01MBP, IRN03MNP, IRQ02FNP.

⁷⁰ Information received 8 April 2013.

⁷¹ IRN06MRS.

⁷² IRN08M.

Nonetheless, the decision-maker made no reference to the applicant's explanation and gave no reasons for rejecting it in the subsequent decision:

*"It is also noted that before arriving in the United Kingdom, you travelled through Italy and Spain. These are considered to be safe countries under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Since you remained in both Italy and Spain it is considered that you failed to take advantage of a reasonable opportunity to make an asylum or human rights claim while in a safe country. Your failure to do so has damaged your credibility under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004."*⁷³

UNHCR observed that other explanations applicants provided, such as being in a lorry throughout the journey,⁷⁴ a fear of being returned to the country of origin or place of habitual residence,⁷⁵ and advice from the agent that there is 'no justice in Greece'⁷⁶ were not accepted.

While decision-makers in the UK regularly appear to use Section 8 legislation to bolster adverse credibility findings, the courts have expressed little support for the provision described as a "*constitutional anomaly in relation to the independence of a fact finding judicial tribunal*."⁷⁷ This is borne out in the appeal determinations viewed in this research. It was noted that judges placed little weight on Section 8 factors, irrespective of the outcome of the appeal. Indeed, UK jurisprudence has emphasized that the fact that an applicant did not claim asylum in a country through which he or she transited should generally not be considered as damaging credibility.⁷⁸

It is UNHCR's view that reference to the concept of a safe third country is not appropriate in the credibility assessment. That an applicant does not apply for asylum in a third country is not indicative of the non-credibility of the asserted reasons for the application and should not be considered to undermine the applicant's credibility. Reliance on such a factor in the credibility assessment may result in violation of the principle of non-refoulement.⁷⁹

⁷³ IRN08M.

⁷⁴ IRQ01M.

⁷⁵ AFG07M.

⁷⁶ AFG08M.

⁷⁷ Sedley LJ, granting permission to appeal to the Court of Appeal in *NT (Togo) v Secretary of State for the Home Department* [2007] EWCA Civ 1431, 9 November 2007, para. 3: "It is one thing to recognise that an applicant could have applied for asylum in France and to hold against her, if there was no good explanation for it, the fact that she did not. It does not require legislation to tell an immigration judge that that may be material. It is arguably another thing to hold against an individual, not because it has any intrinsic weight but by command of law, the fact that she has come to this country using a false passport when, if her story is correct, she would have no other way of getting here. To be driven by legislation to hold something like that against an applicant is a constitutional anomaly in relation to the independence of a fact finding judicial tribunal; and in my judgment a question arises as to whether, if the use of a false passport seems to have been ineluctable, any weight or any more than token weight is required by Section 8 to be given to that fact." Sedley LJ also expressed concerns in *ST (Libya) v Secretary of State for the Home Department* [2007] EWCA Civ 24, 12 January 2007, stating: "Section 8 is a problematic provision on which there is, so far, little case law. I cannot at the moment think of any other statute which seeks to prescribe how a judicial fact finder is to go about finding facts. In many respects nonetheless Section 8 does no more than rehearse things that a fact-finder will anyway have regard to. But sub section (4) is not quite in that class. It alters the consequence of a failure to seek asylum in a safe third country from removal to that country under the 1990 Dublin Convention to a potential ground for disbelieving the claim when it is eventually made in this country."

⁷⁸ *R (Bouattoura) v Immigration* [2004] EWHC 1873 (Admin), 20 July 2004, para. 13: "[...] The fact that an asylum-seeker did not claim asylum in a country through which he was transiting should generally not be treated as damaging his credibility: see Symes and Jorro, 'Asylum Law and Practice' para. 2.34. That is especially so when the asylum seeker has given reasons, as the claimant did here, for not claiming asylum in the country of transit, and for preferring to make his claim for asylum in another country."

⁷⁹ UNHCR, *General Conclusion on International Protection*, no. 87 (L), 8 October 1999, letter J. For UNHCR's pronouncements on the use of the concept of safe third country generally see UNHCR, *Thematic Compilation of Executive Committee Conclusions*, August 2008, Third edition.

3. Expected Behaviour in the Member State Considered Indicative of Credibility

UNHCR's review of case files and observation of interviews in one Member State showed that, in practically all cases, the applicant was questioned about efforts made before and after leaving the country of origin or place of habitual residence to obtain further information about the evolution of events that prompted the application for international protection. Applicants were expected to have attempted to find out about political or other relevant developments and recent incidents in the country of origin or place of habitual residence, and to have enquired about the welfare of others such as neighbours, friends, and family. UNHCR's research showed that if the applicant did not take such steps, which the determining authority equated with a genuine account, the relevant asserted facts may be considered not credible.⁸⁰

The following decision reviewed by UNHCR illustrates the assumption that applicants providing genuine accounts would have attempted to remain informed about the situation in their country of origin or place of habitual residence after their arrival in the putative country of asylum:

“Additionally one could ask the question why you haven't taken any initiative in X to verify what happened after you left Iraq. [...] This nonchalant attitude towards your problems and your lack of initiative shows a lack of interest in your situation, which can hardly be explained given the circumstances under which you left your country. This puts your invoked fear for persecution in perspective. Of an asylum seeker it can be expected that he makes efforts to be informed about the reasons that pushed him to leave and that he informs himself about the evolution of his personal problems. That you neglected to take these actions casts serious doubts over your asylum claim and gives serious presumptions that you left Iraq for different reasons than you indicated.”⁸¹

UNHCR also observed that in cases where an applicant asserts to be an LGBTI individual, draft internal guidance suggests that if the applicant takes steps to become informed about the situation of LGBTI individuals in the Member State that this may be indicative of the credibility of that assertion. For example, draft internal guidance provides that an assertion by an applicant to be an LGBTI individual may be deemed not credible if he or she lacks knowledge about the situation of LGBTI individuals in the Member State. In one case reviewed by UNHCR, the fact that the applicant had not attempted to find out about the rights of homosexuals in the Member State was considered to undermine the credibility of his asserted sexual orientation: *“Furthermore, it should be noted that since your arrival in X on 26 June 2010, you declare you haven't informed yourself on the rights of homosexuals in X. [...] This confirms the conviction of [the determining authority] that your change of sexual orientation is not credible.”⁸²*

While applicants may consider that they will be protected from persecution and/or serious harm in the Member State, it is unclear why it is assumed that they would inform themselves of the Member State's laws on the treatment of LGBTI individuals.

⁸⁰ AFG06FSP; IRQ08FSP; DRC03M; DRC06M; DRC07F; DRC08F; DRC09F; GUI04M; GUI07M; GUI08M; GUI09M; GUI10F; INT03IRQM; INT04IRQF; INT06GUIM.

⁸¹ INT04IRQF.

⁸² DRC06M.

The draft internal guidance further provides that if applicants assert they took active steps in the country of origin or place of habitual residence to explore their sexual identity or find partners, it can be considered credible that they will do so in the Member State.⁸³ It is unclear why it should be assumed that people in an alien environment would behave as they did in the country of origin or place of habitual residence, especially if they are uncertain of the possible consequences. It therefore appears to be based on an unfounded assumption that relies on stereotyping.

Furthermore, the draft internal guidance states that where an applicant's sexual orientation is undisputed, his or her nationality, identity, and/or the alleged fear of persecution may only be deemed credible if, *inter alia*, the applicant has attempted to obtain news of any claimed partner and/or other actors referred to who remained in the country of origin or place of habitual residence and who also experienced problems there.⁸⁴ The assumption appears to be that a person who claims to have had a relationship with another in the country of origin or habitual residence, or have associates in a similar situation, would definitely attempt to find out about the welfare of the alleged partner or other associates once in the putative country of asylum.⁸⁵ For example, in one case reviewed, the applicant was considered to have made insufficient efforts, after having left the country of origin or habitual residence, to obtain information about what had happened to his partner, who together with the applicant had allegedly feared persecution on account of their (actual or perceived) sexual orientation.⁸⁶ In another case, the fact that the applicant had not contacted his partner after leaving him in the country of origin or place of habitual residence was considered 'incompatible' with the situation of a person who has had a long-term relationship.⁸⁷

These decision-makers' assumptions raise empirical questions about the practical and emotional choices that people make once they are safely in exile. What part does guilt and fear play, for example, in a decision to enquire about the people and situations left behind? In the absence of psychological and anthropological evidence, decision-makers may be relying on assumptions based on their own personal and cultural backgrounds, which may be insufficient to explain the motivations and behaviours of others.⁸⁸

Moreover, UNHCR observed that where applicants were asked to explain why they had not acted as the decision-maker assumed they should, their explanations were often considered unsatisfactory and as undermining the credibility of the asserted facts.⁸⁹ In particular, their explanations regarding their gender and cultural circumstances could be discounted in favour of the decision-maker's assumptions. For example:

“Even more remarkable is that you also didn't make any efforts after the death of your husband to get to know more about his function that you say was the cause of his death and the kidnapping of your son [...], for example through friends and family (in-law). Again you blame your ignorance on your position as a woman in Iraq [...]. You state that if your husband would have said something to his brothers, they would never tell you [...]. However, this is highly unlikely since, if you had really wanted to know about these things – which would have been no less than logical under these dramatic circumstances – you could have asked them for a clear answer. Especially taking into account that your asylum claim is pending and these facts are crucial for the assessment of your claim.”⁹⁰

⁸³ Office of the Commissioner General for Refugees and Stateless Persons (CGRA/CGVS), Draft guidance on asylum claims where sexual orientation of gender identity is given as a reason for application.

⁸⁴ Office of the Commissioner General for Refugees and Stateless Persons (CGRA/CGVS), Draft guidance on asylum claims where sexual orientation of gender identity is given as a reason for application.

⁸⁵ GUI09M: the decision states that the fact that the applicant had not contacted his alleged long-term partner in Guinea, having left him behind, was not compatible with the claim to have had a long-term relationship.

⁸⁶ DRC06M.

⁸⁷ GUI09M.

⁸⁸ R Graycar, 'The gender of judgments: an introduction', in M Thornton (ed.), *Public and Private Feminist Legal Debates*, Melbourne: Oxford University Press, 1991, pp. 262–82.

⁸⁹ For example, IRQ08FSP, AFG06FSP, GUI04M, GUI07M, GUI08M, GUI09M, GUI10F, DRC06M, DRC07F, DRC08F, DRC09F, INT04IRQF.

⁹⁰ IRQ08FSP.



It is UNHCR's view that the credibility assessment should focus primarily on the statements and other evidence provided by the applicant in relation to the material facts of the claim, rather than on the behaviour of the applicant on arrival in the putative country of asylum. The behaviours determined to indicate credibility in the case files that UNHCR reviewed appeared to be based on speculative assumptions about how someone should behave when fleeing persecution or serious harm, and upon arrival in an alien environment. The behaviour of the applicant in the putative country of asylum is an unreliable indicator of the credibility of the applicant's statements, for there are a myriad of reasons, wholly unrelated to credibility, that may account for such behaviour.

4. Behaviour Considered Indicative of the Applicant's Propensity to Deception and Dishonesty

The submission of false documentation as if valid upon arrival in the Member State; the destruction or disposal of travel documents en route or on arrival; and the provision of false information regarding the travel route may be considered to weaken the credibility of the applicant.⁹¹ The assumption underlying this approach is that ordinarily an applicant with a legitimate claim should not find it necessary to present false statements and/or documentary evidence, or conceal relevant facts or documents.⁹² Therefore, if there are strong reasons to believe that the applicant has provided false information or submitted false documentary or other evidence, this may be considered to undermine the credibility of the asserted fact.

In Belgium, although no explicit legal basis was cited, UNHCR noted that submission of false documentation or other evidence may be taken into account in this manner in practice.⁹³ In the Netherlands, such behaviour may undermine the credibility of the applicant's statements in advance and trigger the application of a higher threshold of credibility.⁹⁴ In the UK, such action may be considered to damage the applicant's credibility.⁹⁵

Guidelines in the Netherlands state that it is generally not considered credible that an applicant cannot present any (indicative) documentary or other evidence of their travel route.⁹⁶ In this regard, official (airline, train, taxi or bus) tickets, boarding passes, luggage labels, an airline's sugar sachets, hotel bills, phone cards, foreign currency, etc. constitute relevant evidence.⁹⁷ This indicates an assumption that the applicant will know that such things will be considered necessary for the assessment of an application for international protection and will know not to dispose of them.

⁹¹ *Matsiukhina and Matsiukhin v. Sweden*, no. 31260/04 (Decision), ECtHR, 21 June 2005. *E.N. v. Sweden*, no. 15009/09, ECtHR, 8 September 2009, para. 30: "In the case before it, the Court first has to take into account the fact that the applicant lied to the Swedish authorities upon arrival in Sweden about his identity and how he had travelled to Sweden. He gave a false name and date of birth and submitted a forged identity card to the authorities. Moreover, he alleged that he had used a fake passport and did not know the travel route while, in reality, he had travelled legally to France on his own passport and with a valid entry visa to study in France. These untruths clearly affect the applicant's general credibility negatively in the eyes of the Court."

⁹² EAC Module 7, section 4.1.7: "The submission of a false document to prove a central element of an applicant's asylum claim indicates a lack of credibility. Ordinarily, it is reasonable to infer that an asylum seeker with a legitimate claim does not usually find it necessary to invent or fabricate documents in order to establish asylum eligibility."

⁹³ IRQ07FSP, INT01AFGM.

⁹⁴ Article 31 (2) (d) and (e) of the Dutch Aliens Act 2000: "(d) the alien has produced a false or forged travel document, identity card or other papers and, despite being questioned about this, has deliberately asserted that they are genuine; (e) in support of his application the alien has deliberately produced a travel document, identity card or other papers that do not relate to him" and IND Aliens Act Implementation Guidelines, (2010) Vc 2000 C4/2.5; Dutch Council of State, 30 December 2011, 201100520, para. 2.4, 2.4.1 and 2.4.2; IRQ01FAP, implicit in IRQ04MNP.

⁹⁵ UKBA, Section 8 (2) (b) and (3) (b) of the UK Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. UKBA, Section 8 (2) (b): "to any behaviour by the claimant that the deciding authority thinks is designed or likely to mislead"; and Article 8 (3) (b): "the production of a document which is not a valid passport as if it were." AFG09F, SOM07F, SOM01F, AFG03M.

⁹⁶ IND Aliens Act Implementation Guidelines, (2010) Vc 2000 C4/3.6.3.

⁹⁷ IND Aliens Act Implementation Guidelines, (2010) Vc 2000 C4/3.6.3. Dutch Council of State, 24 May 2012, 201108433/1 states that the examples of indicative evidence are not exhaustive.

The Dutch guidelines state that it is expected that on arrival applicants directly invoke the protection of the Member State, submitting all the documentation in their possession, and do not hand over documentation to any agent who facilitated their travel unless under coercion, and that the applicant otherwise cooperates fully in the assessment of the application, and provides a credible account.⁹⁸ This appears based on an assumption that those fleeing persecution and serious harm will trust the national authorities, and know that they should not willingly give documents to their agent or anyone else.

In some cases reviewed in one Member State, the applicant's explanation that he or she was forced to leave travel and/or identity documents with the agent was accepted as satisfactory.⁹⁹ In a couple of cases, however, the explanation that the applicant was forced by the agent to destroy travel and/or identity documents was not accepted as satisfactory.¹⁰⁰ UNHCR also reviewed cases where the explanation that the agent had the documents, without any explicit reference to coercion, was accepted as satisfactory¹⁰¹ and unsatisfactory¹⁰² without the reasons for the difference in approach being evident in the case file.

In this regard, it is relevant to note that UNHCR's review of case files in another Member State similarly revealed cases in which the applicant claimed that he or she had destroyed a passport aboard an aircraft due to instruction from an agent, however, this explanation was either not taken into account or not accepted by the determining authority.¹⁰³ In the following example, when questioned during the personal interview, the applicant stated "[w]e had to listen to the agent and he told me to destroy the passport in the toilet of the aircraft."¹⁰⁴ The decision-maker decided that such action was clearly designed to withhold information from the authorities and, therefore, undermined the applicant's credibility. However, in the applicant's later appeal, which was granted, the judge stated "*it seems to be common for illegal entrants to be told by agents to destroy their travel documents. This appellant gave an explanation that is not incredible, and was not challenged. If it is true, and I believe it is; the act would have no logical bearing on credibility.*"¹⁰⁵ In other words, the judge had found that the explanation was credible and, therefore, satisfactory. As such, the lack of this document had no bearing on the credibility assessment.

The fact that such explanations are sometimes not accepted by decision-makers may be attributed to guidance indicating extreme examples of what might constitute a satisfactory explanation such as '*where an individual was forced at knifepoint to give a document to someone else.*'¹⁰⁶ In reality, smugglers and traffickers rarely have to resort to the application of such force. The findings of this research indicate that explanations offered by applicants are indeed not so extreme. UNHCR notes that the guidance requires a level of threat more extreme than that which the EU *acquis* defines as the relevant means of exercising power over a trafficking victim.¹⁰⁷

It should be noted that in the United States a clear distinction has been drawn between:

- ❶ the presentation of fraudulent documents for the purpose of establishing the elements of an asylum claim; and
- ❷ the presentation of fraudulent documents for the purpose of escaping the country of origin or place of habitual residence, or facilitating entry to the USA.

⁹⁸ IND Aliens Act Implementation Guidelines, (2010) Vc 2000 C4/3.6.3.

⁹⁹ IRQ01MNP, IRQ02FBP

¹⁰⁰ IRN03MNP, SOM01MNP

¹⁰¹ IRN04MAP, IRQ02FBP, IRQ03FBP

¹⁰² AFG01MBP, AFG01FNP, AFG04MNP, AFG05MNP, IRN03MNP, SOM03MNP.

¹⁰³ IRN08M, AFG04M, SOM01F, IRQ04F.

¹⁰⁴ AFG04M.

¹⁰⁵ AFG04M, Appeal Determination.

¹⁰⁶ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 54; UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, p. 60.

¹⁰⁷ EU Directive 2011/36/EU Of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Art. 2 (1) defines the means by which traffickers may exercise power over their victims: "*by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.*"

In the first circumstance such behaviour may be indicative of a lack of credibility, whereas in the second it does not serve to impute a lack of credibility.¹⁰⁸

UNHCR has noted that EU Member States do not necessarily draw such a distinction.

A brief observation should be made regarding the inclusion of 'travel route' amongst the issues listed in Article 4 (2) QD. Whilst the travel route taken by the applicant may be pertinent to the determining authority's consideration of the applicability of the Dublin Regulation and the admissibility of the application pursuant to the APD, and while Member States have a broader interest in gathering information regarding migration routes, UNHCR considers that the travel route is rarely a fact which is material for the assessment of qualification for international protection. As such, it could be considered that the applicant's statements and other evidence relating to the travel route are not strictly relevant for the substantiation of the application, and as such should not be a focus of the credibility assessment.

Factors to be taken into account

UNHCR understands that the submission of false travel or other documents and the wilful destruction or disposal of travel or other documents by applicants upon arrival in the country of destination complicates the personal identification of the person concerned and the determination of his or her travel route.

However, the use of false documents and unlawful entry, which some Member States consider potentially to undermine credibility, are precisely the actions that persons in need of international protection must often have to resort to.¹⁰⁹ Many applicants travel and enter EU Member States with false documents or by evading immigration controls as it would be difficult, if not impossible, for them to enter in a regular manner. Many are only able to make the journey with the assistance of agents, facilitators, or others. They may be dependent on, or under the control of, such persons and follow their advice or instructions regarding what to do with any false documents. They may also feel compelled to comply with their guidance on whether and where to apply for international protection and, if so, what to say and do upon encountering the Member State authorities. They may have been advised to withhold information about the travel route and documents, and/or to destroy, alter, or dispose of documentary evidence.

Travel routes are rarely a material fact in the determination of a claim. Information provided by the applicant on the travel route should, therefore, not generally influence a decision on whether to accept or reject asserted material facts.¹¹⁰ There are many reasons, unrelated to the application, why applicants may not cooperate in the provision of information regarding the travel route and documentation used. They may fear retaliation from the smuggler if under strict instructions not to reveal details of the route; they may feel gratitude to the smuggler for having delivered them to a safe haven; they may wish to preserve the details of the route if other family members intend to use the same one; or they may have no knowledge of the route taken if they were concealed in vehicles and safe houses. Duress, coercion, lack of autonomy, misguided advice, fear, desperation, and ignorance are just some of the many reasons that might account

¹⁰⁸ *Akinmade v. Immigration and Naturalization Service (INS)*, 196 F. 3d 951, 955-56 (9th Cir. 1999).

¹⁰⁹ J Sweeney, 'Credibility, Proof and Refugee Law', *International Journal of Refugee Law*, vol. 21, no. 4, December 2009, p. 717.

¹¹⁰ It has been stated with regard to the UK legislation on this issue: Section 8 "plainly has its dangers, first, if it is read as a direction as to how fact-finding should be conducted, which in my judgment it is not, and, in any event, in distorting the fact-finding exercise by an undue concentration on minutiae which may arise under the section at the expense of, and as a distraction from, an overall assessment. Decision-makers should guard against that. A global assessment of credibility is required" (*R v Secretary of State for the Home Department, Ex parte Sivakumar* (FC) [2003] UKHL 14, 20 March 2003); *JT (Cameroon) v Secretary of State for the Home Department Court of Appeal* [2008] EWCA Civ 878, 28 July 2008. See also, UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012: "General credibility findings should not be the starting point of the credibility assessment process. It is generally unnecessary, and sometimes counter-productive, for the decision maker to focus upon minor or peripheral facts that are not material to the claim."

for an applicant's behaviour. In fact, there are numerous possible explanations for an applicant's behaviour other than deception.¹¹¹

It has been stated that “[u]ndocumented entry into the country, poor cooperation in the investigation of the journey, and other similar situations cannot be legitimately sanctioned by refusing alleviation” from the requirement to provide supporting documentary or other evidence.¹¹² “It is fully understandable that Member States wish to stimulate early applications for protection, or willing cooperation in the investigation of the journey or any smuggling services the applicant might have used. This notwithstanding, the assessment of credibility must not be abused and applied as an instrument of sanction.”¹¹³

Decision-makers should not assume that there is a discernible pattern to behaviour, that is, that behaviour in one context or with regard to a specific issue is somehow indicative of behaviour in another context or with regard to another issue. The assumption would play out as follows: ‘if an applicant lied about his or her travel route, then he or she is probably lying about the reasons for the application for international protection. He or she is not trustworthy.’ This seems to rest on an assumption that people are either liars and law-breakers or law-abiding truth-tellers, rather than on an understanding that situational factors also have an effect on behaviour. Anyone who has broken a speed limit understands that this logic does not hold and an assessment of credibility based on this type of assumption may be highly prejudicial to the applicant. An applicant may genuinely relate the core reasons for the application for international protection, but provide false information about the journey to the Member State or false travel documents.¹¹⁴

As for lies, these may be an attempt to embellish or strengthen an otherwise credible account that establishes grounds for qualification for international protection. The Australian High Court, referring to the pressure of circumstances that may lead some applicants to tell lies, stated that:

*“the fact that an applicant for refugee status may yield to temptation to embroider an account of his or her history is hardly surprising. It is necessary always to bear in mind that an applicant for refugee status is, on one view of events, engaged in an often desperate battle for freedom, if not life itself.”*¹¹⁵

A lie or the submission of false documentation or other evidence may just be an attempt to meet the presumed expectations of the determining authority.¹¹⁶ The temptation to provide false documentation may seem acute given determining authorities’ emphasis on the importance of documentary or other evidence supporting the applicant’s statements. The submission of false documentation to support a statement does not necessarily mean that the statement is untrue.¹¹⁷

The determining authority should take into account any individual and contextual circumstances that might account for the applicant’s actions. For example, the concept of lying and embellishment is culturally

¹¹¹ UNHCR, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12.

¹¹² G Noll, *Evidentiary Assessment and the EU Qualification Directive*, New Issues in Refugee Research, Working Paper no. 117, UNHCR, June 2005, p. 5. J Sweeney, ‘Credibility, Proof and Refugee Law’, *International Journal of Refugee Law*, vol. 21, no. 4, December 2009, December 2009, p. 717: “Attempts to punish or discourage particular behaviour have no logical relation to a rule about the alleviation of an evidential burden.”

¹¹³ G Noll, *Evidentiary Assessment and the EU Qualification Directive*, New Issues in Refugee Research, Working Paper No. 117, UNHCR, June 2005, p.13.

¹¹⁴ J Sweeney, ‘Credibility, Proof and Refugee Law’, *International Journal of Refugee Law*, vol. 21, no. 4, December 2009, p. 717: “Likewise, there is no necessary link between behaviour subsequent to the alleged events giving rise to the fear of persecution and the truthfulness of those allegations.”

¹¹⁵ *Abebe v Commonwealth* (1999) HCA 14, 197 CLR 510 (14 April 1999) cited at p. 275 in S Norman, ‘Assessing the Credibility of Refugee Applicants: a Judicial Perspective’, *International Journal of Refugee Law*, vol. 19, no. 2, July 2007, pp. 273–92.

¹¹⁶ W Kälin, ‘Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing’, *International Migration Review*, vol. 20, no. 2, Special Issue: Refugees: Issues and Directions, Summer, 1986, p. 230–41 at 237.

¹¹⁷ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 9.4: “The use of false documents does not necessarily mean that an applicant’s claims are untrue.”

relative.¹¹⁸ The applicant's age may also be a relevant factor to take into account.¹¹⁹ Applicants may wish to conceal facts for other reasons, such as fear, lack of trust of the authorities, shame, stigma, or the effects of trauma.

In a case before the UN Committee Against Torture, the applicant conceded that he had made untrue statements during the initial asylum procedure, but that on appeal he had given a consistent, thorough, and detailed account. He explained his initial untrue statements were caused by his psychological state and fear of providing a full account to the authorities. The Committee, in considering that substantial grounds existed for believing that he would be in danger of being subjected to torture if returned to the country of origin or place of habitual residence, restated its position that complete accuracy is seldom to be expected by victims of torture.¹²⁰

In New Zealand, the Appeals Authority accepted that the applicant's original false application and submission of false documents was a pretext to mask what the applicant believed he could not reveal, namely his sexual orientation. "*His misguided persistence with the original false claim has not deflected from a finding that he is an otherwise credible witness.*"¹²¹

There may be many valid reasons why an applicant may provide false information and/or documents in support of an application. Therefore, the applicant must be afforded an opportunity to explain and any explanation provided should be fully considered. That an applicant has told a lie(s) or concealed a fact(s) is not necessarily decisive in the assessment of credibility.

In the following example, reviewed by UNHCR, the applicant claimed that he destroyed his passport aboard the aircraft. When questioned on this during the personal interview, the applicant stated "[w]e had to listen to the agent and he told me to destroy the passport in the toilet of the aircraft."¹²² However, the decision letter stated the following:

*"You have stated that you came to the United Kingdom using an agent. It is also noted that you claim to have used a false passport to enter the United Kingdom, which you tore up on the flight to London. It is considered that your actions of tearing up the passport were clearly designed to withhold information from the UK authorities. Consequently, it is considered that your aforementioned behaviour clearly falls within Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, and therefore credibility has been damaged as a result of your actions."*¹²³

In the applicant's later appeal, of which was granted, the judge stated:

*"As to Section 8 of the 2004 Act, it seems to be common for illegal entrants to be told by agents to destroy their travel documents. This appellant gave an explanation, this is not incredible, and was not challenged. If it is true, and I believe it is; the act would have no logical bearing on credibility."*¹²⁴

¹¹⁸ W Kälin, 'Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing', *International Migration Review*, vol. 20, no. 2, Special Issue: Refugees: Issues and Directions, Summer, 1986, p 230–41 at p. 238.

¹¹⁹ The Supreme Court of the Slovak Republic has determined that the fact that the applicant, an unaccompanied minor, lied about his name was not, in the light of all the circumstances, sufficient to undermine his credibility. It was necessary to take into account the applicant's age, the fact that he was unaccompanied, and in a totally different social and cultural environment: *M. S. H. v. Migration Office of the Ministry of Interior of the Slovak Republic, Supreme Court of the Slovak Republic* (Najvyšší súd Slovenskej republiky), 1 Sža 12/2010 23 February 2010.

¹²⁰ *Tala v. Sweden*, CAT/C/17/D/43/1996, 15 November 1996.

¹²¹ *Refugee Appeal No. 74665*, New Zealand: Refugee Status Appeals Authority, 7 July 2004.

¹²² AFG04M.

¹²³ AFG04M.

¹²⁴ AFG04M, Appeal Determination.

It is only in the absence of a satisfactory explanation, taking into account the applicant's individual and contextual circumstances and considering the action in light of all the evidence, that intentional provision of false information and/or documentation may be considered to weaken credibility.

UNHCR has clearly stated that “[u]ntrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.”¹²⁵ Applicants who have provided false information and/or documents may nevertheless qualify for refugee status and/or subsidiary protection status. UK case law provides some guidance in respect of the effect of lies on an applicant's overall credibility. The Court of Appeal in the UK has held:

*“First, in each of the cases the Immigration Judges found that the appellants had fabricated a large part of their evidence, the only object being to deceive the immigration authorities both administrative and judicial. [...] However, that consideration cannot in itself weigh with us, because the obligation of the court is to respect the international obligations of the United Kingdom towards persons who do in fact fall within the protection of the Refugee Convention, however little such persons may have assisted their case by lying or acting in bad faith.”*¹²⁶

This case was subsequently relied upon by the Supreme Court, which upheld the Asylum and Immigration Tribunal's approach to assessing the impact of the appellant's lies. The Supreme Court stated it was not

*“unfamiliar with the difficulties created by appellants who have not been truthful but who still may be at risk. We must be very careful not to dismiss an appeal just because an appellant has told lies. Even if very large parts of his story have been disbelieved, it is still possible that the appellant has shown that he would be at risk on return. An appellant's own evidence has to be considered in the round with other evidence and that can include unimpeachable evidence from expert reports or country guidance cases or other evidence about the general state of affairs in that country.”*¹²⁷

Applicants may have valid reasons to rely on fraudulent documents to facilitate their journey and entry to the territory of a Member State; to assert the validity of false documents; and to destroy or dispose of travel documents. Such behaviour should not automatically be used as a ground for imposing a higher threshold of credibility or denying the applicant the benefit of the doubt. Where the provision of false information and/or documentation relates to a material fact, such as identity, the determining authority must determine whether the applicant can provide a satisfactory explanation for his or her behaviour. It should be borne in mind that the submission of false documentation to support a statement does not necessarily mean that the statement is not credible.¹²⁸ Moreover, UNHCR recalls that untrue statements by themselves are not a reason for refusal of refugee status and/or subsidiary protection status.

