



PRACTICES IN INTERVIEWING IMMIGRANTS: LEGAL IMPLICATIONS
REPORT FROM POLAND

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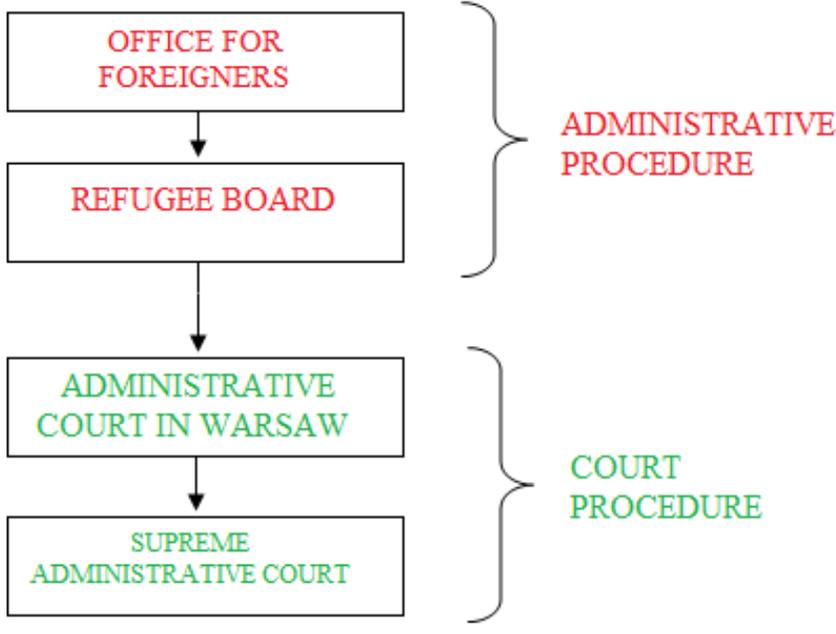
I. INTRODUCTION

Authorities competent to interview foreigners

A. PROCEDURE FOR GRANTING REFUGEE STATUS

Application for granting the refugee status is submitted to the President of the Office For Foreigners, through the commanding officer of the Border Guard. Before making the decision President of the Office For Foreigners assesses if the applicant fulfills conditions of granting refugee status (Article 13.1 of the Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland¹, hereinafter referred to as: Act on granting protection), supplementary protection (Article 15 in connection with an Article 48.1 of Act on granting protection) or permit for tolerated stay on the territory of the Republic of Poland (Article 97.1 in connection with an Article 48.1 of Act on granting protection). According to Article 53.2 of Act on granting protection the decisions made by the President of the Office For Foreigners may be appealed against to the Refugee Board (Council For Refugees). The decision of the Refugee Board ends the administrative procedure, but it can be appealed to the Administrative Court in Warsaw (Wojewódzki Sąd Administracyjny w Warszawie). The judgment of this court can be appealed to the Supreme Administrative Court of the Republic of Poland in Warsaw (Naczelny Sąd Administracyjny w Warszawie). Both of the above mentioned courts assess if the legal provisions were correctly applied during the administrative procedure.

The main interview of the asylum seeker takes place during the procedure held in the Office For Foreigners (exceptions from this rule are specified in Article 43.2 of the Act on granting protection). In some cases

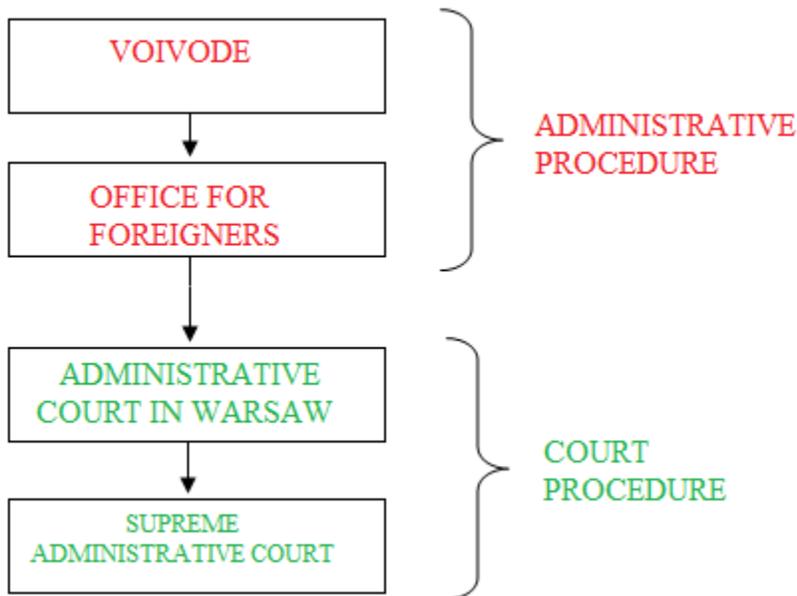


Refugee Board organizes supplementary interview, although it is not obligatory. Therefore interview of the asylum seekers may take place during whole procedure of granting protection on the territory of Republic of Poland. Courts issue the judgments generally on the basis of the whole evidence gathered during the administrative procedure, inter alia on the records of the interviews conducted during this procedure.

¹ English version of the Act available on: <http://www.udsc.gov.pl/LAW,265.html>.

