



PRACTICES IN INTERVIEWING IMMIGRANTS:
LEGAL IMPLICATIONS
REPORT FROM UKRAINE

CARITAS
Uzhgorod, Ukraine

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**Practices in Interviewing Immigrants: Legal Implications
Report from Ukraine, March 2011
Caritas, Uzhgorod, Ukraine**

INTRODUCTION

In Ukraine, there is only one administrative authority – regional migration service (RMS) - who interview foreigners in the procedure concerning granting refugee status.

The border services and police are not responsible for granting refugee status on the territory of Ukraine as well as for taking any decision in asylum cases. They are only responsible for transferring an application for refugee status to local migration services and keeping detainees in detention holding facilities.

Regional migration services and the highest body – State Committee for nationalities and religion of Ukraine (SCNR) are obliged to conduct the asylum procedure and make decision on granting or not granting refugee status in Ukraine.

After submitting an application, there is, in principle, a ten-day period to assess admissibility, after which the applicant is to be informed whether the application has been accepted into the system. While a decision on admissibility is pending, the applicant is issued a green document, which is valid for 15 days. From that point, the authorities are supposed to conduct additional assessments of the claim. Applicants who are in the country illegally remain in detention during this time.

The SCNR was created as an independent agency that is not part of the Ministry of Interior. The Regional Migration Service (RMS), operating in 24 regions (oblasts) under the supervision of the SCNR, receives the asylum applications and conducts admissibility interviews. After receiving an application the RMS can:

- refuse the application within three days if there is no basis for the claim or the claim has violated procedures, and then the person does not even receive a green document;
- accept the application and issue a green document but then refuse to process the application within 15 days if it is manifestly unfounded or abusive; or
- accept and process the application and issue the applicant a pink card to indicate that he or she has been accepted into the procedure.

The pink card does not indicate a grant of asylum but rather allows the applicant to remain temporarily pending the outcome of the procedure and includes work authorization. The RMS is not authorized to grant or refuse refugee status, but has the responsibility to examine the claim once an asylum application has been admitted into the procedure and to make a refugee status recommendation to the SCNR. The law allows the RMS a maximum of three months to gather information about the claim, conduct a medical check, and prepare a file with a recommendation on refugee status to SCNR.

SCNR then has a maximum of a further three months to decide the claim. This means that no one, in principle, should have a pink card longer than six months. The card itself has no expiration date but needs to be stamped every two months to maintain its validity.

Ukrainian asylum standard has some legal gaps.

One of the most serious gaps in the Ukrainian asylum system exists as a failure of the law rather than a failure of implementation: the lack of any form of complementary protection. Now established as a standard in EU asylum law, a growing international consensus has recognized that people fleeing indiscriminate violence in situations of armed conflict and other serious abuses are not adequately covered by the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol and are also in need of international protection. Although Ukraine acceded to the Refugee Convention and Protocol in 2002 and has adopted a national refugee law, it has not included a provision that would protect asylum seekers who would face a risk of serious harm arising from situations of armed conflict. The consequences for certain nationalities have been substantial.

That no Somalis have been granted asylum begs the question whether Somali refugee claimants are considered fairly and without discrimination based on the Refugee Convention's "well-founded fear of being persecuted" standard and this is important for the ethnic Chechens from the Russian Federation who are generally not recognized as refugees.

The absence not only of complementary forms of protection, but also for protection on humanitarian grounds means that the asylum system lacks a basis for protecting victims of trafficking, leaving them at risk of being treated as any other irregular migrant.

I. Problem observed:

1. Whether the interpreter is present at all

2. Lack of qualified interpreters

3. Lack of financial support for interpretation matters.

Current situation:

All expenses for translation services are covered by UNHCR, IOM and NGOs budgets; at the same time only these organizations have qualified staff interpreters.

Legal regulation:

In accordance with the Law of Ukraine "On Refugees", adopted by Verhovna Rada of Ukraine on June 27th 2001 N2257-III, an interpreter is provided for each stage of the procedure of granting refugee status if asylum seeker doesn't speak Ukrainian.

