



St. Gallen, 21.04.2022

Press Release

regarding judgment A-4744/2019 of 6 April 2022

Judgment on the dismissal of an ETH professor

The Federal Administrative Court holds that the dismissal of a professor by ETH Zurich is neither unlawful nor gender discriminatory. However, since the dismissal was not preceded by a warning, the Court awarded the professor indemnification totaling eight months' salary.

In 2017, several doctoral students at the Swiss Federal Institute of Technology, Zurich (ETHZ) complained to the Ombudsman's office about a professor whom they accused of disrespectful and improper conduct. Based on these complaints, the ETHZ conducted an administrative investigation from which it essentially emerged that the accusations were well-founded. Thereupon the ETH Board dismissed the professor by an ordinary notice of termination. The professor challenged the dismissal before the Federal Administrative Court claiming that it was unlawful and gender discriminatory.

Neither unlawful nor discriminatory

A dismissal is unlawful if it is issued on grounds that are inadmissible. In its judgment, the FAC concluded that the dismissal could not be deemed unlawful or gender discriminatory. Contrary to the claims of the appellant, the dismissal was not issued to solve a single case of inter-personal conflict with a doctoral student or in retaliation against the professor for asserting her legal rights. The ETH Board issued the dismissal because, through her leadership style and her conduct towards employees, the professor had repeatedly infringed important legal and contractual obligations and had behaved in an unacceptable manner.

As for the allegation of gender discrimination, after thorough investigation, the Court concluded that it was unfounded. There was no evidence of gender discrimination on the part of ETHZ, even taking into consideration earlier cases. Since the notice of termination was neither unlawful nor gender discriminatory, the claim for continuance of employment is irrelevant; the dismissal terminated the employment relationship with the appellant.

Shortcomings of the Institute

Records show that in earlier years several people had already complained to the ETHZ Ombudsman's office about the professor's leadership behaviour. One complainant had contacted the Ombudsman's office as far back as 2005, and further complaints were filed in 2009, 2013 and 2016. However, none of these

complaints were followed up upon. They were neither investigated, nor was the professor informed that complaints had been made. Only the 2017 complaint led to further investigation and finally to the present dismissal proceedings.

For the FAC, the Institute's long-standing failure to act contributed significantly to the situation that finally arose. Had the Institute reacted promptly, a warning – possibly in conjunction with coaching – might have been an appropriate remedy to improve the offending conduct. At this point, however, despite the continuing lack of introspection and awareness, one cannot *a priori* consider that even milder measures are futile. As a result, the outright dismissal is deemed disproportionate and unjustified in absence of a prior warning. On these grounds, the FAC awards the appellant indemnification totaling eight months' salary.

This judgment 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.