



St. Gallen, 8 May 2019

Press Release

regarding judgement D-4282/2015 of 25 April 2019

Refugee status was rightly revoked

The Federal Administrative Court confirms the revocation of refugee status and status of asylum of a citizen of the former Yugoslavia of Kosovan origin. The conditions for the earlier acceptance of his status as a refugee are no longer applicable. The person concerned can have recourse to protection by the Republic of Kosovo.

The case concerns a citizen of the former Socialist Autonomous Province of Kosovo who obtained asylum in Switzerland in the early 1990s. At that time this region with special status belonged to the Socialist Republic of Serbia, which together with other autonomous republics formed the state of Yugoslavia.

In June 2015 the State Secretariat for Migration (SEM) denied refugee status to the person concerned and revoked his asylum at the same time. The State Secretariat justified its decision with the fact that the conditions on the basis of which he was recognised as a refugee were no longer applicable. The situation in Kosovo has changed over the years. Moreover, the SEM highlighted the fact that the conduct of the person concerned was an additional reason for justifying the revocation, because he had been sentenced to a term of imprisonment in the meantime.

Citizenship regulation in the Republic of Kosovo

As a preliminary point the Federal Administrative Court (FAC) analyses the Kosovan citizenship regulation. It comes to the conclusion that the members of the diaspora, who normally live abroad, can obtain citizenship of the Republic of Kosovo on request. Proof that they were born in this area is sufficient. For this purpose they can provide various documents such as, for example, birth certificates and old identity cards from the era of the Socialist Federal Republic of Yugoslavia. If there is an entry about the person concerned in the Civil Register then there is no reason to deny rapid receipt of citizenship. If the preconditions mentioned above are met, Kosovan citizenship is recognised more or less automatically and no naturalisation in the narrower sense takes place.

It is to be remembered that Kosovo used to be an autonomous province of the Socialist Republic of Serbia and, on a federal level, of Yugoslavia. With the above-mentioned procedure this successor state today recognises the nationality of people who fled abroad because of the Balkan War and who were citizens of

this sub-territory, even in its former Yugoslavian meaning.

Legal basis

The SEM revokes the asylum in accordance with the asylum law and denies refugee status when reasons are given on the basis of Art. 1 lit. C nos. 1-6 of the Geneva Convention on Refugees¹. According to section 5 of this provision a person no longer falls under this convention if the conditions under which the person was recognised as a refugee are no longer applicable and the person cannot any longer refuse to accept the protection of the country of his/her nationality. The reason for this provision is that the international protection granted by Switzerland is subsidiary to the protection that the home state must provide. If, due to significant changes in the conditions in the home state, this protection is available again, international protection is not justifiable any more and can be denied. Moreover, according to Art. 1 lit C no. 3 of the Geneva Convention on Refugees, protection under the Convention is no longer available, if the person concerned has obtained new citizenship and enjoys the protection of the new home state. These reasons for revocation of refugee status are alternative. The denial of refugee status also results in the revocation of asylum.

Change in conditions confirmed

The FAC had already concluded in the reference judgement D-1213/2011 of 30 January 2015² that the situation in Kosovo for people of Albanian ethnicity has changed fundamentally. The evaluation that the situation in Kosovo has stabilised and that the situation in view of the asylum-relevant criteria can be deemed satisfactory, still prevails. On the other hand, an alternative application of Art. 1 lit. C no. 3 of the Convention could also have resulted in revocation of the asylum.

The FAC therefore rejects the appeal of the person concerned. The status of the appellant is comparable to a citizen of the current Republic of Kosovo and he can avail himself of the protection of that state. The revocation of the asylum and the denial of refugee status are therefore justified. However, the cantonal authorities are responsible for the status of the residence permit which the person concerned was issued with under application of the law concerning foreign nationals.

This judgement 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 (305.5 FTE) and 76 judges (68.4 FTE) it is the largest

¹ SR 0.142.30

² This judgement concerns the analysis of the situation in a specific country and its legal recognition which is valid for a number of proceedings over and above an individual case.

federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. First-instance proceedings are also reviewed occasionally. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.