

CSDM

Annual Report

2016



CSDM

Centre Suisse pour la Défense
des Droits des Migrants

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From the President

The mission of the Swiss Advocacy Centre for Migrants' Rights (CSDM) is to guarantee and promote respect for the human rights of asylum applicants and immigrants in Switzerland.

2016 was a very trying year for many of them. Unaccompanied minors were barred from entry at the frontier in Ticino, families were separated by a mechanical application of the Dublin Regulation, and several Eritrean applicants were refused refugee status and now run the risk of being sent back to their country of origin.

These worrying developments are the result of a political climate that is generally hostile to accepting refugees. As a consequence, the CSDM is regularly faced with difficult situations, in which the right to respect for private and family life, the right to an effective remedy, or the right to *non-refoulement* have failed to be protected by Swiss asylum authorities.

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Besides its work of legal representation before international instances, the CSDM has in addition advised other legal consulting services in Switzerland and provided legal opinions. It has also received requests to provide continuing education for lawyers. A permanent effort was made to strengthen our cooperation with the Swiss Refugee Council (OSAR), the European Council on Refugees and Exiles (ECRE) and the Office of the High Commissioner for Refugees of the United Nations (UNHCR).

The past year was a crucial one for our association, one where legal expertise was put to use despite limited financing. The secretariat received support from a Board united in its efforts to develop new synergies, which will allow us to meet the needs of applicants for asylum in Switzerland and Europe.

I would like to thank the Board and our legal staff for all their dedication.



Jasmine Caye
President

A word from the Director

In 2016, we forged a number of fruitful partnerships with actors in Switzerland and abroad. These partnerships reflect the breadth and uniqueness of CSDM's advocacy work and have constituted opportunities for our young organisation to create new and fruitful networks in the advocacy community.

From its inception, the CSDM has been firmly committed to safeguarding the rights of torture survivors and other trauma victims who find themselves caught up in expulsion proceedings. We therefore warmly welcomed the opportunity to work with REDRESS, a London-based NGO, who provided us with an independent legal opinion on Articles 14 and 16 of the Convention against Torture in the context of our case *M.D. v. Switzerland*, no. 700/2015, which is currently pending before the Committee Against Torture. This case concerns a torture victim's right to rehabilitation in the context of an expulsion to Italy under the Dublin Regulation (see *Focus*). Also, with the support of the UNHCR Bureau for Switzerland and Liechtenstein, we conducted an in-depth study of the legal and practical obstacles that refugees face in asserting their rights to family reunification once their refugee status has been recognized by the Swiss authorities. This study constitutes the first in-depth analysis of the legal and practical gaps in the Swiss family reunification regime for refugees with F and B permits. It contains analysis and recommendations for our future planned activities in this area, including strategic litigation before the European Court of Human Rights. Finally, we also partnered up with the Swiss Refugee Council (OSAR) to challenge the current Swiss practice of denying refugee claims of Eritrean nationals who face well-established risks of torture and ill-treatment in their country of origin. These three projects will be carried forward in the coming months and years and we very much look forward to seeing them bear fruit.

I take the occasion to thank the Board whose unfailing support and engagement has been key to the continued success of the CSDM. I wish Mr. Gabriel Barta, who joined the Board in June, a very warm welcome and thank the departing Board members for their dedicated service to the organisation. I also thank Ms. Loubna Hoffman, whose secretarial assistance has been invaluable throughout the year. Finally, without the driving energy and legal acumen of my colleague, Gabriella Tau, it would not have been possible to keep pace with the demands placed on the CSDM by other organizations and individuals in need of assistance. I take the occasion to thank her warmly for her decisive contribution.



Boris Wijkström
Director

Mission and activities

Mission

The CSDM's primary mission is to promote the human rights of foreigners in Switzerland by instituting legal procedures before international bodies such as the European Court of Human Rights and the United Nations' Committee Against Torture.

It also constitutes a centre of expertise in human rights and thus can actively support other legal teams that defend the rights of migrants.

Further, it seeks to contribute to a better understanding of the obligations deriving from international human rights treaties through creation of national and international case law. In order to achieve this, the CSDM will for preference devote its efforts to cases which are likely to result in significant changes in national and European jurisprudence.

