



St. Gallen, 13 November 2020

## **Press Release**

regarding judgment E-3822/2019 of 28 October 2020

### **Asylum: judgment on withdrawing temporary admission**

**In a landmark judgment,<sup>1</sup> the Federal Administrative Court has ruled that the State Secretariat for Migration is obliged to apply the principle of proportionality in cases where temporary admission is to be withdrawn. The Court also notes that temporary admission has been subject to significant changes in the law over the past few years in order to reinforce the status of those admitted on this basis.**

The Swiss State Secretariat for Migration (SEM) periodically checks whether the foreign nationals concerned fulfil the conditions for granting temporary admission as stipulated by law; if this is not the case, it withdraws the temporary admission and issues a removal order. According to established precedents, a temporary admission can only be withdrawn, in principle, if the enforcement of a removal order is lawful, it is possible for the foreign nationals concerned to go to a third country or return to their country of origin or to the country in which they last lived, and this can be reasonably required of them. It therefore falls to the authority called upon to decide on the matter to verify that all three of these conditions are met. Furthermore the SEM must weigh up the particular personal and public interests involved in each case.

#### **Constant change**

In its landmark judgment, the Swiss Federal Administrative Court (FAC) came back to the development of temporary admission towards becoming a status that grants a considerable number of material rights. It notes that the examination to be carried out by the SEM when withdrawing temporary admission is not the same as that carried out when the status is granted. Specifically, the loss of temporary admission, based on which a person was able to establish a plan for their life, can lead to significant changes in the situation of people who are legally residing in Switzerland, sometimes lasting for many years. The principle of proportionality, which generally applies to the revocation of residence permits, must, according to the Court, also apply to the withdrawal of temporary admission set out in Art. 84 para. 2 of the Swiss Federal Act on Foreign Nationals and Integration (FNIA).

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<sup>1</sup> This judgment was coordinated by all judges from divisions IV, V and VI. The legal assessment goes beyond the present case and applies generally to a large number of cases.

### **Enforcing the principle of proportionality in this specific case**

In this particular case, the Court, after weighing up the interests involved, found that the appellant's temporary admission should be maintained, taking into account in particular his age, the length of his stay in Switzerland, his degree of integration and the fact that he had not been convicted of any criminal offences, the subject of any debt enforcement proceedings or served with a certificate of shortfall.

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 (300.8 FTE) and its 74 judges (66.25 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 7,500 judgments every year.