B. PROCEDURE IN THE PROVINCE GOVERNOR'S OFFICES²

In the procedure for granting a permit to reside for a definite period of time on the territory of Poland, a permit to settle oneself on this territory or a permit to stay as a long-term resident of EC the authority of the first instance is territorially competent Province Governor³. Province Governors grant permit to stay on the territory of Poland for instance when a foreigner obtained work permit, runs a business, got married with the Polish citizen or wants to start or continue intramural studies or Ph. D. studies at this territory. According to Article 6 of the Act of 13 June 2003 on foreigners⁴ (hereinafter referred to as: Act on foreigners), the decisions made by the Province Governor may be appealed against to the President of the Office For Foreigners. The decision of the President of the Office For Foreigners ends the administrative procedure, but it can be appealed to the Administrative Court in Warsaw (Wojewódzki Sąd Administracyjny w Warszawie). The judgment of this court can be appealed to the Supreme Administrative Court of the Republic of Poland in Warsaw (Naczelny Sąd Administracyjny w Warszawie). Both of the above mentioned courts assess if the legal provisions were correctly applied during the administrative procedure.



Interviewing migrants may take place during whole above mentioned procedure. The main interview though takes place during the procedure conducted in the Province Governor's Office. In some cases Office For Foreigners organizes supplementary interview, although it is not obligatory. Courts issue the judgments generally on the basis of the whole evidence gathered during the administrative procedure, inter alia on the records of the interviews conducted during this procedure.

² In this report, the main source of the information about the practice of interviewing foreigners by the Province Governors' Offices is the observation of the practice adapted in Mazovia Province Governor's Office in Warsaw (Mazowiecki Urząd Wojewódzki w Warszawie).

³ Territory of Poland is divided for 16 provinces. Provinces are governed by local authorities called Voivodes (Province Governors).

⁴ English version of the Act available on: <http://www.udsc.gov.pl/LAW,265.html>.

II. GUIDANCE FOR CONDUCTING INTERVIEWS

Problem:

Polish law is currently limited to the imposition of the obligation to conduct the interview (in the procedure for granting refugee status) or enabling conducting the interview by the authorities (procedure in Province Governors' Offices), although it does not regulate even in general way principles of conducting this interviews. None of the authorities authorized by law to conduct interviews of the foreigners does not possess the specified, written rules how to conduct properly the interview⁵. Prospective interviewers have to take part in the special training (Office For Foreigners), be trained by their more experienced colleagues (Mazovia Province Governor's Office) and participate in the interviews as observers (Office for Foreigners, Mazovia Province Governor's Office). In the Refugee Board interviews are conducted by members of this authority, who are – according to Article 89r.1 of the Act on granting protection - the persons with outstanding knowledge or practical experience within the scope of the refugee problems.

Lack of the specified, written rules governing the interviews of the foreigners can lead to many misconducts done by the interviewers, interpreters, foreigners and other persons which are authorized to take part in the interview. Those misconducts are a result of the lack of knowledge about the aims and proper conduct of the interview or about rights and obligations of the persons taking part in an interview. Lack of the written rules of conducting the interview can increase the probability of the impunity of the interviewers and interpreters for their misconducts.

Solution:

Polish law should contain the regulation which will specify general rules of conducting the interview and rights and obligations of the interviewed foreigner, interpreter, interviewer or any other person who is entitled to take part in the interview (for example proxy or psychologist). Authorities which are entitled to interview foreigners should additionally prepare and implement their own internal regulations in this area (more specified). The above mentioned internal regulation should be commonly accessible in order to enable every person concerned, especially the interviewed foreigner, to get acknowledged with a rules which will govern the interview. The copy of the regulation should be also handed to an interpreter who starts work in the one of the offices on issue.

Creation of the regulations specifying how to properly conduct the interview will ease definitely the work of the interviewers, who would know what actions should be taken in particular circumstances (for example: when the interviewed foreigner is crying, he is aggressive, afraid), what should be the methodology of asking questions⁶ and what questions have to be asked during the interview (for instance: the question about the assessment of the quality of the

⁵ Information obtained during the meetings in the Office For Foreigners, the Refugee Board and the Mazovia Province Governor's Office in Warsaw.

⁶ It will lead to the logical structure of the interview.

interpretation made during the interview). The responsibility of the interviewer for his misconducts will be more easily born, if the rules of conduct during the interview would be written and commonly accessible. Binding force of the above mentioned regulations will also positively affect the quality of the interpretation (look: Standards of the interpretation and Misconducts of the interviewer) and will contribute to the increase in the foreigners' knowledge about the Polish administrative procedures⁷.

III. PRESENCE OF THE INTERPRETER DURING THE INTERVIEW

A. PROCEDURE FOR GRANTING REFUGEE STATUS

During the procedure for granting the refugee status the presence of the interpreter is ensured by the Polish authorities, so adequately the Office For Foreigners and the Refugee Board. According to Article 43.4 of the Act on granting protection, the authority carrying the proceedings shall ensure free aid of an interpreter having command on the language understandable for the applicant. The decision which language is understandable for the applicant is made on the basis of the application for granting the refugee status, which have to be filled at the beginning of the procedure. In this application asylum seeker has to declare his/hers mother tongue and knowledge of other languages, but only if he can speak in those languages freely (section B, point 4 of the application⁸).

1. Problem:

Applicants do not put enough strain on the declaration of the known languages. For example, citizens of the Russian Federation from the Chechen Republic state that their mother tongue is Chechen, but they know also Russian. Afterwards, during the interview in Russian the applicant says, that he wants to be interviewed in Chechen, because he learned Russian only some time in school and – as a result – he does not understand the questions and cannot freely answer them. It also happens that the interviewer by himself notices the foreigner's problems in understanding the interpreter during the interview or the interpreter points out that the applicant does not understand the declared language. In this situation, on the basis of Article 43.4 of the Act on granting protection, the interview should be stopped because it is not conducted in the language understandable for the applicant. The interview should be in this situation rescheduled and the authority should ensure the aid of the interpreter of the Chechen language. It leads not only to the unnecessary prolongation of the procedure, but also increases the cost of the procedure.