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Activities

Supranational procedures

In 2016 the CSDM continued to submit communications to the UN Committee Against Torture (CAT) concerning highly vulnerable persons, who had received a deportation order naming another European country, either for consideration of their asylum application or because they were in possession of a permit for that country. These persons were victims of torture or suffering from serious illness, who would have been exposed to inadequate conditions in the destination country. The CSDM argued in these cases that expulsion from Switzerland would entail serious personal distress, equivalent to inhuman and degrading treatment

within the meaning of the Convention Against Torture. In each case the CAT granted interim measures, and the Swiss authorities consequently suspended the expulsion of our clients.

We prepared further individual communications in early 2017 for submission to the CAT, one of which concerned the illegal deportation of an Eritrean asylum seeker to his home country. ***See “Example of a case” below.***

The CSDM has also made a collective submission to the European Court of Human Rights to oppose the expulsion of four single-parent families to Italy (Catania) in accordance with the Dublin Regulation.

In partnership with the Bureau for Switzerland and Liechtenstein of the UN High Commissioner for Refugees (UNHCR), the CSDM has written a paper on the legal obstacles to family reunification facing refugees in Switzerland. The study sketches how these may be overcome, in particular by strategic litigation before the European Court of Human Rights. Its recommendations will be presented in 2017 at a public conference organized jointly with UNHCR and will serve as the basis of our future activities in this area. ***See “High points of the year” below.***

On 6 May 2016, the CSDM held a Round Table on The refugee crisis in Europe: strategies for legal professionals. Based on descriptions of case law from the European Court of Human Rights and the Court of Justice of the European Union, the debate discussed the role of asylum seekers’ advocates in the context of the migration crisis in Europe. Around 50 lawyers and other asylum-area professionals listened to presentations from Prof. Francesco Maiani of the University of Lausanne, Me Stephanie Motz of the

University of Lucerne, and Julia Zelvenska, Head of Legal Support and Litigation at ECRE in Brussels.

Legal consulting

Since its founding the CSDM has regularly been asked by lawyers all over Switzerland to offer support, to provide a legal opinion or to take over a case for presentation to the European Court of Human Rights or another international instance. After our second full year of operations, it is clear that legal consulting is an increasingly important aspect of our work, and that requests for it originate from a wide and ever-growing community of legal professionals.

Example of a case

M. G. v. Switzerland

Individual communication no. 811/2017

The case concerns an Eritrean asylum applicant, of Bilen origin, who has received an expulsion decision from the Secretariat of State for Migrations (SEM), confirmed by the Federal Administrative Court (TAF).

Before his escape from Eritrea the applicant had stopped attending school in order to help support his family, and worked in agriculture. His dropping out of school led to his being arrested in a raid and detained with a view to being enrolled in the army. He was held in a metal goods container together with very many others and in horrific conditions. After a few days of imprisonment, when they had been let out to defecate, he and some others managed to escape. The guards opened fire, but there were too many prisoners for the guards to prevent them from escaping.

He made his way back to his village, but hid in the nearby mountains to avoid the soldiers. Some months later, he learned that he had received a summons from the Eritrean authorities to join the military. For fear of having to serve in the military for ever, and of again being severely punished and imprisoned under inhuman conditions, he decided to ignore his call-up and leave Eritrea illegally. Walking, he reached Sudan where he spent several years in a refugee camp. Since his life as a refugee in Sudan was extremely difficult, he decided to leave Sudan, and in the course of his travels had to risk his life several times, both when crossing the desert on his way to Libya and on the trip by boat to Italy. On his arrival in Switzerland he immediately applied for refugee status.

At the first stage of the procedure, the SEM determined that the applicant's claims as to his reasons for escaping and the illegality of his leaving Eritrea were not believable. The TAF confirmed this determination, in spite of the fact that the applicant had successfully

explained most of the claimed inconsistencies pointed out by the SEM. The TAF's conclusion was that no documents in the case contained any element which might have contradicted the lower authority's judgment that expulsion was legal, possible and could reasonably be required, and that the impossibility of obtaining an exit visa from the Eritrean authorities did not by itself make it likely that the applicant's departure from Eritrea had been illegal.

The CSDM challenged the conclusions of the Swiss asylum authorities by submitting an individual communication to the UN Committee Against Torture (CAT). We emphasized that if the applicant was returned to Eritrea, according to several reliable sources of information, he would be running the risk of torture and mistreatment falling under the definition of Art. 3 of the Convention Against Torture, for having avoided military service and left the country without government authorization.

