

CASE STUDY



HUMAN RIGHTS AT SEA



AFRICAN MIGRANTS TO EUROPE

AN ASYLUM CASE STUDY

‘Seeking safety in Europe from torture and ill-treatment’

N.B. *This case study is prepared by the author and is based upon real events concerning real people, whose identities have been protected through the use of initials. All information contained within this case study is true to the extent that facts have been investigated and corroborated by the author. The author is independent German Counsel and is an HRAS Trustee.*

I.

INTRODUCTION

HW had already lost her youngest son, presumed drowned in the Mediterranean Sea when she decided to flee Eritrea in 2013.

Her youngest son had died in 2009 in a failed attempt to cross the Mediterranean Sea seeking a new life and safety in Europe after which, HW made the decision to seek sanctuary in the Federal Republic of Germany via a commercial flight in 2013. HW was 57 years old when she left the country that she said she could no longer call “home” anymore.

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HW's family's problems originated in the Eritrean-Ethiopian conflict. Both her father and her husband were Eritrean nationals, whilst her mother was of Ethiopian nationality. This led to the issue, in terms of a mixed marriage, that the family could not live in safety in either country.

The family had lived in Eritrea until 1999, until they had to leave due to the issues of her mother's Ethiopian nationality. They then moved to Ethiopia, though soon after in 2000, the family was deported back to Eritrea by the Ethiopian authorities.

By 2006 when the situation in Eritrea became so unbearable for HW that she decided to take the risk again and leave Ethiopia with one of her children, another son.

What happened then would change HW's life forever.

HW was detained by the Eritrean authorities crossing the border and where she was accused of being an Ethiopian spy. Both she and her son remained in prison for three years up until 2009.

During her time in prison, HW was tortured and ill-treated to such an extent that she lost her hearing and even today, is no longer able to walk anymore. Her German doctor attested that this could not have derived from any precondition and was a direct result of her ill-treatment by Eritrean authorities.

In 2012, her son was abducted by Bedouins and taken back to Sudan. HW decided to follow him to Sudan to search for him, but without any success. She and a granddaughter, the daughter of her son who died in the Mediterranean Sea in 2009, then used all their contacts and relatives, living both within and outside of Africa, to assist them to leave Eritrea, eventually managing to get on a commercial flight to Germany.

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Their journey from such conditions of torture and ill-treatment ended in Bonn, where they claimed asylum and where HW's stepdaughter and daughter had already settled.

II.

BACKGROUND AND ISSUES

This case study highlights just one of the complex stories that refugees who have succeed in coming to Europe have managed to tell and expose the problems they have faced and the context of their migration away from their home States.

While HW and her family have successfully managed to gain sanctuary in Germany, at the same time, the European legislator is now enacting a law that enables the European Border Control Agency, known as FRONTEX, to render pre-emptive assessments on migrants' asylum cases at sea and before they set foot in a European State.¹

Nonetheless, if it is possible for a disabled woman such as HW gain asylum in Germany and to accurately detail her case to German authorities, in such a situation those people can remain in Germany and raise their case through the German asylum system.

¹ REGULATION (EU) No 656/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Official Journal of the EU, 27.06.2014, L 189/93, p. 98 pp., Art. 4.

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Having arrived in Germany, HW made an application for asylum at the German Agency for Migration and Refugees (hereinafter “BAMF”; Application No. 5647943-224) with the help of her lawyer, Herr Jens Dieckmann, Senior Partner at Becher&Dieckmann (Bonn, Germany), Associate Member 9 Bedford Row International (London, UK), and funded by the German humanitarian organisation “Pro Asyl e.V.” (Otherwise known as “Pro asylum”).

ISSUES

Despite successfully adducing evidence that was accepted by German authorities, HW did not receive refugee status under the Geneva Convention and which is in force in Germany, having been transferred into national law. HW was instead only given subsidiary protection under sec. 60 II, III of the German Residence Act, but which is only a temporary right of residence that needs to be renewed on an annual basis.

The BAMF argued that alleged espionage was deemed a crime in any democratic state and that HW was not otherwise persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

TODAY

Her lawyer, Jens Dieckmann is now taking her case to court with the support of Amnesty International. He is challenging the legality of the agency’s arguments (Administrative Court of Cologne, Case No. 8 K 3769/14.A).

Referring to recent open-source reports of Amnesty International, it is submitted that in Eritrea, HW would face arrest on arrival. For HW, making an application for asylum in another country is deemed treason in Eritrea. In addition, HW faces a high risk of being detained as she has already been accused to be an Ethiopian spy.

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According to the recent reports published by Amnesty International, prisoners are subject to torture and inhuman and degrading treatment in Eritrean prisons. Prisoners are beaten up, placed in painful positions and subjected to extreme weather conditions, as well as being held in isolation. They neither receive clean water nor sufficient amounts of food to sustain themselves and such conditions also apply to those prisoners who are detained for committing immigration related crimes.

Amnesty International has received and documented information about several incidents of death in custody in Eritrean prisons. In August 2012, a prisoner died because he was detained in a subterranean cell for a year and died from extreme heat.² HW's lawyer has therefore based his claim on these reports from a credible and recognised international Human Rights organisation and is arguing that HW ought to be assigned refugee status from the outset, having fled persecution, torture and ill treatment in her home country.

III.

SUMMING UP

HW has already lost one son in seeking a more secure life where human rights are not abused, whilst even today, the son other remains missing after his abduction back to Sudan. HW now seeks a peaceful and safe life in Europe, but her case continues in the German courts and her human rights remain at risk.

Her case is striking, in that it highlights a migrants' reasons to leave their home countries and risk often dangerous and deadly journeys with routes to European

² Amnesty International Report 2013, Eritrea; Amnesty International Urgent Action UA-175/2011, Index AFR 54/019/2011, 09.06.2011.

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States variously taken by sea and facilitated by illegal trafficking networks, as well as via commercially available routes.

Whilst HW had the opportunity to come to Europe a relatively safe way, many others are left with no opportunity, but to cross the Mediterranean Sea via small boats subjecting themselves to trafficker's criminal intentions.

As highlighted by HW's case, the issues raised which refugees and migrants are facing daily in their perilous journeys to safety and away from human rights abuses, as well as the difficulties faced after their arrival in Europe, need to be comprehensively tackled by the European Community in a fair and balanced manner. By undertaking review of such cases at sea and away from independent and expert representation, the numbers of cases in which such people fail to have a fair hearing of the facts of their case, is arguable set to rise. Pushback is not an option and neither is refoulement.

Jens Dieckmann
Rechtsanwalt
Attorney at Law (Germany)

www.gbri.com/associated-members/jens-dieckmann
www.gbedfordrow.co.uk/members/Jens_Dieckmann
www.humanrightsatsea.com

Becher&Dieckmann - Rechtsanwälte
Rathausgasse 11a
D-53111 Bonn Germany
Fon: +491605516229 / +492289637978
Fax: +492289637979



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For further information please contact: enquiries@humanrightsatsea.org
www.humanrightsatsea.org

9 Bedford Row | LONDON | WC1R 4AZ | UK
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