⁷ About the importance of this increase you can read in the part named: Misconducts of the interviewer, Lack of the sufficient information.

⁸ The application is available on: <http://www.udsc.gov.pl/Formularze,240.html>, in the section: "Wniosek o nadanie statusu uchodźcy" (application is created in Polish, English and Russian).

Solution:

The officers of the Border Guard, which are the only authority entitled to receive applications for granting a refugee status, should be obliged to inform the foreigner how important is the language declaration in the application. The asylum seeker should be aware that if he declares a knowledge of the certain language, the interview may be conducted in this language. Only after reception of this information the asylum seeker can assess whether he has satisfactory command of specified language and he will be able to understand all questions which will be asked in this language during the interview and answer them freely.

2. Problem:

Asylum seekers use different dialects of the certain language. It is the best seen in the case of the English and French dialects which are present in African countries. In the application for granting the refugee status foreigners, who use this dialects, declare command of French or English language, even though the dialect of this language which they use is different than the French or English used in adequately France and United Kingdom. Very often they are not aware of this differences. Currently the Office For Foreigners and the Refugee Board for this kind of asylum seekers set the interview in French or English. It is not checked if this interpreters know any other dialects of those languages⁹. It can lead to the lack of understanding between the interpreter and interviewed foreigner during the interview and – as a result – to the incorrect or inaccurate interpretation.

Solution:

The interviewer, as a person who is responsible for organizing the interview, should be trained which languages has dialects used most commonly by applicants which can be incomprehensible for the interpreter of this language. For instance, if the asylum seeker declares the knowledge of French language and comes from Republic of Congo, the interviewer should at the first place look for the interpreter knowing dialect of French spoken in the Republic of Congo. Only if finding of this kind of interpreter is impossible or leads to unjustified lengthiness of the procedure, the interview should be conducted in French language.

B. PROCEDURE IN PROVINCE GOVERNORS' OFFICES

1. Problem:

The Polish law does not oblige Province Governor's Office to provide interpreter's help during the interview. The interview is held in Polish, so if the foreigner does not have satisfactory command in this language, he has to come to the interview with his own interpreter. The interpreter cannot be the member of the family of the applicant, his proxy or any person who has the interest in the positive or negative termination of the procedure. Some foreigners, who apply in Province Governor's Office to legalize their stay on the territory of Poland, do not have enough money to pay for a professional interpretation. This is one of the reasons, why they ask

⁹ Information obtained during the meeting in the Refugee Board and in the Office For Foreigners.

their friends or even strangers (for example waiting on a corridor in the Province Governor's Office) to act as an interpreter during their interview. Province Governors' Offices do not require a specified level of the command of the language from the interpreters. In practice it means that people interpreting during the interview in the Province Governor's Office present very diversified command of language, interpretation and intercultural skills or knowledge about legal language. It can lead to many misunderstandings and discrepancies occurring during the interviews.

Solution:

Province Governors' Offices should be obliged by law to provide free professional interpreter's help during the interview, so as the Office For Foreigners and the Refugee Board are in the procedure for granting a refugee status (especially when a foreigner does not have enough money to pay for a professional interpretation). Foreigners should have possibility to come to the interview with their own professional interpreter, if they prefer interpretation made by him than by the interpreter from the Office.

2. Problem:

Foreigners are called for an interrogation by sending them a letter with date, time and place of the interview. In this document there is also written that the interview will be conducted in Polish, and if the applicant does not know Polish on the level allowing to communicate freely with an interviewer, he should come with his own interpreter. The information send to foreigners is written only in Polish.

A lot of foreigners applying in the Province Governor's Office for a legalization of their stay does not know Polish at all or at the satisfactory level. As a result they are not aware of the content of the call for an interrogation, so they miss the date or time of the interview or come for an interview without an interpreter even when he is needed.

Solution:

A call for an interrogation should be send to the foreigners in the language which is (or should be) understandable for them.

IV. COMPETENCES OF THE INTERPRETER

A. PROCEDURE FOR GRANTING REFUGEE STATUS

There is no legal requirements concerning competences of the interpreters instead of the one which is specified in the Article 43.4 of the Act on granting protection. None of the authorities competent to conduct interviews in the procedure for granting refugee status is obliged to demand from the interpreters the exact level of the command of specified language, graduation from the adequate studies or completion of the specified courses, possession of the intercultural skills and knowledge of the legal language etc. As a consequence, before setting the date of the

interview the interviewer who is responsible for its conduct has to fill in the form send to the interpreters' company, in which he specifies only the language of the interview¹⁰. He does not put any additional data in this form. The common practice in the Refugee Board and in the Office for Foreigners is interpreting during the interview by the interviewer (the interviewer is at the same time the interviewer and the interpreter). Generally, it should be noted that the competences of the interpreters who take part in the interviews in the Office For Foreigners and in the Refugee Board are very diversified. The only legal requirement in this area is "having command on the language understandable for the applicant".

Lack of the accurate competences of the interpreter in procedure for granting refugee status can lead to lack of understanding between interviewed asylum seeker and interpreter, occurrence of many discrepancies and ambiguities and improper interpretation of the words and the behaviour of the foreigner.

It is obvious that interpreters working in the offices should present the highest command of the language. Less obvious is though that they should possess intercultural skills and knowledge about legal language. For this reason these types of the interpreters' qualifications are presented in this report more precisely.

