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Section 4

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Introduction

Article 12 APD sets out the general requirement that applicants for asylum, subject to some exceptions, must be given the opportunity of a personal interview on their application for asylum with a person competent under national law.

‘Personal interview’ is not defined in Article 12 or in Article 2 of the Directive which sets out definitions. In reality, applicants for international protection in EU Member States may be interviewed by different authorities, at different stages, for different purposes and in the framework of a myriad of different procedures. The APD is not explicit as to which of these interviews may be held to constitute a ‘personal interview’ in the terms of Article 12. However, it appears implicit in Article 13 (3) APD that the personal interview should be one which allows the applicant to present the grounds for his/her application in a comprehensive manner.¹

UNHCR’s review of the procedures in the Member States of focus in this research found that, in practice, Member States may conduct the personal interview in the context of an admissibility procedure, an accelerated procedure, a regular procedure or a border procedure.²

Some Member States conduct a preliminary interview.³ The principal purpose of this is generally the registration of the application for international protection and the gathering of information and evidence relating to the profile of the applicant, i.e. his/her identity, age, family relationships, nationality, place(s) of previous residence, previous applications for international protection, travel route details, and travel documents. In some of these Member States, this preliminary interview is conducted by the determining authority.⁴ But in other Member States, it is conducted by an authority

¹ Article 13 (3) states that “Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner.”

² In accordance with Article 12 (2) (b) APD, this may take the form of a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application, in terms of Article 4 (2) of the Qualification Directive.

³ Belgium, Bulgaria, Czech Republic, Finland, Italy, the Netherlands and the UK.

⁴ In Bulgaria, the Czech Republic, the Netherlands and the UK, the determining authority conducts the preliminary interview. In the Netherlands and the UK, the preliminary interview is conducted by the IND and the UK Border Agency respectively. In Bulgaria, the preliminary interview is conducted by the registration officer of the Registration and Reception Centre (RRC) which is the territorial unit of the determining authority (SAR). Note, however, that details on the travel route are gathered in the separate Dublin II procedure by the determining authority. In the Czech Republic, the preliminary interview is conducted by an officer of the DAMP.

other than the determining authority.⁵ Such interviews may request, in brief, the reasons for applying for international protection, but the main purpose is the gathering of basic bio-data, fingerprints, photographs, x-rays, travel route details and the registration of the application. This preliminary interview does not allow the applicant to present the grounds for the application in a comprehensive manner and as such, it cannot be considered to constitute a 'personal interview' in the terms of Article 12 (1) APD. In these Member States, unless omitted, a second interview, which constitutes the 'personal interview', is scheduled. The personal interview may repeat questions and review information gathered relating to the bio-data of the applicant and his/her travel route etc, but one of the principal purposes of the interview is to gather and explore in greater depth the reasons for the application for international protection and the credibility of the applicant's evidence.

In practice, preliminary interviews can have an important bearing on the examination of the application for international protection and any eventual preparation and conduct of the personal interview. Data from the preliminary interview may provide the determining authority with background information and a basis upon which to prepare the personal interview. Moreover, decisions on whether to channel an application into an accelerated or regular procedure – where both procedures exist - may be taken on the basis of the information gathered in this preliminary interview.⁶ Furthermore, perceived contradictions or inconsistencies between the information provided in the preliminary interview and the personal interview must be assessed by the determining authority. Given the purpose and significance of the preliminary interview, UNHCR believes that such preliminary interviews should be subject to the guarantees set out in Articles 13 and 14 APD.⁷

In France, there is no in-country preliminary interview but instead, the applicant's bio-data is gathered as a written submission. Firstly, applicants for international protection must apply in writing to the prefecture of their place of residence for a temporary residence permit.⁸ The applicant must complete, on his/her own, an application form providing information on identity, civil status, family, travel route and possible links with France. However, no information on the reasons for applying for international protection is requested in this form. The applicant must submit the completed form together with four identity photographs, proof of residence, any other available identity and travel documents, and fingerprints are taken. The prefecture staff may check that the form is completed correctly but this does not constitute a meeting in the context of Article 12 (2) (b) APD as no information on the reasons for applying for international

⁵ Belgium: the Aliens Office/border police; Finland: the border guards/police; and Italy: the police.

⁶ For example, in Finland, the Netherlands and the UK.

⁷ See section 5 on the requirements of a personal interview for further information.

⁸ This procedure was described by the Prefecture of Rhône (Lyon) to UNHCR during UNHCR's research. The divergent practices of all the prefectures are reviewed in detail in a report published by the NGO Cimade (*"Main basse sur l'asile. Le droit d'asile (mal) traité par les Préfets"*, June 2007).

protection is gathered.⁹ However, the decision on whether the application for international protection is examined in the accelerated or regular procedure will be taken on the basis of this information. Once a decision is taken by the prefecture on whether to grant a temporary residence permit, the prefecture gives the applicant an asylum application form to complete, on his/her own, in writing in French. This also does not constitute a meeting in terms of Article 12 (2) (b) APD as the prefecture does not assist the applicant with the completion of the form and the submission of essential information. The completed asylum application form is submitted to the determining authority – OFPRA – for a decision on qualification for international protection. A personal interview with OFPRA may take place in the context of the regular or accelerated procedure.¹⁰

In Germany¹¹ and Greece, the gathering of data relating to the profile of the applicant i.e. his/her identity, age, family, nationality, place(s) of previous residence, previous applications for international protection, travel routes, and travel documents and the gathering of information with regards to the reasons for applying for international protection take place in one personal interview.

However, in Germany within the framework of the airport procedure, the Federal Border Police conducts preliminary checks which include, *inter alia*, questions with regard to the travel route and the reasons for leaving the country of origin.¹² The applicant is given the opportunity of a personal interview conducted by the determining authority (BAMF). However, discrepancies between the information gathered by the Border Police and statements made during the BAMF interview are sometimes used to cast doubt on the applicant's credibility.

⁹ Article 12 (2) (b) APD states that the personal interview may be omitted where “ *the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application, in terms of Article 4 (2)*” of the Qualification Directive.

¹⁰ It should be noted that OFPRA may decide to omit a personal interview on grounds stipulated in national law. In such a circumstance, an applicant may not have a personal interview at all. See below for further details.

¹¹ An exception applies with regard to the airport procedure. In the regular procedure, the personal interview begins with the answering of a questionnaire containing over 20 questions with regard to personal data, family, places of residence, education, travel route, etc.. Fingerprints are taken at an earlier stage of the procedure.

¹² According to the law, the safe third country concept could, in principle, be applied at the border and justify a denial of entry to Germany by the border police (Section 18 (2) No. 1 APA). However, according to information provided by the Federal Border Police, there are no cases in which entry could be denied on the basis of this provision in practice. In the absence of border control posts, there is practically no situation in which persons would seek asylum before having entered the territory. If the Federal Border Police apprehends a person without a permission to stay in Germany close to the border and this person seeks asylum, the request would be forwarded to the BAMF with a view to examining the applicability of the Dublin II criteria (Information provided to UNHCR in a phone conversation with the Federal Border Police in Koblenz on 10 November 2009).

It should be noted that, during the period of UNHCR's research, the Presidential Decree 90/2008 was in force in Greece. In accordance with this legislation, police officers conducted an interview which was intended to gather the bio-data of the applicant, information on the travel route and the reasons for the application for international protection. This interview was called a "personal interview" in Article 10 of PD 90/2008 and constituted the personal interview for the purposes of this research.¹³

Two of the Member States surveyed by UNHCR, Bulgaria¹⁴ and Spain, operate a 'filter' procedure through which all applications for international protection are channelled and examined before a decision is taken whether to admit the application to the regular procedure or to reject the application. In the context of this filter procedure, the applicant is given the opportunity for a personal interview with the competent authority. If the application is then admitted to the regular procedure, the applicant may have the opportunity of a further personal interview. Both of these interviews are considered to constitute a 'personal interview' for the purpose of this research.

At the time of UNHCR's research, Spain operated an admissibility procedure for all applications for international protection.¹⁵ The applicant was interviewed in the context of this admissibility procedure. The purpose of the interview was formally to complete and submit the application, and thereby to gather all the relevant bio-data relating to the applicant, relevant information regarding the travel route and to establish the reasons for the application for international protection so that a decision could be taken as to whether Spain was responsible to examine the application in accordance with the Dublin II Regulation, whether the application should be rejected on nationally-stipulated grounds of inadmissibility, or whether the application should be examined in the regular procedure. At the time of this research, the grounds for inadmissibility in national legislation went beyond the scope permitted by Article 25 APD and permitted a negative decision on the merits of the application. As such, the interview which took place in the context of the admissibility procedure would be the only interview with the applicant if the application was rejected in the admissibility procedure.¹⁶ Moreover, if an application was admitted to the regular procedure, it was at the discretion of the eligibility official whether to conduct a personal interview in the context of the regular procedure. In UNHCR's audit of case files in Spain, of the 32 applications that were admitted to the regular procedure, only in one case did a personal interview take place in the context of the regular procedure. The interview in the admissibility procedure

¹³ New legislation PD 81/2009 has now entered into force and Article 2 foresees a personal interview before an advisory Refugee Committee. At the time of UNHCR's research, personal interviews were conducted by the Greek Police of the Aliens Directorates and Security Departments.

¹⁴ This is a three day accelerated procedure.

¹⁵ This operated up until 21 November 2009 when the New Asylum Law came into force. In the new border procedure, a personal interview takes place.

¹⁶ An analysis of the application form shows that it covers all the so-called 'essential information' as described in Article 4 (2) of the Qualification Directive and contains one open question on the 'grounds on which the application is based', leaving it to the interviewer to determine what questioning is required.

was, therefore, considered to constitute a personal interview. At the time of UNHCR's research in Spain, there was no national legislation in force regarding the right to be offered a personal interview, but the New Asylum Law, which entered into force in November 2009, now states that the formalization of the application (in the admissibility procedure) will be done by means of a personal and individual interview.¹⁷

In Slovenia, the determining authority conducts a preliminary procedure in which the application for international protection is formally submitted. An interview takes place in the context of this procedure. The purpose of the interview is to gather all the relevant bio-data relating to the applicant, relevant information regarding the travel route and to establish the reasons for the application for international protection so that a decision can be taken as to whether the application should be further examined in the Dublin procedure, in the accelerated procedure or in the regular procedure.¹⁸ A 'personal interview' takes place in the context of the regular procedure. However, given that, in accordance with Slovenian national legislation, the personal interview may be (and usually is) omitted in the accelerated procedure,¹⁹ the interview which takes place in the context of the preliminary procedure is considered to constitute a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application under Article 4 (2) of the Qualification Directive.²⁰ In other words, it is considered to constitute a meeting in terms of Article 12 (2) (b) APD²¹ and the provisions in the APD relating to 'personal interviews' apply.

In accordance with recital (29) APD, the APD *"does not deal with procedures governed by Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national"* [Dublin II Regulation]. However, the Dublin II Regulation is silent with regard to the right of the applicant to be given the opportunity of an interview during the determination of the

¹⁷ Article 17 (4) of the New Asylum Law.

¹⁸ Note that a preliminary interview will have been conducted by the police to gather personal identification data, information on travel route etc., and the applicant will have been asked to write in his/her own words a statement on why s/he wishes to apply for international protection. However, the subsequent application interview re-visits all these issues.

¹⁹ Article 46 (1), indent 1 of the IPA: "The personal interview may be omitted when *the competent authority* may decide in an accelerated procedure ..." 79% of the applications reviewed in UNHCR's research were examined in the accelerated procedure.

²⁰ Administrative Court decisions (U 129/2008, 6 February 2008, and U 728/2008, 9 April 2008). The Court concluded that the interview to submit the application is to be considered a personal interview where it is conducted in accordance with Article 45 and 47 of the IPA, which means that the determining authority (inspector) has to raise concrete and detailed questions in order to clarify facts and circumstances of the application in order to assess whether grounds for international protection exist or not.

²¹ *"The competent authority has already had a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application, in terms of Article 4 (2) of Directive 2004/83/EC .."*

Member State responsible to examine the application. At the time of writing, the European Commission's Proposal for a recast of the Dublin II Regulation proposes an explicit article requiring Member States, in carrying out the process of determining the Member State responsible under the Regulation, to give applicants the opportunity of a personal interview with a qualified person under national law to conduct such an interview.²² It is proposed that the personal interview shall be for the purpose of facilitating the process of determining the Member State responsible, in particular for allowing the applicant to submit relevant information necessary for the correct identification of the responsible Member State, and for the purpose of informing the applicant orally about the application of the Regulation. UNHCR has welcomed this proposed legal provision which it considers to be in the interests of Member States as well as applicants.²³ Given that it is proposed that the recast Dublin II Regulation addresses the issue of personal interviews in the context of Dublin II procedures, and the fact that the scope of UNHCR's research did not extend to Dublin II procedures, this section of this report does not make any specific recommendations in this regard. However, this section does refer to the opportunity of a personal interview in relation to the application of the safe third country concept as this is expressly referred to in the APD.

