



St. Gallen, 6 December 2019

## **Press Release**

**regarding judgment F-1031/2018 of 27 November 2019**

### **Revocation of an entry ban on issued by fedpol**

**The Swiss Federal Administrative Court quashes a decision by fedpol to ban a French national from entering Switzerland due to his supposed radicalisation. Fedpol was found to have violated the appellant's right to access his file.**

A French national is living in neighbouring France with his wife and their children, all of whom are Swiss nationals. He worked in Switzerland for several years, namely at the Mosquée du Petit-Saconnex (Petit-Saconnex Mosque) in Geneva. In 2017, the individual concerned lost his job and the canton of Geneva refused to renew his cross-border commuter permit. In January 2018, fedpol issued him with a five-year entry ban on the grounds that he poses a threat to Switzerland's internal security due to his radicalisation.

#### **Violation of the right to access the file**

Swiss law provides for the possibility of refusing a party access to certain documents in their file. However, any restriction on the right to access the file must be justified by the existence of important interests, such as the public's interest in the protection of the sources of information, and must respect the principle of proportionality. In this particular case, fedpol did not proceed with the required restraint when it excessively redacted the documents relevant to the outcome of the dispute, without carefully balancing the public and private interests at stake. In particular, fedpol concealed information that was known to the appellant or even accessible to the general public. It also refused, without relevant grounds, to disclose the assessment made by an employee at the Federal Intelligence Service regarding the threat the appellant poses to Switzerland's internal security.

#### **Requirements under Swiss and European law**

For fedpol to issue a travel ban on a European national, there needs to be a current and real threat of a certain severity to Switzerland's internal security. However, the file it has prepared so far does not contain enough concrete evidence to conclude that such a threat exists. The appellant has been criticised for allegedly belonging to radical Islam, working in a mosque that is also frequented by extremists and having possible resentment towards Swiss institutions because of decisions made by Swiss authorities. This is, however, not sufficient to justify the issuance of an entry ban on a European national who has

very close links to Switzerland.

Furthermore, the Swiss Federal Administrative Court (FAC) cannot afford any great weight to the suspicions asserted by fedpol following its consultation with the Federal Intelligence Service, if the concerns expressed are not substantiated by any concrete or compelling evidence on file. In this regard, it is important to note that the file prepared by fedpol does not contain any evidence that the appellant may have engaged in proselytism on behalf of radical Islam or any other criminal activity in connection with his religious beliefs.

The FAC therefore allows the appeal and quashes the disputed decision. This judgement 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 (305.5 FTE) and its 76 judges (68.4 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal 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.