¹²⁵ UNHCR, *Handbook*, para. 199. UNHCR, *Self-Study Module 2: Refugee Status Determination. Identifying Who is a Refugee*, 1 September 2005, section 5.1.2 on general principles: “Misrepresentations or failure to disclose relevant facts should not automatically lead to a conclusion that the applicant does not have a credible claim.” See also *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49, 24 November 2010, para. 33 Dyson LJ: “In some cases, the AIT may conclude that a lie is of no great consequence. In other cases, where the appellant tells lies on a central issue in the case, the AIT may conclude that they are of great significance.”

¹²⁶ *GM (Eritrea) and Ors v Secretary of State for the Home Department* [2008] EWCA Civ 833, 17 July 2008, para. 29. Czech Republic: *H. A. Š. v. Ministry of Interior*, Supreme Administrative Court (Nejvyšší správní soud), 5 Azs 28/2008-68, 13 March 2009: the grounds for subsidiary protection under Article 15 (c) QD may apply even if the evidence of the applicant has been found to lack credibility.

¹²⁷ *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49, 24 November 2010, para. 38.

¹²⁸ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 9.4: “The use of false documents does not necessarily mean that an applicant's claims are untrue.”

5. Conclusion

UNHCR's research has highlighted the use of an extremely wide range of elements by states in their assessment of the credibility of applications for international protection. Moreover, certain behaviours may be considered indicative of non-credibility in one Member State, but not in another. This chapter has also analysed the assumptions underlying reliance on these factors, as well as the limits and dangers associated with the use of many of these factors.

UNHCR hopes that this report will provide the grounds for more evidence-based discussions at the level of the European Union and within Member States to achieve more coherence in this area.

Additional research is necessary on the assumptions that underpin these factors and others, and the legal framework and jurisprudence that support the use of such factors. Likewise, further guidance is also necessary on the interpretation of the 'general credibility of the applicant' to enhance the harmonization of the assessment of credibility in the asylum systems of the EU.

CHAPTER 7

Approaches to the Credibility Assessment

1. Introduction	221
2. Approaches Taken to the Credibility Assessment in State Practice.....	222
2.1. The approach in the Netherlands	222
Step one – assessment of documents.....	222
Step two – determining the threshold of credibility to be applied: consideration of the application of Article 31 (2) (a) to (f) Aliens Act	223
Step three – credibility assessment of the applicant’s statements	224
2.2. The approach in the UK	225
2.3. The approach in the EAC	226
2.4. Analysing the various approaches.....	226
2.4.1. The starting point	227
2.4.2 Assessing the credibility of each material fact	227
2.4.3. Application of the principle of the benefit of the doubt	229
2.4.3.1. The asserted facts in relation to which the principle of the benefit of the doubt is considered.....	230
2.4.3.2. The point at which a consideration of the principle of the benefit of the doubt is undertaken	233
2.4.3.3. The criteria and considerations taken into account in determining whether to grant the benefit of the doubt.....	233
2.5. The threshold for establishing credibility.....	237
3. Clear Statement of Which Facts are Accepted as Credible and Which Facts are Rejected	243
4. A Structured Approach to the Credibility Assessment	245
4.1. The principle of the benefit of the doubt	246
4.2. Consideration of the benefit of the doubt	247
4.3. Application of the benefit of the doubt.....	248
5. Conclusion.....	250

1. Introduction

UNHCR has observed considerable variation in the approach by Member States in the assessment of credibility in asylum procedures. The EU Asylum *acquis* does not provide specific directions on how the credibility assessment should be carried out in asylum procedures. However, relevant guidance and standards can be found in the *acquis*, but also in EU administrative law and the decisions of treaty monitoring bodies such as the CJEU, European Court of Human Rights and the UN Committee Against Torture. In the exercise of its supervisory function, UNHCR has also produced guidance that is relevant to the conduct of the credibility assessment.

Many different approaches, steps, and sequences can be adopted to assess credibility in asylum claims. The approach that the determining authorities in the EU take in the assessment of credibility has also been informed by national legal traditions and practices, which vary across EU Member States, with some jurisdictions applying the principle of the free evaluation of all evidence.¹ An approach based on the free evaluation of the evidence does not, however, exclude a structured approach to credibility assessment. Indeed, an absence of a structured or systematic approach to the assessment of credibility could result in a failure to apply relevant principles and standards appropriately.

Variances in outcomes may also occur within national jurisdictions where individual decision-makers exercise significant discretion and employ different approaches to credibility assessment.

While it is important to recall that each case should be assessed on an individual basis, the Common European Asylum System aims to ensure that applications are examined in accordance with common relevant standards and principles to achieve the stated objective of: “*similar cases should be treated alike and result in the same outcome*”,² regardless of the Member State in which an application for international protection is lodged. As such, the EAC Module on Evidence Assessment encourages national asylum officials to adopt a structured approach to credibility assessment.

This chapter, therefore, seeks to provide a broad overview of the approaches taken by the three Member States surveyed for this research and by the EAC, as well as an analysis of any common features and differences in these approaches. In doing so, the chapter discusses the threshold for establishing credibility applied by the three States under survey, the application of the benefit of the doubt, and the statement of the facts that are accepted and rejected.

¹ In terms of international jurisdictions applying the principle of the free evaluation of evidence, see *Nachova and others v. Bulgaria*, no. 43577/98 and 43579/98, ECtHR, 6 July 2005, para. 147: “*In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence.*” The Committee Against Torture exercises the power of free assessment of the facts based on the full set of circumstances in every case. See CAT, *General Comment no. 1: Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications)*, 21 November 1997, A/53/44, annex IX, para. 9 (b).

² Council of the European Union, *The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens*, OJ (2010/C 115/01), 2010, para. 6.2, p. 32.

2. Approaches Taken to the Credibility Assessment in State Practice

In Belgium, there is no specific law, administrative provision, or policy guidance directing decision-makers on how to structure the credibility assessment. New protection officers receive a brief training session, which is based on the EAC Module on Evidence Assessment and provides a general framework for the credibility assessment. However, the training lacks the authority of an internal guideline.³ Moreover, as not all officers have participated in the training, some may not yet be fully familiar with the recommended structured approach. In addition, UNHCR was informed that a template for the written decision has been implemented to promote a structured approach to the credibility assessment by decision-makers.⁴

In the Netherlands⁵ and the UK,⁶ the specific national guidance stipulates a methodological approach to the credibility assessment. This guidance, together with training, aims to ensure that individual decision-makers take the same approach to credibility assessment.⁷ These structured approaches are set out below and summarized in the flowcharts available in Annexes 2.1-2.3.

2.1. The approach in the Netherlands

Step one – assessment of documents

Assessment of all documents submitted by the applicant. If found to be authentic, IND will gauge the weight to be attached to the documentation, and will consider whether the applicant has made a plausible case to accepting that the document relates to him or her personally.⁸

³ Interview with the Commissioner-General of the CGRA/CGVS, 31 August 2012. The determining authority informed UNHCR that new protection officers receive a half-day of training on the credibility assessment based on a synthesis of the EAC Module on Evidence Assessment; and that, following at least one year of employment, officers can voluntarily complete the whole module: interview with the Head of Knowledge and Training Centre of CGRA/CGVS, 28 March 2012.

⁴ Interview with the Commissioner-General of the CGRA/CGVS, 27 June 2012; interview with Regional Coordinator for the Middle East and Asia of CGRA/CGVS on 6 June 2012; and interview with the Head of Knowledge and Training Centre of CGRA/CGVS on 28 March 2012. It should be noted that UNHCR did not have access to the template for a negative decision on refugee status. For decisions to grant international protection, the decision-maker must complete an internal evaluation form, the template of which requires the following information – family composition, summary of the facts, credibility of material facts, consistency with earlier statements and elements from related files, consistency with COI, documents, origin and travel route, nationality, ethnic background, religion, and political activities.

⁵ IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.3 (in the version of WBV 2010/10), and IND Working Instruction 2010/14, para. 4.1.

⁶ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010. This guidance was updated in the course of UNHCR's research, but the updated guidance did not amend the structured approach. See UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, 13 February 2012.

⁷ The EAC has become part of the training programme in the Netherlands since 2012, but the module on evidence assessment is not yet obligatory.

⁸ IND Working Instruction 2010/14, para. 4.1.

Step two – determining the threshold of credibility to be applied: consideration of the application of Article 31 (2) (a) to (f) Aliens Act⁹

Consideration of whether one of the circumstances set out in Article 31 (2) (a) to (f) Aliens Act 2000 or stipulated by the Council of State applies.¹⁰ If the applicant falls within Article 31 (2) (f) i.e. “...unable to produce a travel document, identity card or other papers necessary for assessment of his application, unless the alien can make a plausible case that he is not to blame for their absence,” an assessment of accountability, namely whether the applicant has made a plausible case that he or she is not accountable for the absence of documents considered necessary for the examination of the application.¹¹ This involves an assessment of whether the applicant’s statements are consistent and credible; and consistent with otherwise known information (the situation in the country of origin or place of habitual residence).¹²

If Article 31 (2) (a) to (f) or another circumstance stipulated by the Council of State applies, the credibility of the applicant’s statements may be considered undermined in advance. The applicant therefore has to be more convincing in his or her statements (‘positively persuasive’) than would otherwise be the case and a higher threshold of credibility may apply with regard to the applicant’s statements.¹³

If Article 31 (2) (a) to (f) or another circumstance stipulated by the Council of State does not apply, the applicant’s statements must be consistent in outline and fit with what is known about the country of origin or place of habitual residence.

⁹ For a more in-depth discussion of the provisions under Article 31 (2) (a)–(f), see Chapter 6 - Assessing the Applicant’s Behaviour used by states in the assessment of credibility. Article 31 (2) (a)–(f) Aliens Act stipulates the following circumstances:

“(a) the alien has previously submitted an application for a residence permit in the Netherlands under another name;

(b) the alien has failed to comply with the directions referred to in section 55 [relating to the place of residence; and clothing, body and luggage search during registration], without having a valid reason;

(c) the alien does not have a travel document required for entry into the Netherlands, unless he has immediately reported to a border control officer or an aliens supervision officer, stating the place where or near which he entered the Netherlands, and has indicated to such officer that he wishes to have asylum;

(d) the alien has produced a false or forged travel document, identity card or other papers and, despite being questioned about this, has deliberately asserted that they are genuine;

(e) in support of his application the alien has deliberately produced a travel document, identity card or other papers that do not relate to him;

(f) in support of his application the alien is unable to produce a travel document, identity card or other papers necessary for assessment of his application, unless the alien can make a plausible case that he is not to blame for their absence.”

¹⁰ Dutch Council of State 8 September 2011, (201009178/1/V2) JV2011/431; LJV: BT1929, para. 2.2.3. This ruling widened the scope of application of the ‘positively persuasive test’ beyond the circumstances set out in Article 31 (2) (a) to (f) Aliens Act 2000. See Chapter 4 for more details on this issue.

¹¹ IND Aliens Act Implementation Guidelines (2010) Vc 2000, C4/3.6.1 and 3.6.3 (in the version of WBV 2010/10).

¹² IND Aliens Act Implementation Guidelines (2010) Vc 2000, C4/3.6.3 (in the version of WBV 2010/10).

¹³ Note that the IND Aliens Act Implementation Guidelines (2010) Vc 2000, C4/3.6.3, (in the version of WBV 2010/10), published in the Staatscourant 2010, 10228, states that “before the asylum story can be assessed, the identity, nationality and travel route should be established as much as possible. When (one of) these first three elements cannot be established due to the accountable lack of documents, the credibility of the asylum story is affected.” (Note that the Aliens Circular was amended during the UNHCR research. Credibility is now referred to in C1/3, which states that if Art. 31 (2) (a) to (f) applies, the applicant’s statements are only considered credible if his or her statements are positively persuasive. In Dutch: “Als sprake is van één of meerdere van de omstandigheden genoemd in artikel 31 lid 2, aanhef onder a tot en met f Vw, acht de IND de verklaringen van de vreemdeling uitsluitend geloofwaardig als van deze verklaringen een positieve overtuigingskracht uitgaat.”) C14/2.4: When a circumstance mentioned in Article 31 (2) (a)–(f) applies, “the statements need to be positively persuasive in order to leave the circumstance as mentioned in Article 31, section 2 aside and to make the statements still plausible.” (Note that the provisions under C14, in the Working Instruction at the time of the research, are no longer reflected in the revised version of the Working Instruction.) IND Working Instruction 2010/14, para. 4.1 (b): “If one of these circumstances occurs, this undermines the credibility of the statements of the alien about the factual circumstances alleged events and assumptions in advance. [...] Specifically, the above means that the alien should be more convincing in his statements than when none of the circumstances mentioned in Article 31, second paragraph, a to f of the Aliens Act 2000 occur. [...] The statements need to be positively persuasive, even though there is a circumstance of Article 31, second paragraph (a) to (f) Aliens Act, to conclude that the statements are credible.”

Step three – credibility assessment of the applicant’s statements

1 assessment of credibility of factual circumstances

Assessment of the credibility of the applicant’s statements regarding the factual circumstances, for example asserted identity, nationality, ethnicity, sexual orientation and/or gender identity, medical condition, religious conviction, etc.¹⁴

If the applicant’s statements concerning factual circumstances are considered not credible, the impact of this should be considered.

If the factual circumstances are considered not credible and are material to the application, it may be concluded that all the applicant’s statements about events and assumptions that derive from this factual circumstance are also not credible.¹⁵ For example, if an applicant’s statements regarding his or her ethnicity, religious conviction, or gender identity are considered not to be credible, the applicant’s statements regarding threats or treatment received on account of this factual circumstance will also be determined not to be credible.

2 assessment of credibility of events and assumptions

If the applicant’s statements regarding the factual circumstances are considered credible or partially credible, then there should be an assessment of the credibility of the applicant’s statements regarding asserted events and assumptions.¹⁶ This should include an assessment of whether the applicant has made a plausible case regarding the causality between the facts, events, and assumptions.¹⁷

The above-mentioned credibility assessments should be based on the following considerations:

- consideration of whether there is internal inconsistency, external inconsistency (with statements of family or others), inconsistency with authoritative sources, inconsistencies in behaviour, vague and short statements, or unlikely events;¹⁸
- a comparison of the statements with all that is known about the situation in the country of origin or place of habitual residence from objective, independent and reliable sources, and what has been previously investigated and considered in interviews of other aliens in a similar situations; and
- other information about the relevant statements.

In assessing the credibility of the statements, decision-makers are directed to consider whether the applicant can be given the benefit of the doubt.¹⁹

¹⁴ IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.1 (in the version of WBV 2010/10): “Factual circumstances concern the alien in person, among which, but not exclusively, the identity, nationality, ethnicity, sexual orientation and religious conviction.” IND Working Instruction 2010/14, para. 2: “Hereby should be considered (inter alia) the identity, nationality, ethnicity, sexual orientation, medical condition and religion of the alien.”

¹⁵ IND Working Instruction 2010/14, para. 4.1 (c). IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.1 (in the version of WBV 2010/10): “Assumptions concern the assumptions of the alien regarding the stated events in the past.”

¹⁶ IND Working Instruction 2010/14, para. 4.1 (c). IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.1 (in the version of WBV 2010/10): “Assumptions concern the assumptions of the alien regarding the stated events in the past.” See also IND Working Instruction 2010/14, para. 2: “The assumptions in this context mean the assumptions of the alien regarding past events. For example, if an alien believes that the – in itself likely – event that members of the security service visited him is the result of his participation in a demonstration a few weeks earlier, this is (in principle) his own assumption.”

¹⁷ IND Working Instruction 2010/14, para. 2.

¹⁸ IND Working Instruction 2010/14, para. 4.1 (c).

¹⁹ IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.3 (in the version of WBV 2010/10): “Within this assessment [assessment of credibility] it has to be seen if the alien can be given the benefit of the doubt.”

2.2. The approach in the UK

Step one: Determination of the material facts

Step two: Assessment of the credibility of the material facts

- a) Consideration of internal credibility of the applicant's statements taking into account level of detail, inconsistencies, and mitigating circumstances that may affect these indicators.²⁰
- b) Consideration of external credibility of the applicant's statements with COI.
- c) Based on the above, asserted facts must be declared 'accepted', 'rejected', or 'uncertain' (those facts that are internally credible ('a' has been satisfied) but lack any external evidence to confirm them ('b' not satisfied), these are deemed to be 'unsubstantiated' or 'uncertain' or 'doubtful').
- d) For 'uncertain' facts, consideration of the benefit of the doubt principle under 339L of the immigration rules,²¹ which includes, under 339L(v), consideration of behaviours stipulated in Section 8 Asylum and Immigration (Treatment of Claimants, etc.) 2004.²²
- e) Where all criteria of 339L of the immigration rules are not fulfilled, further consideration on whether the benefit of the doubt should be granted to 'uncertain' facts is required.
- f) Final stage – list of 'accepted' and 'rejected' facts.

²⁰ In practice, other indicators are also utilized in the credibility assessment, such as knowledge, plausibility, coherence, and delay in making an asylum claim. However these are not specifically specified in the UKBA, Asylum Instruction on Credibility under the subsection of 'Internal Credibility'.

²¹ UK Immigration Rule 339L transposes Art. 4 (5) QD: "339L. It is the duty of the person to substantiate the asylum claim or establish that he is a person eligible humanitarian protection or substantiate his human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met: (i) the person has made a genuine effort to substantiate his asylum claim or establish that he is a person eligible humanitarian protection or substantiate his human rights claim; (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given; (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case; (iv) the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and (v) the general credibility of the person has been established."

²² An applicant's credibility may be damaged by behaviour that falls within the scope of Section 8, which provides:

- (1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this section applies.
- (2) This section applies to any behaviour by the claimant that the deciding authority thinks—
 - (a) is designed or likely to conceal information,
 - (b) is designed or likely to mislead, or
 - (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.
- (3) Without prejudice to the generality of subsection (2) the following kinds of behaviour shall be treated as designed or likely to conceal information or to mislead—
 - (a) failure without reasonable explanation to produce a passport on request to an immigration officer or to the Secretary of State,
 - (b) the production of a document which is not a valid passport as if it were,
 - (c) the destruction, alteration or disposal, in each case without reasonable explanation, of a passport,
 - (d) the destruction, alteration or disposal, in each case without reasonable explanation, of a ticket or other document connected with travel, and
 - (e) failure without reasonable explanation to answer a question asked by a deciding authority.
- (4) This section also applies to failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country.
- (5) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification.
- (6) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being arrested under an immigration provision, unless—
 - (a) he had no reasonable opportunity to make the claim before the arrest, or
 - (b) the claim relies wholly on matters arising after the arrest."

For a more in-depth discussion of the provisions under Section 8, see Chapter 6 - Assessing the Applicant's Behaviour.

2.3. The approach in the EAC

UNHCR's research also looked at the approach promoted by the EAC. The module on Evidence Assessment outlines the following structured approach:²³

- ❶ Gather all information.
- ❷ Determine the facts that are material (relevant) to the claim and assess the corresponding evidence.
- ❸ Assess the credibility of the applicant's statements according to their internal credibility, external credibility, and plausibility.
- ❹ Where a material fact appears to be internally credible, but the claim cannot be corroborated by COI, or other evidence, or where there is a lack of documentation or no document at all, and the applicant was otherwise credible in relation to other material facts that were coherent, consistent, and in accordance with objective evidence and COI, consider giving the applicant the benefit of the doubt. Two approaches are cited:
 - UNHCR approach to the application of the benefit of the doubt.²⁴
 - EU approach based on Article 4 (5) QD.²⁵ Make a balance between the conditions set out in (a) to (e).²⁶
- ❺ Assess the 'personal credibility' of the applicant.
- ❻ Look at all the evidence together as a whole before reaching a decision about whether to accept or reject any material facts.

2.4. Analysing the various approaches

The stipulated approaches in the Netherlands and the UK share common features with each other and the EAC, but there are also some notable differences relating to:

- ❶ the starting point for the credibility assessment;
- ❷ whether and when the decision-maker is required to assess the credibility of all asserted material facts;
- ❸ the application of the principle of the benefit of the doubt;
- ❹ the threshold for establishing credibility and accepting a material fact.

UNHCR's research indicated that the above-mentioned differences in the approaches stipulated in the Netherlands and the UK are largely reflected in the practice of decision-makers. Similar points of difference were also noted in the practice in Belgium.

²³ EAC Module 7, sections 3.2.1, 3.2.3, 3.2.8, 3.2.10, and 5.3.10.

²⁴ EAC Module 7, section 3.1.6.

²⁵ EAC Module 7, section 3.1.7.

²⁶ EAC Module 7, section 3.1.8. Article 4 (5) QD conditions are:

(a) *the applicant has made a genuine effort to substantiate his application;*

(b) *all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;*

(c) *the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;*

(d) *the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and*

(e) *the general credibility of the applicant has been established."*

As the methodology employed for this research was based primarily on a review of the materials in case files and interviews with some decision-makers, it was not possible to arrive at clear observations regarding the sequence of steps taken by decision-makers in practice when assessing credibility. Therefore, UNHCR was only able to discern the steps taken by decision-makers to the extent that decision-makers reflected these steps in their internal notes and written decisions or added information to the file.

UNHCR's indicative findings on the principal differences in the approaches taken by the three Member States of focus are explained further in the following paragraphs.

2.4.1. The starting point

The EAC suggests that the most appropriate starting point for credibility assessment is the determination of the material facts. UNHCR observed that in most of the cases reviewed in the three Member States surveyed, the material facts appeared to have been determined and thus constituted the starting point for credibility assessment in Belgium and the UK.

However, in the Netherlands, before determining the material facts and assessing the credibility of the applicant's statements, the decision-maker must first determine which of two thresholds of credibility (or standards of proof) will be applicable. This constitutes the starting point of the credibility assessment. A determination that any of the circumstances listed in Article 31 (2) (a) to (f) Aliens Act or any of the other circumstances stipulated by the Council of State apply, may mean that the credibility of the applicant's statements are considered undermined in advance of the determination of the material facts and the credibility assessment and a higher threshold of credibility requiring the applicant to be 'positively persuasive' applies. Otherwise, the standard threshold of credibility applies and the applicant is required to make the facts and circumstances underlying his or her application plausible.²⁷

The issue of the threshold of credibility, and the dual thresholds that exist in law and are applied in practice in the Netherlands, are addressed in greater detail in section 2.5. below.

Bearing in mind the legal requirement that applications should be assessed individually, objectively, and impartially, and given that credibility assessment should focus on those facts presented by the applicant that are determined as material for qualification for international protection, it is of concern that, before the material facts of an application have even been determined and assessed, the credibility of those facts can be considered undermined in advance on grounds not directly related to the reasons presented by the applicant for the application.

2.4.2 Assessing the credibility of each material fact

Both the UK approach and the EAC require the decision-maker to assess the credibility of each identified material fact. Each presented material fact should be assessed in light of all the relevant evidence obtained pertaining to that fact and through the lens of the applicable credibility indicators, taking into account the applicant's individual and contextual circumstances and the reasonableness of any explanations provided by the applicant with regard to potentially adverse credibility findings.

²⁷ Dutch Council of State 30 November 2004, (200405142/1); LJN: AR8684.

This approach is advocated in UK national guidance.²⁸ Decision-makers are required to assess the credibility of all the facts determined to be material. At the time of UNHCR's research, the UK guidance stated that:

*“Credibility findings should be focused upon material facts that are serious and significant in nature. The decision maker should begin with the credibility points at the core of the claim, whether these are accepted or rejected, and focus in most depth on those that are specific to the applicant or claim in question. More general credibility points, such as delay in leaving the country or failure to claim asylum when travelling through a third country, should be taken into account towards the end of the credibility assessment process along with those findings that are found by the decision maker to be ‘uncertain’.”*²⁹

The overwhelming majority of the decisions reviewed by UNHCR determined the material facts of the application at the outset, and then proceeded to apply the credibility indicators to those material facts. In only a small number of decisions did the assessment of credibility start with Section 8 (Asylum and Immigration (Treatment of Claimants, etc.) 2004), which sets out the ‘general credibility points’ despite guidance, which states that *“in order to avoid any suggestion that Section 8 has been the starting position, decision-makers should avoid referring to Section 8 at the start of the Reasons For Refusal Letter.”*³⁰

In Belgium and the Netherlands, however, exceptions apply to this approach. In Belgium, UNHCR was informed that an exception to the structured approach promoted in the EAC is made in the case of applicants who claim to originate from Afghanistan and Iraq.³¹ In these cases, the credibility assessment starts with an assessment of the national and ethnic origin of the applicant, and if found credible, the ‘recent stay’ of the applicant is then assessed for credibility.³² Only if these two asserted facts are considered credible will the decision-maker proceed to assess the credibility of the other material facts.³³

In the Netherlands, the assessment of the credibility of the applicant's statements starts with what is described as ‘the factual circumstances’, for example, the applicant's asserted identity, nationality, ethnicity, sexual orientation and/or gender identity, medical condition, religious conviction, etc.³⁴ If the applicant's statements concerning factual circumstances are considered not credible, the decision-maker should consider whether the credibility of other presented facts that derive from the factual circumstance and relate, for example, to events that are claimed to have taken place, need to be assessed for credibility. If an essential factual circumstance, such as the applicant's asserted origin, is not considered credible, the decision-maker may conclude that all the applicant's statements about events and assumptions that derive from this factual circumstance are also not credible.³⁵ Based on UNHCR's review of case files in the Netherlands, it was observed that in some cases not all identified material facts were assessed for credibility.³⁶ The research therefore indicated that there may be differences in state practice regarding whether the credibility of each material fact is assessed.

²⁸ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 14.

²⁹ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 14.

³⁰ UKBA, Asylum Instructions, *Asylum Claims and Assessing Credibility*, February 2012, para 11.16, p. 51.

³¹ Interview with Commissioner-General of CGRA/CGVS, 27.06.2012.

³² The determining authority, CGRA/CGVS, and the appeal body, CCE/RVV, require applicants to render credible their last place of residence in the country of origin and demonstrate that they resided there shortly before applying for international protection in Belgium.

³³ AFG08M, AFG10F. Interview with the Commissioner-General of the CGRA/CGVS, 27 June 2012.

³⁴ IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.1 (in the version of WBV 2010/10): *“Factual circumstances concern the alien in person, among which, but not exclusively, the identity, nationality, ethnicity, sexual orientation and religious conviction.”* IND Working Instruction 2010/14, para. 2: *“Hereby should be considered (inter alia) the identity, nationality, ethnicity, sexual orientation, medical condition and religion of the alien.”*

³⁵ IND Working Instruction 2010/14, para. 4.1 (c). See also IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.1 (in the version of WBV 2010/10): *“Assumptions concern the assumptions of the alien regarding the stated events in the past.”*

³⁶ IRN04MAP, IRQ02MBP, IRQ05MNP, IRQ03MBP.

2.4.3. Application of the principle of the benefit of the doubt

As discussed in Chapter 2, the principle of the benefit of the doubt reflects the recognition of the considerable difficulties that applicants face in obtaining and providing evidence to support their claim.³⁷ The principle recognizes that, notwithstanding the genuine efforts of an applicant, and indeed the determining authority, to gather evidence pertaining to the material facts asserted by the applicant, there may still be some doubt surrounding (some of) the facts alleged by the applicant.³⁸ Moreover, the need for the principle is reinforced by recognition of the fact that an applicant's life and/or integrity may be put at grave risk if international protection is wrongfully declined.

UNHCR's review of case files suggested that decision-makers rarely explicitly refer to the principle in their internal written evaluations or written decisions.

This may be due, in part, to the relevant applicable EU legislative framework. The principle of the benefit of the doubt is not explicitly mentioned in the Qualification Directive. Article 4 (5) QD states:

*“Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and **where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:***

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established” (emphasis added).

Although the principle of the benefit of the doubt is not explicitly mentioned, Member States have considered it to be implicit insofar as the legal provision makes it clear that, if certain conditions are satisfied, there is no requirement that the applicant's statements be supported by documentary or other evidence. The lack of an explicit reference to the principle may explain the lack of explicit mention of the principle in national legislation transposing Article 4 (5) QD.³⁹ However, Dutch legislation transposing Article 4 (5) QD does explicitly refer to the principle of the benefit of the doubt, thereby clarifying in national legislation that the principle is considered subsumed within the QD provisions.⁴⁰

However, UNHCR's research findings, based on its review of case files, interviews with stakeholders, and observations of training sessions on credibility assessment, indicated that some decision-makers may lack a

³⁷ UNHCR, *Handbook*, para. 196: “Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing persecution will have arrived with the barest necessities and very frequently even without personal documents.”

³⁸ *F.H. v. Sweden*, no. 32621/06, ECtHR, 20 January 2009, para. 95; *R.C. v. Sweden*, no. 41827/07, ECtHR, 9 March 2010, para. 50; *Matsiukhina and Matsiukhin v. Sweden*, no. 31260/04, ECtHR, 21 June 2005: “The Court acknowledges that, due to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof.”

³⁹ This is the case in Belgium and the UK.

⁴⁰ In the Netherlands, Article 3.35 (3) Aliens Regulations 2000 transposes Article 4 (5) QD. It states: “When the alien cannot support his statements or aspects of his statements by documents, those statements shall be found credible **and the alien will be granted the benefit of the doubt**, when the following conditions are met: [...]” (emphasis added).

clear understanding of the purpose and relevance of the principle of the benefit of the doubt, in particular with regard to:

- The asserted facts in relation to which the principle of the benefit of the doubt is considered;
- The point at which a consideration of the principle of the benefit of the doubt is undertaken;
- The criteria and considerations taken into account in determining whether to grant the benefit of the doubt.

The paragraphs below summarize these specific observations.

2.4.3.1. The asserted facts in relation to which the principle of the benefit of the doubt is considered

The EAC Module on Evidence Assessment explains:

“Where a material fact appears to be internally credible, but the claim cannot be corroborated by Country of Origin Information or other evidence, or when there is a lack of document or no document at all, and the applicant was otherwise credible in relation to other material facts, which were coherent, consistent and in accordance with objective evidence and COI, you should consider giving the applicant the benefit of the doubt. That is to say to accept the material fact even if there is no document or no other evidence than the declaration to support it.”⁴¹

According to UK policy guidance, the principle of the benefit of the doubt should only come into play with regard to ‘unsubstantiated’ or ‘uncertain’ or ‘doubtful’ facts. Facts considered ‘unsubstantiated’, ‘uncertain’, or ‘doubtful’ are those that are ‘internally credible’, namely they are sufficiently detailed and broadly consistent when considered in light of the applicant’s individual and contextual circumstances, but they lack ‘external evidence’ to confirm them.⁴² The policy provides further guidance on ‘external evidence’ as being COI as opposed to documentary evidence that is referred to under the ‘internal credibility’ section of the asylum instruction. Therefore, it follows that where the applicant’s evidence is internally credible but lacks COI to support it, decision-makers should apply the principle of the benefit of the doubt.

