



St. Gallen, 11 June 2021

Press Release

regarding judgment C-5074/2020 of 25 May 2021

Complaint against compulsory masks on public transport rejected

The Federal Administrative Court upheld the decision of the Federal Office for Public Health to dismiss a complaint filed by 396 private individuals without entering into the substance of the case. The latter had asked the Federal Office to declare that they were not obliged to wear a face mask on public transport.

The Federal Office for Public Health (FOPH) dismissed the request for a declaratory ruling dated 21 August 2020 without entering into the substance of the case. The parties concerned thereupon lodged an appeal with the Federal Administrative Court (FAC) on the grounds that the obligation to wear a mask on public transport vehicles stipulated by the Federal Council in the “COVID-19 Special Situation Ordinance” violated their constitutional right to personal freedom and corporal integrity. The FOPH was asked to consider the substance of their request and clarify their legal question.

Legal framework conditions

The ordinances of the Federal Council are deemed to be general abstract rules which cannot be challenged per se. Neither the federal constitution nor federal law provide for a fundamental judicial review of the consistency of such regulations with higher-ranking law. The legal conformity and constitutionality of Federal Council ordinances can only be judicially examined in the context of a specific case. The competent authority is only required to admit a request for a declaratory ruling if the applicant can show an interest worthy of protection.

No specific case

Neither the constitution nor the legislator provide for a general review of the constitutionality of the Federal Council “Covid-19 Special Situation Ordinance”, or of any individual provision thereof. The FAC first established that the appellants were not appealing an administrative decision issued in any specific case. On the contrary, the purpose of their request for a declaratory ruling was to indirectly subject the constitutionality of the ordinance in question to a general judicial review. This is not provided by law. Moreover, the appellants did not put forward any specific personal reasons why they should be released from the obligation to wear a mask. Instead, they challenged the utility of the mask mandate in general, underscoring the hindrances associated with this obligation. Consequently, the

FOPH was right to decide that there was no interest in a declaratory ruling worthy of protection and, therefore, to dismiss the request without entering into the substance of the case. The FAC denies the appeal.

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 353 employees (297.3 FTE) and its 73 judges (65.15 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 7,200 judgments every year.