We further maintained that the applicant had not had access to a fair process capable of "effectively, independently and impartially" examining the decision to deport him. His case had not been thoroughly and diligently investigated, because the TAF judge gave only summary motivation for his judgment and because the applicant had had no chance of a professional defence of his interests, his application for legal aid having been rejected by the judge. In addition his explanation at the start of his interview that his knowledge of Tigrinya was inadequate, his mother tongue being Bilen, had been ignored, with the result that he had been forced to use Tigrinya.

In response to our submission the CAT granted interim measures, thus preventing the effective expulsion of the applicant as long as a final legal judgment has not been handed down.

The right to rehabilitation for torture victims

We have dealt with a number of cases of expulsions, including under the Dublin Regulation, of torture survivors to third countries where they risk being deprived of specialised medical care. In this context, we are concerned that such expulsions are inconsistent with Article 14 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which guarantees a right to rehabilitation including appropriate medical treatment. In the case of *M. D. v. Switzerland*, Communication no. 700/2015, REDRESS supported our litigation before the CAT by providing us with a legal opinion on this issue.¹

In its submission, REDRESS provides an analysis of relevant jurisprudence and offers its views on the basis of more than twenty years of working with torture survivors in a variety of countries and contexts. It submitted that it is well-established that the subjection of asylum seekers to adverse living conditions (including lack of access to appropriate health care), either in the country in which they are seeking asylum or on *refoulement* to a third State, can amount to inhuman and degrading treatment. It is equally well established that, when considering whether the threshold of minimum severity for inhuman and degrading treatment will be met, States must give special and individualised consideration as to whether the individuals affected form part of any particularly vulnerable groups. Such vulnerable groups are not limited to families with young children and can include young men and torture survivors. Further, it is not necessary to show that systemic human rights violations exist in the country in question. The needs of a torture survivor, and that survivor's right to rehabilitation under Article 14 UNCAT, require that specific consideration be given to a torture survivor's right to rehabilitation by any State under whose jurisdiction that torture survivor finds him or herself, including a State that is proposing to send that survivor to a third country.

¹ REDRESS Brief, 27 July 2016, in the case of *M. D. v. Switzerland*, Communication n° 700/2015 (available on our website: www.centre-csdm.org).

In addition, Article 14 UNCAT provides a freestanding right to a remedy which includes rehabilitation, an obligation by which Switzerland is bound.

In its submission, REDRESS first sets out and analyses comparative domestic, regional and international human rights jurisprudence on factors that a State must take into consideration when assessing whether the threshold of minimum severity for inhuman and degrading treatment will be met in the context of asylum seekers and adverse living conditions/lack of access to appropriate health facilities. It then considers in detail the content of the right to rehabilitation in international law, explaining the breadth and depth of States' obligations under Article 14 UNCAT. It then considers the freestanding civil right to rehabilitation for torture survivors.

This case is currently pending before the CAT.

High points of the year

Partnering with the UNHCR to reinforce family reunification for refugees in Switzerland

In 2016, the CSDM concluded a partnership agreement with the Bureau for Switzerland and Liechtenstein of the United Nations High Commissioner for Refugees (UNHCR), with the aim of studying ways to enhance refugees' access to family reunification.

Family reunification is a key aspect of national refugee protection regimes and is crucially important to the successful integration of refugees in their host country. It is also one of the last remaining ways in which refugees can reach their family members in safety,

without having to risk their lives on the Mediterranean or other dangerous smuggling routes. Notwithstanding its importance, refugees in Switzerland continue to face numerous legal, institutional and practical hurdles to family reunification which prevent the full enjoyment of this right. These obstacles include long statutory waiting periods, financial requirements that are difficult or impossible to meet, the narrow definition of “family”, the exclusion of an automatic right for post-flight family members, and national decision-making that does not consistently take into account the best interests of the child.

In order to better understand what can be done to help refugees overcome these obstacles, the CSDM undertook, with the support of the UNHCR, a comprehensive review of gaps in the Swiss family reunification regime. The study provides a detailed legal analysis of areas where Swiss practice falls short of international law obligations under the 1951 Refugee Convention, the ECHR and other public international law sources, such as the CRC, CEDAW, CERD and the CRPD¹. Special attention was paid to situations which could be amenable to strategic litigation before the European Court of Human Rights or the United Nations Treaty Bodies.