Where there is COI to support an applicant’s account of a past or present fact, and the applicant’s account is ‘internally credible’, the decision-maker may accept the material fact without reference to the principle of the benefit of the doubt.⁴³

From the review of case files in the UK, it was not always apparent whether the decision-maker had understood which asserted facts, according to national guidance, were appropriate in relation to consideration of the principle of the benefit of the doubt. This was partly because some written decisions did not explicitly state the credibility finding with regard to each material fact, and did not explicitly determine which facts were considered doubtful following that assessment.⁴⁴ Moreover, there were some cases when a material fact was explicitly determined to be uncertain but there was no reference to the application of the principle of the benefit of the doubt, or any explicit conclusion about whether the fact had been accepted or rejected.⁴⁵

⁴¹ EAC Module 7, section 3.1.5.

⁴² UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4: “Facts which are internally credible but lack any external evidence to confirm them are deemed to be ‘unsubstantiated’ or ‘uncertain’ or ‘doubtful’. However, a decision must be made whether to give the applicant the benefit of the doubt on each uncertain or unsubstantiated fact – this means that the decision maker must come to a clear finding as to whether the fact can be accepted or rejected. ... The benefit of the doubt needs to be considered and applied appropriately to these uncertain facts when considering all the evidence in the round at the end of the credibility assessment.”

⁴³ UKBA, Asylum Instructions, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 16; UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, para. 4.3.2.

⁴⁴ IRN04M and SOM10MRS.

⁴⁵ AFG04M. See UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4.

In Belgium, the principle of the benefit of the doubt is not explicitly referred to in national legislation, and there is no administrative provision, case law, or policy guidance that specifies when the principle should be considered. Case law states in broad terms that the benefit of the doubt should be given when one is convinced of the credibility of the statements.⁴⁶ Beyond this, the determining authority considers that the application of the principle is subsumed within the provisions of Article 4 (5) QD, which has been reflected, although with different wording, in Article 57/7ter Aliens Act.⁴⁷

Article 57/7ter Aliens Act states that:

“*[t]he Commissioner-General may, when the applicant **did not substantiate his statements with documents or other proof**, consider the application credible if the following conditions are met:*

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements, in possession of the applicant, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for international protection at the earliest possible time, or has been able to demonstrate good reasons for not having done so; and

(e) the general credibility of the applicant has been established”⁴⁸ (emphasis added).

UNHCR was informed that, notwithstanding the language of Article 57/7ter Aliens Act, the determining authority assesses the credibility of all the material facts the applicant presents in accordance with the five conditions set out in Article 57/7ter Aliens Act, regardless of whether there is documentary or other evidence to confirm or support a material fact.⁴⁹ As such, the principle of the benefit of the doubt is considered with regard to all asserted material facts.

From UNHCR's review of case files in Belgium, it was not always possible to confirm the circumstances in which the principle is considered in practice. Written decisions did not consistently specify if the principle of the benefit of the doubt had been considered or applied. UNHCR observed that none of the decisions reviewed that denied refugee status but granted subsidiary protection mentioned either the consideration or the application of the principle of the benefit of the doubt. Of the decisions that granted refugee status, information in a few of the case files revealed that material facts that were detailed, consistent, and plausible,

⁴⁶ Belgian Council of State 186.868, 07.10. 2008.

⁴⁷ Training session observed at the CGRA/CGVS on 22/23 May 2012.

⁴⁸ Article 57/7ter Aliens Act [Original text]: “

(a) le demandeur d'asile s'est réellement efforcé d'étayer sa demande;

(b) tous les éléments pertinents en possession du demandeur d'asile ont été présentés et une explication satisfaisante a été fournie quant à l'absence d'autres éléments probants;

(c) les déclarations du demandeur d'asile sont jugées cohérentes et plausibles et elles ne sont pas contredites par les informations générales et particulières connues et pertinentes pour sa demande;

(d) le demandeur d'asile a présenté sa demande de protection internationale dès que possible, ou a pu avancer de bonnes raisons pour ne pas l'avoir fait;

(e) la crédibilité générale du demandeur a pu être établie.”

⁴⁹ Interview with the Commissioner-General of the CGRA/CGVS, 27 June 2012. A judge of the appeal authority, CCE/RWV, also informed UNHCR that this was the correct approach in an interview on 4 June 2012.

although not confirmed by documentary evidence, were accepted. Reference to the benefit of the doubt was made, but no explicit mention of the conditions set out in Article 57/7ter Aliens Act.⁵⁰

For instance, an Afghan widow with five children whose brother-in-law was persecuting her because he wanted to arrange marriages for her daughters was given the benefit of the doubt, even though she could only show her *taskara* as proof of her identity and origin, as her oral evidence was spontaneous, detailed, plausible, and showed no inconsistencies with the statements of her daughters.⁵¹

In another case, although the identity of the applicant and material facts relating to past persecution were explicitly acknowledged to have been confirmed by documentary evidence, the applicant was nevertheless explicitly given the benefit of the doubt because the past persecution and the existence of a subjective fear could not be questioned.⁵²

Legal practitioners informed UNHCR that there is a general misunderstanding among all stakeholders, including decision-makers, over the circumstances under which the principle should be employed. They surmised that, in practice, the principle may be applied in accordance with the expression's everyday meaning and usage, namely in case of any doubt and when you are not sure what to do, give the applicant the benefit of the doubt.⁵³

In the Netherlands, the principle of the benefit of the doubt is explicitly referred to in the provisions of national legislation transposing Article 4 (5) QD. Article 3.35 (3) Aliens Regulations 2000 states that “*when the alien cannot support his statements or aspects of his statements by documents, those statements shall be found credible and the alien will be granted the benefit of the doubt, when the following conditions are met: [...]*”.

Policy guidance also suggests that the principle of the benefit should be considered when some other facts have been rejected as not credible. The guidance states that where elements of the applicant's statements are not considered credible, the applicant's statements may still be considered credible and the benefit of the doubt given where, for example, “*the inconsistencies, vague or unsubstantiated statements do not relate to the core of the account. They relate for example to peripheral issues not related to the main reason for leaving and not to the core of the account.*”⁵⁴

From UNHCR's review of case files in the Netherlands, because no explicit reference was made to the principle of the benefit of the doubt, it was not possible to confirm the circumstances in which the principle is considered in practice. Decision-makers informed UNHCR that because the principle is woven into legislation and policy guidance notes that consideration of the principle is ‘blended’ into the credibility assessment, explicit reference to the principle is not made in jurisprudence, and is, therefore, not explicit in written decisions either.⁵⁵

⁵⁰ For instance, in GUI01MRS, the applicant submitted no documentary proof. The internal evaluation form states that he was given the benefit of the doubt since there was no reason to doubt his membership of UFDG. The note also records that there was no objective reason to disbelieve that he had participated in the demonstrations mentioned; his declarations about his detention were detailed; his statements in general consistent with COI; he could show detailed knowledge of the political situation in Conakry. He was found therefore to have an objective and subjective fear. In INT07IRQMRS, the applicant submitted a large amount of documentary proof of his identity, employment as a soldier in the Iraqi army, and additional military training he had received. The internal evaluation form states that though the applicant did not submit any documentary proof of the elements of his persecution, he should be given the benefit of the doubt on these points since his related statements were very detailed and plausible. In both cases, the internal evaluation form makes no reference to the other conditions of Article 57/7ter Aliens Act.

⁵¹ AFG03FRS. The internal evaluation form makes no reference to the other conditions of Article 57/7ter Aliens Act.

⁵² IRQ02MRS.

⁵³ Meeting with NGOs on 5 June 2012.

⁵⁴ IND Working Instruction 2010/14, 4.1 (e) on the benefit of the doubt: “*Although non-plausible elements are identified, it still may be concluded that the statement of the alien be considered plausible. For example, it can be concluded that the benefit of the doubt is given to the alien because the inconsistencies, vague or unsubstantiated statements do not relate to the outlines of the core of the account. They relate for example to peripheral issues not related to the reason for leaving and not to the essence of the story.*”

⁵⁵ Interview on 29 March 2012.

2.4.3.2. *The point at which a consideration of the principle of the benefit of the doubt is undertaken*

The EAC suggests that the principle of the benefit of the doubt should be considered in relation to facts that appear to be ‘internally credible’, but the claim cannot be corroborated by COI or other evidence, or when there is a lack of documentation or no document at all.⁵⁶ As such, consideration of whether the benefit of the doubt may be applicable follows the assessment of the applicant’s statements based on their internal and external credibility, as well as their plausibility.

This has been reflected in jurisprudence in Belgium,⁵⁷ and policy guidance in the UK:

*“The benefit of the doubt needs to be considered and applied appropriately to these uncertain facts when considering all the evidence in the round at the end of the credibility assessment. This means that the benefit of the doubt can only be considered **after a finding on the material facts that are to be accepted or rejected has been made.**”⁵⁸ (emphasis added).*

However, UNHCR’s review of case files in the UK indicated that this guidance may not always be applied in practice and that some decision-makers may apply the principle of the benefit of the doubt mid-way through the credibility assessment, before considering all the evidence in the round.⁵⁹

As discussed, this step is not distinguished in policy guidance and practice in the Netherlands and Belgium. Based on UNHCR’s review of case files in Belgium and the Netherlands, it was not possible to discern whether this specific step is taken at the end of the credibility assessment in practice.

2.4.3.3. *The criteria and considerations taken into account in determining whether to grant the benefit of the doubt*

Legislation, case law, policy guidance, and/or training in the three Member States of focus provide that the five conditions set out in Article 4 (5) (a) to (e) QD should be taken into account in considering whether to grant the benefit of the doubt.⁶⁰

The five conditions for waiving the need for documentary or other evidence confirming the applicant’s statements are expressed cumulatively in Article 4 (5) QD. This might be considered to imply that all

⁵⁶ EAC Module 7, section 3.1.5.

⁵⁷ Belgian Council of State, 186.868, 1.10.2008.

⁵⁸ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4. Nevertheless, UNHCR observed some written decisions that gave the impression that consideration was given to whether to grant the benefit of the doubt before all the evidence had been considered and assessed. For example, AFG04M.

⁵⁹ IRQ01M, AFG01F.

⁶⁰ Article 4 (5) QD states that: “Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant’s statements are not supported by documentary or other evidence, those aspects shall not need confirmation, when the following conditions are met:

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements, at the applicant’s disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the applicant’s statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant’s case;

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; **and**

(e) the general credibility of the applicant has been established.”(emphasis added)

conditions must be satisfied for the waiver to apply. Indeed, the language of some national legislation transposing Article 4 (5) QD has reflected the cumulative requirement of the provision.⁶¹

The EAC on the other hand, encourages decision-makers to ‘balance’ the conditions set out in Article 4 (5) QD.⁶²

The UK policy guidance, under the sub-heading ‘Benefit of the doubt and general credibility’, clarifies in turn the meaning of domestic legislation transposing Article 4 (5) QD:

*“What it is saying is that if an applicant meets all 5 criteria, a decision-maker should give the benefit of the doubt – there would, after all be no reason not to do so. However, the reverse is not automatically true. Because an applicant fails to meet one or more of the criteria, this in itself does not permit a decision-maker to disregard all unsubstantiated areas of an applicant’s claim because an unsubstantiated statement can be credible if it is generally internally consistent, compatible with known facts and plausible. It is, once again, a matter of determining the weight to be given to these issues in the light of the material facts of the case. [...] If the applicant has met all 5 of the criteria set out in Paragraph 339L of the Immigration Rules, the benefit of the doubt should be given to any unsubstantiated facts. If the applicant has not met all the criteria, decision-makers nevertheless must consider whether giving the benefit of the doubt to any uncertain facts is justified.”*⁶³

The appeal authority in Belgium has held that the benefit of the doubt may be granted when all the conditions of Article 57/7ter Aliens Act, transposing Article 4 (5) QD, have been satisfied.⁶⁴ However, given that Article 4 (5) has been transposed into a non-mandatory provision in Article 57/7ter Aliens Act, a material fact may be considered not to be credible even though the five criteria are fulfilled.⁶⁵ However, the determining authority informed UNHCR that in practice decision-makers do not mechanically require satisfaction of all five conditions with regard to each material fact.⁶⁶ Indeed, UNHCR noted that in some cases reviewed that granted refugee status, the applicant’s statements were accepted as credible on the basis of their detail, internal and external consistency, and plausibility without explicit reference to the other conditions set out in Article 57/7ter Aliens Act, even though the statements were not supported by documentary or other evidence.⁶⁷

Similarly, in the Netherlands, the Council of State considers the conditions as cumulative.⁶⁸

⁶¹ For example, in Belgium, Article 57/7ter Aliens Act states: “The Commissioner-General may, when the applicant did not substantiate his statements with documents or other proof, consider the application credible if the following conditions are met:” Original text: “Le Commissaire général peut, lorsque le demandeur d’asile n’étaye pas certains aspects de ses déclarations par des preuves documentaires ou autres, juger la demande d’asile crédible si les conditions suivantes sont remplies”. In the Netherlands, Article 3.35 (3) Aliens Regulations 2000 states: “When the alien cannot support his statements or aspects of his statements by documentary, those statements shall be found credible and the alien will be granted the benefit of the doubt, when the following conditions are met: [...]”. Article 4 (5) QD is transposed in the UK by para. 339L of the Immigration Rules, which states: “Where aspects of the applicant’s statements are not supported by documentary or other evidence, those aspects will not need confirmation when **all** of the following conditions are met” (emphasis added).

⁶² EAC Module 7, section 3.1.8, states: “After having **gathered** the material facts, the decision-maker will decide whether those material facts are **established** (=accepted) or not (= rejected). For this purpose, the decision-maker will apply **Article 4.5./Q.D.**, making a **balance** between points a, b, c, d & e.”

⁶³ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4.

⁶⁴ CCE/RVV 81.999, 30.05.2012; CCE/RVV 81.766, 25.05.2012; CCE/RVV 82.241, 31.05.2012; CCE/RVV 82.066, 31.05.2012; CCE/RVV 80.327, 26.04.2012. Draft guidelines on Afghanistan also state that the benefit of the doubt should be given when the application meets the conditions of all five sub-articles of article 57/7ter Aliens Act.

⁶⁵ Information provided by the Commissioner-General of the CGRA on 31 August 2012.

⁶⁶ Information provided by the Commissioner-General of the CGRA on 31 August 2012.

⁶⁷ AFG03FRS, GUI101MRS, INTO7IRQMRS.

⁶⁸ Dutch Council of State 23 December 2009, (200907502); JV2010/68, para. 2.1.1 “if the alien fulfils the requirements as mentioned in the first mentioned provision”, unofficial translation of “indien de vreemdeling aan de in eerstgenoemde bepaling vermelde voorwaarden heeft voldaan”. This reasoning is confirmed in Dutch Council of State, 18 February 2010, 200907476 and Dutch Council of State, 12 March 2010, 200909252. This reasoning is confirmed in other Dutch Council of State rulings, for instance in Dutch Council of State, 18 February 2010, 200907476 and Dutch Council of State, 12 March 2010, 200909252. District Court of Amsterdam, 18 March 2010 (AWB 10/7932) LJN: BL9790, where the argument regarding the cumulative requirement was explicitly made.

Chapters 4 to 6 discuss some of the interpretations that have been given to the five conditions set out in Article 4 (5) QD. The paragraphs below therefore focus on the remaining concept of ‘coherence’ in Article 4 (5) (c), which provides that “*the applicant’s statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant’s case*”. This chapter also looks at how the cumulative conditions set out in Article 4 (5) (a) to (e) are approached in practice by decision-makers.

First, the meaning to be given to the term ‘coherent’ lacks clarity. The ordinary meaning of the term includes being logical, having a natural connection, and holding together.⁶⁹ Legislation in the three Member States of focus, as well as guidance in the Netherlands⁷⁰ and the UK,⁷¹ state that consideration of credibility may require an assessment of whether the applicant’s statements are coherent. However, there is no interpretation of ‘coherent’ in their national legislation, case law, or guidance beyond the reference in UK policy guidance to the need to assess how well the evidence submitted ‘fits together’⁷² and a reference in the Dutch guidelines to the importance of a causal connection between the relevant parts of the applicant’s statements.⁷³

No first-instance written decision reviewed in Belgium or the UK referred to the ‘coherence’ of an applicant’s statements.⁷⁴ In the Netherlands, some decisions reviewed referred to coherence in terms of a logical connection between the facts or in the chronology of the facts asserted by the applicant.⁷⁵

As for the cumulative conditions set out in Article 4 (5) (a) to (e) of the Qualification Directive, the EAC explains that decision-maker should only give the benefit of the doubt when he or she is “*satisfied with the general credibility of the applicant*” and instructs decision-makers to refer to Article 23 (4) (d), (e), (f), (g), (h), (i), (j) and (k) APD when assessing the applicant’s personal credibility.⁷⁶

Dutch policy guidance in turn implies that the benefit of the doubt may be withheld if one of the six circumstances stipulated in Article 31 (2) (a) to (f) Aliens Act applies.⁷⁷ This means that where an applicant entered the Netherlands, for example, without the required entry documents and failed to report immediately to the competent authorities;⁷⁸ or produced a false or forged travel document, identity card, or other papers and, despite being questioned about this, deliberately asserted that they were genuine;⁷⁹ or deliberately produced a travel document, identity card, or other papers that did not relate to him or her

⁶⁹ *Collins Dictionary and Thesaurus*, Glasgow: HarperCollins, 2nd edition, 2000.

⁷⁰ IND Working Instruction 2010/14, para. 4.1 (c), p. 5: “*In assessing whether the statements of the alien are credible, it should be seen, among other things, whether the alien: [...] gave statements that are coherent*”.

⁷¹ Para. 339L (v) of the UK Immigration Rules: “*When decision makers are considering giving an applicant the benefit of the doubt much may depend on the general credibility of the applicant’s account. This includes: the overall consistency and coherence of the applicant’s account [...] taking into account all mitigating circumstances.*” UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, p. 15, para. 4.3.1: “*Consideration of internal credibility requires an assessment of whether the applicant’s claim is internally coherent. [...] It is for the decision maker to assess how well the evidence submitted fits together.*” UKBA, Asylum Instructions, *Guidelines: Gender Issues in the Asylum Claim*, September 2010, para. 7.2.

⁷² UKBA, Asylum Instructions, *Considering Asylum claims and Assessing Credibility*, February 2012, p. 15, para. 4.3.1.

⁷³ IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.3 (in the version of WBV 2010/10): “*Fundamental is the causal connection between the relevant parts of the statements, including the assumptions, that can be the basis for international protection.*” IND Working Instruction 2010/14, para. 4.1 (c) elaborates: “*If the alien gives statements on a number of events, assumptions and/or factual circumstances which he states are related to each other, it will be assessed if the alien made a plausible case of the causal connection. It is examined whether the alien convincingly has placed his statements about factual circumstances, events and assumptions (if and when according to him these are related) in such conjunction with each other that one is logically the result of the other.*”

⁷⁴ UNHCR’s review of 80 written decisions in Belgium and the UK revealed no references to coherence.

⁷⁵ AFG02MNP, AFG01FNP, AFG03FNP, AFG05MNP, IRN01MNP, IRQ05MNP, SOM01MNP, IRN01MBP, SOM02FNP, AFG01MBP.

⁷⁶ EAC Module 7, section 4.1.15.

⁷⁷ IND Working Instruction 2010/14, 4.1 (e) on the benefit of the doubt: “*For example, it can be concluded that the benefit of the doubt is given to the alien because the inconsistencies, vague or unsubstantiated statements do not relate to the outlines of the core of the account. They relate for example to peripheral issues not related to the reason for leaving and not to the essence of the story and none of the circumstances named in Article 31, second paragraph, a to f, Aliens Act is present.*” For further information on these, refer to Chapter 6.

⁷⁸ Article 31 (2) (c) Aliens Act.

⁷⁹ Article 31 (2) (d) Aliens Act.

in support of the application;⁸⁰ or is considered accountable for an inability to produce a travel document, identity card, or other papers considered necessary for the assessment of the application;⁸¹ the benefit of the doubt may not be given. In the overwhelming majority of cases reviewed by UNHCR, one of the above-mentioned circumstances was considered to apply.

Policy guidance in the UK emphasizes that when “*decision-makers are considering giving an applicant the benefit of the doubt much may depend on the general credibility of the applicant’s account*”⁸² (emphasis added). Of note here is the focus on the general credibility of the applicant’s account, not the general credibility of the applicant per se.

The UK guidance explains that the ‘general credibility of the applicant’s account’ includes the internal credibility of the account as well as:⁸³

- behaviours indicating that the applicant has ceased to fear returning to his or her home country, for example, any evidence that the applicant had previously attempted to withdraw his claim for international protection or apply for voluntary return; and a delay in making an application for asylum;⁸⁴
- the applicant’s immigration history, unless he or she is a refugee sur place; and
- the provisions set out in Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

With regard to the latter, the guidance explicitly states that it “*is necessary to take Section 8⁸⁵ into account when deciding whether or not to give the applicant the benefit of the doubt*”, noting that the behaviours specified in Section 8 are not exhaustive or determinative.⁸⁶ In the words of the policy guidance, Section 8 prescribes types of behaviour that potentially damage credibility, but not the extent of the damage.⁸⁷

Though case law has clarified that the weight to be attached to a finding under Section 8 is entirely a matter of discretion for the decision-maker, and it may be appropriate in some cases to give no weight at all to Section 8 findings,⁸⁸ the findings of UNHCR’s review of case files indicated that decision-makers tend to place significant reliance on Article 4 (5) (e) QD to withhold the application of the benefit of the doubt. In a number of cases viewed by UNHCR in which the benefit of doubt principle was considered, the applicant’s general credibility under Article 4 (5) (e) was singled out without mention of any of the other conditions. This provision was regularly referred to as being unfulfilled by applicants.

By way of example, in the following case reviewed by UNHCR, the applicant stated that his brother was arrested following a demonstration in which the applicant had participated. The decision-maker considered whether to apply the principle of the benefit doubt:

⁸⁰ Article 31 (2) (e) Aliens Act.

⁸¹ Article 31 (2) (f) Aliens Act.

⁸² UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4.

⁸³ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4.

⁸⁴ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4.

⁸⁵ Section 2.2 above details the full list of potentially damaging behaviours under Section 8.

⁸⁶ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4. It also states: “*Decision makers must be aware of the requirement to take Section 8 into consideration when deciding whether to give the applicant the benefit of the doubt. [...] When considering the applicant’s general credibility, this is only relevant to the extent that it may assist the decision maker in considering whether a particular unsupported statement is credible.*”

⁸⁷ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4.

⁸⁸ *JT (Cameroon) v Secretary of State for the Home Department* [2008] EWCA Civ 878, 28 July 2008, Pill LJ, paras. 20 and 21: “*The section 8 factors shall be taken into account in assessing credibility, and are capable of damaging it, but the section does not dictate that relevant damage to credibility inevitably results [...] at one end of the spectrum, there may, unusually, be cases in which conduct of the kind identified in section 8 is held to carry no weight at all in the overall assessment of credibility on the particular facts. I do not consider the section prevents that finding in an appropriate case. Subject to that, I respectfully agree with Baroness Scotland’s assessment, when introducing the Bill, of the effect of section 8. Where section 8 matters are held to be entitled to some weight, the weight to be given to them is entirely a matter for the fact-finder.*” The guidance from this case is reflected in UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, para. 4.3.4.

“It is considered you have failed to substantiate this aspect of your account. Whether your brother was arrested will therefore be left in the balance and consideration will be given as to whether it would be right to advance you the benefit of the doubt when your claim is considered as a whole. [...] It is considered that you have failed to meet condition 339L(v) [transposing Art. 4 (5) (e) QD]. It is considered that your behaviour falls within Section 8(4) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Section 8 (4) explains that it is damaging to a claimant’s credibility if they failed to take advantage of a reasonable opportunity to make a claim for asylum in a safe country. It is noted that you passed through Italy and Spain before arriving in the UK and claiming asylum. It is considered that you do not meet all the conditions laid out in Paragraph 339L of the Immigration Rules. Consequently, there is no requirement under the Immigration Rules to accept as true the unsubstantiated claim you have made in paragraph 41.”⁸⁹

In this case, the applicant’s assertion that his brother had been arrested was not accepted on the grounds that he was unable to provide additional evidence to support the statement, combined with the unrelated fact that he had travelled through Italy and Spain without claiming asylum in those countries.

Based on its review of the legal and policy frameworks as well as case-files in the three Member States under research, UNHCR notes the need for further clarification regarding the application of the principle of the benefit of the doubt, as well as the criteria and considerations to be taken into account when considering the benefit of the doubt. UNHCR urges Member States to recall that the objective of refugee and subsidiary protection status determination is humanitarian and that the principle of the benefit of the doubt recognizes the evidentiary difficulties applicants face, but nonetheless acknowledges the need to ensure protection from persecution and/or serious harm.

2.5. The threshold for establishing credibility

It is important to recall that the credibility assessment is predicated on there being no requirement that relevant facts asserted by the applicant are affirmatively ‘proven’. This is in recognition of the formidable evidentiary difficulties inherent in the examination of applications for international protection and the gravity of the potential consequences of an error in the determination of a need for international protection. The credibility assessment, therefore, does not purport to establish the relevant facts as a matter of certainty.⁹⁰ The decision-maker does not need to be certain or fully convinced of the veracity of a relevant fact to find it credible and to accept it for the purpose of status determination. As UNHCR has stated:

“Given that in refugee claims, there is no necessity for the applicant to prove all facts to such a standard that the adjudicator is fully convinced that all factual assertions are true, there would normally be an element of doubt in the mind of the adjudicator as regards the facts asserted by the applicant. Where an adjudicator considers that the applicant’s story is on the whole coherent and plausible, any element of doubt should not prejudice the applicant’s claim; that is, the applicant should be given the ‘benefit of the doubt’.”⁹¹

In other words, the credibility assessment purposefully and positively accommodates and allows for doubt and uncertainty. A decision-maker may accept a fact as credible, even though he or she is not certain that it is true. This is inherent in the principle of the benefit of the doubt, which acknowledges that, in certain circumstances, asserted material facts may be accepted as credible even though they are not confirmed or

⁸⁹ IRN08M.

⁹⁰ UNHCR, *Note on Burden and Standard of Proof*, para. 2.

⁹¹ UNHCR, *Note on Burden and Standard of Proof*, para. 8.

supported by other evidence.⁹² As such, it is clear that the applicant's statements alone may suffice to satisfy the threshold of credibility.

Member States have taken different approaches to the need to articulate the level of conviction that the applicant's statements, and any other evidence, must induce in the mind of the decision-maker in order to accept a relevant asserted fact as credible, and where articulated, the expression of that conviction.

In Belgium, a level of conviction has not been articulated and decision-makers are not provided with any additional marker other than the provisions of Article 4 (5) QD as transposed in national legislation. Case law simply states in broad terms that the benefit of the doubt should be given when one is convinced of the credibility of the statements.⁹³

On the other hand, in the Netherlands, legislation and jurisprudence stipulate that two thresholds of credibility may apply, which depend on the circumstances pertaining to the application. The Aliens Act and policy guidance stipulate that the applicant's statements must be credible ('plausible').⁹⁴ The general rule is that the applicant's statements are considered to be credible when they are consistent in outline and fit with what is known from other sources about the situation in the country of origin.⁹⁵ However, as discussed, above, if one (or more) of the circumstances mentioned in Article 31 (2) (a) to (f) Aliens Act 2000 applies or another circumstance stipulated by the Council of State, the applicant has to be more convincing in his or her statements than when none of the circumstances stipulated in Article 31 (2) (a) to (f) Aliens Act 2000 apply. The applicant's statements need to be 'positively persuasive'. This means that the statements need to be plausible, consistent, coherent, and detailed, and need to be credible on the level of the relevant specificities.⁹⁶ If there are any inconsistencies, ambiguities, incoherent twists, or gaps in the applicant's account, then the standard of 'positive persuasiveness' is not satisfied.⁹⁷ In this regard, the determining authority is not required to distinguish between core and peripheral facts.

As described in Chapter 4, Gathering the Facts, legislation and policy guidance in the Netherlands set high expectations for the documentary evidence applicants should possess and/or should be able to obtain in support of their applications. If, for example, the determining authority considers the applicant accountable for an inability to produce a travel document, identity card, or any other papers considered necessary for the assessment of the application,⁹⁸ the applicant's statements may be required to be 'positively persuasive'. In such a case, for instance, if the applicant's responses to questions probing his or her general knowledge are vague, or considered inconsistent with his or her recall of the details of an event, then his or her statements as a whole may be considered not to be 'positively persuasive' and therefore not credible.

It is at the discretion of the decision-maker whether to apply the higher standard of 'positive persuasiveness' based on the law and it is not always clear why the standard is applied in some cases and not in others. In the overwhelming majority of cases in UNHCR's sample of the Netherlands, the applicants were required to meet the higher threshold of 'positive persuasiveness'. In nearly all these cases, this threshold was applied because the determining authority considered the applicant accountable for an inability to produce a travel

⁹² UNHCR, *Handbook*, para. 196. UNHCR, *Note on the Burden and Standard of Proof*, para. 10: "Failure to produce documentary evidence to substantiate oral statements should, therefore, not prevent the claim from being accepted if such statements are consistent with known facts and the general credibility of the applicant is good."

⁹³ Belgian Council of State 186.868, 7.10.2008, para. 1.2.

⁹⁴ Article 31 section 1 Aliens Act 2000; IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.4 (in the version of WBV 2010/10); IND Working Instruction 2010/14, 4 c: "It should be assessed whether the statements of the alien on the alleged factual circumstances, events and assumptions are credible"; and 4.2: "Finally, at the end of the assessment of the statements of the alien a clear conclusion regarding the plausibility of these statements has to be drawn and stated."

⁹⁵ IND Working Instruction 2010/14, para. 4.1 (b), last section. Dutch Council of State 23 May 2008, (200705074/1), JV2008/292; Administratiefrechtelijke Beslissingen 2009, 11: it is more likely that a statement supported by COI is determined to be plausible. More is required from the applicant if a statement is not supported by COI, although not contradicted by COI either: Dutch Council of State, 2 March 2012, 201103057/1.