Ukrainian procedural legislation contains the obligation for law-enforcement

agencies to provide interpreters for those, who don't speak Ukrainian, which is the language of investigation, preliminary investigation and court procedure. In the context of the issue, such obligation is specified for border and police officers in case a person is being detained. The interpreter must be provided for every stage of the court procedure any instance and jurisdiction as well.

Migration services: according to part 2 of the Article 12 of the Law of Ukraine "On Refugees", if an applicant does not understand Ukrainian or Russian, the migration service must provide the applicant with an interpreter to translate for him into a language that he may communicate. The applicant has the right to hire an interpreter on his own account or on the account of other legal entities or individual person. The interpreter must strictly observe confidentiality principle and sign the commitment to migration service body on non-disclosure of information contained in the personal file of the applicant.

Court procedures:

In cases the migrant or asylum seekers apply to the court it is written in Ukrainian law, that the judgments in Ukraine is made on a state language – Ukrainian, - so the interpreter must be provided for every stage of the court procedure any instance and jurisdiction as well. Asylum cases are under administrative jurisdiction and art.15 of the Code of administrative judgments of Ukraine says that persons who take part in court case and do not understand state language have the right to use their mother language or language they can understand and use interpreter services.

Art.68 of the Code says that persons who take part in court case can ask for interpreter by themselves or the judge can appoint an interpreter by his own initiative. The same article says that the court should provide an interpreter if it became understandable that without an interpreter the person would be deprived of judicial protection.

The above mentioned Code contains the provision that an interpreter is the person who fluently knows the state language and other language to make oral and written translation from one language to the other, and a person who knows the technique of communication with deaf, dumb or deaf-and-dumb persons.

Problem solving:

- Lobbying of finance provision of interpretation services from the State Fund. (party of lobby – UNHCR, IOM together with NGOs who are working in refugee protection field;
- Using of the interpreters' database what has been established by UNHCR and IOM. The pool of interpreters will be ultimately relied on by the Migration Services, Ministries and Border Guard Services of Belarus, Moldova and Ukraine and IOM and UNHCR implementing partners. (http://unhcr.org.ua/news.php?in=1&news_id=168&lang=e);
- Setting cooperation Ukrainian high schools and involving graduates of rare languages knowledge to interpretation process. Cooperation with different refugee communities for this purpose as well.

II. Problem observed:

Lack of standards of interpretation

Current situation: Ukrainian legislation does not specify that an interpreter must be qualified and well-trained. Moreover, in particular cases, it is not specified that the gender of the interpreter and the applicant must be the same.

In most cases unqualified interpreters are used in the refugee granting procedure in Ukraine. If asylum seekers or migrants can speak English well, they have a good chance to receive a qualified interpreter otherwise the compatriots are used as interpreters. Their level of the Ukrainian or Russian language is very low, most of them are uneducated. Only one NGO in Ukraine (HIAS) has qualified staff interpreters from Hindi, Urdu, Dari, Pashto.

In practice, migration officers, NGO lawyers make an effort to follow up the above mentioned principles of the SOPs, but at the same time they are restricted in choice of the interpreters or sometimes are completely deprived of the choice.

Legal regulation: Ukrainian legislation doesn't contain principles applied to interpreters which are used by UNHCR, and which were adopted by UNHCR in SOPs (Standard operation procedures).

Problem solving:

- to initiate a developing of the code of ethics of interpreters and standards of interpretation
- lobbying of legislative adoption of standards of interpretation (probably UNHCR together with NGOs dealing with migrants, asylum seekers and refugees)

III. Problem observed:

• lack of language competencies of the translator in his/her legal vocabulary

Lack of the system of qualified interpretation and lack of language competencies of interpreter may cause delaying of the procedures of submitting applications on asylum in Ukraine. Lack of the qualified interpreters has significant impact on access to the asylum procedure, appeal procedure as well as violates the right of the migrants in detention.