With regard to subsequent applications, some Member States conduct an interview with the applicant in the framework of a preliminary examination.²⁴ The purpose of this interview is to examine whether there are new elements or findings which relate to the applicant's qualification for refugee status or subsidiary protection status. Given the significance of the preliminary examination, UNHCR suggests that the guarantees set out in Articles 13 and 14 APD should apply to any such interview.²⁵

²² Article 5, European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (Recast)* (COM (2008) 820, 3 December 2008).

²³ UNHCR comments on the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person, 18 March 2009. The proposal also sets out some requirements for the personal interview. UNHCR considers that the effectiveness of the interview for all parties would be improved by ensuring that the interview is conducted in a language that the applicant understands rather than "in a language that the applicant is reasonably supposed to understand" as proposed.

²⁴ The preliminary examination is to determine whether the subsequent application raises new elements or findings. UNHCR observed three interviews relating to subsequent applications which take place in the accelerated procedure in Bulgaria. See section 14 of this report on subsequent applications.

²⁵ See sections 5 and 6 of this report on Articles 13 and 14 respectively for further information.

Recommendation

Any interview in which the applicant is given the opportunity to present his/her reasons for applying for international protection should be accorded the safeguards foreseen in the APD for interviews. This should be the case regardless of whether the interview is held in the context of an admissibility, accelerated or preliminary procedure. All such interviews on substance should be conducted by representatives of the determining authority.²⁶

Need for a personal interview

Within the framework of the basic principles and guarantees set out in Chapter II of the Directive, Article 12 concerns the right of the applicant to be given the opportunity of a personal interview on his/her application with a competent person under national law. The personal interview is crucial as it provides the applicant with an opportunity to explain comprehensively and directly to the authorities the reasons for the application; and it gives the determining authority the opportunity to establish, as far as possible, all the relevant facts and to assess the credibility of the oral evidence. As such, UNHCR considers that the personal interview should be an essential component of the asylum procedure.²⁷

Therefore, UNHCR is concerned that Article 12 (2) of the APD foresees extended possibilities for the determining authority of Member States to omit the personal interview.²⁸ Implementation of the optional Article 12 (2) (c) APD may significantly undermine the fairness of the procedure and the accuracy of the decision.

²⁶ It is noted that the EC has proposed a change to the APD in this respect: see proposed recast article 13(1), European Commission, *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 (Recast)*, 21 October 2009, COM(2009) 554 final; 2009/0165 (COD) (APD Recast Proposal 2009).

²⁷ UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, September 2005, Chapter 4.3.1 provides that "[a]ll principal applicants must have the opportunity to present their claims in person in an RSD interview with a qualified Eligibility Officer. Under no circumstances should a refugee claim be determined in the first instance on the basis of a paper review alone."

²⁸ For example, when the competent authority has already had a meeting with the applicant for assisting him/her with completing the application and submitting the essential information regarding the application and when the determining authority on the base of a complete analysis of information provided by the applicant, considers the application to be unfounded in cases where Article 23 (a) (c) (g) (h) and (j) apply. Article 23 (2) (a): "the applicant, in submitting his/her application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he or she qualifies as a refugee by virtue of Directive 2004/83/EC"; Article 23 (2) (c): "the application for asylum is considered to be unfounded:

(i) because the applicant is from a safe country of origin within the meaning of Articles 29, 30 and 31, or (ii) because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 28 (1)"; Article 23 (2) (g): "the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her

It is UNHCR's view that the right to be offered a personal interview in a language which the applicant understands and where the merits of the application are considered should be granted to all adult principal applicants unless the applicant is unfit or unable to attend the interview owing to enduring circumstances beyond his/her control.²⁹ UNHCR believes that all reasonable measures should be undertaken to conduct an interview. Where an earlier meeting has taken place for the purpose of filing an application, according to Article 12 (2) (b) APD, applicants should in particular be permitted to refute gaps or contradictions.

UNHCR's research examined the status of national transposition of Article 12 APD and the implementation, in particular, of Article 12 (1) and (2) in the Member States of focus.

Status of transposition

Article 12 APD only contains one provision which requires transposition in national legislation, regulations and administrative provisions. All the other provisions of Article 12 APD are optional.³⁰ This mandatory provision is set out in the first sentence of Article 12 (1) APD. The first sentence of Article 12 (1) requires that:

"[b]efore a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview on his/her application for asylum with a person competent under national law to conduct such an interview".³¹

having been the object of persecution referred to in Directive 2004/83/EC"; Article 23 (2) (h): "the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin"; Article 23 (2) (j): "the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal";

²⁹ See Resolution 1471 (2005) of the Parliamentary Assembly of the Council of Europe on Accelerated Procedures in CoE Member States (para 8.10.2) available at:

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/eres1471.htm>, and "Guidelines on human rights protection in the context of accelerated asylum procedures" of the Council of Europe (adopted by the Committee of Ministers on 1 July 2009 at the 1062nd meeting of the Ministers' Deputies) para IV (1) (d) available at <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec%282009%291062/4.5&Language=lanEnglish&Ver=app6&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

³⁰ Although note that some further requirements flow from transposition or implementation of the optional provisions.

³¹ However, it should be pointed out at this point that Article 12 (2) and (3) permit a number of exceptions to this general requirement. See below. It should also be noted here that Article 20 (1) (a) APD permits Member States to reject an application for asylum on the basis that the applicant has not established an entitlement to refugee status when there is reasonable cause to consider that the applicant has implicitly withdrawn or abandoned his/her application for asylum, in particular when, s/he has not appeared for a personal interview and has not demonstrated within a reasonable time that the failure to appear for the personal interview was due to circumstances beyond his/her control.

Of the 12 Member States of focus in this research, all have transposed or reflected Article 12 (1) APD in national legislation, regulations and/or administrative provisions. These are Belgium,³² Bulgaria,³³ the Czech Republic,³⁴ Finland,³⁵ France,³⁶ Germany,³⁷ Greece,³⁸ Italy,³⁹ the Netherlands,⁴⁰ Slovenia,⁴¹ Spain⁴² and the UK.⁴³

In Spain, at the time of UNHCR's research, the first sentence of Article 12 (1) APD had not yet been transposed. Neither the Asylum Law nor its Regulation required that the applicant for asylum be given the opportunity for a personal interview. Article 8 ALR foresees that an application for asylum is formalized when the applicant fills in and signs the application form. In practice, the applicant does this in the presence of and with the assistance of the competent authority. As such, this was considered to constitute "*a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application, in terms of Article 4 (2) of Directive 2004/83/EC*" which is one of the grounds upon which a personal interview may be omitted in accordance with Article 12 (2) (b) APD. However,

³² Article 6 of the Royal Decree of 11 July 2003 concerning the CGRA. Although some provisions of this Royal Decree are considered obsolete due to major changes in the legislation and a draft amended Royal Decree is being debated at the time of writing, Article 6 is still applied by the CGRA.

³³ Article 63a (3) LAR states that an interview shall be conducted with the alien. However, note that there is no explicit requirement as to the person's competence under national law to conduct such an interview. Articles 22 and 23 of the Statute of SAR and Articles 75 and 89 of the IRR clarify that personal interviews are conducted by an 'interviewing body'.

³⁴ Section 23 ASA (1) states that an authorized employee of the Ministry of Interior shall conduct an interview with the applicant for international protection in order to establish the data necessary to make a decision.

³⁵ Section 97 (2) Aliens Act 301/2004 states that the Immigration Services shall conduct asylum interviews in order to establish the grounds for the application. It further states that the police can be assigned the task of interviewing if the number of applications increases dramatically or for other special reasons.

³⁶ Article L723-3 *Ceseda* states that "*the OFPRA invites the applicant to an interview.*"

³⁷ Section 24 (1) sentence 3 APA states that it [the Federal Office] shall interview the foreigner in person.

³⁸ Article 3 PD 81/09 states that the authorities competent to receive and examine an application shall provide the applicant with an official note which shall ... refer him/her to the Refugee Committee in order to conduct a personal interview.

³⁹ Article 12 (1) d.lgs. 25/2008 which states that the National Commission and the Territorial Commissions order the personal interview of the applicant through a communication made by the territorially competent Questura.

⁴⁰ Article 4:7 General Administrative Law Act in conjunction with Article 37 Aliens Act 2000, in conjunction with Article 3.110 and 3.111 Aliens Decree 2000.

⁴¹ Article 45 (1) IPA states that before a decision is taken by the competent authority, the applicant shall be given the opportunity of an individual personal interview. Article 7 (2) IPA stipulates that the procedure under this Act should be conducted only by officials with adequate knowledge in the field of asylum law.

⁴² Article 17 (4) New Asylum Law.

⁴³ Paragraph 339NA of HC 395 (Immigration Rules) states that before a decision is taken on the application for asylum, the applicant shall be given the opportunity of a personal interview on his application for asylum with a representative of the Secretary of State who is legally competent to conduct such an interview.

Article 17 (4) of the New Asylum Law now clarifies that the formalization of the application will be done by means of a personal and individual interview.

Recommendation

A personal interview, in a language which the applicant understands and where the merits of the application are considered, should be granted to all adult principal applicants unless the applicant is unfit or unable to attend the interview owing to enduring circumstances beyond his/her control. Article 12 (2) APD should be amended to reduce the extensive catalogue of situations in which a personal interview can be omitted.⁴⁴

Who conducts the personal interview?

In the majority of Member States of focus in this research, the personal interview is conducted by an individual employee of the determining authority. This is the case in Belgium,⁴⁵ Bulgaria,⁴⁶ the Czech Republic,⁴⁷ Finland,⁴⁸ France,⁴⁹ Germany⁵⁰, Greece,⁵¹ the Netherlands,⁵² Slovenia⁵³ and the UK.⁵⁴ In a number of these Member States, this employee is responsible for the examination of the application, including not only the conduct of the personal interview, but also obtaining relevant country of origin information (COI) and other evidence, the assessment of relevant COI and all other relevant evidence, and the drafting of the decision subject to approval. This is the case

⁴⁴ A change to the APD is suggested in the proposal for recast Article 13(2): APD Recast Proposal 2009.

⁴⁵ Case managers of the CGRA in accordance with Article 57/6 of the Aliens Act.

⁴⁶ 11 interviewers of the SAR up until December 2009.

⁴⁷ Interviewers of the DAMP

⁴⁸ According to Section 97 (2) Aliens' Act 301/2004, the Immigration Service which is the determining authority conducts personal interviews. Note that exceptionally the police may conduct part of the personal interview under Section 97 of the Act. The last time this occurred was during the summer 2008 when some Roma applicants from Eastern Europe (outside the EU) were interviewed by the police. The reason for interviews being transferred to the police during that time was the significant rise in applicants and long waiting list for scheduled interviews at the determining authority. The interviews are conducted by the Aliens' Police who have received special training on immigration and asylum issues. The interviews are not conducted in the framework of any border procedure.

⁴⁹ Protection Officers of OFPRA.

⁵⁰ Staff of the determining authority BAMF.

⁵¹ At the time of our research, personal interviews were conducted by police officers. However, see below with regard to recent legislative changes.

⁵² An interviewer of IND.

⁵³ Personal interviews conducted in the context of a meeting to complete the application are conducted by inspectors of the determining authority employed within the Operational Desk at the Asylum Home under the International Protection Division whereas personal interviews, if any, in the accelerated or regular procedures, are conducted by decision-makers employed in the International Protection Status Section.

⁵⁴ Case managers of the determining authority.

in Belgium, Finland, France, Germany,⁵⁵ the Netherlands, the UK, and with regard to some cases in the Czech Republic.

Exceptionally, at the time of this research, one Member State provided for interviews to be conducted, not by an individual employee, but by a panel of nominated members. In Italy, personal interviews should, by law, be conducted by a panel of four members of the Territorial Commissions (the determining authority) composed of:⁵⁶

- an official of the prefecture acting as President;
- a senior official of the state police;
- a representative of the state towns and local autonomies conference; and
- a representative of UNHCR.

This panel is responsible for the examination of the application, including not only the conduct of the personal interview, but also obtaining relevant COI and other evidence and the issue of the decision.⁵⁷ Due to a significant increase in the number of applications for international protection at the beginning of 2008 and an insufficient number of Territorial Commissions to examine the increased number of applications, during the time of this research, all the personal interviews observed were conducted by one member alone or two members together in order to facilitate the simultaneous conduct of interviews and thereby increase the number of interviews conducted.⁵⁸ There is no specialised training for members on recruitment to the Commissions⁵⁹ and the competence of the members to conduct interviews varies greatly depending on their professional background, preparation for their task and personal attitudes. This means that the conduct of an interview by only one or two members of the Commission, rather than the full composition of four members, is significant for the quality of the personal interview and the outcome of the procedure in terms of the decision. In the context of the current legislative provisions for Territorial Commissions, UNHCR considers it crucial that interviews are conducted by the full composition of members sitting as a panel and that decisions are taken in plenary.

