



St. Gallen, 14 February 2019

## **Press Release**

**regarding judgment A-3025/2017 of 8 February 2019**

### **Army should have called in service weapon**

**In the case of a shootout in Schaffhausen/Emmental (BE), the army should have confiscated the perpetrator's weapon. In connection with a state liability claim, the Federal Administrative Court approves the appeals of two social insurance providers.**

A former soldier fired several shots from his army pistol on 24 May 2011 when he faced eviction from his apartment in Schaffhausen/Emmental (BE). The shots struck two police officers. One of the officers died of his injuries at the scene, the other got injured. The army had previously declared the perpetrator unfit for military service and excluded him from duty in 2007 due to personality disorders. However, his weapon was not called in. In 2012, the perpetrator was sentenced to 20 years imprisonment in the first instance for murder, attempted murder as well as violence and threats against authorities and officials. He died in custody in 2013, at which point the criminal proceedings were terminated.

#### **FDF denies state liability**

The compensation fund of the Canton of Bern awarded the two daughters of the deceased police officer a monthly orphan's pension and the healthcare provider Visana Versicherungen AG granted a monthly pension to the surviving wife and daughters. In 2015, both social insurance providers asserted claims for damages against the Federal Department of Finance (FDF) and demanded state liability. Despite the perpetrator's well-known and serious personality disorder, the army had failed to call in his army weapon for a number of years. The FDF rejected the requests in 2017 on the grounds that the Swiss Armed Forces had not violated any duty requiring action or due diligence. It argued, that the fact the perpetrator committed an act of violence with the army weapon was not in the responsibility of the Swiss Armed Forces or the Confederation, but of the cantonal district command.

#### **Responsibility to act according to an unwritten principle**

If an absolute right is at stake – in this case the right to life – the unwritten legal principle of the "Gefahrensatz" is to be acted upon by the person who creates or maintains a dangerous condition. In doing so, this person must take the protective measures necessary to prevent damages.

### **Failure to call in the weapon was unlawful**

The Federal Administrative Court (FAC) concludes that the army created a dangerous situation by failing to confiscate the soldier's army weapon who has been classified dangerous and was therefore found unfit for service. Whilst it is true that the respective cantonal district command is responsible for the administrative handling of the calling in of weapons, their actual withdrawal and the corresponding checks are the responsibility of the Armed Forces Logistics Organisation (AFLO).

In this case, the army did not verify that the weapon had been turned in, which is the reason why the possession of the firearm by the perpetrator went unnoticed. It should also have informed the cantonal district command about the urgency of taking action. A simple entry in the army's information system was not sufficient, since the army alone was aware of the reasons why the perpetrator should not have been left with the army weapon. Consequently, the failure to confiscate the weapon is to be qualified as unlawful conduct on the part of the Confederation.

### **Further requirements for state liability not examined**

The FDF had denied illegality and had therefore not examined the further requirements for state liability. The FAC affirms the illegality, which is why it approves the appeals and revokes the orders of the FDF. The court returns the case to the FDF in order to examine the further requirements for state liability.

This judgment may be appealed to the Swiss Federal 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 357 employees (307.65 FTE) and its 76 judges (68.2 FTE) it is the largest 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. 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.