



**St. Gallen, 13 January 2022**

## **Press Release**

**regarding judgment B-3595/2021 of 3 January 2022**

### **Justitia 4.0: Judgement on the invitation to tender**

**The association «Digitale Gesellschaft» and a Swiss IT company lack the right of appeal against the invitation to tender for the planned judicial platform «Justitia.Swiss». The Federal Administration Court therefore dismisses their appeal without entering into the substance of the case.**

The Conference of the Judiciary and the Conference of Cantonal Justice and Police Directors (CCJPD) plan to create a unified Swiss judicial portal. In future, the central e-justice platform should enable direct legal exchanges between the different parties involved in court proceedings and facilitate the inspection of files at all stages of the proceedings. The project «Justitia 4.0» was launched for this purpose, and the CCJPD was entrusted with the project management.

On 21 July 2021, the CCJPD, as the contracting authority, issued a public invitation to tender for the platform «Justitia.Swiss». The association «Digitale Gesellschaft» and a Swiss IT/ Software company filed an appeal with the Federal Administration Court (FAC) requesting that the invitation to tender be declared null and void.

#### **No right of appeal**

Since the right of both parties to appeal is in doubt and disputed, the Court must first examine this question. The right of appeal presupposes that the appellants are specifically affected by the contested invitation to tender and have an interest worthy of protection in its revocation or amendment. The FAC reaches the conclusion that both appellants have no right of appeal and therefore dismisses their appeal without entering into the substance of the case.

#### **Criteria not satisfied**

The association «Digitale Gesellschaft» would only have the right to appeal if it satisfied the criteria for a «representative» appeal (which is brought by an association in its own name but in the interests of its members). This presupposes a close and immediate connection between the purpose of the association as defined in its Statutes and the contested ruling. Under its Statutes, the purpose of the association «Digitale Gesellschaft» is obviously not to protect the interests of potential tenderers in the invitation to tender at issue. Nor is it apparent how a large number of the members of the association might be specifically affected by the invitation to tender. It follows that the association does not satisfy the second criterion for a «representative» action either.

The IT/Software company failed to present to the Court the necessary proof of its right of appeal. During the legal proceedings, the company did affirm that it was interested in executing the contracts put out to tender. However, it did not substantiate its general statements, and the Court is doubtful that the Company is a potential provider for the services in question. This is because, rather than addressing specific issues of procurement law, the Company's arguments reside in a political appraisal of a still forthcoming legislative process relating to the Justitia 4.0 project.

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.