⁹⁶ IND Working Instruction 2010/14, para. 4.1 (b). See also IND Aliens Act Implementation Guidelines (2010) Vc 2000, C14/2.4 (in the version of WBV 2010/10).

⁹⁷ IND Working Instruction 2010/14, para. 4.1 (b).

⁹⁸ Article 31 (2) (f) IND Aliens Act.

document, identity card, or other papers thought necessary for the assessment of the application. However, in a few cases, the higher threshold was applied even though a legal basis in Article 31 (2) Aliens Act was not cited.⁹⁹ This is in accordance with a ruling of the Council of State to the effect that the ‘positive persuasiveness’ test is not limited to the circumstances set out in Article 31 (2) (a) to (f) Aliens Act.

UNHCR recalls that the fact that refugees are often forced to flee without documentation was intensively discussed during the drafting process of the 1951 Convention and is recognized by Article 31 (1) of the 1951 Convention, which exempts refugees under certain conditions from punishment for illegal entry. The UNHCR Executive Committee reaffirmed in 1981 that asylum-seekers should not be “*exposed to any unfavourable treatment*” solely on the ground that their presence in the country is considered unlawful.¹⁰⁰ Many applicants have valid reasons for the absence of or reliance on fraudulent documents, for example, because they were forced to leave their countries without documents, or they have been compelled to protect the identity of the individuals who assisted them in reaching the asylum country.¹⁰¹ There is, therefore, no justification for imposing a higher threshold of credibility in such cases. Failure to produce documentary evidence should not prevent the claim from being accepted if the statements of the applicant are, overall, coherent and plausible and do not run counter to generally known facts. The application of such a high threshold of credibility may result in the risk that it cannot be met, even though the applicant’s account has been genuinely given, and increases the risk of refolement contrary to Article 33 of the 1951 Convention.

Jurisprudence and policy guidance in the UK confirms that decision-makers should adopt one approach to all applications. However, the issue has arisen before the courts in recent years over whether a ‘standard of proof’ applies to the establishment of facts, and if so which standard, or whether another approach should be taken.

The UK Immigration Appeal Tribunal rejected the proposition that facts should be established on the basis of the civil standard of ‘balance of probabilities’ because this would result in uncertain facts not being accepted and being excluded from the assessment of prospective risk, which, it concluded, could not be right.¹⁰² It held that the standard of proof of ‘reasonable degree of likelihood’, which applies to the determination of prospective risk, foresees a more positive role for uncertainty with regards to acceptance of facts. The tribunal emphasized that, therefore, uncertain facts should not be excluded from the ultimate evaluation of prospective risk.¹⁰³

This judgement was thereafter understood to mean that the lower standard of proof, that of ‘reasonable degree of likelihood’, applied to both the assessment of past and present facts as well as to the assessment of future risk.¹⁰⁴ However, the Court of Appeal subsequently opined that this constituted a misunderstanding of the true effect of the majority decision of the tribunal. It stated that the tribunal had not decided that one

⁹⁹ IRN01MNP, IRQ01FNP: delay in claiming asylum. IRQ04MNP: submission of false documents.

¹⁰⁰ UNHCR Executive Committee, *Conclusion No. 22 (XXXII): Protection of Asylum-Seekers in Situations of Large-Scale Influx*, 21 October 1981, section B, para. 2 (a).

¹⁰¹ UNHCR, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, para. 35f with reference to A/AC.96/914, para. 23.

¹⁰² *Koyazia Kaja v Secretary of State for the Home Department* [1994] UKIAT 11038, 10 June 1994. LJ Brook at p. 10 in *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ. 11, 25 January 2000, 3 All E.R. 449. However, it should be noted that there was a dissenting opinion expressed by R E Maddison to the effect that historical facts should not be accepted on a standard lower than balance of probabilities. Furthermore: “*confusion is introduced by a disinclination to distinguish between the standard to be adopted for the assessment of facts relating to events in the past, which either did or did not occur, and the possibility of events occurring in the future, where obviously there is a wider area of uncertainty.*”

¹⁰³ *Koyazia Kaja v Secretary of State for the Home Department* [1994] UKIAT 11038, 10 June 1994: “*The task of the adjudicator or the Secretary of State remains as in all cases – to assess the belief in the evidence with the ultimate evaluation in mind and to base that evaluation on the views of the evidence as a whole. We stress the need for an adjudicator in each determination to make it clear to the parties that the assessment of whether a claim to asylum is well founded is based on the evidence as a whole (going to past, present and future) and is according to the criterion of the reasonable degree of likelihood.*”

¹⁰⁴ *Horvath v Secretary of State for the Home Department* [1999] EWCA Civ 3026, which explained that this was the general understanding of the Kaja decision. However, it should be noted that in this case, the Court of Appeal, obiter, suggested that there was no reason why past or existing facts should not be established on the basis of the balance of probabilities, and then the prospective risk evaluated according to the ‘reasonable degree of likelihood’ test.

standard of proof applied to both stages of the determination.¹⁰⁵ Instead, the Court of Appeal suggested that rather than applying a standard of proof to past and present facts, decision-makers should instead adopt a particular ‘approach’. It was explained that decision-makers are likely to encounter disparate pieces of evidence, which they must take into account.¹⁰⁶ This includes:

- ① evidence about which they are certain;
- ② evidence they think is probably true;
- ③ evidence to which they are willing to attach some credence, even if they could not go so far as to say it is probably true; and
- ④ evidence to which they are not willing to attach any credence at all.

The Court of Appeal noted that decision-makers should accept evidence in categories (1), (2), and (3). In other words, decision-makers should accept all those material facts that may be possible, even if not probable:

“it must not exclude any matters from its consideration when it is assessing the future unless it feels that it can safely discard them because it has no real doubt that they did not in fact occur (or, indeed, that they are not occurring at present). Similarly, if an applicant contends that relevant matters did not happen, the decision maker should not exclude the possibility that they did not happen (although believing that they probably did) unless it has no real doubt that they did in fact happen.”

This approach, as the Court acknowledged, reflects case law in Australia.¹⁰⁷ In Australia, decision-makers should accept all asserted facts that are possibly true, as well as those that are probably or certainly true.¹⁰⁸ *“In other words, a proper application of the real chance test calls upon the decision-maker to take account of possibilities, even if these are considered unlikely.”*¹⁰⁹

The UK Court of Appeal was keen to differentiate this as an ‘approach’ and not to label it as the application of a ‘standard of proof’.¹¹⁰ However, notwithstanding its own guidance, the Court subsequently referred to the ‘reasonable likelihood’ of the truth of past facts.¹¹¹ Referring to this latter judgment, the UK Supreme Court summarized that *“in relation to the standard of proof, it may be worth recording that the Court of*

¹⁰⁵ *Karanakaran v Secretary of State for the Home Department*, [2000] EWCA Civ. 11, 25 January 2000. Brook LJ at p. 10: *“It is important to understand clearly the true effect of the majority decision in Kaja. They did not decide, as is suggested in one headnote ([1995] Imm AR 1) that: ‘the lower standard of proof set out in Sivakumaran applied both to the assessment of accounts of past events and the likelihood of persecution in the future.’ [...] It appears, however, that whatever the majority of the tribunal actually decided in Kaja, their decision has been generally interpreted as meaning that decision makers are at liberty to substitute a lower standard of proof than that conventionally used in civil litigation when judges make findings about past and present facts.”*

¹⁰⁶ *Karanakaran v Secretary of State for the Home Department*, [2000] EWCA Civ. 11, 25 January 2000, p. 10.

¹⁰⁷ *Chan Yee Kin v MIEA* (1989) HCA 62, 169 CLR 379 (9 December 1989); *MIEA v Wu Shan Liang* (1996) HCA 6, 185 CLR 259 (27 May 1996); *MIEA v Guo Wei Rong* (1997) HCA 22, 191 CLR 559 (13 June 1997); *Abebe v Commonwealth* (1999) HCA 14, 197 CLR 510 (14 April 1999); *Rajalingam v MIMA* (1999) FCA 719 (3 June 1999); *MIMA v Epeabaka* (1999) FCA 1 (6 January 1999). All these cases are cited in the *Karanakaran* judgment.

¹⁰⁸ *Rajalingam v MIMA* (1999) FCA 719 (3 June 1999). The case, at para. 60, set out the principle that there may be circumstances in which a decision-maker must take into account the possibility that alleged past events occurred even though he or she finds that these events probably did not occur. The reason for this is that the ultimate question is whether the applicant has a real substantial basis for his or her fear of future persecution. The decision-maker must not foreclose reasonable speculation about the chances of the future hypothetical event occurring. Also, in para. 62, when the decision-maker is uncertain whether an alleged event occurred, or finds that, although the probabilities are against it, the event might have occurred, it may be necessary to take into account the possibility that the event took place in considering the ultimate question. Depending on the significance of the alleged event to the ultimate question, a failure to consider the possibility that it occurred might constitute a failure to undertake the required reasonable speculation in deciding whether there is a ‘real substantial basis’ for the applicant’s claimed fear of persecution. Similarly, if the non-occurrence of an event is important to an applicant’s case (for example, the withdrawal of a threat to the applicant) the possibility that the event did not occur may need to be considered by the decision-maker, even though the latter considers that the disputed event probably did occur.

¹⁰⁹ A Glass, ‘Subjectivity and refugee fact-finding’, in J McAdam (ed.), *Forced Migration, Human Rights and Security*, Oxford: Hart Publishing, 2008.

¹¹⁰ Sedley LJ’s comments at para. 14, states explicitly that he does not accept that a prescribed standard of proof for historical and existing facts is requisite.

¹¹¹ *GM (Eritrea) and Ors v Secretary of State for the Home Department*, [2008] EWCA Civ 833, 17 July 2008.

*Appeal stated that the applicants had to do no more than prove that there was a reasonable degree of likelihood that the past facts that they asserted [...] were true.*¹¹² The Supreme Court found that this was consistent with the approach adopted by the European Court of Human Rights.¹¹³ However, the Supreme Court also stated that adopting a standard of ‘balance of probabilities’ may also be consistent with the approach adopted by the European Court of Human Rights.¹¹⁴ The Supreme Court decided to proceed on the basis that ‘real possibility’,¹¹⁵ rather than balance of probabilities, was the correct ‘test’ to apply to the assessment of past and present facts, but considered that it should, on another occasion, decide authoritatively on this point.

The most recent UK policy guidance does not refer to the above-mentioned case of the Supreme Court but states:

*“When considering what to accept or reject, decision makers will have to consider facts supported by evidence which will inspire varying degrees of confidence. As originally noted in the case of Kaja this will mean considering: [...] parts of the evidence which on any standard (i.e. up to and including the criminal court standard of proof: ‘beyond reasonable doubt’) were to be believed or not to be believed. Of other parts, the best that might be said of them was that they were more likely than not (i.e. the civil court standard of proof of – ‘probably true’). Of other parts it might be said that there was a doubt (i.e. the fact cannot be rejected as beyond reasonable doubt false, but cannot be accepted as either beyond reasonable doubt true or probably true). [...] It is clear that facts which are ‘beyond reasonable doubt’ true and ‘probably’ true should be accepted, and facts which are ‘beyond reasonable doubt’ false should be rejected.”*¹¹⁶

With regards to facts about which there is some doubt, the updated guidance refers to the case law that specifies that, unless completely disproved, evidence should be given some weight: *“the case of Karanakaran established that decision makers should not ignore facts which were in doubt (or uncertain) but rather consider that: ‘everything capable of having a bearing has to be given the weight great or little, due to it’ (Lord Justice Sedley).*¹¹⁷

Other legal jurisdictions have endorsed the broad approach stipulated by the UK courts and policy guidance.¹¹⁸ For example, the Supreme Administrative Court of the Czech Republic, referring to the case law of Australia, Germany, and the UK, has held:

“This means that if it is reasonably likely that a particular event has taken place in the way as the applicant for asylum claims, the defendant must take the assertion into account in the overall assessment of his application for international protection. [...] the defendant can not exclude from its assessment alleged facts only because another course of events than the one presented by the applicant cannot be excluded or because there is an alternative explanation for certain facts, which is equally likely. [...] The defendant may completely exclude from the assessment certain facts only if he proves almost for sure that they did not happen (i.e. there is not even a reasonable likelihood that they occurred). Other assertions

¹¹² *MA (Somalia) v Secretary of State for the Home Department*, [2010] UKSC 49, 24 November 2010, at para. 18.

¹¹³ *MA (Somalia) v Secretary of State for the Home Department*, [2010] UKSC 49, 24 November 2010, at para. 19 cites para. 132 of *Saadi v. Italy*, no. 37201/06, ECtHR, 28 February 2008: “132. In cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court considers that the protection of Article 3 of the Convention enters into play when the applicant establishes ... that there are serious reasons to believe in the existence of the practice in question **and his or her membership of the group concerned**” (emphasis added).

¹¹⁴ *MA (Somalia) v Secretary of State for the Home Department*, [2010] UKSC 49, 24 November 2010, at para. 20: “Nevertheless, the approach in *Jonah and Horvath* to the ascertainment of past facts may also be seen as consistent with the requirement for ‘substantial grounds’ or ‘serious reasons’.”

¹¹⁵ The Court appears to equate ‘real possibility’ with ‘reasonable degree of likelihood’.

¹¹⁶ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, p. 13, para 4.2.

¹¹⁷ UKBA, Asylum Instructions, *Considering Asylum Claims and Assessing Credibility*, February 2012, p. 13, para 4.2.

¹¹⁸ For example, the Irish High Court case of *A. v Refugee Appeals Tribunal & Ors*, [2011] IEHC 147, 8 April 2011. See also the earlier case *R.K.S. v Refugee Appeals Tribunal and the Minister for Justice, Equality and Law Reform*, [2004] IEHC 436, 9 July 2004.

must be part of an overall assessment of the risk of persecution, where they will be assigned weight according to the degree of likelihood with which it can be inferred that they correspond to reality.”¹¹⁹

UNHCR’s review of case files in the UK showed that most written decisions do not explicitly reference a standard of proof, but instead state clearly which facts are accepted and which are rejected. Decision-makers referenced a standard of proof in just a few cases reviewed.¹²⁰ This is illustrated by the following decision:

“Therefore as the claimant has been broadly consistent with the objective information, and has also been able to remain consistent internally and externally, and noting it has been accepted that she is from the Ashraf clan in Bardera, Somalia, the applicant’s claim that the Al Shabaab group tried to forcibly recruit her husband in Somalia is accepted when applying the lower standard of proof.”¹²¹

Whether the threshold of credibility is defined as an ‘approach’, whereby all asserted facts should be accepted if they are possibly true, as well as those that are probably or certainly true, or whether it is defined by the standard of proof of ‘reasonable likelihood’, UNHCR’s review of decisions in the UK suggested that a more stringent approach is being taken in practice.¹²²

The scope of this research did not allow the examination of whether implementation of Article 4 (5) QD within the conceptual framework of a standard of proof or defined approach makes a notable difference compared with implementation without such a marker.¹²³ It is, therefore, unclear what influence, if any, a standard of proof or defined approach has on the interpretation of the provisions of Article 4 (5) QD. The question of how these varying approaches to the threshold of credibility actually impact on the credibility assessment in practice would require further research.

The review of practices in the three Member States under survey highlighted divergent approaches regarding the threshold recommended or applied for establishing credibility. The study shows the need for further research in this area of the credibility assessment, as well as discussions among experts, and exchanges of views with judges, to achieve a clearer understanding of, and common standards and approaches for, this key concept of the credibility assessment in the asylum procedure.

¹¹⁹ *S. N. v the Ministry of Interior*, Supreme Administrative Court of the Czech Republic (*Nejvyšší správní soud*), 5 Azs 66/2008-70, 30 September 2008.

¹²⁰ IRQ06MRS, AFG01MRS, SOM06FRS, SOM03MRS.

¹²¹ SOM06FRS.

¹²² IRQ04F, AFG06M, AFG05M, SOM08M, IRN05M, IRN09M, IRN03M.

¹²³ C Engel, *Preponderance of the Evidence versus Intime Conviction: A Behavioural Perspective on a Conflict between American and Continental European Law*, preprint of the Max Planck Institute for Research on Collective Goods, August 2008.

3. Clear Statement of Which Facts are Accepted as Credible and Which Facts are Rejected

As discussed in Chapter 2, the credibility assessment requires the decision-maker to reach a clear and unambiguous finding on the credibility of each of the identified material facts and explicitly state whether or not each asserted material fact is accepted as credible.¹²⁴ This requirement also derives in part from Article 9 (2) APD, which states that where an application is rejected, the reasons in fact and in law must be stated in the decision. The obligation to state specific and concrete enough reasons for a decision to allow the applicant to understand why his or her application has been rejected is a corollary of the fundamental EU law principle of the right of defence.¹²⁵

Guidance in the Netherlands stipulates that “*finally, at the end of the assessment of the statements of the alien, a clear conclusion regarding the plausibility of these statements has to be drawn and stated.*” However, where the applicant’s statements regarding factual circumstances, events, and assumptions are considered credible as a whole, guidance states that the written (intended) decision does not have to refer to these findings, and an absence of a written reference should be assumed to indicate that the relevant facts are considered credible.¹²⁶ Where asserted material facts relating to factual circumstances such as ethnicity or religion are not accepted as credible, the finding of non-credibility must be explicitly stated and justified.¹²⁷ It should also be explicitly stated that, therefore, the asserted events and assumptions that derive from the non-credible factual circumstance are also not credible.¹²⁸ Where the applicant’s statements relating to events and assumptions are not considered credible, the finding of non-credibility must be explicitly stated and justified.¹²⁹ Where some of the asserted material facts are accepted as credible and others are not, those that are considered credible must be determined, however, the written decision does not state on what grounds the fact has been accepted.¹³⁰ UNHCR observed, however, that the internal note regarding decisions to grant international protection set out the reasons for findings of both credibility and a lack of credibility.¹³¹

In one Member State, UNHCR noted that, with regard to decisions not to grant refugee status, it was not always clear from the written decision which asserted facts, if any, had been accepted. UNHCR observed that the written decisions refusing refugee status determined the asserted material facts that were not accepted as credible, and very rarely referred to those material facts that were accepted as credible. Where subsidiary protection status was granted, the decisions stated that the applicant’s origin and ‘recent stay’ were found credible and, given the known general situation in the region of origin, subsidiary protection was granted.

¹²⁴ Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 2.5.

¹²⁵ *M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C 277/11, CJEU, 22 November 2012, para. 88: “the obligation to state reasons for a decision which are sufficiently specific and concrete to allow the person to understand why his application is being rejected is thus a corollary of the principle of respect for the rights of the defence.”

¹²⁶ IND Working Instruction 2010/14, para. 4.2.

¹²⁷ IND Working Instruction 2010/14, para. 4.2.

¹²⁸ IND Working Instruction 2010/14, para. 4.2.

¹²⁹ IND Working Instruction 2010/14, para. 4.2.

¹³⁰ AFG03FNP, IRQ03MNP, IRQ02FBP, IRQ02MBP, IRQ01MBP, IRN01FBP.

¹³¹ IRN01MBP, IRN02MAP, IRN04MAP, IRN05MAP, IRQ01FAP, IRQ01MBP, IRQ02MBP, IRQ03MBP, SOM01MAP.

On the other hand, in another Member State, the overwhelming majority of the decisions reviewed made clear findings on whether a material fact was ‘accepted’ or ‘rejected’ and stated reasons for each finding. For example:

“You claim that you are an Afghan national from Kabul. It is noted that you conducted your asylum interview entirely in Dari. According to Ethnologue website, Dari is an alternative name for Farsi, Eastern and is spoken by 5.6 million people in Afghanistan (Source: <http://goo.gl/UupHb>). It is also noted that you were able to name the President of Afghanistan, name a number of provinces in Afghanistan, name the currency of Afghanistan and name a newspaper in Afghanistan. In addition you were able to name a landmark in Kabul and the name of a river in Afghanistan. (Sources: <http://goo.gl/ddkuy>; <http://goo.gl/hG6FN>). It is therefore accepted that you are a national of Afghanistan.”¹³²

By way of exception, in one case, the written decision did not reflect that the decision-maker had determined the material facts, or followed the stipulated structured approach to considering the internal and external credibility of each fact, and the written decision simply drew up a list of indicators which undermined the applicant’s credibility:

*‘The material facts of your claim are not accepted due to the cumulative effect of the following inconsistencies and implausibilities in your account,’¹³³
[and proceeds to provide a list].*

As a general observation, UNHCR’s research revealed that usually findings of non-credibility were expressed in unambiguous terms and reasons were stated. However, in one Member State UNHCR observed that while written decisions might cite explanations provided by the applicant in response to issues that may be the source of potentially adverse credibility findings, these explanations were often dismissed as unsatisfactory without stating the reasons why.¹³⁴ In another Member State, in some cases reviewed, the written decision set out the reasons for not accepting the applicant’s explanations,¹³⁵ yet in other cases the explanations provided at the interview were not even mentioned.¹³⁶

UNHCR reiterates that the decision-maker should reach a clear and unambiguous finding on the credibility of each of the facts determined to be material and explicitly state whether and why each asserted material fact is rejected as not being credible. In cases where an element of doubt remains in relation to an asserted material fact, the application of the benefit of doubt allows the decision-maker to reach a clear and unambiguous conclusion regarding the credibility of such fact even in the absence of supporting evidence. Decisions should state the reasons underpinning the findings of facts.

¹³² AFG10F.

¹³³ INT05IRNF.

¹³⁴ IRQ05MSP, IRQ06MSP, IRQ07FSP, IRQ08FSP, IRQ10M, DRC05M, DRC06M, DRC08F, GUI08M, GUI09M, GUI10F.

¹³⁵ SOM07F, AFG10F, IRN01F, IRQ02M, IRN06MRS, IRN02F, AFG09F, IRQ06MRS.

¹³⁶ IRN09M, SOM09M, IRN10M, AFG03M, SOM05M, AFG04M, IRN05M, IRQ04F, AFG06M.

4. A Structured Approach to the Credibility Assessment

The credibility assessment is a complex and difficult task. State practice observed in UNHCR's research shows the need for a structured approach to ensure that the principles underpinning credibility assessment are fulfilled and the credibility findings are objective and impartial. In particular, the study highlights the need to clarify for decision-makers what the principle of the benefit of the doubt entails, how to consider it, and apply it where necessary.

The credibility assessment must be based on the entirety of the available relevant evidence as submitted by the applicant and gathered by the determining authority by its own means, in light of the credibility indicators set out in Chapter 5. This means it should be based on the applicant's statements and any documentary or other evidence submitted by the applicant and gathered by the determining authority. Much of this information should be gathered before the credibility assessment begins. However, relevant information and evidence may be submitted and gathered throughout the period of the examination of the application up until the time that a final decision is taken, and should also be taken into account.

UNHCR therefore considers that certain key steps should be taken during the credibility assessment. This structured approach must be underpinned by a focus on the material facts presented by the applicant, taking into account his or her individual and contextual circumstances, including age, gender, sexual orientation and/or gender identity, education, social status, ethnic and religious background, as well as experience or fear of persecution, serious harm, human rights violations, and abuse in the country of origin or place of habitual residence. It must also be informed by developments in other disciplinary fields and the impact these may have on the applicant and the decision-maker, in particular with regard to assumptions about human memory, behaviour, values, attitudes, perceptions and responses to risk, as well as about how the account is presented.

UNHCR has identified the following key steps in the credibility assessment:

- ❶ In cooperation with the applicant, gather the information to substantiate the application.
- ❷ Determine the material facts of the application taking into account the applicant's past and present experiences or fear of ill treatment, torture, persecution, harm, or other serious human rights violations, as well as the wider legal, institutional, political, social, religious, cultural context of his or her country of origin or place of habitual residence, the human rights situation, the level of violence, and available state protection.
- ❸ Assess the credibility of each material fact. Each material fact should be assessed, taking into account the applicant's statements and all other evidence that bears on the fact, through the lens of the five credibility indicators identified in Chapter 5, taking into account the applicant's individual and contextual circumstances and the reasonableness of his or her explanations with regards to potentially adverse credibility findings:
 - a. Sufficiency of detail and specificity;
 - b. Internal consistency;
 - c. Consistency with information provided by any family members and/or other witnesses;
 - d. Consistency with available specific and general information, including country of origin information (COI); and
 - e. Plausibility.

- 4 Determine which material facts can be:
 - (a) accepted as credible,
 - (b) rejected as not credible, and
 - (c) those material facts for which an element of doubt remains.

Facts are accepted when they are sufficiently detailed, internally consistent, consistent with other evidence (provided by the family and/or COI), and plausible, whether or not they are supported by further documentary evidence. The benefit of the doubt does not need to be considered or applied in relation to these facts.

- 5 For those material facts regarding which an element of doubt remains, consider whether the benefit of the doubt should be applied with respect to the facts in question. On the basis of the entire information at hand, decide:
 - (a) to accept the remaining facts as credible; or
 - (b) to reject the remaining facts as not credible.

Finally, state in the written decision all the material facts that have been accepted as credible and will inform the assessment of the well-founded fear of persecution and the real risk of serious harm, and all the material facts that have been rejected as not credible, as well as the reasons underpinning these findings of facts.

Chapters 4 to 6 discuss steps (i) to (iv) in detail. The paragraphs below therefore focus on the approach to the principle of the benefit of the doubt.

4.1. The principle of the benefit of the doubt

As discussed in Chapter 2, the principle of the benefit of the doubt reflects the recognition of the considerable difficulties applicants and the determining authorities may face in obtaining and providing evidence to support their claim. Notwithstanding the shared efforts to gather evidence pertaining to the material facts presented by the applicant, there may still be some doubt regarding some of the facts.¹³⁷

The need for the principle is reinforced by the prohibition of *refoulement* and the absolute nature of Article 3 ECHR, which has led some national asylum courts to state that they are “*not bound by legal forms and technicalities or the rules of evidence*”.¹³⁸ The need for, and relevance of, the principle of the benefit of the doubt for credibility assessment in asylum claims has been widely acknowledged in national legislation and by courts.

The application of the principle of the benefit of the doubt, therefore, allows the decision-maker to reach a clear conclusion to accept an asserted material fact as credible even although there may be no other

¹³⁷ UNHCR, *Handbook*, paras. 196, 203 and 204. para. 196: “Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing persecution will have arrived with the barest necessities and very frequently even without personal documents.” “Even such independent research may not, however, always be successful and **there may also be statements that are not susceptible to proof**. In such cases, if the applicant’s account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.” para. 203: “After the applicant has made a genuine effort to substantiate his story **there may still be a lack of evidence for some of his statements**. As explained above (paragraph 196), it is hardly possible for a refugee to ‘prove’ every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt.”

¹³⁸ For example, Australian Government, *Guidance on the Assessment of Credibility*, Migration Review Tribunal, Refugee Review Tribunal, March 2012, para. 2.2.

evidence to support the fact. The UNHCR Handbook provides that consideration of the principle of the benefit of the doubt constitutes a distinct step in the establishment of facts that occurs at the end of the credibility assessment when all the available evidence has been obtained and evaluated, and the credibility of the applicant's statements have been assessed.

4.2. Consideration of the benefit of the doubt

In the UNHCR Handbook, the principle of the benefit of the doubt is afforded a separate section within the overall section on 'Establishing the Facts'.¹³⁹ Consideration of the principle follows the substantiation and assessment of the material facts asserted by the applicant.¹⁴⁰

It is UNHCR's view that consideration of whether to afford the benefit of the doubt requires the decision-maker to take a step back from the detail of each asserted material fact and take a holistic view of the applicant's statements and any other evidence presented by the applicant.

An asserted fact may be accepted because it is sufficiently detailed, internally consistent, and consistent with information provided by family members and witnesses, consistent with available specific and general objective COI, and plausible when considered in light of the applicant's individual and contextual circumstances. Such facts may be accepted without reference to the principle of the benefit of the doubt.

An asserted fact may be rejected because, when taking into account the reasonableness of the explanations provided by the applicant with regard to the potentially adverse credibility findings and the applicant's individual and contextual circumstances, the applicant's statements about that fact are not sufficiently detailed, consistent, and plausible, and/or are contradicted by other reliable, objective, and time appropriate evidence. Again, such facts may be rejected without reference to the principle of the benefit of the doubt because the principle cannot be applied to remedy what is clearly not credible based on all the available evidence.

Following such assessment, there may nevertheless be an element of doubt in the mind of the decision-maker about the credibility of some asserted relevant facts. It is in relation to such facts, and at the end of the credibility assessment, that UNHCR suggests that consideration must be given, in a separate step, to whether to afford the benefit of the doubt.

¹³⁹ The principle of the benefit of the doubt is addressed in section B (2) on 'Establishing the Facts' in the UNHCR Handbook.

¹⁴⁰ UNHCR, *Handbook*, para. 203: "After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. [...] It is therefore frequently necessary to give the applicant the benefit of the doubt." para. 204: "The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked". *Jiao v Refugee Status Appeals Authority and Attorney-General*, Court of Appeal, Wellington CA167/02; [2003] NZAR 647, 21 July 2003; 31 July 2003; para. 34: the principle of the benefit of the doubt "should not get in the way of the proper consideration of the evidence bearing on disputed facts, including a weighing of the possible availability of other evidence supporting or questioning that given by the claimant."

4.3. Application of the benefit of the doubt

After the applicant has made a genuine effort to substantiate the application, there may still be some material facts that could neither be accepted nor rejected, and for which an element of doubt may remain in the mind of the decision-maker.¹⁴¹ It is in relation to these facts that the principle of the benefit of the doubt should be considered. The benefit of the doubt may be relied upon to accept facts for which there is no supporting evidence, or where some doubt otherwise exists. The UNHCR Handbook states:

*“After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. [...] It is hardly possible for a refugee to ‘prove’ every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt.”*¹⁴²

The application of the principle of the benefit of the doubt allows the decision-maker to reach a clear conclusion on whether to accept or reject each of the material facts presented by the applicant.

