



St. Gallen, 16 April 2021

Press Release

regarding judgment A-3584/2020 of 12 April 2021

Federal Criminal Court must pay judge's legal fees

A Federal Criminal Court judge must be compensated for the legal fees that she incurred following the publication of a supervisory report by the Federal Supreme Court and statements made by its President. This decision was made by the Federal Administrative Court.

From the beginning of 2020, the Administrative Commission (AC) of the Federal Supreme Court conducted supervisory proceedings regarding incidents at the Federal Criminal Court (FCC), in the course of which several Federal Criminal Court judges – including the appellant – were questioned. Following the publication of the supervisory report, unfounded accusations that the judge had breached her duty of confidentiality were made in the media. Shortly afterwards, the same judge was once again thrust into the media spotlight following comments made about her by the former President of the Federal Supreme Court.

Invocation of duty of care

The judge requested that the AC of the Federal Criminal Court cover the costs for appointing an external lawyer specialising in media law. Her grounds for seeking professional counsel included the considerable strain on and threat to her authority as a judge, as well as the need to protect both her reputation and that of the Federal Criminal Court.

Article 77 of the Federal Personnel Ordinance (FPersO) stipulates that procedural costs and other legal fees may be reimbursed if employees of the Federal Government are involved in civil or criminal proceedings in the performance of their duties. The AC of the FCC rejected the judge's request on the grounds that it did not meet these requirements in this instance. The judge subsequently lodged an appeal against this decision with the Federal Administrative Court (FAC). She did not invoke the FPersO in her appeal; rather, she cited her employer's duty of care (Art. 328, Code of Obligations – CO).

Judge entitled to reimbursement

In its judgment, the FAC finds that the legal duty of care also applies to judges. All employers, i.e. including the Federal Criminal Court, have an obligation to protect the personal and professional integrity as well as the position and

reputation of their employees. Employees likewise have an obligation of loyalty towards their employer.

The Federal Administrative Court therefore rules that the appellant is, in principle, entitled to the reimbursement of the legal fees that were incurred in the protection of her personal rights. The request for these costs to be covered must also be granted because of the unfounded nature of the public accusation that the judge had breached her obligation of confidentiality, which referred to her by name. The FAC consequently upholds the appeal and reverses the rulings made by the FCC. The FCC will have to evaluate the actual scope of the reimbursement in subsequent proceedings.

This judgment may be appealed to the Federal Supreme Court.

Contact

Andreas Notter
Head of communication
+41 (0)58 468 60 58
+41 (0)79 460 65 53
medien@bvger.admin.ch

Anaëlle Deschenaux
Communication
+41 (0)58 463 03 72
medien@bvger.admin.ch

About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 353 employees (297.3 FTE) and its 73 judges (65.15 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 7,200 judgments every year.