Current situation: In practice, it is quite difficult to verify the level of interpreter's knowledge of legal terminology, court procedure language as well as the command of the applicant's language. The method and procedure for verification of the language skills are not specified by Ukrainian law. The matter of interpretation is completely acceptable if an interpreter can provide an appropriate certificate.

The process of the interview may be complicated when we have to do with rare languages such as the Somali, the Tamil, the Pashto, some dialects of African

languages. No one can prove the quality of the interpretation and the level of understanding by the applicant of what is being said during the interview.

Legal regulation: No standards of interpretation

Problem solving:

- arrangement of educational courses for interpreters, who are used in asylum procedure (to extend their knowledge of the asylum procedure and legal vocabulary)

IV. Problem observed:

- **what are the intercultural skills of the translator**

Current situation: Ukrainian migration authorities do not require from the translators to present intercultural skills. The interpreters are hired for one day contract, so there are no interpreters hired permanently. It means that these interpreters do not have even the possibility to acquire intercultural skills during their work.

Problem solving

- arrangement of educational courses for interpreters on the intercultural skills at UNHCR, IOM basis.

V. Problem observed:

1. **Legal consequences of misinterpreted immigrant's narratives**

An accuracy of interpretation during the interview is the most important issue in the process of making a decision, especially in case when the applicant has no documentary evidence.

Abovementioned remarks concern also court procedures.

2. **No measures are taken by the state in cases of suspected misinterpretations made by the translator**

Generally, it is not provable, that a translator made a mistake during the interpretation. After signing the copy of the interview, misinterpretation is hard to prove that misinterpretation had place.

Current situation: Misinterpreted immigrant's narrative may lead to problem in the process of determining a refugee claim, as a result to the negative decision of the competent authority. It can also (indirectly) lead to decision of the deportation of the foreigner from Ukraine.

A 17-year-old Somali girl told about the interpreter the Migration Service used for her asylum interview:

“During the interview I started to be suspicious that the interviewer would do a wrong translation. If I told him about a serious problem in many sentences, he translated a couple of short words. I said, “You don't try to translate.” There were also misunderstandings. I don't speak very well Arabic and he [the Arabic translator]

also doesn't speak Russian very well. I also asked for an English translator, but there was no English interpreter".

In some cases an interpreter could be suspected by asylum seeker in cooperation with embassy of country of asylum seeker's origin. By reason of fear asylum seeker can keep his narrative in short information and hide important details which may have significant impact to his asylum case.

Legal regulation: The legal responsibility of the interpreter is specified by Ukrainian legislation.

As the interpreter is obliged to follow up the principle of confidentiality and must not disseminate any information he discovered during the interview or while translating documents, an Article 182 of the Criminal Code prescribes the responsibility of the interpreter for violating personal privacy, which includes illegal collection, storage, usage or dissemination of confidential information of the person without his consent, or dissemination of the information in public speaking, etc.

In accordance with Article 384 of the Criminal Code of Ukraine the interpreter can be criminally charged for intentional incorrect interpretation during criminal inquiry, preliminary investigation or during court procedure. Thus, it means that interpreter can be criminally punished for intentional incorrect interpretation within criminal procedures of any jurisdiction.

Thus, Ukrainian Law does not contain the provision of legal responsibility of the interpreter for deliberate interpretation during interview with asylum seeker or migrant.

Problem solving:

- initiating adoption of legislation concerning legal responsibility of the interpreter for deliberate interpretation during interview (probably UNHCR together with NGOs dealing with migrants, asylum seekers and refugees). However, it is quit hard for understanding who and how will determine that the interpretation is deliberate.

VII. Problem observed:

Negligence or complete ignoring of organizational, psychological, ethical principles of the interview by a lawyer or interviewer may have undesirable consequences of the interview and of the case as well.

Implicit and explicit misconduct are done by the interviewer regardless of the translator's proficiency have direct effect on the quality of interpretation process. Availability of a professional interpreter may not guarantee efficiency of the interview process.