1. Problem:

Possession of the intercultural skills by the interpreter has a great impact on the quality of the interpretation in the procedure for granting a refugee status. For instance, if the interpreter of French is accustomed only with French culture and French citizens and do not have any knowledge about Africans who speak French, their culture and customs, it can easily lead to the misconducts of the interpreter during the interview. If the citizen of the Nigeria is talking very loudly and expressively during the interview, it can be understood by the interpreter who has not the necessary intercultural skills as a proof of aggression. It can lead to the negative attitude of the interpreter towards a foreigner and even to the improper interpretation. Meanwhile the interpreter who possessed the exact intercultural skills knows that citizens of the Nigeria talk very loudly and expressively even if they are really calm and has peaceful attitude.

Solution:

Possession of the intercultural skills should be one of the requirements in employing interpreters. At least they should have experience in the work with foreigners from the countries outside of the European Union. The interpreters (so as the interviewers) should be constantly trained in the area of the intercultural skills needed in the interpretations they are making in the Office For Foreigners and in the Refugee Board. The conscious use of knowledge about other cultures during the interview, without a doubt ensures effective communication with their representatives.

¹⁰ Information obtained during the meeting in the Office For Foreigners and in the Refugee Board.

2. Problem:

Lack of the interpreter's knowledge about legal language also can lead to the lack of understanding or incorrect interpretation of the asylum seeker's words. Procedure for granting a refugee status is the procedure strictly governed by the legal provisions. The reasons to grant refugee status, supplementary protection or permit for a tolerated stay are specified in legal language and the interpreter should understand this legal provisions and should know how to explain them to the interviewed foreigner or how to reformulate the question¹¹. Lack of this knowledge is visible in the misunderstandings connected with the word "persecution"¹². During the interview the foreigner is asked if he has been persecuted in the country of origin. It happens that the asylum seeker answers negatively, even though earlier he presented in detail what acts of the persecution he had experienced in his life. It clearly means that he does not understand the word "persecution". The role of the interpreter and the interviewer in this kind of situation should be explanation of this word to the interviewed foreigner. Unfortunately currently, some interviewers not only do not explain the meaning of this word, but treat negative answer to the above mentioned question as a proof of lack of the credibility of the interviewed foreigner.

Solution:

Interpreters should have good command in the legal language. It should be one of the requirements in their employment. Moreover, interviewers should be regularly trained on the proper way of asking questions during the interview, so that they are comprehensible both for the foreigner and for the interpreter.

B. PROCEDURE IN PROVINCE GOVERNORS' OFFICES

Problem:

In Mazovia Province Governor's Office the interpreters present very diversified language proficiency, they have also varied interpreting and intercultural skills. It is the result of the fact, that this authority does not ensure help of the professional interpreter during the interview. Moreover, the Mazovia Province Governor's Office does not require from the interpreters the exact level of the command of the language nor impose any other requirements (except specification of the persons who cannot interpret during the interview, which was mentioned before). Poor command of the language or lack of the essential skills lead to the misinterpretation, contradictions and – as a result – even to negative decision (rejecting an application for a specified permit to stay on the territory of Poland).

¹¹ The interviewer should ask the questions in an understandable way for a foreigner (otherwise the question should be formulated to the person holding the university degree and otherwise to the uneducated person).

¹² The refugee status in the Republic of Poland shall be granted to a foreigner, if as result of justified threat of persecutions in the country of origin because of his/her race, religion or nationality, political opinion or belonging to determined social group he/she can not or does not want to enjoy protection of such country (Article 13.1 of the Act on granting protection).

Solution:

Province Governors' Offices should be obliged by law to provide free professional interpreter's help during the interview, so as the Office For Foreigners and Refugee Board is in the procedure for granting a refugee status. Employed interpreters should present not only a good command in certain language but also should possess experience in work with foreigners from other than European Union countries, intercultural skills and professional preparation to the interpretation.

V. STANDARDS OF THE INTERPRETATION

Problem:

The Polish law regulates only a role, rights, obligations and responsibility of the sworn interpreter (Act of 25 November 2004 on the profession of sworn interpreter), but there is no legal obligation to make all interpretations during the administrative procedures concerning foreigners by the sworn interpreter. Neither Office for Foreigners nor the Refugee Board have adopted the principles applied to the interpreters which are used by the UNHCR¹³. In all procedures described in this report, there are none official, written standards of the interpretation. As a result, if the interpreter is not the sworn interpreter, he is not bound by any rules (except penal responsibility, which will be described below).

Lack of the written standards of the interpretation which would be binding for all the interpreters who take part in interviews in offices on issue can lead to many misconducts made by them (inattentive listening, asking their own questions, talking with a interviewed foreigner about things not connected with the asked question, shortening of the foreigner's statements). Many mistakes made by the interpreters during the administrative procedures described in this report are the result of lack of knowledge how this kind of interpretation should be made and what are the consequences of the incorrect interpretation.

Solution:

Authorities who are entitled to interview foreigners should prepare their own internal regulation which will specify the rules of interpretation during the interview and rights and obligations of the interpreter. The above mentioned internal regulation should be commonly accessible in order to enable the interviewed foreigner to get acknowledged with a rules which will govern his interview. The copy of this regulation should be handed to an interpreter who starts work in the one of the offices on issue. Creation of the internal regulation specifying how to properly conduct the interview will ease definitely the work of the interpreters and improve the quality of the interpretation.

¹³ UN High Commissioner for Refugees, *RLD4 - Interviewing Applicants for Refugee Status*, 1995, RLD4, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ccea3304&skip=0&query=RLD4> [6.08.2011].
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VI. INDEPENDENCE OF THE INTERPRETER

The interpreter should be unbiased and unreceptive to pressure from the officials (who are, for example, urging to end the interview as quick as it is possible). Impartiality of the interpreter is the guarantee of the correct interpretation.

