



St. Gallen, 24 July 2020

## **Press Release**

**regarding judgment A-2138/2020 of 22 July 2020**

### **Sanction against Lauber reduced**

**The Supervisory Authority for the Office of the Attorney General sanctioned Attorney General Michael Lauber with a salary reduction of 8% for the duration of one year due to various breaches of official duty. The Federal Administrative Court upholds part of the accusations raised and reduces the sanction by three per cent.**

In May 2019, the Supervisory Authority for the Office of the Attorney General (SA-OAG) initiated disciplinary proceedings against Attorney General Michael Lauber, who is believed to have breached his official duties with regard to meeting with Fifa President Gianni Infantino several times. At the beginning of January 2020, the proceedings were extended as the behaviour of the Attorney General in the investigations and generally vis-à-vis the SA-OAG was also found to have had an influence.

In the ruling of 2 March 2020, the SA-OAG penalised Lauber with a sanction in the form of a salary reduction of 8% for the duration of one year. It based this on several breaches of various official duties, some of them serious. The Attorney General submitted an appeal against this ruling to the Federal Administrative Court (FAC) and requested the revocation of the sanction and the closure of the disciplinary proceedings. He rejected all the breaches of duty which he had been accused of as being unfounded. He also accused the SA-OAG of formal errors such as partiality and an incomplete investigation of the facts. In addition, he claimed that he was not granted the right to be heard.

#### **Right to be heard violated in one aspect**

The FAC subsequently examined the formal procedures of the investigation as well as the accusations by the SA-OAG that were decisive for the disciplinary measure. The facts of the situation which the SA-OAG dealt with in the disciplinary report but where it found no breach of official duty or a time-barred breach were not examined by the FAC.

The violation of the right to be heard, which was mentioned repeatedly in the appeal, was upheld by the FAC simply on the point that Lauber was at no time able to see certain documents. However, as a result of the proceedings at the FAC, where the appellant was granted access to all the files, this violation is considered to have been remedied. The court does not uphold the other formal

complaints.

Subsequently, the FAC examined individually the breaches of official duties which the Attorney General was accused of and which were taken into account for the assessment of the sanction. The relevant acts include conflict of interest and disregard of the substitution regulation in four cases, breaches of duty of loyalty on the basis of false information provided concerning two meetings on 8 July 2015 and 16 June 2017 as well as obstructing the SA-OAG's investigations and disloyal conduct towards it.

### **Disloyal conduct towards the SA-OAG only slightly negligent**

The FAC upholds the repeated disregard of the substitution regulation and the associated violation of the code of conduct established by the Attorney General himself. In this case, Lauber should have left it to the Deputy Attorney Generals to issue testimony authorisations for his colleagues and to regulate the attorney's fees incurred by them and himself. On these points, as well as on the issue of documents to be handed over to the investigating authority, the Attorney General undoubtedly found himself in a conflict of interest. The court therefore held that Lauber had breached the duty of recusal in these four cases as a result of gross negligence on his part. On the other hand, the FAC did not find that the investigation was obstructed by Lauber's influence on the Deputy Attorney Generals. It therefore considers this accusation of a breach of official duty to be unfounded.

The accusation of disloyal conduct towards the Supervisory Authority is lessened by the court. In making statements to the SA-OAG in a media conference held in May 2019, Lauber did indeed exceed the limits of what is permissible. In view of the relationship of trust already weakened at that time, however, this fault must be classed as slight negligence and not as gross negligence as stated in the ruling.

### **Lauber's statements were intentionally false**

The SA-OAG assessed Lauber's false statements to it regarding two meetings to be serious breaches of official duty. The SA-OAG held that the statements made by the Attorney General concerning the contents of the meeting of 8 July 2015 with André Marty, Head of Information at the Office of the Attorney General and Rinaldo Arnold, Attorney General of Valais, were implausible. The SA-OAG suspected agreements between the participants on the basis of identical wording. The FAC cannot, however, find any evidence of a joint wording arrangement. Furthermore, other circumstances, such as Infantino's candidature for Fifa President which was not yet on the cards at this point, do not rule out the possibility that the meeting was in fact – as stated by Lauber – about general criminal matters and not – as assumed by the SA-OAG – on the topic of football. The accusation of a breach of official duty is therefore unfounded.

The FAC takes a different view of the statements of the Attorney General on the meeting of 16 June 2017, which according to the state of facts was attended by Lauber, Marty, Arnold, Infantino and possibly a fifth person. However, none of the participants can remember this meeting. According to the FAC, this fact alone and various other circumstances lead to the conclusion that Lauber's statements are implausible. Such a gap in memory among several participants is to be regarded as absurd according to general experience of life. The FAC therefore holds that the Attorney General intentionally made a false statement to the SA-OAG during his questioning on 12 November 2018 and knowingly concealed the third meeting with Fifa President Infantino. The FAC therefore upholds the serious breach of Lauber's official duty and duty of loyalty on this point.

### **Salary reduction as a form of sanction is justified**

Overall, the court finds that Attorney General Lauber committed several breaches of official duty and that the formal procedures of the disciplinary proceedings permit a valid decision. Nevertheless, the FAC criticises the SA-OAG for the sometimes very provocative statements in the disciplinary report. For example, the SA-OAG goes too far with the statement that Lauber demonstrates a fundamentally flawed understanding of his profession, and by doing so, ignores the sophisticated aspects of his work as an Attorney General as well as its earlier positive assessments of his conduct in office. Individual accusations were also found to be unfounded. The Federal Administrative Court therefore partly upholds the appeal.

However, the confirmed breaches of official duty and their seriousness still justify the decision of the SA-OAG to opt for the most severe type of disciplinary sanction possible in the form of a reduction in salary. With regard to the extent of the salary reduction, the accusations found to be unfounded must be taken into account. The FAC considers a salary reduction in the middle range to be appropriate and orders a disciplinary measure against the Attorney General in the form of a salary reduction of 5% for the duration of one year.

This judgment may be appealed to the Federal Supreme Court.

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### **About the Federal Administrative Court**

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 355 employees (300.8 FTE) and its 74 judges (66.25 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal administrative authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.