As for the criteria and factors to be taken into account when considering the application of the benefit of the doubt, UNHCR has stated that the applicant should be granted the benefit of the doubt when his or her statements are **on the whole coherent and plausible, and do not run counter to generally known facts**.¹⁴³ As discussed above, these criteria are utilized in state practice in the EU and beyond by national jurisdictions in the determination of whether to apply the principle of the benefit of the doubt.¹⁴⁴

It is worth noting here that just as with an assessment of plausibility, an assessment of whether the applicant's statements seem logical, have a causal connection, or fit together may be fraught with risks that the assessment might become intuitive and based on subjective assumptions, preconceptions, conjecture, speculation, and stereotyping rather than on reliable, objective, and time appropriate evidence. As mentioned previously, psychologists believe that we make judgements either by referring to our own past experiences, or, when facing a new complex situation, by comparing it to another known more simple set of circumstances.¹⁴⁵ However, a reliance on a combination of our past experiences and second-hand experiences gives us only a partial understanding of human experience and behaviour, and we risk considering alleged facts that fall outside our personal experiences, background, culture, values, and views as illogical or not fitting together.¹⁴⁶

In determining whether an applicant's statements are broadly coherent, it must be recalled that there is no 'norm' in terms of human behaviour. Because a wide range of factors and circumstances affect human behaviour and perceptions, these vary widely and unpredictably from person to person.

¹⁴¹ UNHCR, *Note on Burden and Standard of Proof*, para. 12: “Given that in refugee claims, there is no necessity for the applicant to prove all facts to such a standard that the adjudicator is fully convinced that all factual assertions are true, there would normally be an element of doubt in the mind of the adjudicator as regards the facts asserted by the applicant.” See also UNHCR, *The International Protection of Refugees: Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001, p. 3: “Once the examiner is satisfied with the applicant's general credibility, the latter should be given the benefit of the doubt as regards those statements for which evidentiary proof is lacking.”

¹⁴² UNHCR, *Handbook*, para. 203.

¹⁴³ UNHCR, *Handbook*, para. 204. UNHCR, *Note on Burden and Standard of Proof*, para. 12: “Where the adjudicator considers that the applicant's story is on the whole coherent and plausible, any element of doubt should not prejudice the applicant's claim; that is, the applicant should be given the ‘benefit of the doubt’.”

¹⁴⁴ *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593, Canada: Supreme Court, 19 October 1995, para. 204: “The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.”

¹⁴⁵ J Herlihy and S Turner, ‘The Psychology of Seeking Protection’, (2009), *International Journal of Refugee Law*, vol. 21, no. 2, 2009, pp. 171–92 at p. 190. See also D Kahneman, *Thinking Fast and Slow*, London: Allen Lane, 2011, p. 12 and p. 97.

¹⁴⁶ R Graycar, ‘The gender of judgments: an introduction’, in M Thornton (ed.), *Public and Private: Feminist Legal Debates*, Melbourne: Oxford University Press, pp. 262–82.

The applicant's statements must also be viewed in their cultural context, intersected as relevant with other factors such as age, gender, social status, and education, and be seen in the context of the conditions in the country of origin or place of habitual residence.¹⁴⁷ Considerable caution is, therefore, required when assessing the behaviour of persons from different cultures, events in a different cultural context, and the practices and procedures of the political, judicial, and social systems of other countries.¹⁴⁸ There is a risk that decision-makers may be overly influenced by their own views on what is or is not logical, and that those views will have inevitably been influenced by their own gender, culture, other background factors, and experiences.¹⁴⁹ As such, the assessment of credibility must be carried out with reference to COI and based on reliable, objective, and time appropriate evidence.

The UNHCR Handbook also states that “*the benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility.*”¹⁵⁰ In relation to Article 4 (5) (e) QD as well as Article 4 (5) (d), discussed above and in Chapter 6, on the applicant's behaviours the determining authorities may take into account in their assessment of credibility, it is UNHCR's view that these two provisions tend to be interpreted in a restrictive manner and a manner prejudicial to the rights of the applicant. Therefore, UNHCR encourages Member States to interpret Article 4 (5) QD as a whole, and provisions (d) and (e) in particular, in accordance with the principles of the UNHCR Handbook.¹⁵¹

¹⁴⁷ Canadian Council for Refugees, *The Experience of Refugee Claimants at Refugee Hearings at the Immigration and Refugee Board*, January 2012, p. 29: “I felt foolish seeing my life before me, decisions I made or did not make. I felt great sadness and wanted to cry. My emotions were overwhelming. I wanted to cooperate with the process, but I could not control my emotions. [...] I was my worst enemy in there. I was judging myself. **I felt most of my responses to the questions sounded illogical, but they were the truth in the world where I lived without choice**” (emphasis added).

¹⁴⁸ Canadian guidelines, 2.3.5, p. 34,

¹⁴⁹ *Y v Secretary of State for the Home Department*, [2006] EWCA Civ 1223, 26 July 2006, para. 25: “The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society.” See also *Jegatheeswaran v MIMA* (2001) FCA 865 (9 July 2001), at pp. 58 and 59: “Frequently, however, intuition (usually referred to as ‘logic’) predominates and the trier[s] of fact could not readily explain the source of [their] views or explain why [they believed] that those views are sound [...] it goes without saying that the trier of fact's views about human behaviour will not always be sound. Those views may be grounded on prejudice or bias.” J P Eyster, ‘Searching for the Key in the Wrong Place: Why “Common Sense” Credibility Rules Consistently Harm Refugees’, *Boston University International Law Journal*, vol. 30, no. 1, 2012, p. 39.

¹⁵⁰ UNHCR, *Handbook*, para. 204.

¹⁵¹ UNHCR, *Comments on the European Commission's Proposal for a Directive of the European Parliament and of the Council on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Beneficiaries of International Protection and the Content of the Protection Granted (COM (2009)551, 21 October 2009)*, 29 July 2010.

5. Conclusion

In conclusion, UNHCR's research indicated that different approaches to the credibility assessment are advocated across the three Member States surveyed. This observation applies in particular to the circumstances under which the principle of the benefit of the doubt should be considered.

The credibility assessment is only one step in the determination of international protection needs. It is a tool to assist in establishing the relevant facts to which the law should be applied. In Belgium, the Netherlands, and the UK, a structured approach is promoted in training. In addition, in the Netherlands and the UK, it is stipulated in specific national guidance on the assessment of credibility. UNHCR acknowledges the margin of discretion afforded to decision-makers in the assessment of evidence. However, the absence of a structured approach may lead to a failure to apply key principles and standards underpinning the assessment of credibility. Moreover, a structured approach contributes to the objective of similar cases being decided in a similar way.

With regard to the principle of the benefit of the doubt, from the review of case files, it was often unclear whether it had been considered in practice, for written decisions and internal notes often did not explicitly state whether the principle had been considered and, if so, in relation to which asserted facts and why. UNHCR recalls that the application of the principle of the benefit of the doubt allows the decision-maker to reach a clear conclusion on whether to accept or reject an asserted fact where there may be no evidence other than the applicant's statements to support the fact. UNHCR encourages decision-makers to consider the principle of the benefit of the doubt at the end of the credibility assessment when the applicant's statements and all the other available evidence have been assessed.

UNHCR wishes to emphasize that an applicant should not be denied the benefit of the doubt merely on the ground that he or she did not apply for international protection at the earliest possible time.¹⁵² Neither should a delay in application constitute a ground to increase the threshold of credibility for the applicant. UNHCR encourages Member States to interpret Article 4 (5) QD in accordance with the principles of UNHCR's Handbook.¹⁵³ It is clear that an applicant may be a refugee and/or in need of international protection even if the application for international protection was not lodged at the earliest possible time.¹⁵⁴ If the application of Article 4 (5) (d) QD is considered, the decision-maker should enquire into the reasons for any apparent delay by offering the applicant the opportunity to explain the delay and he or she should take any explanation offered by the applicant into account bearing in mind the applicant's individual and contextual circumstances.

¹⁵² UNHCR, *Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted* (OJ L 304/12 of 30 September 2004), 28 January 2005, p. 15: "UNHCR points out that a late submission should not increase the standard of proof for the asylum applicant." It should be noted that Article 8 (1) APD states that "Without prejudice to Article 23(4)(i), Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible." Article 23 (4) (i) APD allows Member States to prioritize or accelerate the examination of an application if "the applicant has failed without reasonable cause to make his/her application earlier, having had the opportunity to do so."

¹⁵³ UNHCR, *Comments on the European Commission's Proposal for a Directive of the European Parliament and of the Council on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Beneficiaries of International Protection and the Content of the Protection Granted* (COM (2009)551, 21 October 2009), 29 July 2010.

¹⁵⁴ Note also Article 8 (1) APD which states that "[w]ithout prejudice to Article 23(4)(i), Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible."

Final Conclusion

UNHCR has aimed through this project to clarify some key concepts and insights into specific aspects of practice in relation to credibility assessment in European Union asylum procedures. Given the complexity of the subject, and limited time and resources, it has not sought to provide a comprehensive overview or comparative analysis of evidentiary rules and practices in the EU as these relate to the asylum system. UNHCR hopes nevertheless to have clarified and highlighted some important issues that warrant further research, analysis, dialogue, and consideration, including for asylum practitioners, decision-makers at first and later instances, judges, EU institutions, EASO, policy-makers and legislative bodies at European and national level, as well as academia and civil society.

The results of this work have been made possible with the financial support of the European Commission through the European Refugee Fund, the contributions of UNHCR's other CREDO project partners, Hungarian Helsinki Committee (HHC), the International Association of Refugee Law Judges (IARLJ), Asylum Aid, and the engagement of all other institutions and parties concerned. UNHCR welcomes their collective engagement also in further discussions on this subject in order to take the thinking on credibility assessment further in a constructive, principled and practical way, in line with international and European law.

Among the UNHCR's observations from this research, variations in the three Member States under review were apparent in practically all aspects of the credibility assessment. These discrepancies could be indicative of wider variations and challenging issues across the EU Member States. UNHCR acknowledges the margin of discretion which is afforded to decision-makers in the assessment of evidence. However, the assessment of credibility must not be a lottery between EU Member States or within the states' national asylum systems. Credibility assessment cannot be reliant on an individual decision-maker's subjective approach, assumptions, impressions and intuition. For this reason, more consistent, transparent and principled approaches are needed, based on law and good practice, in relation to credibility assessment in asylum procedures in Europe.

In some Member States, there may also be a disparity between policy and practice in the credibility assessment. The research suggests that some decision-makers are unaware of the content of guidance, or that their content is unclear or misunderstood. This calls, in addition to further research, discussion and scrutiny of the issue (including by courts), for enhanced training on credibility assessment for decision-makers across the EU.

Further reflection and discussion in the area of credibility assessment will be of value to all stakeholders involved in asylum systems in the EU. It would benefit UNHCR as it works to develop revised guidance on credibility assessment in asylum procedures. It would also assist states and other concerned bodies for whom credibility assessment continues to represent a major challenge to be met in seeking to establish and reinforce quality and consistency in asylum decision-making in the EU. UNHCR stands ready to continue to contribute further to this discussion and evolving thinking in future.

Annexes

Flowcharts and Checklists for Decision-Makers	254
Guide to Credibility Assessment – An Overview.....	254
The Credibility Assessment – Purpose & Principles.....	255
Gathering the Facts: The Applicant’s Duty to Substantiate the Application	256
Gathering the Facts: The Decision-Maker’s Duty to Cooperate.....	257
The Credibility Assessment – Factors to Take Into Account	258
The Credibility Indicators.....	260
A Structured Approach to Credibility Assessment	261
Flowcharts of National Asylum Procedures	
2.1. Belgium.....	262
2.2. The Netherlands.....	263
2.3. The United Kingdom	264
Bibliography	265
Case law	277
List of Abbreviations	285

Guide to Credibility Assessment – An Overview

STEPS IN THE ANALYSIS



EXPLANATION

Preparation for the Personal Interview

1	AUTHORITY'S DUTY TO PROVIDE INFORMATION & GUIDANCE	<input type="checkbox"/>	Before the personal interview the Authority provides information to the Applicant about his or her duty to substantiate the application and guidance on how to do so. This obligation continues throughout the process.
2	AUTHORITY'S DUTY TO GATHER BASIC INFORMATION ABOUT THE APPLICANT	<input type="checkbox"/>	The basic bio data (age, gender, nationality, ethnic origin, physical/mental health, education, social status, religion, urban or rural background, relatives etc.) information may be gathered orally or in a form with assistance from an interpreter where required. It includes the question: "Why are you seeking asylum?" but does not delve into the details of the claim.
3	DM'S DUTY TO PREPARE FOR THE PERSONAL INTERVIEW	<input type="checkbox"/>	The DM familiarizes him/herself with the facts of the application, researches general and specific COI, gathers information on specific aspects of the claim, considers the individual and contextual circumstances of the Applicant, considers any claims made by family members and prepares interview questions.

During the Personal Interview

4	DM'S DUTY TO PROVIDE INFORMATION AND GUIDANCE	<input type="checkbox"/>	At the outset of the personal interview the DM provides information to the Applicant about his or her duty to substantiate the application and guidance on how to do so.
5	DM'S DUTY TO GUIDE THE APPLICANT THROUGH APPROPRIATE QUESTIONING	<input type="checkbox"/>	The DM uses appropriate questions, remains impartial and objective during the interview both in his or her verbal and non-verbal communication.
6	DM'S DUTY TO TAKE INTO ACCOUNT INDIVIDUAL & CONTEXTUAL CIRCUMSTANCES	<input type="checkbox"/>	The DM takes age, gender, cultural and ethnic background, education, social status, sexual orientation and/or gender identity into account in the way questions are put to the Applicant, responses analysed, assessed and interpreted, and follow-up questions phrased.
7	DM'S DUTY TO GATHER EVIDENCE BEARING UPON THE CLAIM	<input type="checkbox"/>	As necessary, the DM uses all means at his or her disposal to gather all relevant evidence bearing on the application, including any supporting evidence.
8	DM'S DUTY TO GIVE THE APPLICANT AN OPPORTUNITY TO COMMENT ON AND EXPLAIN POTENTIAL ADVERSE CREDIBILITY FINDINGS	<input type="checkbox"/>	The DM provides the Applicant with an opportunity to clarify any apparent lack of details, omissions, inconsistencies, and implausibilities. The opportunity to comment on potential adverse credibility findings is maintained throughout the procedure until a decision is made. The DM provides the Applicant with a reasonable opportunity and appropriate time-frame to discharge his or her duty to substantiate the application.

After the Personal Interview: Assessing the Applicant's Statements and Other Evidence

9	ASSESS THE CREDIBILITY OF EACH MATERIAL FACT	<input type="checkbox"/>	In assessing the credibility of each material fact the DM gives due consideration to the credibility indicators in light of the individual and contextual circumstances of the Applicant and the factors affecting the DM's interpretation of the information.
10	DETERMINE WHICH MATERIAL FACTS TO ACCEPT	<input type="checkbox"/>	The Applicant may submit further evidence for consideration by the DM until a decision is made or agree with the DM in relation to forthcoming evidence to allow it to be included in the decision. The DM must consider which material facts to accept, which to reject, and those where an element of doubt remains.
11	CONSIDER WHETHER TO APPLY THE BENEFIT OF THE DOUBT TO EACH REMAINING FACT	<input type="checkbox"/>	When the statements are on the whole coherent, plausible and consistent with COI, grant the benefit of the doubt to those facts for which there is no supporting documentary or other evidence, including COI, or an element of doubt remains.
12	LIST ALL MATERIAL FACTS THAT HAVE BEEN ACCEPTED AND THOSE THAT HAVE BEEN REJECTED	<input type="checkbox"/>	The accepted material facts provide the basis for the analysis that will be made in Stage II when determining whether the Applicant has a well-founded fear or risks serious harm.

The Credibility Assessment – Purpose & Principles

DMs do not have unlimited discretion in the assessment of credibility: they must respect EU fundamental rights and principles, and EU administrative law principles. DMs must work in cooperation with the Applicant [Art.4(1) QD], assess the application on an individual basis taking into account some specific factors [Art.4(3)QD], and accept unsupported facts under certain conditions [Art.4(5)QD]. Applications must be examined and decisions taken individually, objectively and impartially [Art.8(2)APD] with the knowledge of relevant asylum and refugee law standards [Art.8(2)(c)APD] including CJEU, ECtHR and CAT standards, and UNHCR guidance.

PRINCIPLES & STANDARDS	COMMENTARY	<input checked="" type="checkbox"/>
SHARED DUTY	The duty to provide statements and submit documentary or other evidence in support of an application lies in principle with the Applicant. But it is also the DM's duty to cooperate actively with him/her to gather all the information needed. The duty to substantiate the application is shared.	<input type="checkbox"/>
INDIVIDUAL ASSESSMENT	Credibility assessment must be conducted on an individual basis taking into account the individual and contextual circumstances of the Applicant.	<input type="checkbox"/>
OBJECTIVE & IMPARTIAL ASSESSMENT	The determination of international protection is not an adversarial process. The credibility assessment must be carried out objectively and impartially. The DM should be aware that his or her own values, prejudices and views, emotional and physical state can all affect the objectivity of his or her assessment and should strive to minimize them.	<input type="checkbox"/>
EVIDENCE-BASED ASSESSMENT	Whether the DM is accepting or rejecting a fact, his or her must be able to base that decision on evidence. Adverse credibility findings should not be based on unfounded assumptions, subjective speculation, conjecture, stereotyping, intuition, or gut feelings.	<input type="checkbox"/>
FOCUS ON MATERIAL FACTS	Material facts go to the heart of a claim. Peripheral ones do not. Credibility assessment should focus on material facts that are most significant in the determination of the claim. Adverse credibility findings must be substantial in nature and not relate only to minor matters.	<input type="checkbox"/>
OPPORTUNITY TO COMMENT ON ADVERSE FINDINGS	Every Applicant has the right to be heard [Art.41 EU Charter]. This includes the right to provide an explanation for or comment on a fact where the DM may have credibility doubts. The DM should give the Applicant a reasonable opportunity to address any issues that may result in adverse credibility findings.	<input type="checkbox"/>
ASSESSMENT BASED ON ENTIRE EVIDENCE	Credibility assessment must be based on all available relevant Information provided by the Applicant and gathered by the DM, including additional explanations for apparent inconsistencies, omissions, vagueness or implausibilities provided by the Applicant. The DM should not reach conclusions on the credibility of each material fact in isolation.	<input type="checkbox"/>
CLOSE & RIGOROUS SCRUTINY	Because decisions can involve matters of life and death, each case deserves a close and rigorous review of all the information at hand. The Applicant should be able to present his or her case fully; all the evidence provided must be considered; decisions should be based on all the information available; the DM must dispel any doubts.	<input type="checkbox"/>
BENEFIT OF THE DOUBT	Because decisions can involve matters of life and death, and because, despite the best efforts of the Applicant and the DM to gather evidence in support of the material facts, there may still be a measure of doubt on some facts, consideration of the principle of the benefit of the doubt is often needed.	<input type="checkbox"/>
CLEAR FINDINGS & STRUCTURED APPROACH	Credibility assessment determines which facts can be accepted and then will be considered in the well-founded fear of persecution/real risk of serious harm analysis. The principle of the benefit of the doubt allows the DM to arrive at a clear conclusion on whether to accept or reject material facts about which a measure of doubt remains. A structured approach ensures the appropriate application of the relevant standards.	<input type="checkbox"/>

Gathering the Facts: The Applicant’s Duty to Substantiate the Application

Art.4(1) QD states: “Member States **may** consider it the duty of the applicant to submit **as soon as possible** all the elements needed to substantiate the application for international protection.”

Art.4(2)QD lists the relevant **elements** needed for the substantiation of the application, which are the “**Applicant’s statements and all documentation at the Applicant’s disposal.**”

Art.4(5)(a) requires that the Applicant make a **genuine effort** to substantiate the application.

Art.4(5)(b) requires that “**a satisfactory explanation regarding any lack of other relevant elements has been given.**”

THE APPLICANT’S DUTY ‘IN PRINCIPLE’ TO SUBSTANTIATE THE APPLICATION

DUTY	<input checked="" type="checkbox"/>	EXPLANATION	THE ELEMENTS	<input checked="" type="checkbox"/>
1. MAKE A GENUINE EFFORT	<input type="checkbox"/>	Evidence may be oral or documentary. It includes the statements of the Applicant and oral evidence provided by experts, family members and other witnesses. Evidence may be documentary, incl. written, graphic, digital, visual materials, COI, exhibits (physical objects, bodily scarring) and audio/visual recordings. Evidence includes anything that asserts, confirms, supports, or bears on the relevant facts at issue.	Age	<input type="checkbox"/>
↓			Gender	<input type="checkbox"/>
2. PROVIDE THE STATEMENTS AND ALL DOCUMENTATION AT THE APPLICANT’S DISPOSAL	<input type="checkbox"/>	The Applicant’s duty to substantiate the application does not entail a duty to provide documentary or other evidence in support of every relevant fact presented. The Applicant’s statements constitute evidence and are capable by themselves of substantiating the application. Some asserted facts are not susceptible to supporting documentary or other evidence.	Identity, nationality(ies), ethnic origin	<input type="checkbox"/>
↓			Country or origin or place of habitual residence	<input type="checkbox"/>
3. SUBSTANTIATE THE APPLICATION AS SOON AS POSSIBLE	<input type="checkbox"/>	The DM should not have onerous expectations regarding what documentary or other evidence the Applicant should possess and/or be reasonably able to obtain. The assessment of the ‘genuine effort’ should take into account the individual and contextual circumstances of the Applicant, including the means at his or her disposal to obtain documentary or other evidence.	Family members	<input type="checkbox"/>
↓			Education	<input type="checkbox"/>
4. PROVIDE A SATISFACTORY EXPLANATION REGARDING ANY LACK OF OTHER RELEVANT ELEMENTS	<input type="checkbox"/>	The Applicant may be requested, or wish to provide, additional relevant statements or other evidence after the assessment of the evidence begins. The interpretation of ‘as soon as possible’ needs to be informed by an understanding of the individual and contextual circumstances that may inhibit disclosure of information and affect the possibility to obtain supporting documentary and other evidence. This includes taking into account the circumstances in the country of origin.	Social status	<input type="checkbox"/>
			Rural/urban background	<input type="checkbox"/>
			Religion	<input type="checkbox"/>
			Documentation	<input type="checkbox"/>
			Physical/mental health	<input type="checkbox"/>
			Previous asylum applications	<input type="checkbox"/>
			Reasons for applying for international protection	<input type="checkbox"/>

Gathering the Facts: The Decision-Maker's Duty to Cooperate

Article 4 (1) of the EU Qualification Directive states: “In **cooperation** with the Applicant, it is the **duty** of the Member State to assess the relevant elements of the application.”

The Court of Justice of the European Union (CJEU) has explained that although “it is generally for the applicant to submit all elements needed to substantiate the application, the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of determining the relevant elements of that application.”

THE DECISION-MAKER'S DUTY TO COOPERATE

DUTY	EXPLANATION
<p>1. DM'S PROVISION OF INFORMATION AND GUIDANCE TO THE APPLICANT</p> <p style="text-align: center;">↓</p>	<p><input checked="" type="checkbox"/> The Applicant cannot be expected to know that his or her has a duty to substantiate the application, how to discharge this duty, and what facts and type of documentary or other evidence may be relevant. The DM informs the Applicant in a language and manner his or her can understand of what is required to substantiate the application. The DM invites the Applicant to submit evidence that can reasonably be obtained to support the material facts, and informs him/her of the time-frame and the means at an Applicant's disposal in order to submit all the elements required. This information must be given in time for Applicants to comply with these obligations.</p>
<p>2. DM'S PROVISION OF GUIDANCE THROUGH THE USE OF APPROPRIATE QUESTIONING DURING THE INTERVIEW</p> <p style="text-align: center;">↓</p>	<p><input type="checkbox"/> The DM guides the Applicant to gather all the relevant information relating to the material facts of the application. The DM uses open, probing and closed questioning in combination to allow the Applicant to substantiate his or her claim. The interviewer is impartial and objective throughout the interview both in verbal and non-verbal communication. Questioning should be sensitive to the individual and contextual circumstances of the Applicant. Respect for the standards of the credibility assessment and the human dignity of the Applicant should be a guiding principle at all times.</p>
<p>3. DM'S PROVISION OF AN OPPORTUNITY FOR THE APPLICANT TO EXPLAIN POTENTIAL ADVERSE CREDIBILITY FINDINGS</p> <p style="text-align: center;">↓</p>	<p><input type="checkbox"/> The Applicant should be afforded an opportunity to address potentially adverse findings up until the decision is made. The DM identifies any apparent inconsistencies, contradictions, discrepancies, omissions, and implausibilities at the interview and puts them all to the Applicant. It may require the DM to offer a further interview or other means for the Applicant to provide an explanation. Where explanations are offered, these need to be considered before a final decision is taken on the application.</p>
<p>4. DM'S GATHERING OF EVIDENCE BEARING ON THE APPLICATION BY HIS OR HER OWN MEANS</p>	<p><input type="checkbox"/> Because of the inherent difficulties faced by Applicants to provide documentary and other evidence in support of their statements, the DM gathers evidence and other specific information bearing on the Applicant's asserted material facts by his or her own means, including where necessary, any evidence that supports these facts.</p>
<p>4.1 COUNTRY OF ORIGIN INFORMATION (COI) & OTHER EVIDENCE</p>	<p><input type="checkbox"/> The DM obtains, by his or her own means, general and specific COI & other evidence, COI should be relevant, accurate, objective, impartial, reliable, and time-appropriate. The DM evaluates the Applicant's statements and other evidence in the light of what is generally known about the situation in the country of origin, or place of habitual residence, as well as any specific evidence available to the case. The DM adheres to the principle of objectivity and impartiality, which may require gathering evidence that confirms or supports, and not just refutes, the asserted facts.</p>
<p>4.2 PRINCIPLE OF RIGOROUS SCRUTINY</p>	<p><input type="checkbox"/> The DM assesses all the material gathered in substantiation of the application, taking into account the individual and contextual circumstances of the Applicant. The DM also considers material obtained by his or her own means. It is the DM's duty to dispel any doubts about this information.</p>

The Credibility Assessment

– Factors to Take Into Account

FACTORS AFFECTING THE APPLICANT

Credibility assessment must adhere to certain legal principles and standards. It must be conducted fully taking into account the individual and contextual circumstances of the Applicant. These include his or her personal background (age, nationality, ethnic origin, gender, sexual orientation and/or gender identity, education, social status, religion, cultural and rural/urban background, and state of mental and physical health); his or her past and present experiences of ill-treatment, torture, persecution, harm, or other serious human rights violations; as well as the legal, institutional, political, social, religious, cultural context of his or her country of origin, or place of habitual residence, the human rights situation, the level of violence, and availability of state protection. The DM should cross geographical, cultural, socio-economic, gender, educational and religious barriers, and take account of different individual experiences.

THE LIMITS & VARIATIONS OF HUMAN MEMORY	EXPLANATION
RECONSTRUCTION	The DM should be aware of the wide-ranging variability in people's ability to record, retain, and retrieve memories. Visual, verbal and auditory information is not recorded as an accurate copy of experiences, but is reconstructed at the time of recall. No two reformulations can be identical; some inconsistency is inevitable. Memories change over time, sometimes significantly, and naturally decay, details are forgotten. With rehearsal (talking about the event), some memories can fade, others become distorted and others more vivid.
MEMORIES FOR FACTS, DATES AND OBJECTS	Memory for dates, times, frequency, duration and sequence; proper names; verbatim verbal exchanges; peripheral information; and appearance of common objects is unreliable and may be difficult or impossible to recall. Recall is nearly always reconstructed from inference, estimation and guesswork, and is rarely accurate.
EMOTION AND REMEMBERING	High levels of emotion can impair the encoding of any memory. The recall of autobiographical memory is influenced by mood.
RETELLING	The context in which memories are recalled guides their reconstruction. Memory is influenced by the question eliciting information (closed or open-ended questions) and the way the question is asked. Memories are susceptible to suggestion, more so when the person feels under stress, has low self-esteem, or perceives the interviewer to be critical or negative. There is also variation between information when elicited face-to-face or with self-completing forms.
THE IMPACT OF TRAUMA ON MEMORY & BEHAVIOUR	Those who have suffered traumatic events often display avoidance symptoms; they avoid thinking and talking about the event. They may experience dissociation , at the time of the traumatic event or when recalling it; they cannot remember some or all aspects of the trauma, because (aspects of) the event were not initially encoded. They may display emotional numbing and emotionally detach themselves from the facts they are relating. They may only remember sensory impressions (emotions, sensations, sounds, smells) or flashbacks; only fragments or impressions of the experience may be related. They tend to remember some central details , on which they have focused, at the expense of other peripheral details. Detention may have an impact on the ability to record and retrieve specific details of events. They may rely on general knowledge (schematic memory) about situations in preference to recalling specific painful events.
FEAR & LACK OF TRUST	Applicants may lack trust in authorities or interpreters. Some may hold a genuine belief that their persecutors have wide networks in other countries, incl. the country of asylum. Moreover, they may not wish to disclose certain relevant facts for fear of endangering the lives of relatives, friends or associates. Applicants whose fear relates to gender, SGBV, SOGI or trafficking may fear reprisals by family, community and/or traffickers. Applicants may fear reprisals from agents who arranged their travel and entry.
CULTURAL BACKGROUND & CUSTOMS	Diversity in cultural background influences communication. Understanding and interpreting information is culturally determined. Individual cultural backgrounds influence the delivery and interpretation of information. Failure to recognize the cultural relativity of words, notions and concepts can lead to misunderstanding and flawed credibility assessments. Concepts of time, distance, and location may be culturally relative. Concepts of time may differ from those used in Western society; events may be remembered by reference to seasons, religious holidays, festivals, etc.; and birth dates and anniversaries may not be significant in some cultures. An Applicant's cultural background and norms may affect the way his or her relates their account e.g. a woman may have had a secluded life, little communication with strangers or authorities, or is used to a male relative speaking on her behalf.
EDUCATION	An Applicant's level of formal education may affect his or her ability to articulate the reasons for the application; to respond to questions, incl. general knowledge questions on history, geography, political, socio-economic conditions; and his or her understanding of the context of certain events.