⁵⁵ The determining authority tries to ensure that the same person conducting the interview also takes the decision. This is not always possible. However, remarks on reactions seen as being relevant in the framework of the credibility assessment (for instance, extreme excitement) shall be noted down in the hearing reports, in order to give a better impression also to the decision-maker who has not been present during the interview (see Handbook for Adjudicators "Interview" 2.5.3, p.13). In sensitive cases (for instance gender-related persecution, unaccompanied children, torture, danger of suicide etc.), and in cases in which a positive decision is intended by the adjudicator the internal guidelines determine the duty to present the decision to a superior.

⁵⁶ Article 4 (3) of the d.lgs. 25/2008.

⁵⁷ If there is no consensus on the decision, there is a vote. If the vote does not produce a majority decision, the vote of the President prevails.

⁵⁸ Of the 20 interviews observed, 15 were conducted by one member and 5 were conducted by two members (I/02/M/GAM, I/03/M/NIG, I/04/F/NIG, I/13/F/CAM, I/15/M/NIG).

⁵⁹ See below for further information.

In Greece, at the time of UNHCR's research, personal interviews were conducted by police officers. Recent legislative changes in Greece⁶⁰ provide that personal interviews would in future be conducted by an Advisory Refugee Committee composed of four members:

- a high-ranking police officer of the Greek Police as Chairperson;
- an officer or warrant officer of the Greek Police;
- an official of the Aliens and Immigration Directorate of the respective Region; and
- a representative of UNHCR.⁶¹

This would imply the establishment of 52 Committees in the 52 Police Directorates of Greece. UNHCR Greece has rejected the invitation to participate in the Advisory Refugee Committee. The Committee has only consultative status and its recommendation for a decision is non-binding. The Director of the respective Police Directorate has the competence to take the decision. Moreover, the Advisory Committee will be composed of two police officers of the same Police Directorate, one of which is the Chairperson, and an official of the Aliens and Immigration Directorate of the respective region. As such, the Committees will be dominated by the members of the Police Directorates.

Of the 12 Member States of focus in this research, Spain was the only one in which some personal interviews are conducted by an authority other than the determining authority. In Spain, the authority competent to conduct the personal interview, i.e. the application interview which is a meeting with the applicant to complete the application, depends on where the application is lodged and in which procedure the interview takes place. Employees of OAR, the determining authority, conduct interviews in Madrid and at Madrid (Barajas) airport. However, outside, Madrid, the application interview is not conducted by employees of the determining authority and is instead conducted by other designated competent authorities.⁶²

It is UNHCR's view that all personal interviews should be conducted by qualified and trained personnel of the determining authority.

⁶⁰ On 30 June 2009, a new Presidential Decree (PD 81/2009) was published.

⁶¹ UNHCR Greece responded negatively to MOI's invitation for participation in the Advisory Refugee Committees. As UNHCR noted, participation in such Committees is not feasible since "the (recently) introduced changes to the asylum procedure (PD 81/2009) do not sufficiently guarantee either the efficiency or fairness of the refugee status determination procedure... (and) are moving in an entirely different direction from the proposal included in the joint report elaborated by UNHCR and MOI in October 2008, entitled '*Towards a Fair and Efficient Refugee Status Determination in Greece*'." (see Letter to the Head of Security and Order Department of Greek Police Headquarters in Ministry of Interior [UNHCR, 2009d]).

⁶² Outside Madrid, the personal interview (meeting to complete the application) is conducted by either officials of Aliens' Offices, National Police Corps officials or border police depending on where the application is lodged.

UNHCR does not consider that the police is an appropriate authority to conduct the personal interview and examine applications for international protection. UNHCR has serious concerns regarding both the designation of police authorities as the determining authority and the designation of police to conduct personal interviews. UNHCR considers that this raises issues of a potential conflict of professional interests. Moreover, it undermines the perception of confidentiality and impartiality which is so crucial in creating the conditions conducive to the complete disclosure of facts by applicants during the personal interview. Applicants may fear and/or lack trust in the police as a result of their experiences in their country of origin. Furthermore, an interview conducted by the police may trigger or exacerbate post-traumatic stress disorder in applicants who have suffered persecution or serious harm at the hands of the police, military or militarized groups in their countries of origin. UNHCR recommends that another state authority or an independent one is assigned this responsibility and role.

UNHCR recognises that the conduct of a personal interview by a committee or panel may strengthen the impartiality and objectivity of the interview as well as the consequent decision-making. It may also constitute a useful monitoring and quality control tool. However, UNHCR is also aware that a panel of interviewers may be viewed as intimidating and counter to creating an environment which builds trust and is conducive to open disclosure. It is also more difficult to achieve gender-appropriate interviews. Furthermore, it may be more difficult to ensure a coherent line of questioning. In those Member States that conduct personal interviews by committee, measures are needed to ensure appropriate training and flexibility to ensure that the atmosphere is conducive to open disclosure in all circumstances.

Recommendations

UNHCR recommends that all personal interviews be conducted by qualified and trained personnel of the determining authority.

The police should not be designated as the determining authority and should not be involved in the conduct of personal interviews.

UNHCR recommends that the determining authority consider assigning case ownership to a designated staff member/committee i.e. the staff member/committee is responsible for conducting the personal interview, assessing the evidence gathered and any relevant country of origin information, and preparing the decision under supervision.

Where personal interviews are conducted by committee, it is essential that all members possess the requisite knowledge and training, and are also able to recognise when it would be more appropriate that the personal interview is conducted by one member only.

Opportunity for adult dependants to have a personal interview

UNHCR considers that it is crucial to ensure that dependant adults understand⁶³:

- the grounds for qualification for refugee and subsidiary protection status;
- the criteria for a derivative status;
- their right to make an independent application for international protection if they believe that they have independent grounds for qualification;
- the confidentiality of the asylum procedure; and
- their right to request that any interviews are conducted by an interviewer, assisted by an interpreter when necessary, of the sex preferred by the applicant and without the presence of other family members.⁶⁴

As such, the determining authority should ensure that it meets with each dependant adult individually, in private and without the presence of other family members, to ensure they understand the above-mentioned grounds and procedures for qualification for international protection and to offer each dependant adult the opportunity of a personal interview without the presence of family members. In particular, personnel of the determining authority should be aware that in certain cultures or family units, women who have grounds to apply for international protection may be reluctant to make an independent application or request a personal interview or may be discouraged from doing so and, therefore, gender and culturally sensitive communication is required.⁶⁵ It is also UNHCR's position that if, at any stage of the asylum procedure, any information provided by either the principal applicant or the dependant adult, or gathered independently by the determining authority, indicates that the dependant adult may have independent reasons for international protection, this should be further examined in a separate personal interview with the dependant adult.

The second sentence of Article 12 (1) APD states that:

*"Member States may also give the opportunity of a personal interview to each dependant adult referred to in Article 6 (3)" APD.*⁶⁶

⁶³ Paragraph 3.2.6 of UNHCR Procedural Standards for RSD under UNHCR's Mandate, 1 September 2005.

⁶⁴ Some individuals who have experienced persecution or serious harm may not have disclosed the details of the harm to family members and may be reluctant to initiate an independent application or have a personal interview out of concern that the information they provide will be heard by or shared with their family members. This may be particularly relevant for individuals who have experienced gender-related persecution or sexual violence: Paragraph 3.2.6 of UNHCR Procedural Standards for RSD under UNHCR's Mandate, 1 September 2005.

⁶⁵ Paragraph 3.2.6 of UNHCR Procedural Standards for RSD under UNHCR's Mandate, 1 September 2005.

⁶⁶ Article 6 (3) APD states that Member States may allow for an application to be made by an applicant on behalf of his/her dependants provided any adult dependant consents.

This is a permissive clause and, therefore, under the APD, dependant adults have no right to be given the opportunity for a personal interview unless provided by national legislation, regulations or administrative provisions.

UNHCR's research shows that, in law, there is an opportunity for adult dependants to have a personal interview in 10 of the 12 Member States of focus.⁶⁷ In the UK, legal provisions grant the interviewing officer discretion as to whether to interview a dependant adult and, in Spain, there is no explicit legislation regarding the circumstances in which a dependant adult is offered the opportunity of a personal interview.

Six of the Member States of focus in this research do not permit an application to be made on behalf of a dependant adult and, therefore, each adult is an applicant and is given the opportunity of a personal interview subject to any general exceptions which may be applicable. This is the case in Bulgaria, Czech Republic, France, Germany⁶⁸, Italy, and the Netherlands.

In only one Member State, where an application may be made by an applicant on behalf of a dependant adult, is there an explicit legislative provision which gives the opportunity of a personal interview to each dependant adult. This is the case in Greece, where Article 3 of PD 81/2009 explicitly states that a separate personal interview shall be conducted for each dependant adult.⁶⁹

In three Member States where an application may be made by an applicant on behalf of a dependant adult, there is no explicit legislative provision regarding the opportunity of a personal interview for the dependant adult, but legislation requiring a personal interview is interpreted as applying to dependant adults.⁷⁰ In Belgium, Article 6 of the

⁶⁷ Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Greece, Italy, the Netherlands, and Slovenia.

⁶⁸ However, in case family asylum or refugee protection for families is granted according to Section 26 (1), (4) Asylum Procedure Act, the dependant adult will be recognized without being interviewed by the BAMF in person. It should be emphasised in this regard that the law provides that the application is filed by the dependant adults themselves. Under Section 26 (1) APA: *"The spouse of a person entitled to asylum shall be recognized as entitled to asylum if*

1. the recognition of the foreigner as a person entitled to asylum is incontestable,

2. the couple was already married in the country where the person entitled to asylum is politically persecuted,

3. the spouse filed an asylum application before or at the same time as the person entitled to asylum or immediately after entry, and

4. there is no reason to repeal or withdraw the recognition of the person entitled to asylum."

Section 26 (4) APA: *"(1) through (3) shall be applied mutatis mutandis to spouses and children of foreigners granted refugee status. Refugee status shall take the place of entitlement to asylum."*

⁶⁹ This was also explicitly provided by Article 10 PD 90/2008 which was in force during the period of our national research and was replaced by Article 3 PD 81/2009 which entered into force on 20 July 2009.

⁷⁰ Belgium, Finland and Slovenia.

Royal Decree of 11 July 2003, which requires the CGRA to summon the asylum applicant for an interview at least once, is interpreted as applying to dependant adults.⁷¹ In Finland, Section 97 (2) of the Aliens Act 301/2004, which requires the Immigration Services to conduct asylum interviews, is interpreted as giving all applicants the right to a personal interview, including dependant adults. Furthermore, the Administrative Asylum Guidelines 109/032/2008 specifically state that spouses must be heard separately and individually.⁷² In Slovenia, the personal interview may be omitted where the applicant does not have the capacity to participate independently in the procedure.⁷³ Therefore, any adult with procedural capacity is given the opportunity of a personal interview (subject to the general exceptions) and according to UNHCR's interview with a representative of the MOI, it is very rare in practice that a dependant adult would not be interviewed because of his/her dependency.⁷⁴

In the UK, a dependant may be interviewed.⁷⁵ In practice, a case owner may offer a dependant the opportunity of an interview as part of the process of gathering evidence in support of the statements made by the principal applicant. Administrative provisions state that *"[i]nterviewing officers reserve the right to interview dependants if relevant to the account of the main applicant. The interviewing officer might need to conduct such an interview in order to test ethnicity where the main applicant relies on their spouse's or civil partner's ethnicity to seek asylum."*⁷⁶

In Spain, as stated above, there is no explicit legislative provision regarding the right of the applicant to be given the opportunity for a personal interview, and the New Asylum Law contains no explicit provision regarding the opportunity for a personal interview for each dependant adult.⁷⁷ UNHCR's interviews⁷⁸ with admissibility officials, interviewers and NGOs providing legal assistance revealed that, in the absence of explicit legislation, the practice in Spain varies depending on the procedure in which the application is examined, the place where the application is lodged and the circumstances of the case. In the admissibility procedure, in the case of applications lodged at the determining authority (OAR) in Madrid, Valencia and Melilla, a personal interview with each dependant adult is considered mandatory. But in Barcelona, dependant adults are only interviewed if the facts presented by the main applicant are considered to require clarification or if the dependant adult appears to have suffered specific acts of

⁷¹ This was verified through UNHCR's audit of case files. For example, case file nos. 35, 50, and 115.

⁷² This was verified in audited interviews 3 and 4 which both related to applications where spouses applied together for asylum.

⁷³ Article 46 IPA.

⁷⁴ Interview of 9 April 2009.

⁷⁵ Immigration Rules HC 395, para. 349.

⁷⁶ The Asylum Instruction 'Conducting the Asylum Interview', under the heading 'interviewing' (no page numbers).