Problem:

The independence of the interpreters is strictly connected with a form of their employment. As it was written before, the Office For Foreigners and the Refugee Board¹⁴ have concluded the agreement with the interpreters' companies, who delegate their workers to interpret during the interviews led in this offices. Sometimes though the interviewer who knows the language declared by the foreigner is not using the help of the interpreter, but he interprets by himself. The problem with the objectivity can occur in this second situation.

The interviewer before the interview should read all the files of the case and should be acknowledged with the situation in the country of origin of the interviewed foreigner. As a result, before starting the interview, he has already some point of view about the case. His interpretation though cannot be objective. It is possible though that the interviewer who have not understood the foreigner's words, will try to guess what was their meaning on the basis of the knowledge about the case gathered before the interview. Content of the interview record in any way should be based on alleged meaning of a foreigner's speech.

Solution:

The interpretation should be always done by the professional interpreter, so as to ensure its objectivity and correctness. It does not mean necessarily that the interviewer's good command of the foreign language is not useful during the procedure for granting a refugee status. It could be used to control the quality and correctness of the interpretation (look: Measures taken in cases of suspected misinterpretation, problem 2).

VII. MEASURES TAKEN IN CASES OF SUSPECTED MISINTERPRETATION

In the Office For Foreigners, in the Refugee Board and in the Mazovia Province Governor's Office there are any written regulations governing how to deal with suspected misinterpretations occurring during the interview. In all of the offices though there is a practice of stopping the interview, if the interviewer suspects that the interpreter interprets incorrectly or is not understood by the interviewed foreigner¹⁵. After stopping the interview, the interviewer should find out why the interpretation was made incorrectly (lack of competences of the interpreter or

¹⁴ In procedure in the Province Governors' Offices the problem of the independence of the interviewer is not occurring, because this authority is not obliged to provide interpreter's help during the interview.

¹⁵ Information obtained during the meetings in the Mazovia Province Governor's Office, in the Office For Foreigners and in the Refugee Board.

the mistake in choice of the language of the interview) and afterwards reschedule the interview and ensure the presence of another interpreter.

The above mentioned practice has to be assessed positively, although it should be expressed in the internal written regulation governing interviews in administrative procedures concerning foreigners, which was mentioned before (look: Guidance for conducting the interview). Moreover, interviewers should be regularly trained how effectively notice signs of the misinterpretation. If the interviewer knows the language of the interview, he can easily identify any mistakes made by the interpreter. The problem occurs though, when an interview is handled in language unknown to the interviewer. In this situation it is necessary to observe carefully the way the interpretation is conducted so as to notice every signal of the misinterpretation (for example shortening the statements of the foreigner or his body language confirming lack of understanding).

If the interviewer starts to suspect on the basis of the record of the interview that the interpretation was made incorrectly, he can schedule a supplementary interview.

If the suspicions appear after making the decision, the decision of the authority of the first instance can be overruled by the authority of the second instance on the basis of incorrectly made interpretation (Article 138.2 of the Code of the Administrative Procedure). If the suspicions appear after making the final decision, accordingly to Article 154.1 of the Code of the Administrative Procedure, it can be in every moment changed and overruled, if it is necessary because of the public interest and justified interest of the party (in this case: a foreigner).

1. Problem:

Above mentioned ways of handling suspected misinterpretation are created for the interviewer, not for the interviewed foreigner. The applicant has the right to comment on the quality and correctness of the interpretation during interview, but in many cases he simply does not know he has such right (look: Misconducts of the interviewer, Lack of sufficient information). After the interview he is asked, if he has any comments about the interpretation, but it is worth noticing, that his statement about misinterpretation has to be interpreted by the same interpreter who is accused of the improper interpretation. This poses the risk of manipulation, when a foreigner expresses negative assessment of the interpreter's work and the interpreter wants to hide it from the interviewer (his employer). Moreover, when a foreigner assesses the quality of the interpretation after the interview, for instance in the letter send to the office or in the appeal from the negative decision, he is perceived as a person who wants to manipulate the evidence gathered during the interview and intentionally wants to mislead Polish authorities. Current mechanism of the assessment of interpreter's work by the interviewed foreigner though cannot be called effective.

Solution:

Polish law should ensure an effective mechanism which will allow the foreigner to effectively complain on the quality and the correctness of the interpretation (without simultaneous presence

of the interpreter accused of misinterpretation). For instance, it can be assured by making the opinion about the quality of the interpretation by the foreigner in writing just after the interview. This opinion should be attached to the files of the case, so as to be easily checked during the whole procedure. The another idea is to give foreigners a right to comment on the quality of the interpretation in letter which should be send to the competent office during 7 days from the date of the interview. Foreigner should be informed about this possibility before and after the interview.

2. Problem:

The greatest problem with the misinterpretations is lack of the possibility to prove that the incorrect misinterpretation took place. During the interview, the foreigners can protest against the suspected misinterpretations, but if the interviewer does not know the language of the interview, he cannot check if the interpretation is indeed made incorrectly or foreigner's protest is only a way to prolong the procedure or make the content of the interview invalid. After the interview, even if the foreigner suspects misinterpretations (on the basis of a translated interview record or of the content of a negative decision), he has no proof that the misinterpretation has occurred.

