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Discussion Paper: Asylum Decision-Making – Interviews

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Questions for discussion:

- Q1 – Is an asylum interview necessary for every asylum claim?
- Q2 – How to prepare for a neutral, objective and efficient asylum interview?
- Q3 – Is there a role for legal representation in relation to an asylum interview?

Note for discussion:

Q1 – Is an asylum interview necessary for every asylum claim?

The most important question, and one on which there does not appear to be consensus among EU states. UNHCR research¹ indicates a variety of practice in relation to when interviews are conducted, how and by whom and whether an interview is conducted at all. This strongly suggests there is no consensus as to the purpose or value of an interview. UNHCR provides an answer:

“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 relevant facts and to assess the credibility of the oral evidence.”²

The interview is an opportunity to focus the mind of the decision-maker (or interviewer, if different) and applicant on the application. For the former, it is the key opportunity to investigate the application. For the latter, it is a no less key opportunity to present the asylum claim.

¹ UNHCR *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice – Key Findings and Recommendations*, March 2010 (sections IV, V and VI), available at:

<http://www.unhcr.org/refworld/docid/4c63e52d2.html>

² UNHCR, March 2010 *op cit* (page 65)





It is possible, though circumstances are likely to be exceptional, that an asylum claim can be clearly seen to be well-founded without the need for an interview (e.g. the applicant and the risk of persecution he or she faces may be well known). In some circumstances, an interview may not be possible (e.g. the applicant is not competent by reason of immaturity or mental ill health). However, if an interview is possible and it is not clear that the applicant is a refugee, it is necessary that one should take place. Any other approach entails a clear risk that the deciding authority will not have sufficient information in order to decide upon the application. Why is that? It may seem that simply giving an applicant an opportunity to put in writing all that he or she would wish to say in support of the application should be sufficient. However, applicants may have little or no experience of presenting themselves on paper. They may have little or no command of the language to be used on a form. They may not understand what is or is not relevant to the application. They may have little appreciation of either the legal standards by which the application is to be assessed or of what can be reasonably expected of the decision-maker's (and interviewer's) knowledge and experience. Any written application may itself raise questions, which are best answered in person (not least as a written exchange may simply raise further questions). A well-prepared interview provides the best opportunity to address these concerns. It is a shared opportunity for the interviewer and applicant to ensure the asylum claim is fully disclosed and articulated. If successful in that aim, it should enhance confidence in the asylum process, permit a safe and sustainable decision to be reached at the earliest opportunity and ensure that any subsequent (e.g. appeal) proceedings are more effective and efficient for being focused on the matters that are key and material rather than peripheral or irrelevant, that are outstanding or contentious rather than settled or uncontroversial.

Recognition of these points raises further questions, some (but not all) of which are discussed in the remainder of this paper. Before moving on, it is necessary to emphasise that the interview is **a shared opportunity**, from which it follows that there is a shared responsibility to facilitate and take that opportunity. However, the interviewer has several distinct advantages such as: The interview will be conducted in a place familiar to (possibly selected by) him or her. The interviewer should be familiar with the asylum process (and the interview) and his or her role in it. The consequences of the interview/process going wrong in any individual case will be of lesser and less immediate importance to the interviewer. The primary language used (that in which the interview is recorded, and which takes the lead in the sense of setting the questions) is the language of the interviewer. It follows that if the interviewer cannot put his or her prejudices and suspicions to one side, it is highly unlikely that the applicant will be able to do so.

Q2 – How to prepare for a neutral, objective and efficient asylum interview?

Since the interview is so much under the control of the interviewer (e.g. when and where it takes place, what questions are asked, selection and control of the interpreter etc.), the greater responsibility falls to him or her in respect of preparation. However, it would be a mistake to think that it is only the interviewer who needs to prepare. The importance of the matter at hand (the asylum claim) and the unfamiliarity of the applicant in combination mean there is real need for preparation by the applicant. That preparation (seeking to understand what is relevant for the interview, what is expected of him or her at the interview and generally what will happen and



why) will not be possible for the applicant without help and/or information. Recognition of the difficulty that the applicant may have with his or her own preparation should emphasise the importance of the interviewer's preparation for and conduct of the interview.

An interview will need to be adequately structured if the applicant is to be expected to fully disclose and articulate his or her asylum claim. Random (or seemingly random) questioning will neither instil confidence in nor understanding of the applicant, who cannot then be reasonably expected to ensure that all that is relevant is disclosed or articulated in a way that is comprehensible and clear. On the other hand, an interview that simply follows set questions may miss important information and unresponsiveness to the applicant's answers will similarly undermine confidence.

It follows that the interviewer needs to have some clear objectives in relation to the specific interview. He or she must be familiar with the personal information relating to the applicant, and familiar with general information (particularly country information and legal standards) relating to the application. Without this personal and general background, the interviewer will not be in a position to structure the interview, identify key questions to ask and key areas to explore and successfully respond to the applicant's answers with follow-up questions. Where an applicant faces profound difficulties in disclosing relevant information (e.g. where cultural or social taboos strongly discourage disclosure of rape, torture or some other shameful experience), it will be especially important that the interviewer has prepared well so that he or she can confidently (though sensitively) explore areas which the applicant may instinctively seek to avoid. Nonetheless, in some cases, it will (or should) become apparent to the interviewer that, however familiar with this information he or she is, this is insufficient – the circumstances of which may be wholly outside the interviewer's control (e.g. there was no information previously available to the interviewer to suggest an applicant had serious mental health difficulties, but on presentation at interview there are clear indications that the applicant is not currently competent to proceed). There can be no hard and fast rule, but in some cases the interview may need to be abandoned or postponed, in others it may be reasonable to proceed, and in some proceeding may be reasonable but further interview may be necessary.

It similarly follows that the interviewer should be prepared to provide information to the applicant at interview – e.g. about the purpose of the interview, and the asylum process generally.

The importance of preparation raises questions about how information should be obtained from the applicant prior to interview. This is not discussed here, but it should be noted that there is the potential for tension between the need for information from the applicant in order to prepare for the interview and the need to ensure that reliable information is secured through means that are suitable for that purpose. A key issue, therefore, is the decision-maker's understanding or expectation as to the reliability of information however obtained (including at interview).

Is there a role for legal representation in relation to an asylum interview?

Recognition of the importance of the interview as a shared opportunity to ensure the asylum claim is fully disclosed and articulated, and the importance of preparation to secure this aim, highlights the role for good quality legal advice and representation. While it is not generally the case among EU states that legal representation is available before, during *and* post-interview, in principle a legal representative is in a unique position to play an important role at *all* of these stages. Some, but not all, of the reasons for this apply to others (including decision-makers and interviewers). However, it is the combination of the following that constitutes the key value of legal representation:

- Independence from the deciding authority
- Knowledge of the asylum process
- Understanding of the applicable legal standards
- General familiarity with legal processes
- Capacity to provide advice and assistance with options (including where asylum is refused)

These combined factors, where there is sufficient time to develop a client-lawyer relationship of trust and confidence, provide the best conditions for information and understanding to be imparted to the applicant so that he or she is best prepared to engage with the asylum process (including the interview). Similarly, these factors mean the legal representative is best placed to identify, understand and address any inadequacy in the asylum process (including the interview). If the aims identified above (in relation to the need for an interview) are to be secured – in particular, if confidence is to be enhanced, safe and sustainable decisions are to be reached at the earliest opportunity and appeal proceedings are enabled to be focused – the role for legal representation before, during and after the interview can be critical.