⁷⁷ It only states that exceptionally, if it is considered essential for the adequate formalization of the application, another family member may be present.

⁷⁸ Held between 13 and 30 April 2009.

persecution. At Barajas Airport in Madrid, it is left to the discretion of the admissibility official whether or not family members are interviewed.⁷⁹

Recommendations

Member States should ensure that not only principal applicants but also dependant adults understand the grounds for qualification for refugee and subsidiary protection status. States should give the opportunity of a personal interview to each dependant adult and ensure that they have the opportunity to raise any protection needs they may have in their own right. The offer of a personal interview should be made to each dependant adult in private. The APD should be amended accordingly, in line with the practice prevailing in many Member States.⁸⁰

If, at any stage of the asylum procedure, information provided by either the principal applicant or the dependant adult, or independently gathered by the determining authority, indicates that the dependant adult may have his/her own reasons for international protection, this should be further examined in a separate interview with the dependant adult.

This personal interview of dependant adults should take place without the presence of family members.

Opportunity for children to have a personal interview

It is UNHCR's view that unaccompanied and separated child applicants should be given the opportunity of a personal interview when this is considered to be in the best interests of the child, in light of all relevant circumstances; and where the personal interview can be conducted by qualified personnel with specialist training and knowledge regarding the psychological, emotional and physical development and behaviour of children and in the presence of a designated representative.⁸¹

The third sentence of Article 12 (1) APD states that:

"Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview".

⁷⁹ It should be noted that each adult applicant, even if a dependant, has his/her own case file and number.

⁸⁰ This is proposed in recast Article 13 (1): APD Recast Proposal 2009.

⁸¹ See paragraph 8.2, UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997 and paragraphs 3.4.5 and 4.3.7 of UNHCR Procedural Standards for RSD under UNHCR's Mandate, 1 September 2005.

Article 2 of the APD on definitions does not define a ‘minor’ as such but Article 2 (h) APD defines an ‘unaccompanied minor’ as a person below the age of 18.⁸² Moreover, as Article 12 (1) APD refers simply to ‘a minor’, the term is assumed to apply to all children below the age of 18 regardless of whether they are accompanied, unaccompanied or separated.⁸³ Although Article 17 APD sets out specific guarantees for unaccompanied minors, it does not stipulate the circumstances in which an unaccompanied minor is given the opportunity for a personal interview.⁸⁴

The third sentence of Article 12 (1) APD is permissive. Notwithstanding the fact that the APD does not provide any direction on the circumstances in which a child should be given the opportunity of a personal interview, Member States’ approach to this issue must be underpinned and guided by their obligations under other relevant international laws.

All the Member States surveyed in this research are party to the UN Convention on the Rights of the Child (CRC) and as such are bound by its provisions. States which are party to the CRC have to ensure that the provisions and principles of that Convention are fully reflected and given legal effect in relevant domestic legislation. In this regard, the national legislation of Member States must ensure that the best interests of the child are a primary consideration.⁸⁵ This is also stated in the Charter of Fundamental Rights of the European Union,⁸⁶ and has been repeatedly endorsed and reiterated by UNHCR.⁸⁷ Whether a personal interview is in the best interests of a child must be determined with reference to the individual circumstances of the child such as age, the level of maturity

⁸² Moreover, Article 1 of the UN Convention on the Rights of the Child describes a child as “*every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier*”. Note that only persons under the age of 14 are considered minors according to the Bulgarian Law on Persons and Family 1949, last amended, SG No. 120/29.12.2002. Juveniles are persons aged 14-18. So interviews with applicants aged 14 or above are mandatory. However, UNHCR’s audit of case files revealed one case where a juvenile aged 14 was not given a personal interview (Decision 29). In accordance with Article 25 (1) LAR, a tutor or guardian shall be appointed to unaccompanied minors and juveniles.

⁸³ See Inter-Agency, Inter-Agency Guiding Principles on Unaccompanied and Separated Children, January 2004 for definitions of ‘unaccompanied’ and ‘separated’ children. UNHCR recommends use of the terms ‘child/children’ and the definitions set out in the Inter-Agency Guidelines, to ensure greater accuracy and specificity of references to children in relevant circumstances. However, in this report, the term ‘minor’ and ‘unaccompanied minor’ are used to reflect the language of the APD.

⁸⁴ Article 17 (1) (b) states that the unaccompanied minor’s representative should be given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare him/herself for the personal interview.

⁸⁵ Article 3 which states that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

⁸⁶ Article 24 (2).

⁸⁷ See, for example, UNHCR Executive Committee, Conclusion on Children at Risk, Conclusion No. 107 (LVIII), 5 October 2007.

of the child, the presence or absence of parents and family, the child's experiences, the child's physical and psychological well-being etc.⁸⁸

Moreover, in accordance with the CRC, state parties must assure that a child who is capable of forming his/her own views has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.⁸⁹ The Convention goes on to stipulate that for this purpose, *"the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."*⁹⁰ The Charter of Fundamental Rights of the European Union also provides that children *"may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity."*⁹¹

Specifically with regard to the treatment of unaccompanied and separated children, the Committee on the Rights of the Child has expressed the view that *"[w]here the age and maturity of the child permits, the opportunity for a personal interview with a qualified official should be granted before any final decision is made."*⁹²

The above-mentioned international legal provisions should be given binding effect in relevant domestic legislation.⁹³ However, UNHCR's research has found that in the absence of a specific requirement in the APD, national legislation on the circumstances in which a child shall be given the opportunity of a personal interview in the asylum procedure is divergent, and occasionally limited or non-existent. For example, there is no explicit national legislation on the circumstances in which a child shall be given the

⁸⁸ See UNHCR Guidelines on Determining the Best Interests of the Child, May 2008. Although these guidelines are primarily directed to UNHCR Offices and partners in the field, they are also potentially of use to Member States.

⁸⁹ Article 12 (1) UN Convention on the Rights of the Child, 20 November 1989.

⁹⁰ Article 12 (2). Article 22 of the same Convention also states that States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his/her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said states are Parties.

⁹¹ Article 24 (1).

⁹² Paragraph 71, General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, 1 September 2005. This is also the view of UNHCR expressed at paragraph 8.2, UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997.

⁹³ In the course of this research, UNHCR did not review the surveyed Member States' general legislation on children.

opportunity of a personal interview in Belgium, France, Germany⁹⁴ and Spain (see below).

The following provides a brief country by country overview:

Belgium: Article 6 of the Royal Decree of 11 July 2003 concerning the CGRA is considered to govern applications by unaccompanied children and, therefore, they are offered the opportunity for a personal interview regardless of their age or developmental capacity. The applications of unaccompanied children are examined with priority and in the accelerated procedure.⁹⁵ However, Article 6 of the Royal Decree is not considered to apply to children who are accompanied i.e. dependant children.⁹⁶

Bulgaria: Bulgarian legislation distinguishes between accompanied and unaccompanied children.⁹⁷ Accompanied children between the ages of 10 and 14 shall be interviewed except where this would be to the detriment of the child's interests.⁹⁸ But such interviews are rare in practice.⁹⁹ An accompanied child under the age of 10 may be interviewed if there is a need to further clarify facts and circumstances, depending on his/her developmental level.¹⁰⁰ Such interviews are exceptional and have been conducted in case of doubts concerning family relations.¹⁰¹ Article 119 (1) of the IRR is not explicit with regard to the circumstances in which an unaccompanied child shall be interviewed, but based on its provisions, unaccompanied children are always given in principle the opportunity for a personal interview.¹⁰²

The Czech Republic: There is explicit legislative provision in Section 29 (4) CAP which provides that the administrative body should provide the opportunity for a child to be heard, either directly or through his/her representative, where the child is capable of formulating his/her views. These views shall be taken into account considering the age and mental maturity of the child.

Finland: Article 6 (b) of the Aliens Act 301/2004 explicitly states that children aged 12 or above shall be heard unless such a hearing is manifestly unnecessary. A child under the age of 12 may be heard if s/he is sufficiently mature. The child's views shall be taken

⁹⁴ With the exception of legislation regarding those aged 16 or more, and legislation regarding minors born in Germany aged less than 6.

⁹⁵ Information confirmed by personnel of the determining authority and the Commissioner-General for Refugee and Stateless Persons.

⁹⁶ *Idem*.

⁹⁷ According to the Bulgarian Law on Persons and Family of 1949, last amended, SG No. 120/29.12.2002, a minor is a person under the age of 14. Those aged between 14 and 18 are juveniles who are able to take legal action with the consent of their parents/custodians.

⁹⁸ Section III, Article 100 (3) of the IRR.

⁹⁹ Interviews with stakeholders, Proceedings and Accommodation Department.

¹⁰⁰ Section III, Article 100 (4) of the IRR.

¹⁰¹ Interviews with stakeholders, Proceedings and Accommodation Department.

¹⁰² Confirmed in an interview with the determining authority.

into account in accordance with the child's age and level of development. Note that the right to be heard does not always entail a full personal interview.

France: There is no legislative provision on the circumstances in which a dependant child is offered the opportunity of a personal interview. In practice, dependant children aged less than 18 who are accompanied by at least one parent cannot submit an application in their own right and, in principle, will not be given the opportunity for a personal interview.¹⁰³ They may be interviewed in specific cases where their oral evidence is considered pivotal for the examination of the application of the main applicant. There is no specific provision in law regarding the circumstances in which an unaccompanied child is interviewed. In practice, however, UNHCR is informed that unaccompanied children are interviewed in the presence of the 'ad hoc administrator' who is appointed to assist them.

Germany: Section 12 APA states that a person who is at least 16 years of age is capable of performing procedural acts during the asylum procedure.¹⁰⁴ This also includes the personal interview.¹⁰⁵ However, there are no explicit legal provisions concerning children aged less than 16 with regard to the conduct of a personal interview. Section 24 (1) Sentence 4 APA nonetheless states that the interview will be omitted with regard to children born in Germany who are under the age of six. In the absence of other relevant explicit legal provisions omitting the right of child applicants to be heard, it has been argued in the asylum literature that a personal interview of children under the age of 16 should be seen as mandatory.¹⁰⁶ With regard to its practice concerning accompanied children, UNHCR has been informed by the determining authority (BAMF) that in cases of children aged between 14 and 16, in principle, a personal interview is conducted in the presence of the parent(s)¹⁰⁷, while accompanied children aged less than 14 are not normally interviewed in person.¹⁰⁸ There is no explicit legislation with regard to the personal interview of unaccompanied children.¹⁰⁹ In case family asylum or refugee protection for families is granted according to Section 26 (2) and (4) Asylum

¹⁰³ This information was provided to UNHCR in an interview with the determining authority OFPRA.

¹⁰⁴ Section 12 (1) 1st half of the 1st Sentence APA: "*A foreigner who is at least 16 years of age shall be capable of performing procedural acts in accordance with this Act, [...]*".

¹⁰⁵ According to written information submitted by the BAMF, every applicant capable of performing procedural acts (thus from 16 years of age) is interviewed separately on the reasons for the application.

¹⁰⁶ G. Renner, Commentary on Foreigner's Law, 8th edition (2005), Section 14a, para 7 and Section 24 para 8; Hailbronner, Commentary on Foreigner's Law, Section 14a, para 6 (June 2009), and Section 24 para 53 (June 2008).

¹⁰⁷ Unless the minor does not consent to the presence of the parent(s).

¹⁰⁸ Information provided by the Head of the BAMF-Unit for Quality Control in Nuremberg on 16 November 2009 to UNHCR.

¹⁰⁹ This is notwithstanding the fact that the practice of the BAMF described for the cases of accompanied minors cannot be transferred as such to cases of unaccompanied minors, due to the fact that information regarding the well-founded fear of being persecuted cannot be obtained from parents.

Procedure Act¹¹⁰, an unmarried child will be recognized without being interviewed in person by the BAMF. This provision also applies to children aged 16 to 18 as their personal status shall be governed by the law of the host country (Article 12 of the 1951 Convention).¹¹¹

Greece: Article 3 of PD 81/09 states, with regard to children, that the personal interview shall be conducted taking into consideration their maturity and psychological consequences of any traumatic experience.¹¹²

Italy: There is explicit legislation with regard to children who submit an asylum application in their own right. They have the right to a personal interview if accompanied (Article 13 (3) of the d.lgs. 25/2008) or unaccompanied (Articles 13 (3) and 19 (4) of the d.lgs. 25/2008).

