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

St. Gallen, 14 November 2019

## **Press Release**

regarding judgment F-1499/2018 of 25 October 2019

### **Determining the country responsible for ruling on a family's asylum claims**

**The Dublin system offers the necessary flexibility to ensure that a family is not separated during an asylum procedure, even when its members lodge their claims in two different countries. However, Switzerland may not always examine another country's application of criteria on which the rules on responsibility are based. This is the conclusion which was reached by the Federal Administrative Court in a landmark judgment.**

A Turkish citizen had applied for asylum in Switzerland on 6 January 2017; his wife did the same on 23 October 2017 for herself and on behalf of their two minor children. However, the State Secretariat for Migration (SEM) noted that she had already lodged an application for international protection in Germany on 31 August 2017 – also for herself and her two children – and that Germany had agreed to examine their asylum claim without having requested that Switzerland take charge of the aforementioned individuals within the time limits set out in the Dublin III Regulation. As the German authorities then acknowledged their responsibility for the wife and the two children as well as her husband (to preserve family unity), the SEM declined to examine the asylum claims of any member of that family and ordered their transfer to Germany. Asserting that the Swiss authorities ought to be responsible for assessing their asylum claims, the individuals concerned appealed to the Federal Administrative Court (FAC) against the SEM's decision. According to them, Switzerland should be responsible for considering all the asylum claims in question, given that the husband's first claim had been lodged in the country.

#### **Clarification of current case-law**

In its landmark judgment,<sup>1</sup> the FAC clarified its current case-law and also took into account the recent decisions of the Court of Justice of the European Union (CJEU).<sup>2</sup> Once a Dublin Member State agrees to conduct an asylum procedure and thus allows applicants who had already lodged an initial claim while on its territory to return there, the SEM is no longer required to scrutinise all the criteria

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<sup>1</sup> This judgment was the subject of coordination proceedings before the judges of Divisions IV, V and VI combined. The legal appraisal goes beyond the scope of the present case and applies in general terms to multiple cases.

<sup>2</sup> See CJEU judgment of 2 April 2019 in Joined Cases C-582/17 and C-583/17 as well as judgments C-670/16 of 26 July 2017 and C-213/17 of 5 July 2018.

for determining the responsible Member State pursuant to Chapter III of the Dublin III Regulation. Consequently, and notwithstanding the principle of family unity, this means that members of a family may potentially be separated, even if the authorities in the Member States responsible for assessing their claims cannot be held to be at fault in this respect.

### **Two options must be put forward**

In the present case, the FAC has quashed the SEM's decision and has returned the matter back to it, with the instruction to offer the applicants two options: either the husband accepts his transfer to Germany, in which case Germany will be responsible for assessing the claims of all family members and family unity can be preserved, or he decides to remain in Switzerland, in which case the SEM will assess his case only and his wife and two children will be transferred to Germany, unless the SEM makes use of the sovereignty clause.

This judgment is final and may not 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.