



St. Gallen, 8 July 2022

Press Release

regarding judgments F-1724/2019 of 27 June 2022 and F-1752/2019 of 29 June 2022

Asylum: federal subsidies to cantons

In the event of a non justifiable expiry of the statutory time limit for Dublin transfers, the Confederation may cancel the subsidies paid to the cantons.

As a general rule, the cantons are responsible for providing aid to persons in need. This rule also applies in the field of asylum where the cantons are entrusted with the provision of social assistance and emergency aid to the persons staying in Switzerland assigned to them. For this purpose, the Confederation makes flat-rate compensatory payments to the cantons. In particular, the cantons are responsible for enforcing any removals ordered by the State Secretariat for Migration (SEM) as part of its decisions to dismiss asylum applications in accordance with the Dublin regulations. In this context, Article 89b of the Asylum Act (AsylA) provides that the Confederation may claim back flat-rate compensatory payments already made if a canton fails to carry out the enforcement tasks or carries out such tasks inadequately without an objective excuse. Similarly, if the non-fulfilment or inadequate fulfilment of enforcement tasks leads to the person concerned staying longer in Switzerland, the Confederation may decline to make these compensatory payments.

Non-enforcement of Dublin removals by the responsible canton

In two cases brought before the Federal Administrative Court (FAC) by the Republic and Canton of Neuchâtel, the SEM established that the removal periods, of six and eighteen months respectively, had expired, that a procedure had therefore had to be initiated at the national level, and that there was no objective reason justifying the non-enforcement of the removals. As a result, it was decided to stop payment of the federal subsidies beyond the statutory period. The canton of Neuchâtel challenged this decision arguing that the cantons were entitled to a certain leeway and could not be expected to “blindly” enforce the removals ordered by the SEM.

The first case concerned an Eritrean national who should have been transferred to Italy; the canton had not taken any steps because his wife, whom he had joined in Switzerland and whose application for asylum had also been dismissed and who had seen her removal ordered, was in an advanced state of pregnancy. After the expiry of the time limit for removal, a procedure was initiated at national level and the applicant was granted asylum in Switzerland, with the benefit of

family reunification for his wife and child.

In the second case, the canton had not enforced the removal to Bulgaria of a Turkish national after his short disappearance from the reception centre – which resulted in the extension of the enforcement period to eighteen months – and two suicide attempts.

Formal objections denied

In its appeals, the canton of Neuchâtel alleged that the SEM had violated the principle of the separation of powers and its right to be heard, and that it had inaccurately and incompletely determined the material facts. The FAC rejected all three formal complaints.

Federal enforcement

Analyzing whether the canton of Neuchâtel had failed to fulfil its obligation to enforce the removals to Dublin States, the Court emphasised that, in this context, contrary to the ordinary law on foreigners, the legislative had not intended to grant the cantons any leeway. Notwithstanding, even assuming the cantons had a certain leeway, this would not include the right to question a decision or judgment in force outside any procedural framework.

Yet, in both cases, the persons concerned had been the subject of a procedure as part of which the decisions by the federal authority were subject to appeal and a request for a review was still possible. Under these circumstances, non-enforcement could only be justified on objective grounds. In its judgments, the FAC determined that, in the first case, the canton of Neuchâtel had not taken any practical steps during the six-month period for removal and that, in the second case, fourteen months passed without the canton undertaking any action at all to review the medical aspects of the case. Therefore, failing any objective grounds for non-enforcement of the removals, the SEM had not infringed federal law by cancelling the federal subsidies in the two cases. Both appeals are therefore denied.

These judgments 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 365 employees (305.6 FTE) and its 72 judges (64.5 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 6,500 judgments every year.