The Netherlands: Dutch legislation distinguishes between accompanied and unaccompanied children. The Aliens Circular provides that the interview of unaccompanied children is mandatory but may be omitted if the child is under the age of 12 and a pedagogic or psychological examination suggests that the child may face difficulties which would hinder the interview.¹¹³ According to the determining authority (IND), the interview of dependant children aged under 15 is discretionary and an interview will only be conducted if explicitly requested by the parents, lawyer or child him/herself.¹¹⁴

Slovenia: With regard to unaccompanied children, national legislation provides that the unaccompanied child, together with his/her legal representative, shall be present during all acts of the procedure which would include any interviews.¹¹⁵ In practice, according to the MOI, unaccompanied children are always present when the application is lodged and during the personal interview. With regards to dependant children, the interview is optional and dependent on an assessment of the child's procedural capacity taking into

¹¹⁰ Section 26 (2) APA: *"A child of the foreigner who was minor and unmarried at the time the asylum application was filed shall be recognized as entitled to asylum if the foreigner's entitlement to asylum is incontestable and there is no reason to repeal or withdraw the recognition of entitlement to asylum."*

Section 26 (4) APA: *"(1) through (3) shall be applied mutatis mutandis to spouses and children of foreigners granted refugee status. Refugee status shall take the place of entitlement to asylum."*

¹¹¹ G. Renner, Commentary on Foreigner's Law, 8th edition (2005), Section 26 para 16; R. Marx, Commentary on the Asylum Procedure Act, 7th edition (2009), Section 26, para 60.

¹¹² The same provision was contained in Article 10 (1) PD 90/2008 which was in force during the period of UNHCR's national research. Article 10 (1) PD 90/2008 has been replaced by Article 3 of PD 81/09 on 20/7/2009 (PD 81/09 was published on 30/6/2009 and entered into force 20 days later).

¹¹³ C3/3.2 Aliens Circular.

¹¹⁴ According to the recently published report (June 2009) *'Kind in het Centrum'*, by K. Kloosterboer there is a need to facilitate the participation of children in the asylum procedure with respect to their age. See recommendations 53-56 of the report.

¹¹⁵ Article 16 (6) IPA.

account his/her age, mental maturity and ability to understand the meaning of the procedure.¹¹⁶

Spain: There are no specific legal provisions regarding the circumstances in which an unaccompanied or separated child shall be given the opportunity of a personal interview. This decision is left to the discretion of the interviewer, based on what is considered to be in the best interest of the child by the legal guardian who represents him/her throughout the asylum procedure, and who in practice would be present in any interview. Under the New Asylum Law, no specific provisions are included regarding unaccompanied or separated children, although Article 46 (1)-(2) foresees that the specific situation of vulnerable applicants or beneficiaries of International protection, such as minors, will be taken into consideration and owing to their vulnerability, the necessary measures will be adopted to afford a differentiated treatment to their applications for international protection.

UK: It is the determining authority's policy not to interview children under the age of 12. Unaccompanied children over the age of 12 who have applied for international protection in their own right shall be interviewed about the substance of the application unless they are unfit or unable to be interviewed. Other children over the age of 12 can be interviewed, but are not interviewed unless they apply for asylum in their own right.¹¹⁷

Recommendations

In accordance with the 1989 UN Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union, the APD should recall that the “best interests of the child” shall be a primary consideration in all actions concerning the child, including the determination of the circumstances in which a child shall be given the opportunity of a personal interview.¹¹⁸

In this connection, and in order to address the absence of national legislation and administrative instructions in some Member States, the APD should require Member States to determine in law the circumstances in which children shall be given the opportunity of a personal interview and/or the right to be heard. To this effect, in the last paragraph of APD Article 12 (1), the word “may” should be changed to “shall”.

¹¹⁶ Article 46 (3) AGAP and Article 42 (2) and (3) IPA.

¹¹⁷ Paragraph 352 Immigration Rules HC 395.

¹¹⁸ Recital (14) of the APD at present refers to the best interests of the child as a primary consideration but only with regard to unaccompanied minors. However, a new and specific recital providing that the best interests of the child should be a primary consideration: see proposed recast Recital 23, APD Recast Proposal 2009

Focus of the interview with dependants

UNHCR's audit of case files and observation of interviews included only a very small number involving family members. Given the size of the sample, findings are not conclusive but may, nevertheless, be indicative. UNHCR found some evidence to indicate that interviews of dependants may focus solely on the issues raised by the main applicant without adequately seeking to identify or check whether there are any particular relevant circumstances relating to the dependants.¹¹⁹

For example, in Belgium, the audit of case files, the interviews attended as well as interviews with stakeholders indicated that the personal interview of the dependant applicant may not sufficiently enquire into whether the dependant has reasons for an application in their own right.¹²⁰ After addressing issues relating to the personal data of the dependant applicant, documents and travel route, the dependant applicant was asked whether his/her reasons for fleeing are completely linked to that of the main applicant. When the dependant applicant's response was affirmative, the interview of the dependant applicant focused solely on the issues raised by the main applicant.¹²¹ At the end of the interview, the dependant applicant was asked whether s/he had ever been arrested or convicted. It might not be clear to the dependant applicant that the arrest or the conviction does not have to be related to the issues raised by the main applicant. The possible importance of his/her own reasons for fleeing were not explained to the applicant and no other questions were asked during the interview to check whether the dependant applicant truly did not have his/her own reasons for an application for international protection. In one case,¹²² for example, the dependant applicant was not asked about her job, her daily activities, if she had ever been politically active herself or if she had ever experienced any problems herself (not related to the problems of her husband), even though she, for example, had studied at university and obtained a degree in educational studies. In one case file included in the audit, the dependant applicant requested that her file be separated from that of her husband because she claimed to have had her own reasons for fleeing her country of origin. The issues raised by the dependant applicant were only discussed very briefly (one or two questions) during the interview and the decision simply stated there were no reasons to separate the applicant's file from that of her husband. The dependant applicant did not receive protection, based on the rejection of the application of her husband.¹²³

One case file audited in the Netherlands highlighted the need for the determining authority to ensure that it checks whether the dependant may have reasons in his/her own right to request international protection. At the end of the interview, the

¹¹⁹ For example: case file 115 in Belgium and case file to Decision 16 in Bulgaria.

¹²⁰ Interview with NGOs 25 March 2009 and interview with lawyers 26 March 2009.

¹²¹ Case file no. 35, 50 and 115.

¹²² Case file number 115.

¹²³ Case file number 50.

dependant recounted problems that s/he had faced him/herself. The interviewer asked why s/he had not mentioned these issues before, upon which s/he answered that s/he had not been asked before.¹²⁴

From the interviews that UNHCR observed in Greece¹²⁵, interviewers did not seek to identify any particular issues relating to the dependants. As three police officers¹²⁶ confirmed, the focus of the interview is mainly on the issues raised by the main applicant and dependants are asked questions only for reasons of clarification and confirmation.¹²⁷

With regard to the other Member States surveyed, UNHCR's sample of case files did not include a sufficient number of case files relating to applicants with adult dependants or adult family members to provide evidence of the general approach taken in those States on this issue. However, there was some evidence of good practice in specific cases in Germany¹²⁸, the Netherlands, and Slovenia¹²⁹.

Some cases indicated that interviewers may use the interview of family members as a means to establish contradictions and inconsistencies. For example, in one case, interview questions appeared to be aimed at establishing contradictions.¹³⁰ The application for refugee status was rejected on the ground that the determining authority did not believe the family had stayed in Baghdad recently because of contradictions between family members relating to, for example, how many times the family members visited the grave of their murdered daughter, when and where the children went to school, and the time the family had spent at a cousin's house (even though this was only discussed with one daughter). Some important issues were not addressed at all. For example, the father was never clearly asked about threats he claimed to have received.¹³¹

¹²⁴ Case file 7.

¹²⁵ IO481IRQ1, IO41AFG1.

¹²⁶ Personnel responsible for interviewing in ADA and SDS.

¹²⁷ Interviews with S3 and S4.

¹²⁸ Only one audited protocol 00AFG09 concerned two adult family members who were interviewed separately and both applicants were given the opportunity to raise issues particular to their respective applications. In the 5 audited protocols concerning a parent and his/her child/children, the parent was given the opportunity to raise issues particular to the child/children: 11SOM06, 11NIG02, 10AFG04, 11AFG07, 11AFG10.

¹²⁹ Two interviews involving spouses were observed and they were all given the opportunity to present relevant circumstances.

¹³⁰ Case file 35 in Belgium concerning an Iraqi family of five: father, mother, daughter and two sons (one of the sons being under 18). Three daughters and one son were still in Iraq and one daughter was killed in a shooting in Baghdad in 2004. All family members based their application on the application of the father (main applicant) who claimed to be a low-ranking case manager with the Iraqi Special Republican Guard and, therefore, a member of the Baath party.

¹³¹ Subsidiary protection status was granted.

In Spain, case reports, drafted by admissibility/eligibility officers setting out the reasoning for the proposed decision,¹³² indicated that in the case of applications involving large family groups from Colombia, separate interviews with family members are often used to establish contradictions which are difficult for the applicant to rebut in the re-examination procedure, because of the limited or lack of written reasoning given for the initial inadmissibility decision. In Melilla, UNHCR was explicitly informed that interviews of family members are used to establish contradictions.¹³³ Furthermore, UNHCR's audit of case files revealed some indications that sometimes applicants are not given the opportunity to explain apparent contradictions between members of the same family.¹³⁴

In Germany, the handbook for adjudicators instructs them not to attach too much importance to minor discrepancies in the facts claimed by applicants and dependants. Only major contradictions should be regarded as relevant, and the applicant must be given the opportunity to clarify such contradictions.¹³⁵ According to information provided by a lawyer,¹³⁶ the extent to which this instruction is applied in practice depends on the adjudicator. Some adjudicators are reportedly determined to conduct the interview in a way that contradictory statements are produced by the applicants, while other adjudicators completely abstain from such a practice. UNHCR observed four interviews concerning family members.¹³⁷ There was no indication that the adjudicator in any way focused on contradictions. However, given the fact that these were the only observed cases involving family members, no general conclusion in this regard can be drawn from the audit of personal interviews. Only one of the audited case files concerned spouses who had been interviewed separately.¹³⁸ The interviews did not focus on establishing contradictions. Given that only one case could be identified, no general conclusion can be drawn from this observation.

It is UNHCR's view that if new evidence or inconsistencies arise during an interview with family members or dependants that are material to the determination of the principal applicant's application, the principal applicant should generally be given the opportunity to clarify these aspects of the evidence in a second interview. However, the determining authority should use the utmost discretion and sensitivity in assessing the reliability of the evidence, and testing the credibility of the principal applicant, and

¹³² These are held in the case files but are not accessible to applicants until a decision has been adopted.

¹³³ As informed by police official in charge of interviews.

¹³⁴ For example, case file 20R (RUS) in France and case files 0106044, 0206117, 0606116, 0306045, 1006062, 0906052, 0405046 in Spain.

¹³⁵ Handbook for Adjudicators "Interview", 2.5.4, page 13.

¹³⁶ X1.

¹³⁷ HR 8, HR 9, HR 10, HR 11 (father and son // mother and son).

¹³⁸ 00AFG09.

should respect the obligation to preserve the confidentiality of the interview with the family member or dependant.¹³⁹

Recommendations

Where an application may be made on behalf of adult dependants, and the personal interview with the dependant adult is conducted, the Member State shall inquire whether the dependant adult has his/her own reasons to request international protection, and ensure s/he is aware of his/her right to make a separate application for international protection.

Personal interviews of dependants should not be conducted with the aim of establishing contradictions and inconsistencies. 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 generally be given the opportunity to clarify these in a second interview.

EU guidelines with regard to the personal interview of dependants and family members should be developed, which could be provided to all adjudicators.

Opportunity for an additional personal interview

A second or follow-up personal interview may be useful or necessary to gather additional information. Where real or perceived inconsistencies, contradictions and improbabilities arise in the context of an applicant's personal interview, or in relation to the personal interviews of family members or other dependants, or following the gathering of COI or other evidence, in the interests of an adequate and complete examination, it may be necessary to arrange a second interview to address these apparent contradictions and inconsistencies.

Of the 12 Member States of focus in this research, three have legislation or administrative provisions which explicitly foresee the possibility of a second personal interview: Bulgaria¹⁴⁰, Slovenia¹⁴¹ and Spain¹⁴².

¹³⁹ UNHCR, Procedural Standards for Refugee Status Determination under UNHCR's Mandate, September 2005, Chapter 4.3.13.

¹⁴⁰ Article 63a (3) of LAR which states "As needed by the relevant procedure, the interviewing body shall perform further interviews" and Article 91 (4), IRR Chapter six on the general procedure states that "the interviewing body may, at its discretion, conduct a second interview.."

¹⁴¹ Article 41 (1) of the IPA states that "The official may call more personal interviews in an individual case if this is necessary in order to fully establish the actual situation."

¹⁴² Article 17 (8) of the New Asylum Law states that a second interview may take place in accordance with conditions to be set out in the implementing regulation (which had not been drafted at the time of writing).

