

# Summary

## **Assessing credibility: an advisory report on the examination, integrated assessment and review of asylum seekers' accounts in support of their applications.**

The State Secretary for Security and Justice (the State Secretary) asked the Advisory Committee on Migration Affairs (ACVZ) to issue an advisory report on how the assessment of the credibility of asylum seekers' accounts could be improved in practice. The key question this report addresses is:

What conditions must the administrative assessment of the credibility of statements made by asylum seekers which are not supported by evidence meet and what practical guidelines can be given?

The advisory report investigates how on behalf of the State Secretary, the Immigration and Naturalisation Service (IND) should assess credibility on the basis of legislation and how it actually does so in practice. In addition, it examines the role of other parties, that influence the quality of credibility assessment, including the Aliens Police, the Royal Military and Border Police (KMar), the Dutch Council for Refugees (VWN) and legal aid representatives. The report looks at a wide range of factors, for example the current European and national standards applying to assessment, the content of 'integrated credibility assessment', judicial review of the decision and the training given to asylum staff.

### **The process and major findings**

As of 1 January 2015, credibility assessment in the Netherlands changed. The IND performs what is known as 'integrated credibility assessment'. In this integrated assessment all the elements that negatively affect credibility are weighed as a whole against the elements that are favourable to credibility. In the State Secretary's view this leads to a more balanced and transparent substantiation of the decision. Before 1 January 2015, 'positive persuasiveness' was the prevailing standard. This meant that the emphasis in the investigation and assessment of credibility came to rest on negative elements. If certain circumstances were present, the asylum seeker was subject to a heavier 'burden of proof' to make his/her account credible.

In September 2015 the ACVZ held three expert meetings with the legal aid representatives, the judiciary and the IND. It emerged that in principle, all three took a positive view of the introduction of integrated credibility assessment. The legal aid representatives and the representatives of the judiciary regard the new working methods as an improvement on the situation before 1 January 2015, when 'positive persuasiveness' was the prevailing standard. All three parties took the view that on the whole, integrated credibility assessment works well in practice, but they also made a number of suggestions for improvement.

The ACVZ concluded that the IND had succeeded in improving credibility assessment. This constitutes a positive step forward in comparison with the pre-2015 situation. For example, the IND is now better able to name positive as well as negative elements in the grounds for the decision. However, there are factors other than the grounds for decisions that can affect the quality of assessment. These problem areas in the asylum procedure and possible improvements are summarised below.

The very limited registration of asylum seekers' information at the registration stage of the asylum procedure by the Aliens Police and the KMar gives rise to problems in the assessment of statements that are not supported by evidence. The duplication of tasks performed by the Aliens Police, the KMar and the IND is inefficient.

The way the 'registration interview' and the 'first interview' are organised raises questions. The 'registration interview' is meant for screening purposes and a possible 'Dublinclaim'. The 'first interview' aims to establish identity, nationality and origin, personal background /family ties and travel routes. Screening should be carried out consistently and in line with the goals set, as was the case before 2014. If identity documents are missing, this should be pointed out to asylum seekers at the registration stage and they should be given the opportunity to establish their identity, nationality and origin, either through documents or otherwise, at the first interview. The report of the registration interview should in all cases be made available – before the first interview – to the lawyer providing legal aid so that he/she can discuss this with the asylum seeker and make any necessary corrections or additions.

In the ACVZ's view, good information provision is the foundation for the asylum procedure. At the registration stage, there are opportunities to improve the provision of information on what is expected of asylum seekers, what kind of information is being gathered, and for what purpose the information will be used. It should at this point be made explicit that the information will be used to assess credibility in the asylum procedure.

The ACVZ believes asylum seekers should be confronted in good time with inconsistencies in their statements. The 'second or supplementary interview' is about their reasons for seeking asylum. Asylum seekers should be confronted with inconsistencies between statements made during the first and the second interview in the second interview or supplementary interview and not for the first time in the written notification of the intention to deny the application. If there is any doubt, the IND staff member must continue to question the asylum seeker in the second or supplementary interview until the fullest possible picture of his/her reasons for applying asylum has emerged.

It is important for IND staff to adopt an open attitude. A degree of subjectivity in assessing credibility is unavoidable but should be limited as far as possible. In the ACVZ's opinion, the IND should deploy at least two interviewing and decision-making staff operating independently of each other. The IND should apply the 'four-eyes criterion' as a general principle.

IND staff members must show considerable willingness to examine seriously the corrections and additions made to the interviews and the asylum seeker's response to the IND's notification of intent, partly in light of the duty to cooperate laid down in article 4 of Council Directive 2004/83/EC (the Qualification Directive). In assessing credibility, they should provide solid grounds for their reaction to the arguments of the asylum seeker's lawyer providing legal aid (as set out in the response to the notification), without over-emphasising minor points or details. The courts have been given an important review (and if necessary corrective) task in this area in the form of a 'full and ex-nunc' examination.

The ACVZ concludes that in assessing the credibility of asylum seekers' accounts the IND should focus on the core of these accounts and not on peripheral aspects. Additions made later in the procedure must be given a serious examination if they touch on the core of the account and may not be dismissed a priori. And in line with the case law of the European Court of Human Rights, an excessively strict standard of proof may not be applied.

Statements which are not supported by evidence must be consistent and plausible (internal credibility indicators) and must not conflict with information from external sources relevant to the asylum application (external credibility indicators). The ACVZ endorses the use of both internal and external credibility indicators and calls for the practical application of insights from the sociology and psychology of law, particularly where the assessment of the consistency of statements is concerned.

The ACVZ proposes measures to improve the information gathered about the person of the asylum seeker and his/her motives for seeking asylum, as well as the credibility assessments. It calls for investment in permanent in-service training and professionalisation of IND personnel, including temporary staff. A professional asylum process should also include peer review and monitoring by managers. To raise awareness of the risk of unconscious subjectivity in credibility assessment, it is important to invest in courses featuring case studies and providing feedback.