



Verein GiveaHand.ch

Sandstrasse 5
CH-3302 Moosseedorf
Telefon: +41 (0) 79 830 57 63
E-Mail: info@giveahand.ch

"VOLUNTARY" RETURNS TO ERITREA

BY ANNELIES MUELLER
VEREIN GIVE A HAND.CH

OCTOBER 2021

Table of contents

- Introduction..... 2
- 1. The Swiss asylum procedure..... 2
 - Offices involved 2
 - Procedure 2
 - Problems..... 3
- 2. Criterias applied when treating asylum claims 3
- 3. Law enforcements against Eritrean asylum seekers 4
 - List of law enforcements 4
- 4. Results 5
- 5. Further problems..... 5

Introduction

In Paragraph 18 of the latest UK Home Office Report on the Situation in Eritrea, published in September 2021, there is a disturbing allusion referring to the possibility of "*voluntary returns*". This possibility is brought into the discussion after the dire human rights' situation in the EMNS and the problems returnees had faced after being forcibly repatriated to the country were extensively evaluated. It almost appears as if the last passage would lack a logical connection with the rest of the report - as if it had been included at a latter stage of writing and after a hint from somewhere or somebody.

To us who have been accompanying Eritrean refugees in Switzerland for the past six to seven years, the allusion to "*voluntary returns*" automatically rings all the alarm bells. This (rather hypothetical) possibility which in practice is taken advantage of only by a small number of Eritreans (most of them elderly individuals previously sympathetic with the government or people suffering from severe psychological or even psychiatric issues) has nevertheless decided on the fate of hundreds of asylum seekers searching refuge from the dictatorship in Asmara.

In this paper, I'd like to outline the most important developments in Switzerland resulting in an almost complete turn-down of Eritrean applicants and hundreds of affected people stranded either in clandestine conditions in the neighbouring countries (including Great Britain) or in a legal limbo in Switzerland.

1. The Swiss asylum procedure

The Swiss asylum procedure has undergone a reform coming into effect on 1st of March 2019. As most of the cases I am going to refer to, however, have been treated under the old system, I will briefly mention its procedures, its actors and its main problems.

Offices involved

- a. The **State Secretariat for Migration (SEM)**: Is responsible for the treatment and evaluation of the asylum cases, issues country policies and asylum decisions.
- b. The **Federal Administrative Court (FAC)**: treats appeals lodged by asylum seekers and their legal representatives against negative asylum decisions; court of last appeal!
- c. The **Cantonal Migration Offices**: Are responsible to house and finance the refugees during the procedures; are also responsible to execute expulsion decisions issued by the SEM.

Procedure

1. Arrival at the border after illegal entry (or at the airport after legal entry), transfer to one of the four reception centers;
2. Shortly after arrival: Brief interrogation on personal data, family ties, documents, journey, health and - if time was available - a few questions on the respective country and on the reasons why asylum is claimed;
3. Many months (or even one or two years) later: A profound interview in which the asylum claims and the flight from the home country are discussed. Cross-questioning is a frequent mean of checking and counter-checking.
4. A few months later: An asylum decision is issued by the SEM; 30 days for appeal.
5. (in case of appeal): Appeal is briefly checked by the instruction judge; when prospects to succeed are given, free charge is granted;
6. Many months (or years) later: The case is decided by three judges. A verdict is issued.

Problems

- Interrogation situation: Small rooms, long interview durations, cross-questioning, etc.
- Credibility (character of applicant, years at school, trauma, sexual violence not mentioned because of tabu or trauma, etc.).
- no legal representatives unless an appeal is lodged against the negative asylum decision
- Rumours within the community and purposely distributed false information from pro-government agents;
- Manipulative behaviour of interpreters during interviews.

2. Criterias applied when treating asylum claims

The individual asylum claims are treated based on the claims the applicant made during the interviews. The person who evaluates the claims is not the one who had previously questioned the applicant. The following criteria are applied when issuing an asylum decision:

1. **Credibility:** The claims are checked on their plausibility and on the country knowledge acquired by the country experts at the SEM. Contradictions, illogical or unreasonable behaviour or claims and of course forged evidence obviously minimize the chances of being granted asylum.
2. **Right to asylum:** If a person manages to illustrate that he or she had been persecuted by state actors (or that state actors are not willing or able to protect him or her) from e/g persecution by family members, if the persecution is intense enough to create an *"unendurable physical or psychological pressure on the applicant"* and if there is no internal flight alternative (inside the home country) available, the person is attributed the refugee quality as well as the right to asylum (permanent stay).
3. **post-flight reasons:** If a person's behaviour while or after fleeing the country amounts to persecution by State actors after his or her return, the applicant is granted temporary refugee status, but no asylum (e/g until 2016, the illegal exit from Eritrea was sufficient to justify a temporary refugee status).
4. **Temporary admission for humanitarian reasons:** If an applicant's claims neither meet the criteria to obtain asylum nor to grant a refugee status, two aspects need to be evaluated before a decision to expel a person maybe issued:
5. **Admissability of return:** If the expulsion violates international law (e/g the ECHR, the CAT, CEDAW or Child's convention), the return is not admissible.
6. **Unreasonability of return:** If there is a general situation of violence, a civil war or generally dire situation existing in the home country, the expulsion becomes unreasonable; the same is the case if a person's health is seriously endangered after return or if no socio-economic network is available in order to help the applicant with his or her re-integration (Art. 83 §4 Asylum law: *"If a person faces to be pushed into an existentially threating situation of poverty after return"*).