Solution:

Every interview should be recorded by means of audio recording equipment. Currently, Polish law enables authorities to record the interview in the procedure for granting a refugee status. According to Article 43.5 of the Act on granting protection, the authority carrying the proceeding may record a course of activities by means of audio-video recording equipment, if the applicant is informed about it and there are no technical obstacles. At this moment, the interviews are not recorded because of the technical obstacle – the offices do not possess the equipment necessary to record the interview and to store recorded cassettes or CDs.

It is worth noticing though, that purchase of this equipment will be profitable not only for the foreigner, who will have the possibility to prove occurrence of the misinterpretations, but also for Polish authorities. It will allow to reveal the fraud. It happens that the interpreters are trying to convince the interviewed foreigner during the interview to pay them for an interpretation which will be correct or convergent with the Geneva Convention reasons to grant refugee status. Audio-record of the interview can be though a proof of committing the crime by the interpreter. Moreover, this record can be a proof of the correct interpretation and conduct of the interview when the interviewed foreigner groundlessly accuses the interpreter or interviewer of misconducts. Furthermore, recording of all interviews increases the quality of the interview, because the interviewers and the interpreters will be more reluctant to misinterpret or to misconduct, while their nonprofessional behavior can be easily checked.

VIII. LEGAL CONSEQUENCES OF THE MISINTERPRETATION

A. INTERVIEWED FOREIGNER

Misinterpretation can lead to the issuing by the competent authority negative decision. It can also – indirectly – lead to decision of the deportation from the territory of Poland. Any inaccuracy, contradictions, ambiguities and even vagueness of the foreigner’s statements are interpreted by Polish authorities to the foreigner’s disadvantage and undermine his credibility. Foreigners often say that the contradictions are the result of the misinterpretation, because they have never said during the interview words which are written in the record. Even though, like it was written before, currently it is very difficult to prove that the interpreter, not the interviewed foreigner, made the mistake.

B. INTERPRETER

The legal responsibility of the interpreter is regulated by the Article 233.4 of the Polish Penal Code, which states that who, as an interpreter, shows false interpretation, which is going to be treated as a proof in the court proceedings or other proceedings led on the basis of the legal act, shall be subjected to imprisonment for maximum 3 years. Accordingly to the Article 233.5 of the Penal Code, above mentioned punishment can be extraordinarily mitigated, or even the court can refrain from imposing sanction, when false interpretation concerns the matter which is not affecting the outcome of the proceedings or when the interpreter corrects the false interpretation before the conclusion of the case, even if it is not legally binding.

The sworn translator is also responsible disciplinary for his conduct on the basis of the Article 21.1 of the Act of 25 November 2004 on the profession of sworn interpreter. However, not all the interpreters who interpret during the interviews in the Office for Foreigners, in the Refugee Board or in the Province Governors’ Offices are sworn interpreters.

IX. MISCONDUCTS OF THE INTERVIEWER

A. LACK OF THE SUFFICIENT INFORMATION

Foreigners do not know what rights and obligations they have during the interview. Article 8 of the Code of the Administrative Procedure states, that “Public administration bodies are obliged to conduct proceedings in such a way as to raise confidence in the State organs”. Moreover, the Article 9 of this Code states that, “Public bodies are required to properly and fully inform the parties of the facts and law which may affect the determination of their rights and obligations subject to administrative proceedings. Authorities shall ensure that the parties and other persons participating in proceedings shall not have suffered damage due to ignorance of the law, and to this end provide the necessary clarifications and guidance”.

Furthermore, accordingly to Article 10 of the Act on foreigners, “an alien who applies for the granting or prolongation of visa, the granting of the residence permit for a fixed period, the

permit to settle or the long-term resident's EC residence permit shall be informed in the language understandable to him/her about the procedure and its principles as well as about rights granted to him/her and obligations imposed on him/her”.

More specified are obligations of the authorities in the procedure for granting a refugee status. Accordingly to Article 29.1 of the Act on granting protection, “the authority admitting the application shall inform the applicant in a language understandable for him/her about the principles and procedures of the proceedings for granting refugee status, rights vested to him/her, his/her obligations and legal effects of non-performance of his/her obligations, possibility of giving consent to the representative of the United Nations High Commissionaire for Refugees for providing information about the course of procedure and reviewing the files of the case and taking notes and copies from them and organizations to which statutorily deal with refugees-related matters”.

1. Problem:

Currently there is no specified rule governing what information exactly should be provided to the foreigner at the beginning of the interview in the Office For Foreigners, in the Refugee Board and in the Province Governors' Offices. Interviewers are not obliged to make some special introduction before the interview in this offices (they are bound only by the general rules expressed in the above mentioned regulations). The only obligatory statement which occurs at the beginning of the interview is the information that the interviewed foreigner is obliged to tell the truth unless he may be held liable for false statements. As a result, the presence of the introduction (information about the rights and obligations) during the interview and the quality of this introduction varies dependently on the person who is interviewing a foreigner.

Lack of the information about rights and obligations of the interviewed foreigner can lead to many problems during the interview. Foreigners often do not even have essential knowledge connected with the interview. Clients of the Helsinki Foundation For Human Rights in Poland complained that they did not know that they can ask for a break, so although they needed to go to the bathroom, they waited until the end of the interview. As a result, during the last hour of the interview they could not concentrate on the questions asked.

Solution:

The information communicated to the foreigners at the beginning of the interview should be specified in the internal regulation, which should be prepared in every office on issue. All interviewers should know what exact information they are obliged to present to the foreigner. The information should be unified, so as to ensure the equal information to every interviewed foreigner, but at the same time it should be adapted to the particular case (for example information communicated to the minors will be different than the one presented to the adults). The foreigner should be informed what are his rights and obligations, especially he has to acquire such essential information that he is entitled to ask for a break (to go to the bathroom) or for a glass of water.