The Credibility Assessment

– Factors to Take Into Account

FACTORS AFFECTING THE APPLICANT (CONTINUED)

GENDER	Gender defines identities, status, roles, responsibilities, and power relations among members of a society. Gender roles are socially constructed; they vary across and within societies and cultures, and according to age, religion, ethnic and social origin; they evolve to respond to changes. Gender roles influence the attitudes, behaviour, roles, and activities of males and females; they usually involve inequality and a power imbalance between women and men. Gender roles affect male and female experiences of persecution and serious harm and their asylum claims. The DM should assess an account in the context of an Applicant's gender, intersected with his or her age, culture, religion, family, and socio-economic status, and refrain from conclusions based on stereotypical, superficial, erroneous or inappropriate perceptions of gender.
SEXUAL ORIENTATION AND/OR GENDER IDENTITY (SOGI)	Some LGBTI Applicants may have had to conceal their SOGI to avoid ill-treatment leading to feelings of self-denial, anguish, shame, isolation, self-hatred and psychological harm; they may not initially disclose the real grounds for the application. They may have suffered ill-treatment, discrimination, harassment, and marginalization; gender norms may make it difficult to discuss these. LGBTI Applicants in the process of coming to terms with their SOGI may change their claim during the process. Their experiences are influenced by their cultural, economic, family, political, religious and social context; this influences the way his or her expresses his or her SOGI. The DM should not base credibility assessment on superficial understanding of LGBTI Applicants' experiences, or erroneous/stereotypical assumptions.
STIGMA AND SHAME	Stigma, shame, fear of rejection by family and community may inhibit disclosure. Gender-based violence survivors are often held morally culpable for the act, which is culturally unacceptable and shameful. They may suffer trauma, self-blame, shame, memory loss and distortion. Stigma may also account for lack of documentary or other evidence e.g. of incident reports, COI.
OTHER FACTORS	Age, social status, profession, religion and beliefs, rural or urban background, etc.

FACTORS AFFECTING THE DECISION-MAKER

The objectivity and impartiality principal requires an approach to the credibility assessment that minimizes subjectivity. The DM should be aware that subjectivity can materialize through:	
DM'S THINKING PROCESSES	If the DM has decided on a conclusion, his or her is more likely to believe the evidence that supports that conclusion, even if it is unsound. A concept, known as the halo effect, is a tendency whereby the DM risks either believing or not believing everything. The halo effect increases the weight of first impressions, and subsequent information may be treated as irrelevant.
DM'S INDIVIDUAL & CONTEXTUAL CIRCUMSTANCES	The DM should not approach credibility assessment from his or her own background and life experiences ("what would I, or someone I know do in this situation?"). The DM should be aware of the influence of his or her own educational background. The DM should not be influenced by his or her views of what is plausible or not. The DM should be aware of the tendency to believe statements because they are linked by logic or associated to beliefs his or her holds.
DM'S STATE OF MIND	The DM should not start with scepticism or a refusal mind-set, which may prejudice and distort the credibility assessment. The DM should not feel personally annoyed or irritated when his or her considers the Applicant has lied. Awareness is the antidote to subjectivity.
DM'S POLITICAL, SOCIETAL AND INSTITUTIONAL CONTEXT	The DM should be aware of the influence that societal, political, institutional contexts that are geared towards preventing irregular immigration may have on his or her mind-set and attitudes. The DM should remember that the objective is protection and must uphold fundamental rights.
REPETITIVE NATURE OF THE TASK	Because of the repetitive nature of the task, the DM may tend to categorize applications into generic case profiles with assumptions regarding credibility.
CASE-HARDENING, CREDIBILITY FATIGUE, EMOTIONAL DETACHMENT, STRESS AND VICARIOUS TRAUMA	Routine exposure to accounts of torture, violence, or ill-treatment can take a psychological toll. Disbelief is a coping strategy but may undermine objectivity and impartiality. Emotional detachment may translate into disbelief and a reluctance to engage with the applicant's account.

The Credibility Indicators

Credibility assessment refers to the process of gathering relevant information from the Applicant; examining it in the light of all the information available to the DM; and determining whether and which of the statements and other evidence relating to material elements of the claim can be accepted. These accepted facts may then be taken into account in the analysis of the well-founded fear of persecution and real risk of serious harm.

Applications must be examined and decisions taken individually, objectively and impartially, but there is no infallible and fully objective means to assess the credibility of the material facts presented by the Applicant. To minimize subjectivity, credibility indicators should be used. No one indicator is a certain determinant of credibility or non-credibility. DMs must be aware of the assumptions that underlie each indicator, and understand the factors and circumstances that can render them inapplicable and/or unreliable in an individual case (see Factors Affecting Credibility Assessment).

CREDIBILITY INDICATORS	EXPLANATION
SUFFICIENCY OF DETAIL & SPECIFICITY	The DM must assess if the level and nature of the detail provided by the Applicant is reasonable and indicative of a genuine personal experience by someone with the Applicant's individual and contextual circumstances (age, gender, region of origin, education, etc.).
INTERNAL CONSISTENCY	'Internal consistency' relates to consistency within an interview, or within the written and oral statements by the Applicant, or between the statements and documentary or other evidence submitted by the Applicant. It requires a lack of discrepancies, contradictions, and variations in the information provided.
CONSISTENCY OF APPLICANT'S STATEMENTS WITH INFORMATION PROVIDED BY FAMILY MEMBERS OR WITNESSES	Consistency in the facts presented by the Applicant with any statements made by dependants, other family members or witnesses may be considered an indicator of credibility.
CONSISTENCY OF APPLICANT'S STATEMENTS WITH AVAILABLE SPECIFIC AND GENERAL INFORMATION INCLUDING COI	The DM must assess the credibility of the material facts presented by the Applicant against what is generally known about the situation in the country of origin or place of habitual residence; accurate, independent and time-appropriate COI; available specific information; or other expert evidence (medical, anthropological, language analysis, document verification reports).
PLAUSIBILITY	'Plausibility' relates to what seems reasonable, likely or probable. The DM must be careful not to base a credibility finding on subjective assumptions, preconceptions, conjecture and speculation, but rather on independent, objective, reliable and time-appropriate evidence.

A Structured Approach to Credibility Assessment

International protection determinations are conducted with a two-stage approach. Stage one is the gathering of relevant information, the identification of the material facts of the application and the determination of whether and which of the Applicant's statements and other evidence can be accepted. Stage two is the analysis of the well-founded fear of persecution and real risk of serious harm.

STEPS	EXPLANATION	<input checked="" type="checkbox"/>
-------	-------------	-------------------------------------

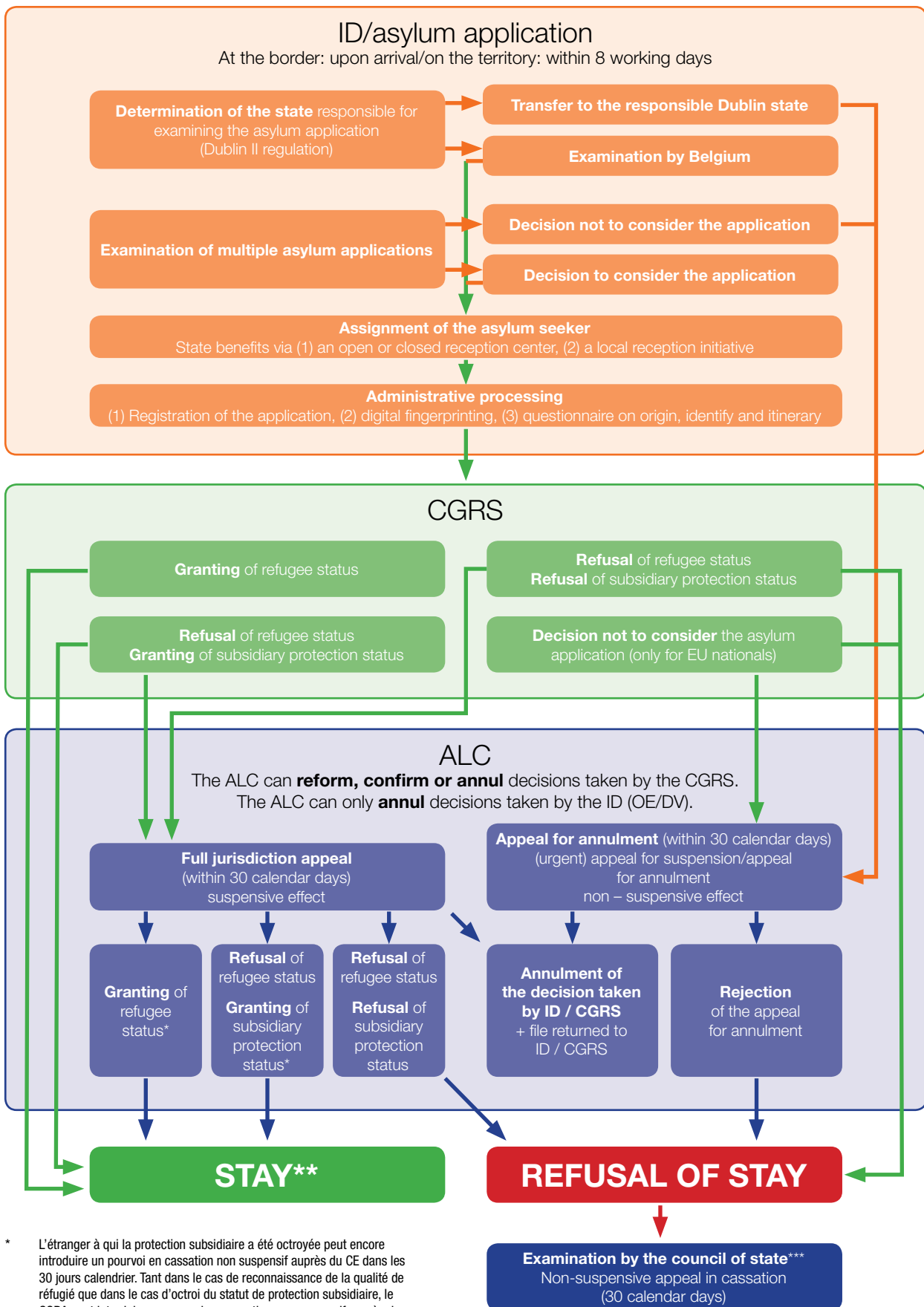
STAGE ONE: Assessing the Credibility of the Applicant's Statements & Other Evidence

Note: The opportunity to comment on potential adverse credibility findings must be provided up until a decision is made.

STEP 1: GATHER ALL THE INFORMATION TO SUBSTANTIATE THE APPLICATION	All statements and other evidence substantiating the claim must be gathered by both the applicant and the DM. Evidence related to the claim may be submitted by the Applicant or gathered by the DM up until the decision is made. Because the Applicant may not know the grounds for international protection, the examination of the facts of the claim should be broad.	<input type="checkbox"/>
↓		
STEP 2: DETERMINE THE MATERIAL FACTS	Once the DM has gathered all the facts in the case, his or her determines which may relate to protection grounds. Decisions on whether to grant status will be made on the basis of an assessment of the material facts of the application. Material facts go to the heart of the application and must be clearly determined.	<input type="checkbox"/>
↓		
STEP 3: ASSESS THE CREDIBILITY OF EACH MATERIAL FACT	In assessing the credibility of each material fact the DM gives due consideration to the credibility indicators in the light of the individual and contextual circumstances of the Applicant and the factors that could affect the DM's interpretation of the information.	<input type="checkbox"/>
↓		
STEP 4: DETERMINE WHICH MATERIAL FACTS ARE		
↓	↓	↓
❶ Accepted Material Facts Accepted facts are consistent, detailed enough, and plausible, whether or not they are supported by documentary or other evidence.	❷ Rejected Material Facts Rejected facts lack sufficient details and are inconsistent and implausible.	❸ Uncertain Material Facts: Uncertain facts which are unsupported by documentary or other evidence, or are facts about which an element of doubt remains.
		↓
STEP 5: CONSIDER WHETHER TO APPLY THE BENEFIT OF THE DOUBT TO FACTS ABOUT WHICH DOUBT REMAINS	Consider applying the benefit of the doubt for each remaining material fact about which an element of doubt remains when the statements are on the whole coherent, plausible and consistent with COI, and any explanations provided by the Applicant for apparent contradictions, inconsistencies, omissions and implausibilities are reasonable.	<input type="checkbox"/>
↓		
WRITTEN DECISION: STATE CLEARLY WHICH FACTS ARE ACCEPTED AND WHICH ARE REJECTED, STATE REASONS WHY	Outline all accepted material facts that will be taken into account in Stage Two – the well-founded fear and serious harm analysis. These will be the material facts accepted at Step 4 as well as those that are accepted at Step 5 after having been given the benefit of the doubt. State the reasons for accepting and rejecting each material fact.	<input type="checkbox"/>

STAGE TWO: The Well-Founded Fear and Serious Harm Analysis

Asylum Procedure in Belgium



* L'étranger à qui la protection subsidiaire a été octroyée peut encore introduire un pourvoi en cassation non suspensif auprès du CE dans les 30 jours calendrier. Tant dans le cas de reconnaissance de la qualité de réfugié que dans le cas d'octroi du statut de protection subsidiaire, le CGRA peut introduire un pourvoi en cassation non suspensif auprès du CE dans les 30 jours calendrier.

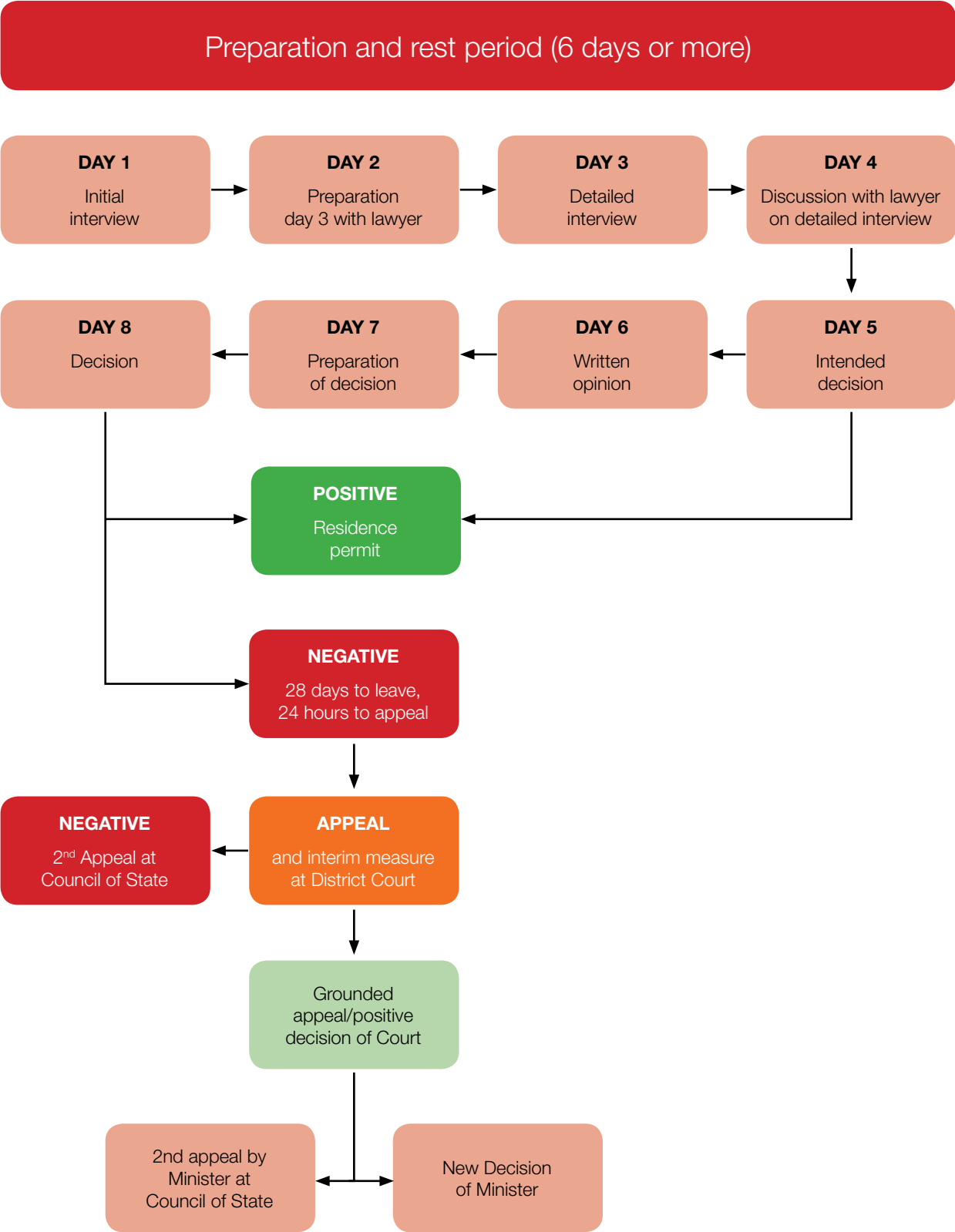
** The granting of refugee status entitles the applicant to a permanent residence permit. The granting of subsidiary protection status entitles the applicant residence permit.

*** A filter procedure is applied: not all appeals are declared admissible.

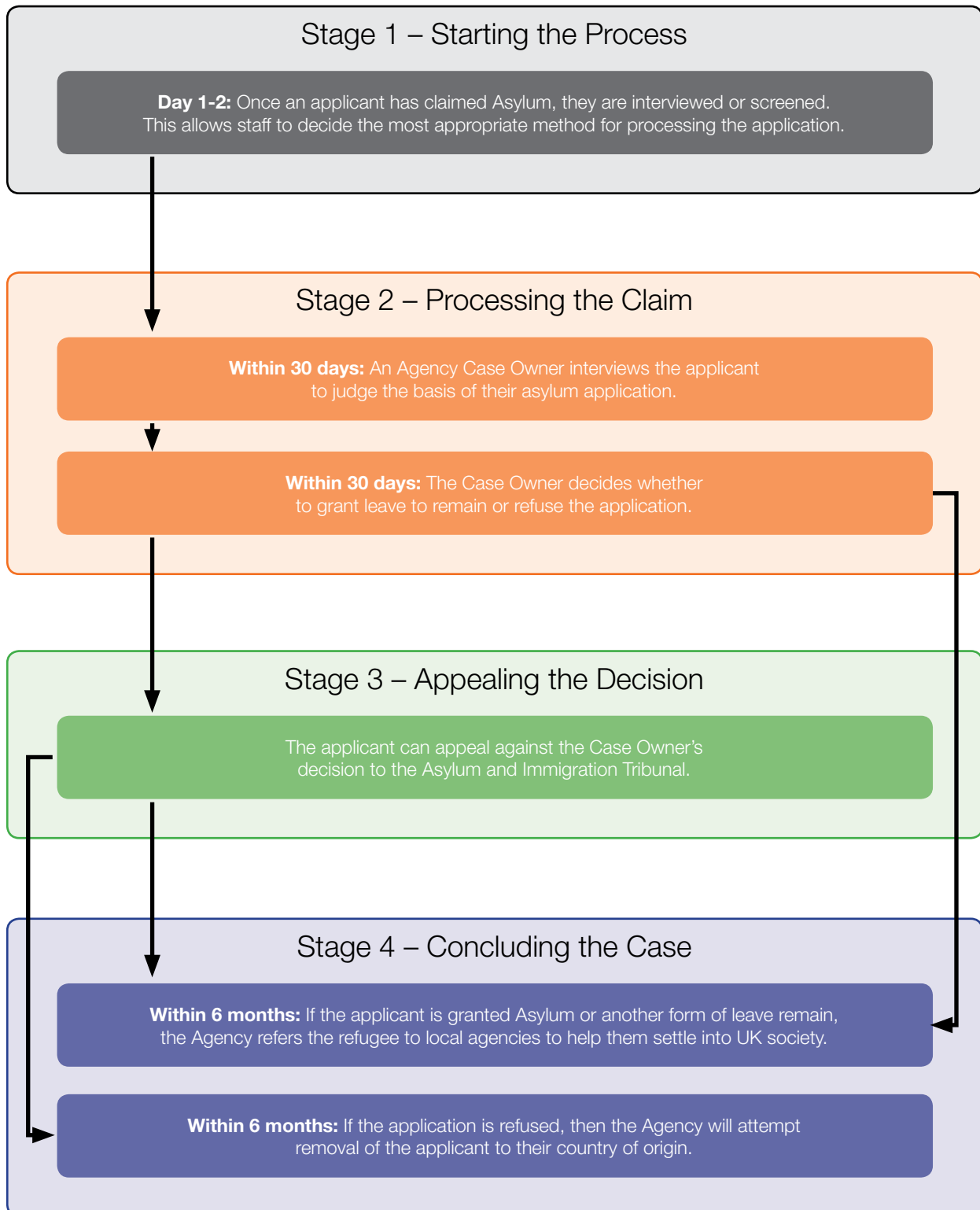
ID = Immigration Department ALC = Aliens Litigation Council

CGRS = Office of the General Commissioner for Refugees and Stateless Persons

Asylum Procedure in the Netherlands



Asylum procedure in the United Kingdom



New Asylum Model - The Home Office, Management of Asylum Applications by the UK Border Agency, The National Audit Office; HC 124 Session 2008-2009, 23 January 2009, www.nao.org.uk

Bibliography

Books, Reports, and Articles

Advisory Committee on Migration Affairs, The Hague

Evaluating Expertise: The Role of Expert Advice in the Asylum Procedure, 6 July 2012, at: <http://goo.gl/OJSFN>

Transparent and Verifiable, A Report on the Use of Country Information in Aliens Policy, 5 September 2006, at: <http://goo.gl/yBwcl>

American Psychiatric Association,

DSM-IV: Diagnostic and Statistical Manual of Mental Disorders, Washington DC: APA, 1994.

DSM-IV-TR: Diagnostic and Statistical Manual of Mental Disorders, Washington DC: APA, 2000.

Amnesty International, Still Human Still Here

A question of credibility: Why so many initial asylum decisions are overturned on appeal in the UK, April 2013, at: <http://goo.gl/sRtTe>

S. J. Anderson, G. Cohen, S. Taylor

'Rewriting the Past: Some Factors Affecting the Variability of Personal memories', *Applied Cognitive Psychology*, vol. 14, no. 5, pp. 435–54, 2000, at: <http://goo.gl/AzZKA>

D. Anker, 'Determining Asylum Claims in the United States: A Case Study on the Implementation of Legal Norms in an Unstructured Adjudicatory Environment', *New York University School of Law Journal of Law and Social Change*, vol. 19, no. 3, pp. 433–527, 1992, at: <http://goo.gl/986pc>

Asylum Aid

Comisión Española de Ayuda al Refugiado (Spain – coordinator), France terre d'asile (France), Consiglio Italiano per i Rifugiati (Italy) and the Hungarian Helsinki Committee (Hungary), Gender Related Asylum Claims in Europe: Comparative Analysis of Law, Policies and Practice Focusing on Women in Nine EU Member States, May 2012, at: <http://goo.gl/85pzx>

Lip-Service or Implementation: The Home Office Gender Guidance and Women's Asylum Claims in the UK, March 2006, at: <http://goo.gl/sJeaQ>

Unsustainable: The Quality of Initial Decision-making in Women's Asylum Claims, January 2011, at: <http://goo.gl/HiokB>

Women's Asylum News: Issue no. 107, December 2011–January 2012, 'I Feel Like as a Woman, I am not Welcome', pp. 1–4, December 2011, at: <http://goo.gl/priQa>

Women's Asylum News: Issue no. 115, January/ February 2013, January 2013, 'Claiming Asylum on the Basis of Your Sexuality: The Views of Lesbians in the UK', pp. 1–4, at: <http://goo.gl/q7lCe>

A. Baddeley, M. W. Eysenck, M. C. Anderson

Memory, Hove: Psychology Press, 2009.

H. Baillot, S. Cowan, V. Munro

Research Briefing: Rape Narratives and Credibility Assessment (of Female Claimants) at the AIT, April 2012, at: <http://goo.gl/1ZsHD>

D. Baldinger

Rigorous Scrutiny versus Marginal Review: Standards on Judicial Scrutiny and Evidence in International and European Asylum Law, Oisterwijk: Wolf Legal Publishers, 2013.

F. C. Bartlett

Remembering: A Study in Experimental and Social Psychology, Cambridge: Cambridge University Press, 1932.

J. Baxter, J. Boon, C. Marley

'Interrogative pressure and responses to minimally leading questions', *Personality and Individual Difference*, vol. 40, no. 1, pp. 87–98, 2006, at: <http://goo.gl/Rtlxu>

B. E. Bell, E. F. Loftus

'Trivial Persuasion in the Courtroom: The power of (a few) Minor Details', *Journal of Personality and Social Psychology*, vol. 56, no. 5, pp. 669–79, 1989, at: <http://goo.gl/fnyeC>

L. Berg, J. Millbank

'Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants', *Journal of Refugee Studies*, vol. 22, no. 2, pp. 195–223, 2009, at: <http://goo.gl/5wYDU>

S. Bidrose, G. S. Goodman

'Testimony and Evidence: A Scientific Case Study of Memory for Child Sexual Abuse', *Applied Cognitive Psychology*, vol. 14, no. 3, pp. 197–213, 2000, at: <http://goo.gl/dE3ON>

T. Bingham

The Business of Judging: Selected Essays and Speeches, Oxford: Oxford University Press, 2000.

'The Judge as Juror: The Judicial Determination of Factual Issues', *Current Legal Problems*, vol. 38, no. 1, pp. 1–27, 1985, at: <http://goo.gl/egjOc>

**S. Black, L. J. Levine,
T. M. Lauthere**

'Autobiographical Remembering and Hypermnnesia: A Comparison of Older and Younger Adults', *Psychology and Ageing*, vol. 14, no. 4, pp. 671–82, 1999, at: <http://goo.gl/b2sCW>

D. Bögner

What prevents refugees and asylum seekers exposed to violence from disclosing trauma, Doctoral Thesis in Clinical Psychology (UCL), London, 2005.

**D. Bögner, C. Brewin,
J. Herlihy**

'Refugees' Experiences of Home Office Interviews: A Qualitative Study on the Disclosure of Sensitive Personal Information', *Journal of Ethnic and Migration Studies*, vol. 36, no. 3, pp. 519–35, 2009, at: <http://goo.gl/ZKO0a>

**D. Bögner, J. Herlihy,
C. Brewin**

'Impact of Sexual Violence on Disclosure during Home Office Interviews', *British Journal of Psychiatry*, vol. 191, no.1, pp. 75–81, 2007, at: <http://goo.gl/Cnj9p>

**C. Brewin, J. D. Gregory,
M. Lipton, N. Burgess**

'Intrusive Images in Psychological Disorders: Characteristics, Neural Mechanisms and Treatment Implications', *Psychological Review*, vol. 117, no. 1, pp. 210–32, 2010, at: <http://goo.gl/sAEeG>

S. Bryant, J. K. Peters

'The Five Habits: Building Cross-Cultural Competence in Lawyers', *Clinical Law Review*, vol. 8, no. 1, 2001.

R. Byrne

'Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals', *International Journal of Refugee Law*, vol. 19, no. 4, 2007, at: <http://goo.gl/zpDDh>

S. Chaiken, Y. Trope

Dual-Process Theories in Social Psychology, New York: Guilford Press, 1999.

**S. A. Christianson, E. F. Loftus,
H. Hoffman, G. R. Loftus**

'Eye fixations and memory for emotional events', *Journal of Experimental Psychology, Learning, Memory and Cognition*, vol. 17, no. 4, pp. 693–701, 1991, at: <http://goo.gl/lp11H>

G. Coffey

'The Credibility of Credibility Evidence at the Refugee Review Tribunal', *International Journal of Refugee Law*, vol. 15, no. 3, pp. 377–417, 2003, at: <http://goo.gl/gDTBj>

J. Cohen

'Errors of Recall and Credibility of Testimony: Can Omissions and Discrepancies in Successive Statements Reasonably Be Said to Undermine Credibility of Testimony?', *Medico-Legal Journal*, vol. 69, no. 1, pp. 25–34, 2001, at: <http://goo.gl/mcrbf>

J. Cohen

'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers', *International Journal of Refugee Law*, vol. 13, no. 3, pp. 293–309, 2001, at: <http://goo.gl/uszeB>

Comité Belge d'Aide aux Réfugiés

La crainte est-elle fondée? Utilisation et application de l'information sur les pays d'origine dans la procédure d'asile, June 2011, at: <http://goo.gl/7gCjL>

S. Conlan, S. Waters, K. Berg

Difficult to Believe: The Assessment of Asylum Claims in Ireland, Irish Refugee Council, 2012.

Conseil du Contentieux des Etrangers

Rapport Annuel 2009–2010, at: <http://goo.gl/V8WOJ>

M. Conway, E. Holmes

Memory and the Law: Recommendations from the Scientific Study of Human Memory, Leicester: The British Psychological Society Press, 2008.

H. Crawley

Chance or Choice? Understanding Why Asylum Seekers Come to the UK, Refugee Council report, January 2010, at: <http://goo.gl/ld0tk>

H. Crawley

Gender-Related Persecution and Women's Claims to Asylum, The Fahamu Refugee Programme, 2012, at <http://goo.gl/33VKA>

K. Cushner, R. W. Brislin (eds.)

Intercultural Interactions: A Practical Guide, Thousand Oaks: SAGE, 1995.

S. Dahl, A. Mutapcic, B. Schei

'Traumatic Events and Predictive Factors for Posttraumatic Symptoms in Displaced Bosnian Women in a War Zone', *Journal of Traumatic Stress*, vol. 11, no. 1, pp. 137–45, 1998, at: <http://goo.gl/mCbWt>

S. Danziger, J. Levav, L. Avnaim-Pesso

Extraneous Factors in Judicial Decisions, Proceedings of the National Academy of Sciences of the United States of America, 2011.

K. A. Deffenbacher, S. D. Penrod, B. H. Bornstein, E. K. McGorty

'A Meta-Analytic Review of the Effects of High Stress on Eyewitness Memory', *Law and Human Behaviour*, vol. 28, no. 6, pp. 687–706, 2004, at: <http://goo.gl/SR0nr>

B. M. DePaulo, J. L. Lindsay, B. E. Malone, L. Muhlenbruck, K. Charlton, H. Cooper

'Cues to Deception', *Psychological Bulletin*, vol. 129, no. 1, pp. 74–118, 2003, at: <http://goo.gl/v50Na>

J. Dutton

What to Believe? A Critique of the Assessment of Plausibility in Asylum Applications, Electronic Immigration Network, October 2003.

M. Eastmond

'Stories as Lived Experience: Narratives in Forced Migration Research', *Journal of Refugee Studies*, vol. 20, no. 2, pp. 248–64, 2007, at: <http://goo.gl/HgDjv>

C. Engel

'Preponderance of the Evidence versus *Intime Conviction*: A Behavioural Perspective on a Conflict between American and Continental European Law', preprint of the Max Planck Institute for Research on Collective Goods, August 2008, at: <http://goo.gl/yPAQh>

J. Ensor, A. Shah, M. Grillo

'Simple Myths and Complex Realities – Seeking Truth in the Face of Section 8', *Journal of Immigration Asylum and Nationality Law*, vol. 20, no. 2, pp. 95–111, 2006.