None of the Member States of focus in this research have any legislation or administrative provisions preventing the conduct of an additional personal interview. Although UNHCR's research shows that there is generally no legislative limit on the number of interviews that can be held, in practice, it appeared rare for an applicant to be summoned for an additional interview in some Member States.¹⁴³ Belgium, Bulgaria and the Czech Republic represented exceptions. Out of the 90 case files audited and the 11 interviews observed in Belgium, 17 applicants were interviewed twice. Whereas in Bulgaria, second interviews were conducted in seven out of the 62 cases audited¹⁴⁴ and in the Czech Republic, out of 73 case files audited, two interviews had been or were to be conducted in 15 cases. However, UNHCR's research did not gather data on the reasons prompting the conduct of an additional interview.

Recommendation

States are encouraged to establish a practice of offering second interviews in cases where it may be warranted, for example, because of inconsistencies, lack of clarity or gaps arising from first interviews.

Omission of personal interviews under Article 12 (2) APD

UNHCR regrets that Article 12 (2) APD sets out circumstances in which a personal interview may be omitted. It must be stressed that this is an optional provision and Member States are not required to omit the personal interview in the circumstances listed.

UNHCR is of the opinion that the exceptions permitted by the APD to the right to a personal interview significantly undermine the fairness of procedures and the accuracy of decisions. In line with UNHCR Executive Committee Conclusions No. 8 (XXVIII) of 1977 and 30 (XXXIV) of 1983, UNHCR strongly recommends that all applicants should, in principle, be granted the opportunity for a personal interview, unless the applicant is

¹⁴³ Finland (none of the audited case files involved a second interview), France, Germany (none of the audited protocols involved a second interview and according to a lawyer (X1) a second interview had never taken place in any of his/her cases but nor had one been requested. One observed interview – HR5 – was a “supplementary interview” arranged because a social worker criticized the tone and atmosphere of the first interview); Italy (none of the audited case files involved a second interview), the Netherlands in the accelerated procedure the opportunity for a second interview is limited by the time scales and only one of the case files audited had conducted a second interview; Slovenia: refugee counsellor stated that second interviews were rare. This was confirmed directly by UNHCR's research, in which only one second interview was observed due to problems with interpretation of first interview; in Spain, a second interview rarely takes place in the admissibility procedure unless there have been procedural flaws in the first interview (in only one of the audited cases in the regular procedure did an additional interview take place); and the UK, no second interviews were observed, although the Asylum Process Guidance does refer to opportunities to provide further information.

¹⁴⁴ Decisions 1, 15, 36, 42, 50, 52 and 59.

unfit or unable to attend an interview owing to enduring circumstances beyond his/her control.¹⁴⁵

In general terms, Article 23 (2) APD requires an adequate and complete examination of applications. UNHCR believes that this cannot be achieved without the determining authority conducting a personal interview with the applicant as the personal interview is an essential part of the asylum procedure.

Article 12 (2) APD permits the omission of a personal interview in eight circumstances:

- the determining authority is able to take a positive decision on the basis of evidence available (Article 12 (2) (a));
- the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application, in terms of Article 4 (2) of Directive 2004/83/EC (Article 12 (2) (b));
- the determining authority, on the basis of a complete examination of information provided by the applicant, considers the application unfounded (Article 12 (2) (c)) where:
 - Irrelevant issues or issues of minimal relevance are raised by the applicant;
 - The applicant is considered to be from a safe country of origin;
 - There is a country which is considered to be a safe third country for the applicant¹⁴⁶;
 - The applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having been the object of persecution as defined in the Qualification Directive;
 - The applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin¹⁴⁷; and

¹⁴⁵ Article 12 (3) APD does provide that “the personal interview may also be omitted where it is 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.”

¹⁴⁶ Note that this is also a possible inadmissibility ground under Article 25 (2) (c) APD. However, in accordance with Article 27 (2) (c) APD, the safe third country concept should not be applied without giving the applicant the opportunity to challenge the application of the concept. As such, the decision to omit the personal interview should not be taken unless the applicant has been given this opportunity.

¹⁴⁷ Note that this may also be a possible inadmissibility ground under Article 25 (2) (f) APD. However, Article 32 (3) APD requires Member States to, at least, conduct a preliminary examination to determine whether there are new elements or findings. The decision to omit a personal interview cannot be taken unless this preliminary examination has been conducted. However, Article 34 (2) (c) permits the preliminary examination of a subsequent application to be conducted on the sole basis of written submissions without a personal interview. It must be stressed that this latter provision is optional.

- The applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal.

UNHCR considers that Article 12 (2) (c) APD is highly problematic and much of it lacks an element of logic.

Article 12 (2) (c) APD requires that any decision to omit a personal interview is taken by the determining authority *“on the basis of a complete examination of information provided by the applicant”*. In practice, such a decision to omit the personal interview would have to be taken on the basis of limited initial information provided by the applicant in a preliminary or screening interview or based on a written submission. At this point, the applicant has not necessarily provided, or received an opportunity to provide, full information on the reasons for the application for international protection. As mentioned above, preliminary interviews are sometimes conducted by an authority other than the determining authority who may not be competent with regard to issues of international protection, and ask brief predetermined questions sometimes without applying guarantees which should be present in the personal interview, for example the applicant may not have been informed yet of the procedure to be followed or his/her rights and obligations, and the consequences of non-compliance; they may not have received the services of an interpreter able to ensure appropriate communication; the interviewer may not have acted in a gender-appropriate fashion; and the interview may not have taken place in confidential conditions. Often these preliminary interviews are conducted soon after arrival when the applicant may be exhausted and disoriented. Moreover, the applicant is normally not asked to provide comprehensive reasons for the application for international protection. In short, information obtained in this context is limited and not reliable, and should not be relied upon to form a view regarding whether the application is founded or unfounded. Similarly, it should not be used to reach a decision to omit the personal interview.

Article 12 (2) (c) APD permits the omission of a personal interview on grounds that the determining authority considers the application to be unfounded because it raises irrelevant or minimally relevant issues, the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing, or the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal. Yet, the personal interview serves to determine the relevance of facts raised by the applicant. It serves to provide the applicant with an opportunity to clarify any apparent or perceived inconsistencies, contradictions or improbable statements, and to add to representations which may be considered insufficient. Moreover, it can serve to determine whether the applicant has submitted an application for international protection *merely or only* to delay removal.

Article 12 (2) (c) APD also permits the determining authority, on the basis of a complete examination of information provided by the applicant, to omit the personal interview in cases where the applicant is considered to be from a safe country of origin within the meaning of Articles 29, 30 and 31 APD.¹⁴⁸ However, Article 31 APD implies that applicants must be given the opportunity to submit grounds for considering that the country is not a safe country of origin in his/her particular circumstances and in terms of the Qualification Directive.¹⁴⁹ A personal interview provides the applicant with the best opportunity to do this.

UNHCR considers that the APD is flawed in permitting the omission of the personal interview on the above-mentioned grounds.¹⁵⁰

Furthermore, Article 12 (2) (c) APD permits Member States to omit the personal interview on the ground that the determining authority considers that there is a safe third country for the applicant. In accordance with Article 27 (2) (c) APD and international law, Member States must conduct an individual examination and ascertain whether any proposed safe third country is actually safe for the particular applicant. Moreover, the applicant must be given the opportunity to, at least, challenge the application of the safe third country concept on the grounds that s/he would be subjected to torture, cruel, inhuman or degrading treatment or punishment. A decision to omit the personal interview, therefore, cannot be taken unless the applicant has been given the effective opportunity to rebut the presumption of safety. An interview of the applicant would provide the applicant with the opportunity to raise grounds, if any, to challenge the application of the concept and enable the determining authority to ascertain whether any proposed safe third country is actually safe for the particular applicant.

Article 12 (2) (c) also permits Member States to omit the personal interview on the ground that the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin. However, Article 32 (3) APD requires Member States to conduct, at least, a preliminary examination of the subsequent application to determine whether or not there are new elements or findings. The decision to omit a personal interview cannot be taken unless this preliminary examination has been conducted. However, Article 34 (2) (c) permits the preliminary examination of a subsequent application to be conducted on the sole basis of written submissions

¹⁴⁸ Of the 12 Member States surveyed for this research, Belgium and Italy do not have legislation permitting the designation of third countries as safe countries of origin. See section 14 of this report for further information.

¹⁴⁹ Article 31 (1) APD states that a country may only be considered as a safe country of origin for a particular applicant if ... *"he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his/her particular circumstances and in terms of his/her qualification as a refugee"*.

¹⁵⁰ Articles 23 (4) (a) APD, 23 (4) (c) APD with regard to safe country of origin, 23 (4) (g) APD, and 23 (4) (j).

without an interview. It must be stressed that this latter provision is optional and an interview would provide the opportunity to ascertain whether there are any new elements or findings.

The following subsections of this report distinguish between national legislation and practice relating to the omission of the personal interview. As will be seen, in practice, most of the Member States surveyed offer the opportunity of a personal interview to first-time applicants.

National legislation relating to the omission of interviews

The grounds upon which Member States' national legislation, regulations or administrative provisions permit the omission of the personal interview cannot be easily and clearly set out in a comparative format.

This is due, in part, to the fact that national legislation may express the grounds for omission in broader terms than the APD, and whether a specific ground stipulated in the APD is considered to be reflected in national legislation may be a question of interpretation. For example, in France, one of the grounds upon which the personal interview may be omitted is that "*the elements which substantiate the claim are manifestly unfounded.*"¹⁵¹ French legislation does not define 'manifestly unfounded' and there are no public guidelines setting out the criteria to be applied. Other information provided by authorities regarding practice has, therefore, been drawn upon indicatively for the table below.¹⁵²

Care should also be taken in comparing national legislation because in some Member States, the omission of the personal interview may mean that the applicant has no interview at all with the determining authority on the merits of the application. In some Member States, by contrast, national legislation may provide for a personal interview in an initial phase of the first instance procedure, but provide grounds for omission of the personal interview in a following phase. Therefore, notwithstanding legislative grounds for the omission of the personal interview, all applicants nevertheless have an interview with the determining authority. For example, in Slovenia and Spain, all applicants are given the opportunity for an interview as part of the procedure to formalize the registration of the application. However, following this phase, in Slovenia, the application is channelled into either the accelerated or the regular procedure; and the personal interview may be omitted, and usually is in practice, omitted in the accelerated procedure on numerous grounds stipulated in national legislation. In Spain, following the admissibility phase in which the applicant is interviewed, if the application is channelled into the regular procedure, the personal interview may be omitted at the

¹⁵¹ Article L.723-3 *Ceseda*.

¹⁵² See footnote 155 below for more detail.

discretion of the determining authority. No specific grounds are stipulated in national legislation.¹⁵³

Bearing these caveats in mind, UNHCR's research shows that national legislation, regulations or administrative provisions provide for the omission of the personal interview in the following circumstances¹⁵⁴:

Key to table: √ indicates that the personal interview may be omitted on this ground. 'X' indicates that the personal interview may not be omitted on this ground.

	Be	Bg	Cz	De	Es ¹⁵⁵	Fi	Fr ¹⁵⁶	Gr	It	Nl	Si ¹⁵⁷	UK
Art. 12 (2) grounds:												
Positive decision can be taken on basis of evidence available	X	X ¹⁵⁸	X	X ¹⁵⁹		X	√	√	√	X	X	√

¹⁵³ Article 17.8 provides that secondary legislation will determine the conditions under which a new "personal hearing" on the asylum application can be held. The need to hold such hearing/s must be motivated.

¹⁵⁴ Note that this refers to legislation and not practice which is often different.

¹⁵⁵ The New Asylum Law establishes that the formalization of the application shall be made by means of a personal interview (Article 17 (4)). As such, all applicants have an interview and it is not possible to omit the interview as without it an application is not registered and no procedure ensues. Current Spanish asylum legislation does not establish a right to a personal interview nor legislate on the circumstances in which a personal interview will be offered in the regular procedure. In the regular procedure, the decision to conduct a personal interview is wholly at the discretion of the eligibility official.

¹⁵⁶ In France, there are four grounds in legislation for the omission of the personal interview according to Article L.723-3 *Ceseda*: a) the OFPRA is able to take a positive decision on the basis of elements available; b) the asylum seeker is a national of a country to which article 1C5 of the 1951 Refugee Convention is applied; c) the elements which substantiate the claim are manifestly unfounded; d) medical reasons prevent the conduct of the interview. The term 'manifestly unfounded' has been interpreted in this table based on internal guidelines, and the criteria contained in the London Resolution of the Council of Ministers on Manifestly Unfounded Applications for Asylum of 1992 which, according to OFPRA inspires their practice (although not binding); and the practice whereby it appears that a significant number of applicants of subsequent applications are not offered the opportunity of a personal interview (see section 15 of this report).