Current situation:

- no introduction or explanation of actions taken are observed during interview in migration office;
- inattentive listening often lead to losing many important details have been said by client;

- frequent interruption often cause situation when client forgets to present some details, some information to interviewer
- arguing with client as a result of implicit hostility
- migration officers do not giving the copy of interview to the migrant in the end of the interview;
- As far as no professional standards of interpretation that's lead to undermining of process of the interview may lead to the negative decision of the competent authority.
- Open hostility to immigrants
- In many situations interviewers are not prepared to the interview, they do not read before the interview files of the client or country of origin information
- Premature resumes of the interviewer related to asylum seekers.

An Uzbek asylum seeker in Kyiv told that the attitude of the Migration Service interviewers made him unwilling to trust them enough to tell his reasons for fearing return to Uzbekistan:

The Migration Service has a bad attitude toward asylum seekers. They shout at people. They do not act correctly. I asked them not to shout. They make you come back again and again. It is exhausting. I did not feel I could trust the Migration Service. I did not mention all the facts [in my asylum interview]. I did not think that they would provide confidentiality. I think I gave enough information for my refugee claim to be credible, but it was not a long, detailed interview.

An Afghan asylum seeker interviewed by MS recalled:

It was a short interview, about a half hour. I was not able to fully explain my situation. She typed my answers. She was very slow with her typing. She did not understand [specific political references indicating that the interviewer had little knowledge of Afghanistan].

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Legal regulation: Procedural standard's for refugee status determination under

UNHCR's mandate, UNHCR Standard operation procedures (SOPs),

Problem solving:

- well trained, educated, qualified interviewer, who observes all principles and standard's of interviewing according to above mentioned documents.
- Improve training and supervision of migration service refugee claim interviewers and interpreters to ensure that interviews are conducted by staff with specialized skills and knowledge of refugee and asylum matters. Applicants should be treated with respect and consideration in all phases of the process in order to foster trust and a full and fair examination of the claim, with particular sensitivity to cultural and gender difference, and for survivors of torture, sexual abuse, and other traumatizing events.

Recommendations

To the Verkhovna Rada, the Cabinet of Ministers of Ukraine

- Provide state budgeting for the interpretation services;
- Provide sufficient resources for interpretation matters in administrative courts and administrative appeals courts to handle migration and asylum-related cases.

To the State Border Guard Service, To the Ministry of Interior

- Provide a written translation of any document asylum seekers/detainees are asked to sign and fully explain to them the content and consequences of signing such documents.
- Through recruitment and training, deploy more guards and other migrant detention facility personnel with capacity to communicate with foreigners in their own languages and, where needed, employ competent interpreters to communicate with detainees with whom no common languages are spoken.

To the State Committee on Nationalities and Religions, regional services

- Improve training and supervision of migration service refugee claim interviewers and interpreters to ensure that interviews are conducted by staff with specialized skills and knowledge of refugee and asylum matters.
- Train migration service officials on child-specific forms of persecution and on conducting child-friendly asylum interviews.
- Using of the interpreters' database what has been established by UNHCR and IOM. The pool of interpreters will be ultimately relied on by the Migration Services, Ministries and Border Guard Services of Belarus, Moldova and Ukraine and IOM and UNHCR implementing partners. (http://unhcr.org.ua/news.php?in=1&news_id=168&lang=e);
- Setting cooperation Ukrainian high schools and involving graduates of rare languages knowledge to interpretation process. Cooperation with different refugee communities for this purpose as well.

To UNHCR and IOM

- Lobbying of finance provision of interpretation services from the State Fund.
- initiating adoption of legislation concerning legal responsibility of the interpreter for deliberate interpretation during interview
- arrangement of educational courses for interpreters on the intercultural skills at UNHCR, IOM basis.
- arrangement of educational courses for interpreters, who are used in asylum procedure (to extend their knowledge of the asylum procedure and legal vocabulary)
- to initiate a developing of the code of ethics of interpreters and standards of interpretation
- lobbying of legislative adoption of standards of interpretation (probably UNHCR together with NGOs dealing with migrants, asylum seekers and refugees).