H. Evans Cameron

'Refugee Status Determinations and the Limits of Memory', *International Journal of Refugee Law*, vol. 22, no. 4, pp. 469–511, 2010, at: <http://goo.gl/gdK9t>

J. P. Eyster

‘Searching for the Key in the Wrong Place: Why “Common Sense” Credibility Rules Consistently Harm Refugees’, *Boston University International Law Journal*, vol. 30, no. 1, pp. 1–54, 2012, at: <http://goo.gl/n6oHu>

M. Farrell

Recent Developments in Human Rights and Judicial Review – The Role of the European Convention on Human Rights Act, 2003, Free Legal Advice Centres, 16 May 2009.

M. Fazel, J. Wheeler, J. Danesh

‘Prevalence of Serious Mental Disorder in 7000 Refugees Resettled in Western Countries: A Systematic Review’, *Lancet*, vol. 365, no. 9467, pp. 1309–14, 2005, at: <http://goo.gl/h5kMY>

G. Gisli

The Psychology of Interrogations, Confessions and Testimony, Chichester: J Wiley and Son, 1992.

A. Glass

‘Subjectivity and refugee fact-finding’, in J McAdam (ed.), *Forced Migration, Human Rights and Security*, Oxford: Hart Publishing, 2008, at: <http://goo.gl/cYrpq>

Global Deception Research Team

‘A World of Lies’, *Journal of Cross-Cultural Psychology*, vol. 37, no. 1, January 2006, pp. 60–74, at: <http://goo.gl/tfZNI>

C. Gorst-Unsworth, E. Goldenberg

‘Psychological Sequelae of Torture and Organised Violence Suffered by Refugees from Iraq. Trauma-Related Factors Compared with Social Factors in Exile’, *The British Journal of Psychiatry*, vol. 172, no. 1, pp. 90–4, 1998, at: <http://goo.gl/gHznH>

P. A. Granhag,

L. A. Strömwall, M. Hartwig

‘Granting Asylum or Not? Migration Board Personnel’s Beliefs about Deception’, *Journal of Ethnic and Migration Studies*, vol. 31, no. 1, pp. 29–50, 2005, at: <http://goo.gl/RlesK>

P. A. Granhag,

L. A. Strömwall, A. C. Jonsson

‘Partners in Crime: How Liars in Collusion Betray Themselves’, *Journal of Applied Social Psychology*, vol. 33, no. 4, pp. 848–68, 2003, at: <http://goo.gl/9bfBU>

J. Herlihy, K. Gleeson, S. Turner

‘What Assumptions about Human Behaviour Underlie Asylum Judgments?’, *International Journal of Refugee Law*, vol. 22, no. 3, pp. 351–66, 2010, at: <http://goo.gl/8ZJrh>

J. Herlihy, L. Jobson, S. Turner

‘Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum’, *Applied Cognitive Psychology*, vol. 26, no. 5, pp. 661–76, 2012, at: <http://goo.gl/DMnGG>

J. Herlihy, P. Scragg, S. Turner

‘Discrepancies in Autobiographical Memories: Implications for the Assessment of Asylum Seekers: Repeated Interviews Study’, *British Medical Journal*, vol. 324, 2002, at: <http://goo.gl/qOjTZ>

‘Asylum Claims and Memory of Trauma: Sharing our Knowledge’, *The British Journal of Psychiatry*, vol. 191, no. 1, pp. 3–4, 2007, at: <http://goo.gl/6B9nw>

‘Should Discrepant Accounts Given by Asylum Seekers be Taken as Proof of Deceit?’, *Torture*, vol. 16, no. 2, pp. 81–92, 2006, at: <http://goo.gl/bZISA>

J. Herlihy, S. Turner

‘The Psychology of Seeking Protection’, *International Journal of Refugee Law*, vol. 21, no. 2, pp. 171–92, 2009, at: <http://goo.gl/zuO7F>

M. Hollifield, T. Warner,

N. Lian, B. Krakow,

J. H. Jenkins, J. Kesler,

J. Stevenson, J. Westermeyer

‘Measuring Trauma and Health Status in Refugees: A Critical Review’, *Journal of the American Medical Association*, vol. 288, no. 5, pp. 611–21, 2002, at: <http://goo.gl/1VmX4>

Immigration Equality

Guidance for Adjudication of Lesbian, Gay, Bisexual, Transgendered and HIV Asylum Claims Materials, 2004, at: <http://goo.gl/Gdfs2>

International Commission of Jurists (ICJ)

Yogyakarta Principles – Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, March 2007, at: <http://goo.gl/FNpQY>

Irish Council for Civil Liberties (ICCL)

Irish Times, *Women and the Refugee Experience. Towards a Statement of Best Practice*, June 2000, at: <http://goo.gl/JcwRD>

S. Jansen, T. Spikerboer

Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe, COC Netherlands, Vrije Universiteit Amsterdam, September 2011, at: <http://goo.gl/O7uDB>

M. Kagan

‘Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determinations’, *Georgetown Law Journal*, vol. 17, no. 3, pp. 367–416, 2003, at: <http://goo.gl/OV5hZ>

W. Kälin

‘Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing’, *International Migration Review*, Special Issue: Refugees: Issues and Directions, vol. 20, no. 2, pp. 230–41, 1986, at: <http://goo.gl/rgU4R>

G. Kaufmann, G. C. B. Drevland, E. Wessel, G. Overskeid, S. Magnussen

‘The Importance of Being Earnest: Displayed Emotions and Witness Credibility’, *Applied Cognitive Psychology*, vol. 17, no. 1, pp. 21–34, 2003, at: <http://goo.gl/DO7OF>

D. Kahneman

Thinking Fast and Slow, London: Allen Lane, 2011.

D. Kahneman, A. Tversky

‘Judgment under Uncertainty: Heuristics and Biases’, *Science*, New Series, vol. 185, no. 4157, pp. 1124–31, 1974, at: <http://goo.gl/3YLSV>

S. Khosravi

“Illegal” Traveller: An Auto-Ethnography of Borders, Basingstoke: Palgrave Macmillan, 2010.

R. P. Kern, T. M. Libkuman, H. Otani

‘Memory for Negatively Arousing and Neutral Pictorial Stimuli Using a Repeated Testing Paradigm’, *Cognition & Emotion*, vol. 16, no. 6, pp. 749–67, 2002, at: <http://goo.gl/yv9oR>

Legal Action for Women

Black Women’s Rape Action Project, Women Against Rape, *A ‘Bleak House’ for Our Times – An Investigation into Women’s Rights Violations at Yar’s Wood Removal Centre*, London: Crossroads Women’s Centre, 2005.

P. Levrincova

Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination, dissertation, Charles University, Prague, 2010.

J. A. List

‘Age and Schematic Differences in Reliability of Eyewitness Testimony’, *Development Psychology*, vol. 22, no. 1, pp. 50–7, 1986, at: <http://goo.gl/N36O8>

E. Loftus

‘Planting Misinformation in the Human Mind: A 30-year Investigation of the Malleability of Memory’, *Learning & Memory*, vol. 12, no. 4, pp. 361–6, 2005, at: <http://goo.gl/ZP7zw>

E. F. Loftus, M. R. Banaji, J. W. Schooler, R. A. Foster

‘Who Remembers What?: Gender Differences in Memory’, *Michigan Quarterly Review*, vol. 26, no. 1, pp. 64–85, 1987, at: <http://goo.gl/2Zscl>

J. S. McIntyre, F. I. M. Craik

‘Age Differences in Memory for Item and Source Information’, *Canadian Journal of Psychology*, vol. 41, no. 2, pp. 175–92, 1987, at: <http://goo.gl/S3vch>

A. Macklin

Truth or Consequences: Credibility Determinations in the Refugee Context, International Association of Refugee Law Judges: Ottawa, Canada, 14–16 October 1998, at: <http://goo.gl/o1aRl>

M. McPherson, L. Horowitz, D. Lusher, S. Di Giglio, L. E. Greenacre, Y. B. Saalman

‘Marginal Women, Marginal Rights: Impediments to Gender-Based Persecution Claims by Asylum-seeking Women in Australia’, *Journal of Refugee Studies*, vol. 24, no. 2, pp. 323–47, 2011, at: <http://goo.gl/tQJS7>

J. Millbank

‘From Discretion to Disbelief: Recent Trends in Refugee Determinations on the Basis of Sexual Orientation in Australia and the United Kingdom’, *The International Journal of Human Rights*, vol. 13, no. 2/3, pp. 391–414, 2009, at: <http://goo.gl/sCY9Y>

‘“The Ring of Truth”: A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations’, *International Journal of Refugee Law*, vol. 21, no. 1, pp. 1–33, 2009, at: <http://goo.gl/qVwX8>

J. Milquet, M. Wathelet

‘Arrêté royal du 18 août 2010 modifiant l’arrêté royal du 11 juillet 2003 fixant la procédure devant le Commissariat général aux réfugiés et aux apatrides ainsi que son fonctionnement: Rapport au Roi’, *Moniteur Belge* (The Belgian official journal), no. 268 (3 September), pp. 56342–50, 2010, at: <http://goo.gl/XfRbz> (in French and Dutch).

C. A. Morgan-III, G. Hazlett, A. Doran, S. Garrett, G. Hoyt, P. Thomas, M. Baranoskif, S. M. Southwick

‘Accuracy of Eyewitness Memory for Persons Encountered during Exposure to Highly Intense Stress’, *International Journal of Law and Psychiatry*, vol. 27, no. 3, pp. 265–79, 2004, at: <http://goo.gl/JcJxi>

R. S. Nickerson

‘Confirmation Bias: A Ubiquitous Phenomenon in Many Guises’, *Review of General Psychology*, vol. 2, no. 2, pp. 175–220, 1998, at: <http://goo.gl/hKxPO>

G. Noll

Evidentiary assessment and the EU qualification directive, New Issues in Refugee Research, Working Paper no. 117, UNHCR, June 2005.

G. Noll, (ed.)

Proof, Evidentiary Assessment and Credibility in Asylum Procedures, Leiden: Martinus Nijhoff, 2005.

S. Norman

‘Assessing the Credibility of Refugee Applicants: a Judicial Perspective’, *International Journal of Refugee Law*, vol. 19, no. 2, pp. 273–92, 2007, at: <http://goo.gl/S39E4>

F. Ochberg, (ed.)

Post Traumatic Therapy and Victims of Violence, 1998, New York: Brunner/Mazel.

M. J. Ouimet, M. Munoz, L. Narsiah, V. Rambure, J. A. Correa

‘Pathologies courantes chez les demandeurs d’asile à Montréal : prévalence et facteurs de risque associés’, *Canadian Journal of Public Health*, vol. 99, no. 6, pp. 499–504, 2008, at: <http://goo.gl/ICygl>

D. G. Payne

‘Hypermnnesia and Reminiscence in Recall: A Historical and Empirical Review’, *Psychological Bulletin*, vol. 101, no. 1, pp. 5–27, 1987, at: <http://goo.gl/blKdB>

J. Ramji-Nogales, A. Schoenholtz, P. G. Schrag

Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform, New York: New York University Press, 2009.

Refugee Law Initiative (RLI)

‘The Report of Proceedings of the Roundtable on Due Process Considerations relating to the Use of Country of Origin Information in Refugee Status Determination Procedures’, roundtable jointly hosted on by the Refugee Law Initiative (RLI), the International Association of Refugee Law Judges (IARLJ) and UNHCR, University of London, 22 May 2012, at: <http://goo.gl/sk7sa>

M. A. Reinhard, S. L. Sporer

‘Verbal and Nonverbal Behaviour as a Basis for Credibility Attribution: The Impact of Task Involvement and Cognitive Capacity’, *Journal of Experimental Social Psychology*, vol. 44, no. 3, pp. 477–88, 2008, at: <http://goo.gl/tk2tk>

S. Rempell

‘Gauging Credibility in Immigration Proceedings: Immaterial Inconsistencies, Demeanor, and the Rule of Reason’, *Georgetown Immigration Law Journal*, vol. 25, no. 2, 2011, at: <http://goo.gl/rcsWo>

H. Rogers, S. Fox, J. Herlihy

The Importance of Looking Credible: The Impact of the Behavioural Sequelae of Post-Traumatic Stress Disorder on the Credibility of Asylum-Seekers, (under review).

C. Rousseau, F. Crépeau, P. Foxen, F. Houle

‘The Complexity of Determining Refugeehood: A multidisciplinary Analysis of the Decision-Making Process of the Canadian Immigration and Refugee Board’, *Journal of Refugee Studies*, vol. 15, no. 1, pp. 43–70, 2002, at: <http://goo.gl/xdlCg>

D. C. Rubin (ed.)

Remembering our Past: Studies in Autobiographical Memory, Cambridge: Cambridge University Press, 1995.

J. W. Schooler, D. Gerhard and E. F. Loftus

‘Qualities of the Unreal’, *Journal of Experimental Psychology, Learning, Memory and Cognition*, vol. 12, no. 2, pp. 171–81, 1986, at: <http://goo.gl/rbQ98>

T. Spijkerboer

Gender and Refugee Status, Aldershot: Ashgate, 2000.

J. Sweeney

‘Credibility, Proof and Refugee Law’, *International Journal of Refugee Law*, vol. 21, no. 4, pp. 700–76, 2009, at: <http://goo.gl/EPCAz>

M. Symes, P. Jorro

Asylum Law and Practice, Haywards Heath: Bloomsbury Professional, 2010 (second edition).

R. Thomas

Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication, Oxford: Hart Publishing, 2011.

‘Assessing the Credibility of Asylum Claims: EU and UK Approaches Examined’, *European Journal of Migration and Law*, vol. 8, pp. 79–96, 2006, at: <http://goo.gl/DpS8J>

M. Thornton (ed.)

Public and Private Feminist Legal Debates, Melbourne: Oxford University Press, 1991.

B. Tversky, E. J. Marsh

‘Biased Retellings of Events Yield Biased Memories’, *Cognitive Psychology*, vol. 40, no. 1, pp. 1–38, 2000, at: <http://goo.gl/blpiR>

D. E. Valentine, J. C. Knudsen (eds.)

Mistrusting Refugees, Berkeley: University of California Press, 1995.

T. Valentine, J. Mesout

‘Eyewitness identification under stress in the London dungeon’, *Applied Cognitive Psychology*, vol. 23, no. 2, pp. 151–61, 2009, at: <http://goo.gl/FJEpW>

**W. J. van Bennekom,
J. H. van der Winden**

Asielrecht, Den Haag, Boom Juridische Uitgevers, 2011.

J. M. G. Williams

‘Capture and Rumination, Functional Avoidance, and Executive Control (CaRFAX): Three Processes that Underlie Overgeneral Memory’, *Cognition & Emotion*, vol. 20, no. 3–4, pp. 548–68, 2006, at: <http://goo.gl/EeXIT>

**J. M. G. Williams,
T. Barnhofer, C. Crane,
D. Hermans, F. Raes,
E. Watkins, T. Dalgliesh**

‘Autobiographical Memory Specificity and Emotional Disorder’, *Psychological Bulletin*, vol. 133, no. 1, pp. 122–48, 2007, at: <http://goo.gl/gFQcB>

J. C. Yuille, J. L. Cutshall

‘A case study of eyewitness memory of a crime’, *Journal of Applied Psychology*, vol. 71, no. 2, pp. 291–301, 1986, at: <http://goo.gl/iwLS1>

**L. Wilson-Shaw, N. Pistrang,
J. Herlihy**

‘Non-Clinicians’ Judgments about Asylum Seekers’ Mental Health: How do Legal Representatives of Asylum Seekers Decide When to Request Medico-Legal Reports?’, *European Journal of Psychotraumatology*, vol. 3, no. 18406, 2012, at: <http://goo.gl/ZubpO>

European Union

Council of the European Union

Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted, 19 April 2004, 2004/83/EC, at: <http://goo.gl/Kx9cH>

Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, 2 January 2006, OJ L 326, 13 December 2005, at: <http://goo.gl/T8s25>

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for

Subsidiary Protection, and for the Content of the Protection Granted (Recast), 20 December 2011, OJ L 337, p 9–26, at: <http://goo.gl/oHJ4B>

The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, OJ (2010/C 115/01), 2010, at: <http://goo.gl/hPm8c>

European Commission

Amended proposal for a Directive of the European Parliament and the Council on Common Procedures for Granting and Withdrawing International Protection Status (Recast), 1 June 2011, COM(2011) 319 final, at: <http://goo.gl/FgziG>

European Union Agency for Fundamental Rights (FRA)

The duty to inform applicants about asylum procedures: the asylum seeker perspective, Thematic Report, September 2010, at: <http://goo.gl/5suwZ>

European Asylum Curriculum

Module 7 – Evidence Assessment, April 2012.

Assessing the Claim’s Credibility, 16 March 2011.

International Criminal Tribunal for Rwanda

Rules of Procedure and Evidence,
at: <http://goo.gl/GG6N8>

UN Committee against Torture (CAT)

General Comment no. 1: Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications), 21 November 1997, A/53/44, annex IX, at: <http://goo.gl/lfkdv>

UN General Assembly

Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V),
at: <http://goo.gl/WH1FW>

Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, at: <http://goo.gl/CuUaV>

UNHCR

Age, Gender and Diversity Policy, Working with People and Communities for Equality and Protection, June 2011,
at: <http://goo.gl/HBj7s>

Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted (OJ L 304/12 of 30.9.2004), 28 January 2005, at: <http://goo.gl/5BEAC>

Building in Quality: A Manual on Building a High Quality Asylum System, September 2011, at: <http://goo.gl/L4GJH>

Comments on the European Commission's Proposal for a Directive of the European Parliament and of the Council on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Beneficiaries of International Protection and the Content of the Protection Granted (COM (2009)551, 21 October 2009), 29 July 2010, at: <http://goo.gl/fGGvB>

Comments on the European Commission's Proposal for a Directive of the European Parliament and of the Council on Minimum Standards on Procedures in Member States for Granting and Withdrawing International Protection (COM(2009)554, 21 October 2009), August 2010, at: <http://goo.gl/ojbbk>

Ensuring Gender Sensitivity in the Context of Refugee Status Determination and Resettlement. Module 2: Ensuring Gender Sensitivity in Refugee Status Determination – Procedural Issues, October 2005, at: <http://goo.gl/Ob2qM>

Ensuring Gender Sensitivity in the Context of Refugee Status Determination and Resettlement. Module 3: Ensuring Gender Sensitivity in the Context of Resettlement, October 2005, at: <http://goo.gl/W0bxX>

Evidentiary Assessment and the EU Qualification Directive, 1 June 2005, at: <http://goo.gl/ABnMy>

General Conclusion on International Protection, no. 87 (L), 8 October 1999, at: <http://goo.gl/F8KzY>

Global Consultations on International Protection/ Third Track: Asylum Processes (Fair and Efficient Asylum Procedures), 31 May 2001, EC/ GC/01/12, at: <http://goo.gl/A96qd>

Guidelines on International Protection no. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 7 May 2002, HCR/GIP/02/01, at: <http://goo.gl/gqds7>

Guidelines on International Protection no. 7: The application of Article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, 7 April 2006, HCR/GIP/06/07, at: <http://goo.gl/WnUiQ>

UNHCR, *Guidelines on International Protection no. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, at: <http://goo.gl/qp3xh>

UNHCR

Guidelines on International Protection no. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012, HCR/GIP/12/01, at: <http://goo.gl/KWnLF>

Guidelines on Statelessness no. 2: Procedures for Determining whether an Individual is a Stateless Person, 5 April 2012, at: <http://goo.gl/Kh8rf>

Guidelines on the Protection of Refugee Women, July 1991, at: <http://goo.gl/4hPdr>

Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, January 1992, HCR/1P/4/Eng/Rev.2, at: <http://goo.gl/sFMRG>

Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/1P/4/ENG/REV. 3, at: <http://goo.gl/cFrcd>

Handbook for the Protection of Women and Girls, January 2008, at: <http://goo.gl/kZ6Rn>

Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice – Key Findings and Recommendations, March 2010, at: <http://goo.gl/AeGTA>

Commentaires du Haut Commissariat des Nations Unies pour les réfugiés relatifs aux : – projet de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour,

l'établissement et l'éloignement des étrangers et la loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers (ci-après « projet de loi monocaméral »), et – projet de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, et modifiant la loi du 27 décembre 2006 portant des dispositions diverses (ci-après « projet de loi bicaméral »), 29 January 2013, at: <http://goo.gl/78JPN>

Note du Haut Commissariat des Nations Unies pour les réfugiés relative à l'évaluation des demandes d'asile introduites par des femmes, 14 December 2012, at: <http://goo.gl/BSjC7>

Note on Burden and Standard of Proof in Refugee Claims, 16 December 1998, at: <http://goo.gl/TNeXn>

Procedural Standards for Refugee Status Determination under UNHCR's Mandate, September 2005, at: <http://goo.gl/upcnV>

Quality in the Swedish Asylum Procedure: A Study of the Swedish Migration Board's Examination of and Decisions on Applications for International Protection, September 2011, at: <http://goo.gl/V6F7M>

Quality Initiative Project, 2010, at: <http://goo.gl/75MNE>

Quality Integration Project, 2010, at: <http://goo.gl/wqiVC>

Représentation régionale du HCR pour l'Europe de l'Ouest, Propositions en matière de protection des réfugiés, des bénéficiaires de la protection subsidiaire et des apatrides en Belgique, 12 October 2011, at: <http://goo.gl/qoX7E> (in french).

Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence, July 2011, at: <http://goo.gl/Mo84z>

Self-Study Module 2: Refugee Status Determination. Identifying Who is a Refugee, 1 September 2005, at: <http://goo.gl/gurpv>

Sexual and Gender-Based Violence Against Refugees, Returnees and Internally Displaced Persons. Guidelines for Prevention and Response, May 2003, at: <http://goo.gl/T5A0b>

Summary Conclusions: Asylum-Seekers and Refugees Seeking Protection on Account of their Sexual Orientation and Gender Identity, November 2010, at: <http://goo.gl/3p5jv>

Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers, (Lisbon Expert Roundtable, 9–10 December 2002), February 2003, at: <http://goo.gl/FLfKc>

The International Protection of Refugees: Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees, April 2001, at: <http://goo.gl/QCHz2>

Thematic Compilation of Executive Committee Conclusions, August 2008, Third edition, at: <http://goo.gl/2gHsU>

Vulnerable or invisible? Asylum seekers with disabilities in Europe, 10 November 2010, at: <http://goo.gl/kRQ1m>

Women and Girls Fleeing Conflict: Gender and the Interpretation and Application of the 1951 Refugee Convention, September 2012, PPLA/2012/06, at: <http://goo.gl/1bOeM>

UNHCR Executive Committee

Conclusion no. 8 (XXVIII), Determination of Refugee Status, 12 October 1977, at: <http://goo.gl/Kn3m9>

Conclusion No. 22 (XXXII): Protection of Asylum-Seekers in Situations of Large-Scale Influx, 21 October 1981, at: <http://goo.gl/QdH8s>

Conclusion no. 30 (XXXIV), The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylums, 20 October 1983, at: <http://goo.gl/1uLVn>

Conclusion no. 64, Refugee Women and International Protection, 5 October 1990, at: <http://goo.gl/KILIt>

Conclusion no. 107, Children at Risk, 5 October 2007, at: <http://goo.gl/Hywgs>

National Guidance

Australia

Australian Government

Guidance on the Assessment of Credibility, Migration Review Tribunal, Refugee Review Tribunal, August 2008.

Guidance on the Assessment of Credibility, Migration Review Tribunal, Refugee Review Tribunal, March 2012, at: <http://goo.gl/XD3pn>

Belgium

Office of the Commissioner General for Refugees and Stateless persons (CGRS)

2011 Annual Report, at: <http://goo.gl/YIzmm>

Draft guidance on interview strategies and risk assessment (Afghanistan), February 2011.

Draft guidance on asylum claims where sexual orientation of gender identity is given as a reason for application.

Federal Agency for the Reception of Asylum Seekers (Fedasil), *Asylum in Belgium: Information Brochure for Asylum Seekers Regarding the Asylum Procedure and*

Reception Provided in Belgium, 2010, at: <http://goo.gl/XsD62>

Canada

Canadian Council for Refugees

The Experience of Refugee Claimants at Refugee Hearings at the Immigration and Refugee Board, January 2012, at: <http://goo.gl/Ux1ZE>

Immigration and Refugee Board of Canada, Legal Services

Assessment of Credibility in Claims for Refugee Protection, 31 January 2004, at: <http://goo.gl/Pm3ns>

The Netherlands

Aliens Act 2000

(Complete revision of the Aliens Act) [Netherlands], 1998–1999; 26 732, 1 April 2001, at: <http://goo.gl/dOSr4>

Aliens Decree 2000

(Vreemdelingenbesluit 2000), at: <http://goo.gl/Wkw2j> (in Dutch).

Aliens Regulation 2000

(Voorschrift Vreemdelingen 2000), at: <http://goo.gl/FRgVX> (in Dutch).

Decree of the Secretary of State of Safety and Justice of 19 December 2012

WBV 2012/25, in order to change the Aliens Act Implementation Guidelines 2000, published in the Dutch Government Gazette of 24 December 2012, nr. 26099, at: <http://goo.gl/x8Bqz>

Decree of the Secretary of State of Safety and Justice of 26 March 2013

WBV 2013/4, in order to change the Aliens Act Implementation Guidelines 2000, published in the Dutch Government Gazette of 28 March 2012, nr. 6442, at: <http://goo.gl/Rqal3>

Immigration and Naturalisation Service (IND)

Working Instruction 2010/10. (IND-werkinstructie nr. 2010/10 (AUB): Wijze van opstarten van onderzoek en/of het stellen van vragen bij onderzoek tijdens de asielpprocedure), at: <http://goo.gl/7wZgG> (in Dutch).

Working Instruction 2010/14. (IND-werkinstructie nr. 2010/14 (AUB): Beslissystematiek Beoordeling geloofwaardigheid en zwaarwegendheid), at: <http://goo.gl/mrQA7> (in Dutch).

Aliens Act Implementation Guidelines 2000 (Vc 2000) – Ministry of Justice, Netherlands.

Aliens Act Implementation Guidelines (2010) Vc 2000, as amended by Decree of the Minister of Justice of 24 June, WBV 2010/10, at: <http://goo.gl/UzoDZ> (in Dutch).

Sweden

Swedish Migration Board (Migrationsverket)

Guidelines for Investigation and Evaluation of Asylum Cases in Which Persecution Based on Given Sexual Orientations is Cited as a Ground, 28 January 2002, at: <http://goo.gl/iu5Yj>

Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection, 28 March 2001, at: <http://goo.gl/hw70T>

United Kingdom

UKBA, Asylum Instructions

Conducting the Asylum Interview, March 2012, at: <http://goo.gl/qh4y6>

Considering the Protection (Asylum) Claim and Assessing Credibility, July 2010, at: <http://goo.gl/6eZPF> (links to 2012 updated version).