¹⁵⁷ All applicants are interviewed as part of an initial procedure to formalize the registration of the application. This is considered to constitute a meeting in terms of Article 12 (2) (b) APD. The data in this table relates to some of the grounds upon which the personal interview may be omitted in the accelerated procedure. Article 46 (1), indent 1 of the IPA provides that "*the personal interview may be omitted when the competent authority may decide [on the application] in an accelerated procedure on the basis of the facts and circumstances referred to in the first, third, fourth, fifth, sixth, seventh, or eighth indents of Article 23 of this Act [the latter sets out the evidence which may be taken into consideration e.g. oral and documentary evidence submitted by applicant and evidence obtained by competent authority]*". There are 16 grounds upon which the competent authority may decide on an application in the accelerated procedure in accordance with Article 55 IPA.

	Be	Bg	Cz	De	Es ¹⁵⁵	Fi	Fr ¹⁵⁶	Gr	It	Nl	Si ¹⁵⁷	UK
Meeting with competent authority already held	X	X	X	X		X	X	√	X	X	X	√
Irrelevant issues raised by applicant	X	X	X	X		X	√ ¹⁶⁰	√	X	X	√ ¹⁶¹	√
Safe country of origin	X	X	X	X		X	√ ¹⁶²	√	X	X	√	X
Safe third country	X	X	X	X ¹⁶³		X ¹⁶⁴	X	√	X	X	√	√ ¹⁶⁵
Applicant has made inconsistent, contradictory, improbable or insufficient representations	X	X	X	X		X	√ ¹⁶⁶	√	X	X	√	√

¹⁵⁸ Infants born in Bulgaria to parents who have had protection granted in Bulgaria are not interviewed. See Decision 24 where minor born in Bulgaria to parents who were beneficiaries of humanitarian status was granted humanitarian status.

¹⁵⁹ Section 24 (1) Sentence 4, 1st Alternative APA states that the interview may be dispensed with if the Federal Office intends to recognize the foreigner's entitlement to asylum. The wording only refers to constitutional asylum (Article 16a Basic Law). This is confirmed by G. Renner, *Commentary on Foreigner's Law*, 8th edition (2005), section 24, para 9 which states that the provision does not apply in cases of Section 60 (1) Residence Act. Thus it does not fall within the scope of the Directive. Moreover, there are indications in the literature (R. Marx, *Commentary on the Asylum Procedure Act*, 7th edition (2009), Section 24, para 58) that this provision is not applied in practice any more.

¹⁶⁰ Not an explicit legal ground. However, note that by law the personal interview may be omitted on the ground that the elements which substantiate the claim are manifestly unfounded.

¹⁶¹ An application may be decided in the accelerated procedure, and therefore the personal interview may be omitted where "the applicant entered the Republic of Slovenia exclusively for economic reasons" and also when "the applicant, in submitting his/her application and presenting the facts, has only raised issues that are insufficient, insignificant or of minimal relevance to the examination of whether s/he qualifies for international protection" according to Article 55 IPA in conjunction with Article 46 (1) IPA.

¹⁶² Not an explicit legal ground. However, note that by law the personal interview may be omitted on the ground that the elements which substantiate the claim are manifestly unfounded.

¹⁶³ Section 24 (1) Sentence 4, 2nd alternative APA states that the interview may be dispensed with if the foreigner claims to have entered Germany from a safe third country (Section 26a). But the safe third country concept only applies to cases of constitutional asylum (Article 16a Basic Law). With regard to the examination of refugee status, entering Germany from a purported safe third country will lead to the application of the Dublin II Regulation.

¹⁶⁴ Section 103 (1) of the Aliens' Act 301/2004 allows for applications to be dismissed on the ground of a safe country of asylum. This includes the concept of safe third countries and implies that applications may be dismissed without a personal interview. However, according to the determining authority, this is interpreted as applying only when there is deemed to be a first country of asylum and not a safe third country.

¹⁶⁵ Applications raising the issue of a safe third country do not have to be examined substantively and are treated in accordance with UK third country procedure, see Asylum Instruction 'Third Country Cases: Referring and Handling'; in this regard there will be no personal interview of the asylum application.

	Be	Bg	Cz	De	Es ¹⁵⁵	Fi	Fr ¹⁵⁶	Gr	It	Nl	Si ¹⁵⁷	UK
so claim unconvincing												
Subsequent application raising no new elements	X	X	√ ¹⁶⁷	√		√	√ ¹⁶⁸	√	√ ¹⁶⁹	X	√	√
Application made merely to delay removal	X	X	X	X		X	√ ¹⁷⁰	√	X	X	√	√
Art. 12 (3) grounds:												
Unfit or unable on health grounds	X	√	X	X	X	X	√	√	√ ¹⁷¹	√	√	√
Other grounds found in national legislation:												
No interpreter available	√			X								
Application considered manifestly unfounded (potentially broader than Art. 12 (2))				X			√					
Application examined in accelerated procedure (potentially broader than Art. 12(2) APD)				X							√	
National of a country to which Art. 1 C 5 of 1951 Convention applicable				X ¹⁷²			√					

¹⁶⁶ Not an explicit legal ground. However, note that by law the personal interview may be omitted on the ground that the elements which substantiate the claim are manifestly unfounded.

¹⁶⁷ Interviews are omitted not on the grounds of Article 12 APD but on the grounds of inadmissibility.

¹⁶⁸ Not an explicit legal ground. However, note that by law the personal interview may be omitted on the ground that the elements which substantiate the claim are manifestly unfounded.

¹⁶⁹ Interviews are omitted not on the grounds of Article 12 APD but on the grounds of inadmissibility.

¹⁷⁰ Not an explicit legal ground. However, note that by law the personal interview may be omitted on the ground that the elements which substantiate the claim are manifestly unfounded.

¹⁷¹ For a positive decision (recognition of 1951 Convention status only).

	Be	Bg	Cz	De	Es ¹⁵⁵	Fi	Fr ¹⁵⁶	Gr	It	Nl	Si ¹⁵⁷	UK
National of the EU			√	X								
First country of asylum			√	√ ¹⁷³		√			√ ¹⁷⁴			√ ¹⁷⁵

Compatibility of national legislation with Article 12 (2) APD

For the most part, the national legislation of the Member States of focus in this research is considered to be compatible with Article 12 (2) APD, with two possible exceptions.

In France, as mentioned above, there is a general provision permitting the omission of an interview if the application is considered to be manifestly unfounded.¹⁷⁶ The compatibility of this provision with Article 12 (2) (c) APD depends on whether the decision that an application is manifestly unfounded is taken on the basis of complete examination of information provided by the applicant and whether the interpretation given to the term ‘manifestly unfounded’ is limited to the terms of Article 12 (2) (c) APD. As stated above, French legislation does not define ‘manifestly unfounded’ and there are no public guidelines setting out the criteria to be applied, rendering it difficult to assess compatibility with Article 12 (2) (c) APD. The criteria for determining whether an application is manifestly unfounded is apparently based on the definition contained in the London Resolution of the Council of Ministers on Manifestly Unfounded Applications for Asylum of 1992 (which is not legally binding) and inspired by OFPRA’s own experience and practice (internal guidelines). Each protection officer, therefore, has a wide margin of appreciation in deciding whether to omit a personal interview on the ground that the application is manifestly unfounded, and interpretation may vary from

¹⁷² With regard to eligibility procedures. Different rules apply with a view to revocation procedures based on an application of the German cessation provisions.

¹⁷³ According to Section 29 APA, an application can be rejected as “irrelevant” if the asylum seeker was obviously safe from persecution in a third country and can be returned to that country. The rejection as “irrelevant” implies that a hearing is not carried out. However, in practice, the provision is hardly ever applied. In 2008, only three decisions were based on Section 29 APA according to information provided by the BAMF. They all concerned a Bosnian family which had applied for protection after having lived for seven years in the USA and held a 15-year residence title for that country. Since the application of the Dublin II Regulation, the possibility to reject an application as irrelevant would only apply to persons who enter Germany by air or sea and do not come directly from the state of persecution. Moreover, the criterion of returnability and the evidence test further reduce the scope of application for this provision.

¹⁷⁴ Article 29 (1) (a) of d.lgs. 25/2008 provides that applications are declared inadmissible and the personal interview may therefore be omitted when “*the applicant has been recognized as a refugee by a State that has signed the Geneva Convention and is still able to avail him/herself of such protection*”.

¹⁷⁵ Applications raising the issues of a ‘first country of asylum’ are not considered substantively and are treated in accordance with UK third country procedure.

¹⁷⁶ Article L.723-3 *Ceseda* states that OFPRA may omit the interview where “(c) the elements which substantiate the claim are manifestly unfounded”.

one Geographic Division of the OFPRA to another.¹⁷⁷ OFPRA might consider an asylum application to be ‘manifestly unfounded’ on the following grounds: the grounds on which the claim is based are outside the scope of refugee status or subsidiary protection criteria; the application is based on deliberate fraud, for instance false declarations about nationality/identity; the applicant’s statements are devoid of any substance, i.e. do not contain sufficient details and/or personal details; the application relies on the general situation; the applicant’s statements are devoid of any credibility, i.e. are based on manifestly false documents, are fundamentally inconsistent or improbable or contain major contradictions. Moreover, on this basis, Article L.723-3 paragraph c) *Ceseda* also applies to subsequent applications. Member States had the opportunity to include Article 23 (4) (d) APD relating to the presentation of false information or documents or withholding information with respect to identity and nationality, but this is not included within the terms of Article 12 (2) (c) APD. Therefore, the interpretation of ‘manifestly unfounded’ by the French authorities may go beyond the scope of the APD.

It should be noted that the only ground upon which an interview can be omitted in Belgium is that there is no available interpreter. If the CGRA does not have an interpreter available who speaks the language of the applicant, the asylum applicant can be requested to bring his/her own interpreter. If the applicant fails to bring an interpreter, the CGRA *can* decide on the asylum application without hearing the asylum applicant.¹⁷⁸ The asylum applicant should be allowed to write down his statements. If the asylum applicant does not want to or cannot write down his/her statements, the CGRA is allowed to decide on the asylum application based on the elements made available to it. Article 20 of the Royal Decree of 11 July 2003 concerning the CGRA is based on the case law of the Council of State which states that the CGRA is not legally obligated to provide an interpreter.¹⁷⁹

UNHCR was informed by the determining authority that this legal provision is very rarely implemented. Nevertheless, given modern tele- and video communications, the absence of an interpreter should not be a ground for omission of the interview under Article 12 (3) APD.¹⁸⁰ Moreover, this is not in accordance with Article 10 (1) (b) and Article 13 (3) (b) APD. Article 10 (1) (b) APD requires Member States to provide applicants with the services of an interpreter for the personal interview, and Article 13 (3) (b) requires Member States to select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview.

¹⁷⁷ In UNHCR’s audit of case files only applications concerning Pakistani nationals were determined to be manifestly unfounded: case files 11R(PK); 12R(PK) and 55R(PK). Six case files concerning Pakistani nationals were audited in total.

¹⁷⁸ Article 20 § 3, of the Royal Decree of 11 July 2003 concerning the CGRA.

¹⁷⁹ RvS 8 May 1998, nr. 73.569 & RvS 18 August 1998, nr. 73.599 & RvS 31 January 2006, nr. 154.366.

¹⁸⁰ Article 12 (3) permits the omission of the personal interview when “it is not reasonably practicable”.

It should also be noted that in Slovenia, Article 46 (1) indent 1 IPA permits the omission of the personal interview in the accelerated procedure. An application may be referred to the accelerated procedure on any one of 16 grounds, which are broader than Article 12 (2) (c).¹⁸¹ Therefore, the omission of the personal interview on this ground cannot be considered compatible with Article 12 (2) (c) APD. However, because the applicant has a meeting with the determining authority for the purpose of submitting the application before the accelerated procedure, this meeting is considered to constitute a personal interview for the purposes of the APD on the basis of Article 12 (2) (b).¹⁸²

Good practice with regard to national legislation

A number of Member States surveyed have recognized that it is not possible to ascertain whether any initial reasons given by the applicant for applying for international protection are irrelevant, inconsistent, contradictory, improbable, insufficient or merely to delay or frustrate removal, without first conducting a personal interview of the applicant. These Member States, therefore, do not have national legislation, regulations or administrative provisions which permit the omission of the personal interview on these grounds. These Member States are Belgium, Bulgaria, the Czech Republic, Finland, Germany, Italy, the Netherlands and Spain. Indeed, the determining authority in Germany (BAMF) has explicitly stated that the personal interview is seen as indispensable for the assessment of the reasons for the application and their relevance.

Similarly, in spite of Article 12 (2) (c) APD, a number of Member States have recognized that even if national legislation provides for the designation of third countries as safe countries of origin, in order to determine whether a particular country may be considered a safe country of origin for a particular applicant, an interview is essential to provide the applicant with an opportunity to rebut the presumption of safety.¹⁸³ These Member States, therefore, do not have national legislation, regulations or administrative provisions which permit the omission of the personal interview on the ground of a safe country of origin. These Member States are Belgium, Bulgaria¹⁸⁴, the Czech Republic¹⁸⁵, Finland, Germany¹⁸⁶, Italy, the Netherlands¹⁸⁷, Spain¹⁸⁸ and the UK.