In particular, the study highlighted the fact that the situation for F-permit refugees is problematic with a three-year ban on seeking family reunification after the person has been granted status, not to mention the additional financial requirements imposed on family reunification for this class of refugees. Also, family reunification rights in relation to post-flight family members of B-permit refugees (which includes family ties that were formed during flight) are relatively restrictive and potentially inconsistent with Article 8 ECHR, given that strict financial requirements are also imposed. Certain cases may additionally raise issues under the prohibition of discrimination under Art. 14 ECHR taken with Art. 8 ECHR. Most prominent amongst these is the situation of

post-flight family members of B-permit refugees, as compared with family reunification rights of B-permit refugees with pre-flight family members. Other case scenarios in which a challenge under Art. 14 ECHR could be mounted concern the family reunification rights of refugee children as compared with Swiss children, and the differential treatment between F-permit refugees and B-permit refugees regarding the three-year ban for F-permit refugees.

In addition, certain case scenarios may best be litigated before one of the UN Committees. In particular, cases concerning unaccompanied refugee children seeking family reunification with their parents could be litigated before the UN Committee on the Rights of the Child under Art. 22 CRC, once Switzerland has ratified the Optional Protocol to the CRC. Further, case scenarios concerning mothers with children in Switzerland who are seeking family reunification with their spouse or further children may fall within the definition of *de facto* discrimination against women under CEDAW, where they cannot meet the financial requirements due to their childcare obligations.

The study also discussed the relative lack of strategic litigation by Swiss lawyers in this area, and identified a series of measures to address these gaps including through capacity-building of national stakeholders and strategic litigation mainly before the ECtHR. The CSDM intends to launch a multi-year project to implement the conclusions and recommendations of the study.

¹ CSDM 2016, *Family Reunification for Refugees in Switzerland: Legal Framework and Strategic Considerations*.

² Convention on the Rights of the Child (CRC); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); International Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention on the Rights of Persons with Disabilities (CRPD).

Support

In 2016, the CSDM benefited from generous donations from Capital Group, the Bureau for Switzerland and Liechtenstein of the United Nations High Commissioner for Refugees (UNHCR), and a private foundation in Geneva. Our association has 105 members and 112 private donors.

Our thanks

We would like to express our heartfelt thanks to all, individuals, members, partner organizations, foundations and Geneva local authorities, who support us and make our existence possible.

Accounts

Income		Expenditure	
Income from activities	—	Personnel expenses	70'086.63
Private donors	83'362.40	Education	3'918.68
Tied contributions	10'000.00		
Subsidies	1'000.00	Web site	267.00
Membership fees	2'100.00	Overheads and other expenses	13'043.28
Other income	450.40	Expenses from previous periods	—
Total CHF	96'912.80		87'315.59
Excess of income CHF	9'597.21		

The team

Staff

Boris Wijkström, director

Gabriella Tau, lawyer

Loubna Hoffmann, secretariat volunteer

Committee

Jasmine Caye, president, Editor, *ForumAsile* blog and *Le temps des réfugiés* blog for Le Temps

Anne Maia Falconnet, treasurer, Administration and Finance Manager, CSP Geneva

Anne-Marie Barone, judge, Civil Court, Geneva

Gabriel Barta, committee member of the Geneva *Collectif de soutien aux sans-papiers*

Dominique Bavarel, lawyer, *Collectif de défense*

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Sophie Malka, Editor, *Vivre Ensemble* (VE)

Fanny Matthey, member of the research staff, Law Faculty, University of Neuchâtel (UNINE)

Stephanie Motz, barrister, Doctoral candidate, University of Lucerne (UNILU)

Adam Weiss, Managing Director, European Roma Rights Centre (ERRC)

The Swiss Centre for the Defense of Migrants' Rights (SCMR/CSDM)

The CSDM is a non-profit association created in May 2014. Its mission is the legal defence of the human rights of migrants and asylum seekers before international instances, such as the European Court of Human Rights and the UN Committee Against Torture.

The CSDM was founded in response to the erosion of the civil rights of foreigners in Switzerland, and the need for a specialized body which can offer support to legal professionals active in this area and to the migrants themselves. By means of cases submitted to international bodies, the CSDM seeks to generate case law which will promote better understanding and a stricter respect for obligations deriving from international treaties which Switzerland has ratified in the human rights area.

This annual report presents the CSDM's activities during its third year of existence.

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