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

St. Gallen, 7 July 2023

## **Press Release**

**regarding judgment F-3116/2023 of 27 June 2023**

### **Judicial remits clarified**

**The Federal Administrative Court has specified the conditions in which expulsion orders and entry bans issued by fedpol to safeguard Switzerland's internal or external security must undergo a judicial review, instead of an administrative review.**

In December 2022, the Federal Office of Police (fedpol) ordered the expulsion from Switzerland of a North Macedonian national suspected of being a radicalised Islamic extremist, and issued against him an entry ban of twenty years, which also covers the Principality of Liechtenstein and the entire Schengen Area. Moreover, the Federal Office of the Attorney General of Switzerland has opened pending criminal proceedings against him. In light of the need to implement this decision immediately given the threat posed by him, fedpol revoked the suspensive effect of a potential appeal. The person involved appealed this decision before the Federal Department of Justice and Police (FDJP), requesting that the suspensive effect be reinstated. The FDJP rejected this request in May 2023 without providing any information on legal remedies. Finally, the person involved lodged parallel appeals against this decision with both the Federal Administrative Court (FAC) and the Federal Council.

#### **Legal or administrative remedy?**

In its landmark judgment, the Swiss Federal Administrative Court (FAC) specified the conditions under which expulsion orders and entry bans under article 68 of the Foreign Nationals and Integration Act (FNIA) can undergo a judicial review conducted by the FAC, thereby bypassing the administrative avenues of appeal through the FDJP, and subsequently, the Federal Council. This requires the counter-exception provided for under article 32 of the Federal Administrative Court Act (FACA) to apply. In other words, the foreign national must exercise his right to have his case heard in court, where such a right is provided under international law. Article 13 ECHR, in particular, which guarantees the right to an effective remedy, may be cited as the basis for this right. However, the foreign national must also invoke in a defensible way a substantive provision of the ECHR.

In this particular case, the appellant was able to establish, in a sufficiently convincing way, that his wife and two children are settled in Switzerland and that they have been granted long-term residence permits, and invoked the right to respect for private and family life, provided under article 8 ECHR in particular.

The FAC therefore holds that it has jurisdiction to hear the appeal against the FDJP's decision. Based on the merits of the case, the FAC upholds the rejection of the request that the suspensive effect be reinstated. The FAC's jurisdiction also includes the appeal against the main order issued by fedpol in December 2022. The FAC therefore invites the FDJP to transfer the appellant's file to allow the former to conduct the appeal process.

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 351 employees (296.1 FTE) and its 73 judges (65 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.