2. Problem:

The only source of specified information in the procedure for granting refugee status is the “Information for people who received a call for interrogation under the procedure of granting the refugee status”¹⁶. It is sent to all applicants as a attachment to a call for an interrogation¹⁷. In this information only basic information about the interview are pointed out. It states, that “As a general rule, each person that submitted an application for granting a refugee status - applicant, will take part in an interview (interrogation).”, “All information given by the applicant during the proceedings, and also during the statutory interview are confidential and protected by Polish law” and “During the interrogation the applicant is obliged to give all information, which will be needed to consider the application on granting the refugee status. Giving detailed answers to the questions asked during the interrogation is beneficial to the applicant. The applicant is also obliged to provide all owned evidence, which confirm the information given in the application on granting the refugee status”. Moreover, in the information it is pointed out, that “the information given during the interrogation, as well as the evidence provided are essential for considering the application on granting the refugee status”. The document ends with an information about evidence which occurs after the interview and decision made on the basis of the interview.

The practice of sending such information to every foreigner have to be assessed positively and recommended to be used also in the procedure in the Province Governors’ Offices. However this information is incomplete. For instance, there is none information about the right to change an interpreter, the right to change the language of the interview before conducting it, if the planned interpretation was set by mistake (when for example applicant declared knowledge of English and the interview was set in French), or during the interview (if the applicant does not understand the questions asked and cannot answer them freely). Moreover, it is worth noting, that currently in the call for an interrogation the language in which the interview will be conducted is not specified.

Lack of the knowledge amongst interviewed foreigners about the role and principles of the interpretation during the interview leads to a lot of problems. For example, currently, at the beginning of the interview foreigner is obliged to sign the agreement to be interrogated in the specified language. If the applicant questions the language of the interview later (after the interview), the authorities state that he agreed to being interviewed in this language, he could protest against it, so if he did not, the interview was conducted correctly. In practice many foreigners simply do not know that they can protest against the language chosen for their interview.

¹⁶ Information in English (also available in Russian) available on:

<http://www.udsc.gov.pl/Information,for,people,who,received,a,call,for,interrogation,under,the,procedure,of,granting,the,refugee,status,1160.html>

¹⁷ The information is send in 8 languages: Polish, English, Russian, Georgian, French, Arabian, Armenian and Vietnamese (information obtained during the meeting in the Office For Foreigners).

Solution:

In the “Information for people who received a call for interrogation under the procedure of granting the refugee status” should be added the information about the interpretation during the interview. Especially it should contain the information about:

- The planned language of the interview,
- The right to change the language of the interview, if it is not a language understandable for a foreigner,
- The right to refuse to sign the agreement for an interview in a specified language,
- The right to ask for a change of the interpreter during the interview, when the foreigner is not able to understand asked questions and answer them freely or when he is not objective in his interpretation, he omits some information, does not interpret accurately etc.

This rights should be also presented to the applicant at the beginning of the interview by the interviewer (look: problem 1).

The increased awareness of the foreigner about his rights will lead to the decrease of the complaints on the language chosen for an interview and to the increase of the interpretation’s quality.

B. ATTITUDE OF THE INTERVIEWER

Problem:

Clients of the Helsinki Foundation For Human Rights in Poland often inform that interviewers were listening inattentively, they were bored, they haven’t showed any interest in the their story and they wanted to end the interview as quick as it is possible. For that purpose they frequently interrupted the foreigner. This kind of the behavior can lead to the situation, when a foreigner, who is pushed on to finish his story as quick as it is possible, forgets to present some details. When he wants to add this information later, his credibility is perceived as low and those new information are perceived as made up for a purpose to mislead the authorities.

Solution:

Interviews should be recorded by means of audio-video recording equipment. Recording of the all interviews increases the quality of the interview, because the interviewers will be more reluctant to misconduct, while their nonprofessional behavior can be easily checked. The schedule of the interviews should be created realistically, so as the interviewer has enough time to listen whole story of the foreigner.

C. PROBLEM OF THE “ESCALATION OF TESTIMONY”

Currently, the Office For Foreigners and the Refugee Board in some their decisions state that the foreigner’s statements made during submitting an application for a refugee status are more credible than the statements made during the interview conducted in the Office For Foreigners or in the Refugee Board. Authorities state that first statements are made spontaneously, so they are

truthful. In their opinion, if the foreigner omits some information while he is making the application for a refugee status, it means that he made up the information which was presented during the interview in the Office For Foreigners or in the Refugee Board and wants to mislead Polish authorities. Polish authorities define it as a proof of “escalation of the testimony”.

Above mentioned assessment of the importance of the asylum seeker statements is incorrect, because it does not include the reality of the submission of the application for a refugee status. A lot of the applications are made on the border of the Poland, especially in Terespol, or in Warsaw. The flow of new asylum seekers sometimes is so big that the time for accepting the application by the officers of Border Guard is limited. Sometimes the officers of the Border Guard are so occupied, that they ask the foreigner to write the reasons of his escape from the country of origin on the piece of paper. This statements are later translated to Polish and attached to the application form. Officers of the Border Guard are not obliged to inform the foreigner about the gravity of the statements made during submission of the application. Moreover, it is worth pointing out that the asylum seekers who are making the application while crossing the border are in many cases tired, nervous, stressed and sometimes even ill. All this circumstances can easily affect the quality and accuracy of their statements.

It is advisable that Polish authorities should stop treating statements made during submission of the application as more credible than statements made during interview in the Office For Foreigners or in the Refugee Board and take into the consideration all the above mentioned factors which can affect the quality and accuracy of foreigners’ statements.

