



St. Gallen, 10 November 2022

Press Release

regarding judgment A-691/2021 of 27 October 2022

Compensation awarded for personal injury

In 2014, a pregnant Syrian was ordered to return to Italy from Brig despite suffering pain. The Swiss Border Guard refrained from calling for medical assistance. The Federal Administrative Court has therefore awarded her financial compensation.

A family of five Syrian refugees was travelling on the night train from Milan to Paris on 4 July 2014. Following an identity check, the French border police stopped the family from continuing their journey and handed them over to the Swiss Border Guard in Vallorbe to be sent back to Italy. While awaiting the train for Domodossola, the family was detained for about two hours on the premises of the Swiss Border Guard at Brig railway station. The Syrian woman was pregnant at the time and had been in increasing pain since arriving in Brig. Her husband repeatedly asked the guards to call for medical assistance. The Swiss Border Guard refrained from providing medical assistance. Instead, they put the family on the train back to Domodossola. Once in Italy, the woman was taken to hospital where her baby girl was declared stillborn.

Claim for damages and financial compensation

In July 2015, the Syrian wife and husband filed a claim for damages and compensation on their own behalf and that of their three children with the responsible Federal Department of Finance (FDF). By the end of 2018, after the border guard in charge of the operation had been convicted of bodily injury in military criminal proceedings, the family reduced their original claims. In February 2021, they appealed the negative decision before the Federal Administrative Court. They claimed CHF 136'473 in damages and a total of CHF 159'000 in compensation, plus interest respectively.

No damages recognised

The family claimed damages on the grounds that they had received less in state support payments in Italy between July 2014 and October 2017 than they would have received in Germany where they had originally intended to apply for asylum. Damages are designed to compensate a material loss or a loss in assets. In the opinion of the Court, the difference in the support benefits granted by different countries does not qualify as damage in the legal sense. The Court therefore denies the claim for damages.

Financial compensation for personal injury

Further additional compensation is designed to satisfy a person for a non-material impairment or emotional suffering of a certain intensity. By failing to provide medical assistance, the Swiss Border Guard caused the pregnant woman to suffer labour pains of growing intensity and for a longer time. There were further aggravating circumstances. Because medical assistance was denied, the woman experienced more stressful circumstances (e.g. train ride to Italy), as well as a well-founded fear of dying, than she would have if she had been in hospital as required. Moreover, the events of 4 July 2014 contributed to her psychological impairments. The outcome is non-material damage of sufficient severity to justify compensation by way of financial compensation. Relying upon the sums hitherto awarded in Switzerland by way of compensation, and after duly weighing all the circumstances, the FAC awards the appellants the sum of CHF 12'000 plus interest by way of compensation.

Decisions of the FAC in matters of state liability may be appealed to the Federal Supreme Court if the sum at dispute is at least CHF 30'000 or if the legal issue is of fundamental importance. Whether this is the case is for the Federal Supreme Court to decide.

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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.