Recommended amendments to the Law of Ukraine “On Refugees”

- Amend the Law of Ukraine “On Refugees” to include complementary forms of protection to protect people fleeing indiscriminate violence arising from armed conflict and other human rights abuses, humanitarian protection for circumstances such as trafficking in human beings, and temporary protection in situations of mass influx.
- Amend the Law of Ukraine “On Refugees” to ensure access of all asylum seekers to the asylum procedure, irrespective of their age. Ensure that children are supported by qualified state sponsored representatives throughout the asylum procedures as well as by lawyers, and do not make access to the asylum procedure and documentation dependent on the appointment of a legal representative.

Recommended amendments to the Law on Legal Status of Foreigners and Stateless Persons

Persons who were in the procedure of determination of their protection needs in Ukraine (refugee status or other forms of international protection) as well as persons who would apply for protection in Ukraine upon readmission (refugee status or other forms of international protection) shall be protected against forcible expulsion until the respective status determination procedures (including court appeals) is completed.

Suggestion to replace Art. 3 of the Law on Legal Status of Foreigners and Stateless Persons as follows:

- a. In accordance with the Law of Ukraine “On Immigration”, aliens and stateless individuals may immigrate to Ukraine for the purposes of permanent residence.
- b. Aliens and stateless individuals granted the refugee status or asylum in Ukraine shall be considered permanent residents as of the date of granting the refugee status or asylum.
- c. Aliens and stateless individuals who are considered persons in need of subsidiary protection (or are granted temporary protection) in Ukraine shall be

recognized as persons temporarily residing in Ukraine for the period of operation of the circumstances, as a result of which the said subsidiary protection/temporary protection was granted.

d. Aliens and stateless individuals who have legally come to Ukraine for employment purposes and received their temporary residence permits shall be recognized as persons staying in Ukraine on legal grounds for the whole period of their employment in Ukraine.

e. Aliens and stateless individuals who have legally come to Ukraine to participate in international technical assistance projects shall be recognized as persons staying in Ukraine on legal grounds for the whole period of their work in Ukraine.

f. Aliens and stateless individuals who have legally come to Ukraine for the purposes of studying and received their temporary residence permits shall be recognized as persons staying in Ukraine on legal grounds for the whole period of their studying in Ukraine.

g. Aliens and stateless individuals who have legally come to Ukraine for the purposes of family reunification with persons-citizens of Ukraine (or who have effected a marriage with Ukrainian citizens during their legally ground stay in Ukraine in the cases described in Sections 3, 4, 5, and 6 of this Article) shall be recognized as persons legally staying in Ukraine for the period necessary to obtain authorization for their immigration.

h. Aliens and stateless individuals who have come to Ukraine for the purposes of family reunification with the persons described in Sections 2, 3, 4, 5, and 6 of this Article and obtained their temporary residence permits shall be recognized as persons legally staying in the territory of Ukraine.

i. Aliens and stateless individuals who have come to Ukraine on other legal grounds shall be recognized as persons legally staying in the territory of Ukraine for the whole validity period of their visas or for the period established by law or international treaty signed by Ukraine.

j. Aliens and stateless individuals who permanently resided in Ukraine before they made a decision to terminate their Ukrainian citizenship, and continue to permanently reside in Ukraine after their decision to terminate their Ukrainian citizenship shall be recognized as persons permanently living in Ukraine.

The Code of Ukraine for Administrative Offences do not provide sufficient safeguards for refugees and asylum seekers of refugee status or of other forms of international protection.

Recommended amendment: to pay due regard to Article 31 of *the 1951 Refugee Convention*, which prohibits the imposition of penalties against seekers of refugee status and refugees for illegal entry or presence. The amendments to *the Law on Legal Status of Foreigners and Stateless Persons*, Art. 28 and Art. 31 should therefore expressly mention Article 31 of *the 1951 Refugee Convention*.