X. COPY OF THE INTERVIEW RECORD

A. PROCEDURE FOR GRANTING REFUGEE STATUS

In accordance with Polish law, a foreigner shall be heard by the authority carrying the proceedings in order to explain the facts materials for consideration of the matter and shall be provided with a copy of record of such a hearing (Article 43.1 of the Act on granting protection). Foreigners are entitled to get a copy of the interview without any charge.

Problem:

Most of the records made in the Office For Foreigners are written manually by the interviewers during the interview. In the Refugee Board records are written manually or on the computer. The legibility of this records is varied.

Solution:

All of the records should be written on the computer.

B. PROCEDURE IN PROVINCE GOVERNORS' OFFICES

Problem:

According to the Polish law, Province Governors' Offices are not obliged to hand over a copy of the record of the interview. It is possible to receive a copy of it but a foreigner has to pay for every page of the copy and he has to present a written justification of the demand of the record's copy. Even though, every foreigner at the every stage of the procedure, has the right to look through the files gathered during the procedure in his case, so then he can take pictures of the record without any charge.

Records are written manually or on the computer.

Solution:

In Polish law should be a legal provision which will entitle foreigners who are interviewed in Province Governors' Offices to receive a copy of the interview record without any charge and without the obligation to justify the need of the record's copy.

All of the records should be written on the computer.

XI. CONDITIONS OF THE INTERVIEW

1. Problem and solution:

In the Office For Foreigners and in the Refugee Board there are separate rooms in which interviews are conducted. In the Refugee Board there is a "wall" from glass which separates interviewer and interpreter from the foreigner. Even though, in practice some of the interviewers conduct the interview only in one part of the room (without the glass between interviewer and interviewed foreigner)¹⁸. This solution should be assessed positively. The "wall" should be removed.

2. Problem:

In the Mazovia Province Governor's Office, the interviews are conducted in two rooms in which can be conducted even four interviews in the same time. Stands are separated only by small partition walls. During the interview, the foreigner can hear everything what is happening during the other interviews. It can confuse him, decrease his ability to concentrate and to remember to tell everything accurately and exhaustively. Moreover, he can feel intimidated to talk about some details of his life in front of a third person other than interviewer (especially in cases connected with marrying Polish citizen).

¹⁸ Information obtained during the meeting in the Refugee Board.

Solution:

Mazovia Province Governor's Office should enable foreigners being interviewed in the conditions ensuring freedom of expression and protection of their privacy, which are not intimidating and embarrassing. Interview should be conducted in the separate room, in which there are only interviewer, interpreter and interviewed foreigner.

XII. CONCLUSIONS

It is recommended to:

a. Polish government, Polish parliament and Polish President:

- 1) to prepare a regulation which will specify general rules of conducting the interview and rights and obligations of the interviewed foreigner, interpreter, interviewer or any other person who is entitled to take part in the interview;
- 2) to prepare a regulation which will ensure the free professional interpreter's help during the interview in the procedure in the Province Governors' Offices;
- 3) to prepare a regulation which will introduce a mechanism allowin foreigner to effectively complain on the quality and the correctness of the interpretation;
- 4) to introduce new legal provision which will entitle foreigners who are interviewed in Province Governors' Offices to receive a copy of the interview record without any charge and without the obligation to justify the need of the record's copy;
- 5) to prepare a regulation which will enable Province Governors' Offices to record the interviews by means of audio recording equipment.

b. The Office for Foreigners, the Refugee Board and the Province Governors' Offices:

- 1) To prepare internal specified regulations of conducting the interview and rights and obligations of the interviewed foreigner, interpreter, interviewer or any other person who is entitled to take part in the interview;
- 2) To prepare internal regulation which will specify the rules of interpretation during the interview;
- 3) To record every interview at least by means of audio recording equipment;
- 4) To prepare internal regulation which will specify what exact information should communicated to a foreigner at the beginning of the interview by the interviewer;
- 5) To schedule the interviews realistically, so as the interviewer has enough time to listen whole story of the foreigner;
- 6) To write the records on the computer only.

c. The Office for Foreigners and the Refugee Board:

- 1) To train the interviewers in the area of:
 - The existence of the dialects and their intelligibility for a interpreters;
 - Intercultural skills;
 - Legal language;
- 2) To train the interpreters in the area of:
 - Intercultural skills;

- Legal language;
- 3) To schedule the interview in the exact dialect of the language as long as it is possible and it is not leading to unjustified lengthiness of the procedure;
- 4) To employ only interpreters who present intercultural skills or – at least – experience in the work with foreigners from the countries outside of the European Union and have good command in the legal language;
- 5) To ensure that the interpretation during the interview is always conducted by the professional interpreter, not the interviewer;
- 6) To add in the “Information for people who received a call for interrogation under the procedure of granting the refugee status” the information about the interpretation during the interview;
- 7) To stop treating statements made by the foreigner during submission of the application for granting a refugee status as more credible than statements made during interview in the Office For Foreigners or the Refugee Board.

d. Province Governors’ Offices (Mazovia Province Governor’s Office):

- 1) To send a call for an interrogation to the foreigners in the language which is (or should be) understandable for them;
- 2) To enable foreigners being interviewed in the conditions ensuring freedom of expression and protection of their privacy, which are not intimidating and embarrassing. Interviews should be conducted in the separate room, in which there are only interviewer, interpreter and interviewed foreigner;
- 3) To provide every foreigner with a copy of the interview record, free of charge and without obligation to justify the need to have that copy.

e. Officers of the Border Guard:

- 1) to inform the foreigner that the language which knowledge he declares may be the language in which afterwards the interview will be conducted.