Bundesverwaltungsgericht
Tribunal administratif fédéral
Tribunale amministrativo federale
Tribunal administrativ federal

Media relations
P.O. Box, 9023 St. Gallen

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Press Release
regarding judgment F-76/2019 of 30 August 2021

Simplified naturalisation not (yet) accessible to registered partners

The Federal Administrative Court confirmed the decision of the State Secretariat for Migration not to consider an application for simplified naturalisation filed by a man living in a registered partnership. At the same time, the Court found that this decision violated the prohibition of discrimination under international law and waived the appellant's legal costs.

A Russian national arrived in Switzerland in 2011 and lives in a registered partnership with a Swiss national since 2015. In 2018, the Russian national filed an application for simplified naturalisation, which the State Secretariat for Migration (SEM) declined to consider. Since the Swiss Citizenship Act provides that only married persons qualify for simplified naturalisation and not those living in a registered partnership, the SEM advised the party concerned that he could apply to the Canton for ordinary naturalisation.

In 2019, the Russian national appealed the negative decision before the Federal Administrative Court (FAC). In substance, he argued that he was discriminated against compared to a married person, and that this was in violation of the provisions of the European Convention on Human Rights (ECHR) and UN Covenant II.

Discrimination upheld
The appellant argues that the ordinary naturalisation procedure takes longer than the simplified procedure and that during this time he would be obliged to keep the same residence even if relocation were appropriate for professional reasons. He did not, however, specify the actual professional circumstances. He rightly maintained on the other hand that, in the ordinary procedure, sexual orientation couldn't be kept secret because a larger circle of persons is informed than in the simplified procedure.

The FAC sees an inadmissible discrimination in the fact that the law denies homosexual persons access to simplified naturalisation on the ground that they cannot enter into marriage – consequently because of their sexual orientation. In the appellant's case, however, the aggravations associated with the ordinary naturalisation procedure are negligible. As a lawyer, the appellant would be able

to run through this process without difficulty and obtain Swiss citizenship. Moreover, he did not show that he had to change his place of residence for professional reasons.

Considering the low severity of the adverse effects, the Court refrained from annulling the SEM's decision. Notwithstanding, the Court formally finds that that decision is in violation of the prohibition of discrimination under international law. Consequently, the FAC waives the appellant's legal costs.

This judgment may be appealed to the Federal Supreme Court.

Relationship between federal and international law
In the event of a conflict between federal law and international law, Switzerland is generally obligated to apply international law. The Federal Supreme Court has developed an exception, known as the "Schubert practice",[1] which should not have been applied in the present case. According to this practice, a prior norm of international law should not be applied when the federal legislator consciously breached international law or consciously accepted the possibility that international law would be breached. This exception does not apply to Switzerland's human rights obligations, where international law takes precedence over national law.

When drafting the Federal Act of 18 June 2004 on the Registered Partnership between Same-Sex Couples (Same-Sex Partnership Act) and during the relevant parliamentary debates, it was stated that registered partnerships would not be treated on an equal footing with marriages in terms of simplified naturalisation. Therefore, is it assumed that the legislator consciously accepted a possible infringement of international law.

If the initiative about same-sex marriage is accepted, homosexual persons will also be assured unrestricted access to simplified naturalisation.

Contact

Rocco R. Maglio
Press secretary
+41 (0)58 465 29 86
+41 (0)79 619 04 83
medien@bvger.admin.ch

Andreas Notter
Head of communication
+41 (0)58 468 60 58
+41 (0)79 460 65 53
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.

[1] See Decision BGE 142 II 35 of the Federal Supreme Court