



Eritrean asylum seeker's expulsion from Switzerland would not breach the European Convention

The case [M.O. v. Switzerland](#) (application no. 41282/16) concerned the complaint brought by an Eritrean asylum seeker that he would be at risk of ill-treatment if deported from Switzerland to his country of origin. He essentially claimed before the Swiss authorities that he was a deserter from military service and, following a period of imprisonment, had escaped and left Eritrea illegally. The authorities found that his asylum claim was not credible and ordered his removal.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that:

there would be **no violation of Article 3 (prohibition of torture and of inhuman or degrading treatment)** of the European Convention on Human Rights if the expulsion order against the applicant, Mr M.O, were implemented.

The Court found in particular that, if Mr M.O. were removed to Eritrea, he would not be at risk as a result of the general human rights situation in the country. Furthermore, there were no substantial grounds to believe that his personal circumstances would expose him to a real risk of inhuman or degrading treatment if removed. The Swiss asylum authorities as well as the Federal Administrative Court, in thoroughly reasoned decisions, had found that Mr M.O. had failed to substantiate his claim; and it was not for the European Court to substitute its own assessment of the facts for that of the domestic courts, which are, as a general principle, best placed to assess the evidence.

Principal facts

The applicant, Mr M.O., is an Eritrean national who was born in 1990. He grew up in Eritrea, but currently lives in Switzerland.

Mr M.O. entered Switzerland illegally in June 2014 and applied for asylum. He was heard by the Swiss asylum authorities on three occasions before his application was ultimately rejected in 2016 and his departure from Switzerland was ordered. His appeal against this decision to the Federal Administrative Court was also subsequently rejected. Mr M.O. essentially claimed that he would be at risk of ill-treatment if deported to Eritrea because he was a deserter from military service and, following a period of imprisonment, had escaped and left the country illegally in 2013. Both the asylum authorities and the Federal Administrative Court found though that he had failed to substantiate his claim in his three interviews, which lacked substance and detail. They pointed to a number of discrepancies and credibility concerns which related to core aspects of his claim and his account as a whole, including the circumstances of his leaving Eritrea.

Mr M.O.'s expulsion has, however, in the meantime been stayed on the basis of an interim measure granted by the European Court of Human Rights under Rule 39 of its Rules of Court, which indicated

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

to the Swiss Government that the applicant should not be expelled to Eritrea whilst the Court was considering his case.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment) and Article 4 § 2 (prohibition of slavery and forced labour), Mr M.O. alleged that, if deported to Eritrea, he would face a real risk of inhuman and degrading treatment and of being forced to carry out indefinite military service.

The application was lodged with the European Court of Human Rights on 13 July 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena Jäderblom (Sweden), *President*,
Branko Lubarda (Serbia),
Helen Keller (Switzerland),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),
Jolien Schukking (the Netherlands),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

The Court noted that the human rights situation in Eritrea was currently of grave concern. However, none of the reports submitted concluded that the general situation in Eritrea, as it stood at the moment, was such that an Eritrean national would be put at risk of ill-treatment if simply returned there. Therefore, the Court found that the general human rights situation in Eritrea did not prevent the applicant's removal *per se*.

Hence, M.O.'s personal circumstances were decisive for the Court's assessment of his case. Recalling that it was for M.O. to substantiate his claim, at least in as far as it concerned his personal circumstances, the Court noted that he had not submitted direct documentary evidence to prove that he faced a real risk of ill-treatment in Eritrea, in particular because of his illegally leaving the country. He relied instead on general information about his country showing that the illegal exit of a person of draft age was sufficient for that person to be perceived as a draft evader or deserter, and consequently to be at risk of ill-treatment if forcibly returned. The plausibility of his testimony before the domestic authorities/courts was therefore all the more decisive. However, both the asylum authorities as well as the Federal Administrative Court, in thoroughly reasoned decisions, found that the applicant's account as a whole was not credible, including as concerned his departure from Eritrea.

Bearing in mind that it was not the Court's task to substitute its own assessment of the facts for that of the domestic courts, which are, as a general principle, best placed to assess the evidence, the Court therefore endorsed the Swiss authorities' assessment that M.O. had failed to substantiate his claim that he would face a real risk of being subjected to inhuman and degrading treatment if forced to return to Eritrea. Consequently his expulsion to Eritrea would not involve a violation of Article 3 of the Convention.

His complaint under Article 4 of the Convention about being forced to carry out indefinite military service was rejected for non-exhaustion of domestic remedies. In particular, his claim to the asylum authorities and Federal Administrative Court had focused on the risk of his ill-treatment if he were

deported to Eritrea; he had not argued that the military service constituted slavery, servitude and/or forced labour. The Court noted the Swiss Government's submission that the circumstances of the present case allowed the applicant to institute a new set of proceedings for asylum, in which his claim regarding Article 4 of the Convention would be examined on the merits by the State Secretariat for Migration and, in the event of an appeal, by the Federal Administrative Court.

The Court further decided to continue to indicate to the Swiss Government under Rule 39 of the Rules of Court not to expel M.O. until this judgment becomes final, or until further order.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.