¹⁸¹ See chapter on accelerated procedures for further details.

¹⁸² Administrative Court decisions (U 129/2008, 6 February 2008; U 728/2008, 9 April 2008). The Court said that the interview to submit the application is to be considered a personal interview where it is conducted in accordance with Articles 45 and 47 of the IPA, which means that the determining authority (inspector) has to raise concrete and detailed questions in order to clarify facts and circumstances of the application in order to assess whether grounds for international protection exist or not.

¹⁸³ Note that of the Member States surveyed, Belgium and Italy do not have legislation which permits the national designation of third countries as safe countries of origin.

¹⁸⁴ In practice, there is no current national list of designated safe countries of origin.

¹⁸⁵ The Czech Republic does not have legislation allowing for the designation of safe countries of origin but such national designation does exist (not adopted pursuant to a legislative provision) and this is a ground to determine an application as manifestly unfounded according to Section 16 ASA.

State practice relating to the omission of interviews

UNHCR notes positively that, regardless of national legislative provisions, its research shows that, in practice, a number of Member States offer a personal interview to all first-time adult applicants: Belgium¹⁸⁹, Bulgaria¹⁹⁰, the Czech Republic,¹⁹¹ France¹⁹², Germany¹⁹³, Italy¹⁹⁴, the Netherlands¹⁹⁵, and Spain. In Slovenia, every applicant has a meeting with the competent authority for the purpose of assisting him/her to complete his/her application and submit essential information.

In the UK, although Immigration Rule 339 NA permits an interview to be omitted in a wide range of situations, policy instructions set a higher standard.¹⁹⁶ The API on *Interviewing* states that the determining authority normally interviews applicants before refusing an asylum claim substantively.¹⁹⁷ In the 60 cases audited for this UNHCR

¹⁸⁶ Within the framework of the safe country of origin concept it is assumed that no persecution takes place in these countries, however, the applicant can rebut this assumption (Section 29a APA). A personal interview which provides for the opportunity of such a rebuttal is also conducted in these cases. The Member States of the European Union as well as Ghana and Senegal have been designated as safe countries of origin (Section 29a (2) APA).

¹⁸⁷ Note that the Netherlands does not have a national list of designated safe countries of origin in accordance with the APD. Instead, it may apply on a country-by-country basis an assumption of safety which the applicant must rebut. However, in practice, it is reported that the concept is rarely applied. See section 14 of this report for further information.

¹⁸⁸ According to Article 17 (4) New Asylum Law, the application for international protection is formalized in a personal interview. As such, all applicants are interviewed and there is no ground for omission of this interview.

¹⁸⁹ Unless there is no interpreter available.

¹⁹⁰ In 61 of the 62 case files audited, a personal interview was conducted. The exception was a case concerning a minor born in Bulgaria whose parents were beneficiaries of humanitarian status. The minor was granted humanitarian status.

¹⁹¹ Unless the applicant is an EU citizen or has already received international protection in another country or another EU Member State is responsible for the examination under the Dublin II Regulation.

¹⁹² According to the 2008 OFPRA activity report, 100% of first applicants were invited to a personal interview and there is now a policy of offering a personal interview to all new applicants. Although note that UNHCR's audit of case files found that personal interviews were omitted where applications were considered to be manifestly unfounded (and in the case of subsequent applications).

¹⁹³ Exceptions apply in cases of first-time applicants under the following circumstances: applicants failing to appear at the interview without an adequate excuse (Section 25 (4) Sentence 4 APA / Section 25 (5) APA); application for a child under age 6 born in the Federal territory and the facts of the case have been sufficiently clarified (Section 24 (1) Sentence 4 APA); in case family asylum or refugee protection for families is granted to unmarried minors or spouses according to Section 26 (2), (4) APA; in practice in most cases of accompanied minors who are under 14 years old.

¹⁹⁴ Except if the applicant is already a recognized refugee and is able to avail him/herself of protection.

¹⁹⁵ An interview was conducted in all the case files audited for this research, although there are concerns about the quality of the interview in the 48 hour accelerated procedure.

¹⁹⁶ The API on *Interviewing*.

¹⁹⁷ API *Interviewing* November 2006 (rebranded December 2008).

research, personal interviews were omitted in four cases involving application of the Dublin II Regulation.¹⁹⁸

In Finland, personal interviews were conducted in 90 of the 115 case files audited. The cases in which personal interviews were not conducted were cases where the application was either implicitly or explicitly withdrawn, or were subsequent applications without new elements, Dublin cases or cases raising the issue of first country of asylum.

In Greece, in theory, the personal interview constitutes both the formalization of the application as well as the opportunity to gather evidence regarding the reasons for the application for international protection. In practice, the 'omission of the personal interview' means the omission of the question asked regarding the applicant's reasons for leaving the country of origin.¹⁹⁹ The Head of the ARD in ADGPH informed that in ADA, where the overwhelming majority of applications are lodged, there is an oral guideline to 'omit the interview' in cases where the applicant claims to have left the country of origin exclusively on economic grounds and the country of origin does not have 'disorderly' conditions and/or is not among those countries that create refugees. Of the 52 cases that UNHCR observed in Greece, in ten the 'interview was omitted' because the applicants, all Pakistani nationals, were deemed to have arrived in Greece for economic reasons.²⁰⁰

The fundamental problem with Article 12 (2) (c) APD, if applied, is perhaps highlighted by the following finding. UNHCR audited three case files in France which concerned applicants originating from Pakistan.²⁰¹ Their applications did not appear particularly short or less detailed, or less relevant or more stereotyped than other applications that were sampled. However, in each case the personal interview was omitted. This decision to omit the personal interview was taken on the basis of the information in the application form completed by each applicant in French and without the assistance of the determining authority. The case file contained a '*Proposal for a negative decision*' which consisted of one or two pages. The application for international protection was

¹⁹⁸ In 2008, 1,715 applications were rejected on safe third country grounds according to the provisional figures of the Home Office *Control of Immigration: Quarterly Statistical Summary*, United Kingdom October-December 2008. In our audit of case files, personal interviews did not take place in seven cases. This included four safe third country cases: DAF58, DAF 59, DAF 60, DAF 61. These were all "Dublin" cases. We were provided with four "dummy" files by the Third Country Unit; and three cases where the applicant did not turn up for interview and the application was therefore refused on non-compliance grounds: DAF 48, DAF50, DAF 51. It is the determining authority's policy not to interview child asylum applicants under the age of 12 Stakeholders have confirmed that in cases involving children over the age of 12, interviews are often omitted.

¹⁹⁹ Note that UNHCR has very serious concerns regarding the quality of personal interviews in Greece. See section 6 of this report on the requirements of the personal interview.

²⁰⁰ IO1PAK1, IO2PAK2, IO3PAK3, IO6PAK5, IO15PAK6, IO16PAK7, IO21PAK8, IO32PAK10, IO35PAK11 and IO36PAK12.

²⁰¹ Case-File 11R (PK); Case-File 12R (PK); and Case-File 55 R (PK).

rejected in all three cases on the grounds of a lack of personal and detailed written declarations by the applicants. Clearly, the omission of the personal interview denied the applicants the opportunity to provide detailed or further evidence to support their claims.

UNHCR's audit of 60 case files in France revealed eight case files concerning subsequent applications.²⁰² All the subsequent applications in the sample were examined under the accelerated procedure and none of the applicants were invited to an interview. The ground for the omission of the interview was not mentioned in any of the case files. Moreover, three of the eight applicants had not been interviewed by OFPRA in the framework of the procedure to examine their first application for international protection, on the ground that their application was considered to be manifestly unfounded.²⁰³ This decision was taken on the basis of the application form completed by each applicant in French and without the assistance of the determining authority. As a result, these three applicants were never given the opportunity of a personal interview with the determining authority OFPRA. It should be noted that, according to OFPRA, it now seeks to give the opportunity of a personal interview to all first-time applicants.²⁰⁴

Recommendations²⁰⁵

Article 12 (2) (c) APD should be amended and the references to Articles 23 (4) (a) (irrelevant issues), 23 (4) (c) (safe country of origin), 23 (4) (g) (inconsistent, contradictory, improbable and insufficient representations) and 23 (4) (j) (merely to delay or frustrate removal) should be deleted.²⁰⁶

Those Member States which have national legislation permitting the omission of the personal interview on the grounds that the issues raised are irrelevant, inconsistent, contradictory, improbable, insufficient or merely to delay or frustrate removal, should delete this legislative provision.

In Member States which operate a separate procedure in which the applicability of the safe third country concept is assessed, the determining authority should ensure the applicant is given the opportunity of an interview in which s/he has the

²⁰² Case-File 52R (AFG); Case-File 58R (DRC); Case-File 59R (SLK); Case-File 49R (SLK); Case-File 50R (PAK); Case-File 51R (RUS); Case-File 57R (TR); and Case-File 48R (TR).

²⁰³ Case-File 58R (DRC); Case-File 50R (PK); and Case-File 48R (TR).

²⁰⁴ Note OFPRA's claim in the 2008 Activity Report that all first-time applicants are now invited to an interview.

²⁰⁵ This research project does not encompass the implementation of the Dublin II Regulation and therefore no recommendations are made here relating to the opportunity of a personal interview in the course of Dublin procedures. However, a recommendation is made with regard to the application of the safe third country concept and it is recognized that this may be applied in the context of Dublin procedures.

²⁰⁶ This is proposed in recast Article 13(2): APD Recast Proposal 2009.

opportunity to rebut any presumption that a safe third country is safe in his/her particular circumstances. Where Member States assess the applicability of the safe third country concept in the course of the normal procedure, when it is considered that there is a safe third country, the applicant should be given the opportunity to rebut any presumption that a safe third country is safe in his/her particular circumstances in an interview with the determining authority.

During the preliminary examination of subsequent (repeat) applications, UNHCR considers it good practice for Member States to give applicants the opportunity for an interview, so that applicants can explain the facts and substantiate the evidence which is claimed to justify a new procedure.

Failure to appear for a personal interview

Article 12 (6) APD states that, irrespective of Article 20 (1) APD (on the implicit withdrawal or abandonment of an application), *“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”*.

The consequences of a failure to appear for a personal interview, in terms of the procedural steps taken by the competent authorities and the type of decision which might ultimately be taken, are dealt with in section 7 of this report on the withdrawal or abandonment of applications.

With regard to Article 12 (6) APD, UNHCR’s research revealed some evidence indicating that a failure to appear, without good reason, will undermine the credibility of the applicant should the applicant reappear for a re-scheduled interview or contact the competent authorities.²⁰⁷ In Belgium, technical refusal decisions on the ground of a failure to appear for interview state that the behaviour of the applicant:

“shows a lack of cooperation / disinterest in the asylum procedure, which is incompatible with the existence, in your circumstances, of a real risk of persecution as defined in the Geneva Convention or a real risk of serious harm warranting subsidiary protection, and the duty of the asylum applicant to cooperate with the determining authority”.

In Bulgaria, two of the four interviewers interviewed for this research did not consider that a failure to appear for an interview should be a significant factor to be taken into account, whilst the other two interviewers considered that a failure to appear, without good reason, undermined the credibility of the applicant. In Finland, according to the determining authority, a failure to appear for an interview without good reason clearly

²⁰⁷ For example, stated in reports on Belgium, Finland, Greece, and the Netherlands.

affects the credibility of the applicant.²⁰⁸ In Germany, legislation explicitly states that the determining authority will make a decision “*taking into account the foreigner’s failure to cooperate*”.²⁰⁹ In Greece, according to the Head of ARD in ADGPH, a failure to appear for an interview weakens the asylum application. In Italy, some decisions state “*the fact that the applicant has not attended the personal interview can also be interpreted as a lack of interest in recognition*” (D/55/TP/F/ERI/N). In the Netherlands, legislation states that a failure to appear for an interview is a counter-indication for a positive decision (Article 31 (2) (b) Aliens Act).

UNHCR wishes to recall that a failure to appear for the personal interview does not necessarily indicate that an applicant does not qualify for refugee or subsidiary protection status. A person with protection needs may not appear for the personal interview for a variety of reasons unrelated to the merits of his/her application.²¹⁰

Recommendation

The assessment as to whether the applicant has a good reason for his/her non-appearance at the personal interview should take into consideration the subjective circumstances of the applicant, including, *inter alia*, his/her psychological state. It should not be treated as an indication, of itself, that an applicant does not qualify for refugee or subsidiary protection status.

²⁰⁸ Interview conducted 24 February 2009.

²⁰⁹ Section 25 (4) Sentence 4 APA with regard to applicants who are required to reside in a reception centre and Section 25 (5) APA with regard to applicants who are not required to reside in a reception centre.

²¹⁰ See section 7 of this report on the withdrawal or abandonment of applications for further information.