3. Law enforcements against Eritrean asylum seekers

Since 2010, Eritrean asylum seekers have increasingly become a target of xenophobic political attacks; this can be observed in the media as well as in parliamentary discussions or legal changes directly attempting to stem the influx of Eritrean asylum seekers into Switzerland.

In 2015 and 2016, the negative media campaign, mainly driven by right-wing politicians in collaboration with Eritrean pro-government agents establishing themselves as "experts" on this "problematic" community, reached a peak. In February 2016, a group of 5 Swiss parliamentarians went on a journey to Eritrea, organised by Honorary Consul Toni Locher, a notorious pro-government agent of Swiss origin. The parliamentarian's conclusions could later be found in all media: *"We were able to walk around in Asmara and enjoy our Espresso without being harassed by anybody. The UN's claims must be completely exaggerated."*

At the same time, a so-called "Fact Finding Mission" consisting of 2 experts from the SEM and one of the BAMF, travelled to Asmara. They were able to hold several talks organised with different representatives (the usual round-tripping), and they issued a report shortly afterwards.

Based on this report, the SEM organised a Press conference on June 23rd, providing details on the above-mentioned report. A consequence was that the illegal exit as a sole asylum claim would no longer justify a temporary refugee status.

Important to bear in Mind!: The press conference was held on the very same day when thousands of Eritreans gathered in Geneva in order to utter their approval with the UN report. Whereas their demonstration wasn't mentioned in a single line, the law enforcement was broadly perceived and discussed in each Swiss newspaper.

List of law enforcements

- **2012:** as an addition to Art. 3 Asylum law, §2 explicitly excludes desertion from military service as an asylum claim; this, however, didn't prove to be sufficient to turn down Eritrean asylum claims as the conditions in EMNS were generally perceived as inhumane and degrading (violating Art. 3 ECHR) and amounting to slavery or forced labour (in violation of Art. 4 ECHR).
- **Sept 2013: As a result of a** reform of the Asylum law, the possibility to ask for asylum at a Swiss embassy abroad was abolished; family reunion was reduced to spouses and under-age children.
- **June 2016:** The SEM issues a statement saying that illegal exit would no longer justify a post-flight reason (previously resulting in temporary refugee status).
- **30. Jan 2017:** 1. Landmark decision on Eritrea (D-7898/2015): The FAC approves the SEM's interpretation on illegal exit.
- **17. Aug 2017:** 2. Landmark decision (D-2311/216): The FAC undertakes the task of doing an updated assessment on the general situation in Eritrea; it comes to the conclusion that the general situation does no longer justify that expulsion to Eritrea (as long as it happens voluntarily) should be considered unreasonable.
- **Second half of 2017:** An increasing amount of negative asylum decisions emerged in which, respective to a decision issued by the European Court for Human Rights, the SEM stated that the mere probability that an applicant could be conscripted into the EMNS after his/her return was not sufficient to justify a violation of Art. 3 and 4 ECHR. To justify the inadmissibility of return, the fear of persecution must be proven so that "a real risk" would be given.
- **10. Jul 2018:** 3. landmark verdict, E-5022/2017: The FAC examines whether conditions in EMNS do violate Art. 3 and 4 ECHR. It reaches the conclusion that the treatment of conscriptees is

indeed harsh and problematic, but there were no indications that the ill-treatment was widespread (systematic) and flagrant enough to justify a general violation of Art. 3 and 4 ECHR. This would be the case as long as the rejected applicants would fulfil their duty by settling their relationship with the Eritrean government.

- **2019-2020:** Based on the 2. Landmark verdict, the SEM announces that 3'200 temporary admissions for humanitarian reasons on Eritreans would be re-evaluated. In sheer panic, several dozens of Eritreans fled to neighbouring countries. According to the SEM, "only" 9% of all evaluated cases were affected and the temporary admissions were withdrawn.

4. Results

These three landmark verdicts resulted in an almost systematic turn-down of Eritrean asylum claims as long as no solid evidence could be produced that the person had evaded EMNS or even fled detention.

A very cynical contradiction is that Swiss authorities do still acknowledge the evasion from military or National Service as a reason to grant asylum, but they would not hesitate to send rejected asylum seekers back into these very same conditions.

The EASO-report issued by the SEM which was published in Sept 2019 claims that the diaspora status which is achieved by settling the relationship through paying the 2% tax, signing the repentance letter and by giving detailed information on the whereabouts of all the family members would last no longer than 6 to 12 months after return. Thereafter, the returnees would face the same treatment as Eritreans who had stayed in the home country.

5. Further problems

1. **No Monitoring:** No monitoring of returnees is done by the SEM. There are no reliable information on what happens to Eritreans who voluntarily returned home.
2. **Data exchange:** The cantonal migration offices routinely Exchange data from rejected asylum seekers with the Eritrean consulate in Geneva. By doing so, the cantonal migration offices hope to later obtain travel documents from the consulate once a treaty on forcible returns has been negotiated.

For further information, please contact the author.

Annelies Müller
Verein Give a Hand.ch
Sandstrasse 5, Erdgeschoss
CH-3302 Moosseedorf/BE
Tel.: +41 (0)31 850 10 94
Mob.: +41 (0)79 830 57 63
annelies.djellal@giveahand.ch
www.giveahand.ch