Considering Asylum Claims and Assessing Credibility, February 2012, at: <http://goo.gl/5CosW>

Gender Identity issues in the Asylum Claim, v. 1.0, 08 June 2011, at: <http://goo.gl/FMDUi>

Guidance for the Competent Authorities for Cases of Potential Trafficking, 13 October 2010, at: <http://goo.gl/NXqpt>

Guidelines: Gender Issues in the Asylum Claim, September 2010, at: <http://goo.gl/LOLSE>

Language Analysis, February 2013, at: <http://goo.gl/B5deq>

Medical evidence (Non Medical Foundation Cases), November 2008, at: <http://goo.gl/2PkPm>

Sexual Orientation Issues in the Asylum Claim, June 2011, at: <http://goo.gl/XkVEf>

UKBA

Guidance on Further Submissions: What the UK Border Agency would Like to see from your Client's Further Submission, at: <http://goo.gl/9Yuls>

Guidelines on Sexual Orientation Issues in the Asylum Claim, October 2010, at: <http://goo.gl/mlW7Q>

Handling Claims Involving Allegations of Torture or Serious Harm: Interim Casework Instruction (Non Detained

Pilot), 18 July 2011, at: <http://goo.gl/kKnDa>

Interviewing Protocol: Protocol Governing the Conduct of Substantive Interviews and the Role of Interviewing Officers, Representatives and their Interpreters, 5 December 2008, at: <http://goo.gl/x2Ogx>

The Independent Chief Inspector of UKBA: The Use of Country of Origin Information in Deciding Asylum Applications – A Thematic Inspection, October 2010–May 2011, at: <http://goo.gl/BCZLo>

United Kingdom: Home Office

Country of Origin Information Report – Iran, 31 August 2010, at: <http://goo.gl/ilgpo>

Country of Origin Information Report – Iran, 28 June 2011, at: <http://goo.gl/KGKju>

United Kingdom, Asylum and Immigration Tribunal/ Immigration Appellate Authority

Immigration Appellate Authority (UK): Asylum Gender Guidelines, 1 November 2000, at: <http://goo.gl/J3Clz>

United States

Refugee, Asylum and International Operations Directorate (RAIO)

US Citizenship and Immigration Services, *Asylum Officer Basic Training Modules*, (various documents), at: <http://goo.gl/vJZ8E>

List of Case Law

National Case Law

International Criminal Tribunal for the former Yugoslavia

Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, (Trial Judgment), IT-96-23-T and IT-96-23/1-T, 22 February 2001, at: <http://goo.gl/Guiux>

Prosecutor v. Kupreškić et al. (Appeal Judgment), IT-95-16-A, 23 October 2001, at: <http://goo.gl/9fjZW>

Prosecutor v. Mucić et al., IT-96-21-T, Decision on Zdravko Mucić's Motion for the Exclusion of Evidence, 2 September 1997, at: <http://goo.gl/nnSyP>

Prosecutor v. Kupreškić et al. (Trial Judgment), IT-95-16-T, 14 January 2000, at: <http://goo.gl/KLqj3>

Prosecutor v. Anto Furundzija (Trial Judgment), IT-95-17/1-T, 10 December 1998, at: <http://goo.gl/Z8qWj>

International Criminal Tribunal for Rwanda

Prosecutor v. Juvénal Kajelijeli (Judgment and Sentence), ICTR-98-44A-T, 1 December 2003, at: <http://goo.gl/mLUES>

Prosecutor v. Alfred Musema (Appeal Judgment), ICTR-96-13-A, 16 November 2001, at: <http://goo.gl/V4Yxx>

Prosecutor v. Alfred Musema (Judgment and Sentence), ICTR-96-13-T, 27 January 2000, at: <http://goo.gl/6s42T>

Prosecutor v. Georges Anderson Nderubumwe Rutaganda (Judgment and Sentence), ICTR-96-3-T, 6 December 1999, at: <http://goo.gl/42bMS>

Prosecutor v. Jean-Paul Akayesu (Trial Judgment), ICTR-96-4-T, 2 September 1998, at: <http://goo.gl/f7Ppo>

Committee Against Torture

V.L. v. Switzerland, CAT/C/37/D/262/2005, 20 November 2006, at: <http://goo.gl/g5jJ5>

Iya v. Switzerland, CAT/C/39/D/299/2006, 16 November 2007, at: <http://goo.gl/kioc0>

E.V.I. v. Sweden, CAT/C/38/D/296/2006, 2 May 2007, at: <http://goo.gl/7drhx>

C.T. & K.M. v. Sweden, CAT/C/37/D/279/2005, 17 November 2006, at: <http://goo.gl/FW98F>

A.K. v. Australia, CAT/C/32/D/148/1999, 11 May 2004, at: <http://goo.gl/cV5Ko>

Karoui v. Sweden, CAT/C/28/D/185/2001, 25 May 2002, at: <http://goo.gl/pjZfu>

A.S. v. Sweden, CAT/C/25/D/149/1999, 15 February 2001, at: <http://goo.gl/prgzC>

Falcon Rios v. Canada, CAT/C/33/D/133/1999, 17 December 2004, at: <http://goo.gl/XDJx9>

Halil Haydin v. Sweden, CAT/C/21/D/101/1997, 16 December 1998, at: <http://goo.gl/eXvAE>

A v. Netherlands, CAT/C/21/D/91/1997, 13 November 1998, at: <http://goo.gl/e7tqN>

Tala v. Sweden, CAT/C/17/D/43/1996, 15 November 1996, at: <http://goo.gl/w8UeM>

Kisoki v. Sweden, CAT/C/16/D/41/1996, 8 May 1996, at: <http://goo.gl/VS57M>

Ismail Alan v. Switzerland, CAT/C/16/D/21/1995, 8 May 1996, at: <http://goo.gl/NusCJ>

Council of Europe: European Court of Human Rights

F.N. and Others v. Sweden, Application no. 28774/09 (Judgment), 18 December 2012, at: <http://goo.gl/BSiZx>

Singh and Others v. Belgium, Application no. 33210/11, (Judgment), 2 October 2012, at: <http://goo.gl/AmIV4> (only in French)

Hirsi Jamaa and Others v. Italy, Application no. 27765/09 (Judgment), 23 February 2012, at: <http://goo.gl/ssc0i>

Yoh-Ekale Mwanje c. Belgique, Requête no. 10486/10 (Arrêt), 20 décembre 2011, at: <http://goo.gl/hHMqs> (only in French)

Auad v. Bulgaria, Application no. 46390/10 (Judgment), 11 October 2011, at: <http://goo.gl/kjQRM>

M. and ors. v. Bulgaria, Application no. 41416/08 (Judgment), 26 July 2011, at: <http://goo.gl/7meIO>

M.S.S. v. Belgium and Greece, Application no. 30696/09 (Judgment), 21 January 2011, at: <http://goo.gl/3YIW1>

A. v. the Netherlands, Application no. 4900/06 (Judgment), 20 July 2010, at: <http://goo.gl/AsfgW>

N. v. Sweden, Application no. 23505/09 (Judgment), 20 July 2010, at: <http://goo.gl/bsJUj>

R.C. v. Sweden, Application no. 41827/07 (Judgment), 9 March 2010, at: <http://goo.gl/QWjji>

E.N. v. Sweden, Application no. 15009/09 (Decision), 8 September 2009, at: <http://goo.gl/HF6ko>

F.H. v. Sweden, Application no. 32621/06 (Judgment), 20 January 2009, at: <http://goo.gl/JCwRs>

NA v. The United Kingdom, Application no. 25904/07 (Judgment), 17 July 2008, at: <http://goo.gl/Lk7wC>

Saadi v. Italy, Application no. 37201/06 (Judgment), 28 February 2008, at: <http://goo.gl/jBDF9>

M. v. Sweden, Application no. 22556/05 (Final Decision), 6 September 2007, at: <http://goo.gl/9pc0Q>

Achmadov and Bagurova v. Sweden, Application no. 34081/05 (Decision), 10 July 2007, at: <http://goo.gl/rrgmw>

Salah Sheekh v. The Netherlands, Application no. 1948/04 (Judgment), 11 January 2007, at: <http://goo.gl/USFEj>

N. v. Finland, Application no. 38885/02 (Judgment), 26 July 2005, at: <http://goo.gl/TIAGB>

Nachova and Others v. Bulgaria, Applications no. 43577/98 and 43579/98 (Judgment), 6 July 2005, at: <http://goo.gl/1qk1z>

Said v. The Netherlands, Application no. 2345/02 (Judgment), 5 July 2005, at: <http://goo.gl/WNpFI>

Matsiukhina and Matsiukhin v. Sweden, Application no. 31260/04 (Final Decision), 21 June 2005, at: <http://goo.gl/mShl6>

Shamayev and Others v. Georgia and Russia, Application no. 36378/02 (Judgment), 12 April 2005, at: <http://goo.gl/npouA>

Jabari v. Turkey, Application no. 40035/98 (Judgment), 11 July 2000, at: <http://goo.gl/rJUip>

H.L.R. v. France, Application no. 24573/94 (Judgment), 29 April 1997, at: <http://goo.gl/8BOEH>

Chahal v. The United Kingdom, Application no. 70/1995/576/662 (Judgment), 15 November 1996, at: <http://goo.gl/LLUml>

Vilvarajah and Others v. The United Kingdom, Application no. 45/1990/236/302-306 (Judgment), 26 September 1991, at: <http://goo.gl/6LtVq>

Cruz Varas and Others v. Sweden, Application no. 46/1990/237/307 (Judgment), 20 March 1991, at: <http://goo.gl/jsDYw>

European Union: Court of Justice for the European Union

M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General, C-277/11, 22 November 2012, at: <http://goo.gl/5kBmB>

M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Opinion of Advocate General), C-277/11, 26 April 2012, at: <http://goo.gl/QiLX9>

Fulmen and Mahmoudian v. Council, Joined Cases T-439/10 and T-440/10, 21 March 2012, at: <http://goo.gl/t8mpJ>

France v. People's Mojahedin Organization of Iran, C-27/09 P, 21 December 2011, at: <http://goo.gl/vSQjn>

Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration, C-69/10, 28 July 2011, at: <http://goo.gl/TG7sE>

Sopropé - Organizações de Calçado Lda v Fazenda Publica, C-349/07, 18 December 2008, at: <http://goo.gl/rvqoQ>

Panayotova and others v. Minister voor Vreemdelingenzaken en Integratie, C-327/02, 16 November 2004, at: <http://goo.gl/ckHtX>

Unión de Pequeños Agricultores v. Council, C-50/00, 25 July 2002, at: <http://goo.gl/NVkgGF>

Krombach v. Bamburski, C-7/98, 28 March 2000, at: <http://goo.gl/K9i9d>

Transocean Marine Paint Association v. Commission, C-17/74, 23 October 1974, at: <http://goo.gl/Q7nmo>

International and Regional Case Law

Australia

High Court of Australia

Abebe v Commonwealth (1999) HCA 14, 197 CLR 510 (14 Apr 1999), at: <http://goo.gl/Memp2>

MIEA v Guo Wei Rong (1997) HCA 22, 191 CLR 559 (13 June 1997), at: <http://goo.gl/Yxggt>

MIEA v Wu Shan Liang (1996) HCA 6, 185 CLR 259 (27 May 1996), at: <http://goo.gl/FXfTK>

Chan Yee Kin v MIEA (1989) HCA 62, 169 CLR 379 (9 December 1989), at: <http://goo.gl/9o9FY>

Federal court of Australia

Jegatheeswaran v MIMA (2001) FCA 865 (9 July 2001), at: <http://goo.gl/aj7OV>

W148/00A v MIMA (2001) FCA 679 (22 June 2001), at: <http://goo.gl/vS2Zr>

VHAU of 2002 v MIMIA (2003) FCA 376 (2 May 2003), at: <http://goo.gl/po3Cs>

Rajalingam v MIMA (1999) FCA 719 (3 June 1999), <http://goo.gl/A8Jia>

Yao-Jing Li v MIMA (1997) 74 FCR 275, 288 (24 April 1997), at: <http://goo.gl/Bj7LO>

Austria

Higher Administrative Court (Verwaltungsgerichtshof)

A. M. v. Federal Asylum Review Board, 2005/01/0080, 28.06.2005, at: <http://goo.gl/Gkftg>

M. v. Federal Asylum Review Board, 2001/20/0006, 30.09.2004, at: <http://goo.gl/r1G4t>

S. v. Federal Asylum Review Board, 2003/20/0389, 26.11.2003, at: <http://goo.gl/Sq0OA>

S. v. Federal Asylum Review Board, 2000/20/0269, 26.11.2003, at: <http://goo.gl/Cjhui>

S v. Federal Asylum Review Board, 2001/01/0169, 25.03.2003, at: <http://goo.gl/orOQG>

Belgium

Belgian Council of State

Council of State 219.313, 10.05.2012, at: <http://goo.gl/KZtMa>

Council of State 190.508, 16.02.2009, at: <http://goo.gl/ygwNB>

Council of State 186.868, 07.10.2008, at: <http://goo.gl/j4Uzq>

Council of State 164.792, 16.11.2006. Not available online.

Council of State 163.124, 04.10.2006. Not available online.

Council of State 144.744,
20.05.2005,
at: <http://goo.gl/8HdFX>

Council of State 139.515,
19.01.2005,
at: <http://goo.gl/DfVpm>

**CCE/RVV (Conseil
du Contentieux des
Etrangers/ Raad voor
Vreemdelingenbetwisting)**

CCE/RVV 82.241, 31.05.2012,
at: <http://goo.gl/kPxuV>

CCE/RVV 82.066, 31.05.2012,
at: <http://goo.gl/REtNI>

CCE/RVV 81.999, 30.05.2012,
at: <http://goo.gl/fuPel>

CCE/RVV 81.766, 25.05.2012,
at: <http://goo.gl/SzmtG>

CCE/RVV 80.327, 26.04.2012,
at: <http://goo.gl/adH2H>

CCE/RVV 75.313, 16.02.2012,
at: <http://goo.gl/UbU9N>

CCE/RVV 74.347, 31.01.2012,
at: <http://goo.gl/bRR2p>

CCE/RVV 73.834, 24.01.2012,
at: <http://goo.gl/JZZDE>

CCE/RVV 73.798, 23.01.2012,
at: <http://goo.gl/WIUUnh>

CCE/RRV 72.597, 23.12.2011,
at: <http://goo.gl/f9ATx>

CCE/RVV 70.439, 22.11.2011,
at: <http://goo.gl/7ZKLN>

CCE/RRV 69.519, 28.10.2011,
at: <http://goo.gl/v1Mj4>

CCE/RVV 69.017, 21.10.2011,
at: <http://goo.gl/6U66i>

CCE/RVV 67.749, 30.09.2011,
at: <http://goo.gl/dLYcs>

CCE/RVV 66.223, 05.09.2011,
at: <http://goo.gl/tS3VU>

CCE/RVV 66.037, 01.09.2011,
at: <http://goo.gl/8AtML>

CCE/RRV 65.541, 11.08.2011,
at: <http://goo.gl/OWKq3>

CCE/RRV 64.539, 08.07.2011,
at: <http://goo.gl/IB1rm>

CCE/RRV 63.756, 24.06.2011,
at: <http://goo.gl/aCfJi>

CCE/RRV 61.581, 16.05.2011,
at: <http://goo.gl/kSQpO>

CCE/RRV 60.434, 28.04.2011,
at: <http://goo.gl/WLGah>

CCE/RVV 54.933, 26.01.2011,
at: <http://goo.gl/9AGuv>

CCE/RRV 22.422, 30.01.2009.
Not available online.

CCE/RRV 15.335, 29.08.2008.
Not available online.

Bulgaria

**Supreme Administrative
Court of Bulgaria (Върховен
административен съд)**

*Sina Faham v. the head of the
State Agency for Refugees*,
2866/2011, 17 May 2011,
at: <http://goo.gl/kEuiX>
(full text in Bulgarian) and
at: <http://goo.gl/wQL4O>
(case summary in English)

*Ali v. the head of the
State Agency for Refugees*,
14106/2009, 10 June 2010,
at: <http://goo.gl/SzYLX>
(full text in Bulgarian) and
at: <http://goo.gl/Vdcte>
(case summary in English)

*A. v. the head of the State
Agency for Refugees*,
11774/2007, 30 June 2008,
at: <http://goo.gl/ZZKTc>
(full text in Bulgarian) and
at: <http://goo.gl/ObbHc>
(case summary in English)

Canada

Supreme Court

*Chan v. Canada (Minister of
Employment and Immigration)*,
[1995] 3 S.C.R. 593, 19 October
1995, at: <http://goo.gl/M10bR>

Federal Court of Appeal

*Attakora v. Canada (Minister of
Employment and Immigration)*
[1989], 99 N.R. 168 (F.C.A.), 19
May 1989,
at: <http://goo.gl/IQID4>

Federal Court

*Sheikh v. Canada (Minister of
Citizenship and Immigration)*
[2000], IMM-315-99, 25 April
2000, at: <http://goo.gl/oc2vs>

*Arumugam v. Canada
(Minister of Employment and
Immigration)* [1994], IMM-
1406-93, 20 January 1994,
at: <http://goo.gl/sSxZc>

Czech Republic

**Supreme Administrative
Court of the Czech Republic
(Nejvyšší správní soud)**

L. O. v. Ministry of Interior,
No. 5 Azs 40/2009-74, 28 July
2009, at: <http://goo.gl/GrcIt>

H. A. Š. v. Ministry of Interior,
No. 5 Azs 28/2008-68 13,
March 2009,
at: <http://goo.gl/Hr7r4>

S. N. v the Ministry of Interior,
No. 5 Azs 66/2008-70,
30 September 2008,
at: <http://goo.gl/OTrrP>

V. H. H. v. Ministry of Interior,
No. 5 Azs 24/2008-48,
15 August 2008,
at: <http://goo.gl/nyD7v>

S. N. v. Ministry of Interior,
No. 6 Azs 235/2004-57,
21 December 2005,
at: <http://goo.gl/ftU8L>

Y. A. v. Ministry of Interior,
No. 6 Azs 50/2003-89
24 February 2004,
at: <http://goo.gl/CCXRf>

Ireland

Supreme Court

*Z v Minister for Justice, Equality
and Law Reform, James
Nicholson sitting as the Appeals
Authority, Ireland, the Attorney
General*, IESC 14, 01 March
2002, at: <http://goo.gl/21tDA>

High Court of Ireland

*A. v Refugee Appeals Tribunal &
Ors*, [2011] IEHC 147, 8 April
2011, at: <http://goo.gl/YOEmS>

K. v Refugee Appeals Tribunal,
[2011] IEHC 125, 25 March
2011, at: <http://goo.gl/yY19z>

*I.R. v Minister for Justice,
Equality and Law Reform,
the Refugee Appeals Tribunal*,
[2009] IEHC 353, 24 July 2009,
at: <http://goo.gl/rh6XP>

*Imafu v Minister for Justice,
Equality and Law Reform and
Others*, [2005] IEHC 416,
9 December 2005,
at: <http://goo.gl/wi6Ff>

*Zhuchkova v Minister for justice
Equality and Law Reform and the
Refugee Appeals Tribunal*, High
Court of Ireland, 2003/669JR;
[2004] IEHC 414, (2005) 10
ICLMD 73, 26 November 2004.
Not available online.

*R.K.S. v Refugee Appeals
Tribunal and Minister for Justice
Equality and Law Reform*,
[2004] IEHC 436, 9 July 2004,
at: <http://goo.gl/DtX5Z>

*Skender Memishi v The Refugee
Appeals Tribunal, Rory McCabe,
The Minister for Justice, Equality
and Law Reform, The Attorney-
General, and Ireland*, [2003]
IEHC 65, 25 June 2003, at:
<http://goo.gl/mvRMF>

Italy

Corte Suprema di Cassazione

Corte Suprema di Cassazione,
Sezione Civile VI, 10 gennaio
2013, ordinanza n. 563/2013,
at: <http://goo.gl/85Mhe>

Corte Suprema di Cassazione,
Sezioni Unite Civili, 21 ottobre
2008, sentenza n. 27310, at:
<http://goo.gl/vhrEA>

Tribunale di Napoli/ Tribunale di Torino

Tribunale di Napoli, Sezione
Civile I bis, 2 febbraio 2011,
sentenza n. 30, (Tribunal of
Naples, judgment n. 30,
2 February 2011),
at: <http://goo.gl/Oda7o>

Tribunale di Torino, 29 maggio
2009, *sentenza n. 177*, (Tribunal
of Turin, 29 May 2009,
judgment n. 177, 29 May 2009).
Not available online.

Lithuania

*A.Z. and A.V. v. Migration
Department, Vilnius Regional
Administrative Court* (Vilniaus
apygardos administracinis
teismas), Supreme
Administrative Court of
Lithuania (Lietuvos vyriausiasis
administracinis teismas), A822-
959/2011, 28-05-2010, 05-05-
2011, at: <http://goo.gl/SEhmC>

The Netherlands

Cases available on
www.migratieweb.nl
and/or www.vluchtweb.nl
which are not public websites
and are only available
for subscribers; all LJN
numbers are available at
www.rechtspraak.nl

Dutch Council of State

Council of State 14 June 2012,
(201109920/1/V2);
LJN: BW9121.

Council of State 11 June 2012,
(201108164/1/V1) JV2012/370;
LJN: BW8603.

Council of State 24 May 2012,
(201108433/1/V1).

Council of State 27 April 2012,
(201109421) JV2012/310.

Council of State 18 April 2012
(201107278). Not published.

Council of State 7 March 2012,
(201007907/1/V3) JV2012/184;
LJN: BV9262.

Council of State 2 March 2012,
(201103057/1).

Council of State 30 December
2011, (201100520).
Not published.

Council of State 28 December
2011, (200105344/1)

Council of State 27 December 2011, (201108202/1/V4), published in *Jurisprudentie Vreemdelingenrecht* JV 2012/95; LJN: BV0404.

Council of State 8 September 2011, JV2011/431; LJN: BT1929.

Council of State 30 May 2011, (201011349/1); LJN: BQ7859.

Council of State 4 April 2011, (201008219/1/V1) JV 2011/245; LJN: BQ0748.

Council of State 23 February 2011, (201007021/1/V1).

Council of State 13 September 2010, (201003588) JV2010/410; LJN:BN7304.

Council of State 7 June 2010, (201002887).

Council of State 12 March 2010, (200909252).

Council of State 18 February 2010, (200907476).

Council of State 24 December 2009, (200906274). Not published.

Council of State 23 December 2009, (200907502); JV2010/68

Council of State 18 December 2009, (200901087) JV2010/65; LJN:BK8644.

Council of State, 23 May 2008, 200705074/1, JV2008/292

Council of State 25 March 2008, (200708599).

Council of State 7 August 2007, (200703619/1).

Council of State 15 March 2005, (200500388) JV 2005/185, and published in *Rechtspraak Vreemdelingenrecht* (RV) 2005/53.

Council of State 30 November 2004 (200405142/1); LJN: AR8684.

Council of State 31 October 2003, JV 2004/11; LJN:AO2112.

Council of State 23 September 2003, (200302654) JV 2003/500; RV 2003, nr. 11 met not Bruin.

Council of State 27 January 2003, (AB2003,286), RV1974-2993.57, JV2003/103; LJN: AF5566.

Council of State 27 January 2003, (200206297).

Council of State 14 February 2003, (200300012/1); JV 2003/158.

Council of State 28 August 2002, JV 2002/355. Not available online.

Council of State 8 October 2002, (200204720/1) JV 2002/414.

District Court

District Court of Maastricht 21 March 2013, awb 13/5048. Not published.

District Court of Groningen 12 December 2011 (AWB 10/374), LJN: BU8360, JV2012/71.

District Court of Amsterdam 18 March 2010 (AWB 10/7932); LJN: BL9790.

District Court of the Hague, sitting in Amsterdam, 18 March 2010, (AWB 10/7932) LJN: BL9790.

District Court of the Hague 3 March 2003 (AWB 03/13656).

New Zealand

Court of Appeal, Wellington

Jiao v Refugee Status Appeals Authority and Attorney-General, CA167/02 [2003] NZAR 647, Hearing 21 July 2003, Judgment 31 July 2003, at: <http://goo.gl/5Tk0B>

Refugee Status Appeals Authority

Refugee Appeal No. 74665, No. 74665, 7 July 2004, at: <http://goo.gl/ja4Gk>

Slovenia

Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije)

I Up 500/2009, 16 December 2009, at: <http://goo.gl/2LnnZ> (in Slovenian)

I Up 375/2008, 28 July 2008, at: <http://goo.gl/5Sjzp> (in Slovenian)

Administrative Court (Upravno sodišče Republike Slovenije)

I Up 502/2010, 12 May 2010, at: <http://goo.gl/z8cD0>

Constitutional Court

Up-771/06 of 5.6.2006 and Up-2195/06-14, 11 September 2007

Slovak Republic

Supreme Court of the Slovak Republic (Najvyšší súd Slovenskej republiky)

S. H. v. Migration Office of the Ministry of Interior of the Slovak Republic, 1Sža/56/2010, 13 July 2010, at: <http://goo.gl/pLBqa>

M. S. H. v. Migration Office of the Ministry of Interior of the Slovak Republic, 1 Sža 12/2010, 23 February 2010, at: <http://goo.gl/5Y13H>

F. C. v. Migration Office of the Ministry of Interior of the Slovak Republic, 1 Sža/12/2009, 26 May 2009, at: <http://goo.gl/4J0O6>

L. L. v. Migration Office of the Ministry of Interior of the Slovak Republic, 1 Sža 9/2007, 16 October 2007, at: E Babiaková, E Berthotyová, Rozhodnutia Najvyššieho súdu Slovenskej republiky v azylových veciach. Výber 17 rozhodnutí, Eurokodex, Bratislava 2008, ISBN 978-80-89636-25-4, p. 100.

Regional Courts

V. B. v. Migration Office of the Ministry of Interior of the Slovak Republic Regional Court in Košice (Krajský súd v Košiciach), 5 Sža 2/03, 18 September 2003. Not available online.

Spain

Supreme Court of Spain 5051/2006, 19 February 2010, at: <http://goo.gl/JZ4tO>

Sweden

Swedish Migration Court of Appeal (Migrationsöverdomstolen), UM 540-06, 2007-03-19, at: <http://goo.gl/QdNXB>

The United Kingdom

Supreme Court

MA (Somalia) v Secretary of State for the Home Department, [2010] UKSC 49, 24 November 2010, at: <http://goo.gl/0I9VN>

Court of Appeal (England and Wales)

R (on the application of AM) v Secretary of State for the Home Department, [2012] EWCA Civ 521, 26 April 2012, at: <http://goo.gl/ftt5p>

JT (Cameroon) v Secretary of State for the Home Department, [2008] EWCA Civ 878, 28 July 2008, at: <http://goo.gl/hafMU>

GM (Eritrea) and Ors v Secretary of State for the Home Department, [2008] EWCA Civ 833, 17 July 2008, at: <http://goo.gl/Tqwgk>

NT (Togo) v Secretary of State for the Home Department, [2007] EWCA Civ 1431, 09 November 2007, at: <http://goo.gl/p2thH>

ST (Libya) v Secretary of State for the Home Department, [2007] EWCA Civ 24, 12 January 2007, at: <http://goo.gl/MdY7i>

Y v Secretary of State for the Home Department, [2006] EWCA Civ 1223, 26 July 2006, at: <http://goo.gl/j9nUO>

HK. v Secretary of State for the Home Department, [2006] EWCA Civ 1037 20 July 2006, at: <http://goo.gl/zH2ty>

Mibanga v Secretary of State for the Home Department, [2005] EWCA Civ 367, 17 March 2005, at: <http://goo.gl/C8a3U>

Gheisari v Secretary of State for the Home Department, [2004] EWCA Civ 1854, 16 December 2004, at: <http://goo.gl/Uxxzn>

A. v Secretary of State for the Home Department, [2003] EWCA Civ 175, 21 January 2003, at: <http://goo.gl/a8vtG>

Karanakaran v Secretary of State for the Home Department, [2000] EWCA Civ. 11, 25 January 2000, at: <http://goo.gl/mUCij>

Horvath v Secretary of State for the Home Department, [1999] EWCA Civ 3026, at: <http://goo.gl/vMtv2>

United Kingdom: High Court (England and Wales)

R (Bouattoura) v Immigration, [2004] EWHC 1873 (Admin), 20 July 2004, at: <http://goo.gl/21erp>

United Kingdom: Immigration Appeal Tribunal

B (DR Congo), [2003] UKIAT 00012, 12 June 2003, cited in M Symes, P Jorro, *Asylum Law and Practice*, Haywards Heath: Bloomsbury Professional, 2010 (second edition), p. 58.

XS (Kosovo, Adjudicator's conduct, psychiatric report) Serbia and Montenegro, [2005] UKIAT 00093, 26 April 2005, at: <http://goo.gl/kdHLT>

MM (DRC - Plausibility) Democratic Republic of Congo v Secretary of State for the Home Department, [2005] UKIAT 00019, 27 January 2005, at: <http://goo.gl/2TTkz>

HE (DRC - credibility and psychiatric reports) Democratic Republic of Congo, [2004] UKIAT 00321, 16 December 2004, at: <http://goo.gl/LWP3w>

YL (Rely on SEF) China, [2004] UKIAT 00145, 8 June 2004, at: <http://goo.gl/H85yP>

AA (Credibility, Totality of evidence, Fair Trial) Sudan, [2004] UKIAT 00152, 3 June 2004, at: <http://goo.gl/OX2Qo>

Horvath v Secretary of State for the Home Department, Appeal No. 17338, 28 September 1998, at: <http://goo.gl/c3i5y>

Koyazia Kaja v Secretary of State for the Home Department, [1994] UKIAT 11038, 10 June 1994, at: <http://goo.gl/rrDMb>

United Kingdom: Upper tribunal (Immigration and Asylum Chamber)

AZ (Trafficked women) Thailand v Secretary of State for the Home Department, CG [2010], UKUT 118 (IAC), 8 April 2010, at: <http://goo.gl/eJ7qv>

United Kingdom: Asylum and Immigration Tribunal

SM (Section 8: Judge's process) Iran, [2005] UKAIT 00116, 5 July 2005, at: <http://goo.gl/jo69e>

United Kingdom: House of Lords (Judicial Committee)

R v Asfaw, [2008] UKHL 31, 21 May 2008, at: <http://goo.gl/5dEk5>

Secretary of State for the Home Department (Respondent) v K (FC) (Appellant) and Fornah (FC) (Appellant) v Secretary of State for the Home Department (Respondent), [2006] UKHL 46, 18 October 2006, at: <http://goo.gl/1hapC>

R v Secretary of State for the Home Department, Ex parte Sivakumar (FC), [2003] UKHL 14, 20 March 2003, at: <http://goo.gl/WJqEW>

R (Bugdaycay) v Secretary of State for the Home Department [1987] AC 514, at: <http://goo.gl/gUfW1>

United States of America Court of Appeals

Todorovic v. US Attorney General, 621 F.3d 1318, 1325-1327, (11th Cir. 2010), at: <http://goo.gl/lnrt1>

Razkane v. Holder, Attorney General, 562 F.3d 1283, 1288, (10th Cir. 2009), at: <http://goo.gl/xRvFx>

Shahinaj v. Gonzales, 481 F.3d 1027, 1029, (8th Cir. 2007), at: <http://goo.gl/XwtE8>

Djouma v. Gonzales, 429 F.3d 685, 687, (7th Cir. 2005), at: <http://goo.gl/0wRSb>

Iao v. Gonzales, 400 F.3d 530, 534 (7th Cir. 2005), at: <http://goo.gl/CKiBw>

Guan v. Gonzales, 432 F.3d 391, 396 (2nd Cir.2005), at: <http://goo.gl/QekY1>

Amadou v. INS, 226 F.3d 724 (6th Cir. 2000), at: <http://goo.gl/eYD1N>

Akinmade v. INS, 196 F. 3d 951, 955-56 (9th Cir. 1999), at: <http://goo.gl/4GkGx>

US Federal Court

Zubeda v. Ashcroft, 333 F.3d 463, 476-77, (3rd Cir. 2003), at: <http://goo.gl/rRzvz>

Immigration Court

Matter of X, United States Executive Office for Immigration Review (EOIR), 9 August 2011, at: <http://goo.gl/nLoQH>

List of Abbreviations

APD	Asylum Procedures Directive: Council of the European Union, Council Directive 2005/85/EC of 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status
CAT	United Nations Committee against Torture
CCE/RVV	Conseil du Contentieux des Etrangers/ Raad voor Vreemdelingenbetwistingen - Council for Aliens Litigation (Belgium)
CEAS	Common European Asylum System
CGRA / CGVS	Commissariat Général aux Réfugiés et aux Apatrides / Commissariaat-Generaal voor de Vluchtelingen en de Staatlozen Office of the Commissioner General for Refugees and Stateless Persons (Belgium)
CJEU	Court of Justice of the European Union
COI	Country of origin information
DM	Decision-Maker
EAC	European Asylum Curriculum
EASO	European Asylum Support Office
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EWCA	England and Wales Court of Appeal
ExCom	Executive Committee of the High Commissioner's programme (UNHCR)
FEDASIL	Federal agency for the reception of asylum seekers (Belgium)
FRA	European Union Fundamental Rights Agency
HCA	High Court of Australia
HHC	Hungarian Helsinki Committee
IARLJ	International Association of Refugee Law Judges
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IEHC	High Court of Ireland
IND	Immigration and Naturalisation Service (Netherlands)
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
OE/DV	Office des Etrangers/ Dienst Vreemdelingenzaken (Belgium)

- QD** Council of the European Union, Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
- QD (recast)** Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
- RAIO** Refugee, Asylum and International Operations Directorate (USA)
- SOGI** Sexual Orientation and/or Gender Identity
- UK** United Kingdom
- UKBA** United Kingdom Border Agency
- UKIAT** United Kingdom Immigration and Asylum Tribunal
- UKUT** United Kingdom Upper Tribunal
- UKSC** United Kingdom Supreme Court
- UNHCR** United Nations High Commissioner for Refugees

UNHCR

**PROTECTING
REFUGEES
REBUILDING
LIVES**

Donate now at: www.unhcr.org/donate



UNHCR Bureau for Europe
Rue van Eyck, 11b
1050 Brussels, Belgium



European Refugee
Fund of the European
Commission