



The best possible solution would be to protect the countryside and promote renewable energies. But what happens when one conflicts with the other, for example, building a wind turbine in a protected area? Which interest outweighs the other? The Federal Supreme Court also has to deal with just such issues.

The Judicial

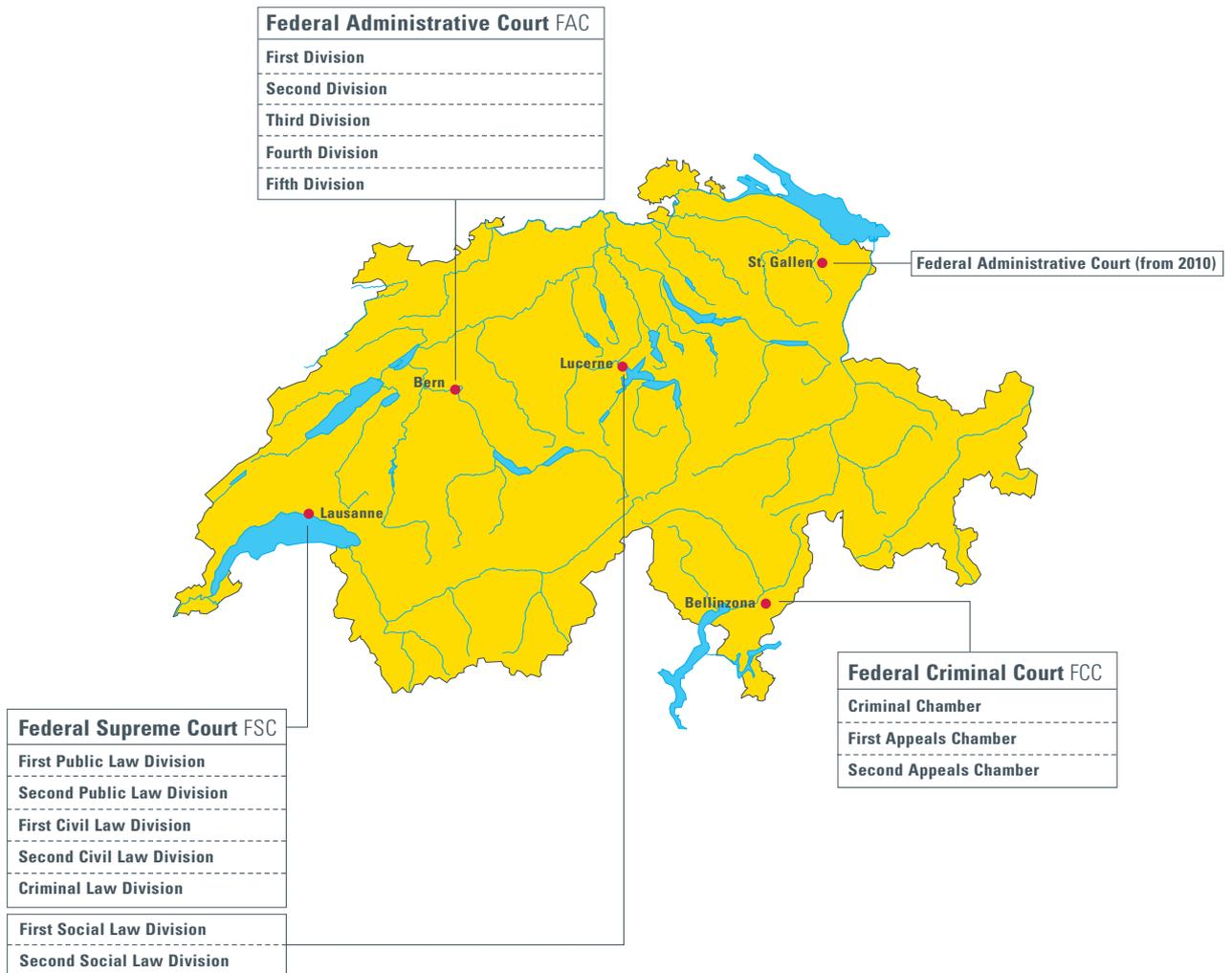


Branch: the Federal Courts



The Third Power

The Federal Supreme Court is the highest court in Switzerland. It is the embodiment of the judiciary at federal level, one of the three state authorities, the others being Parliament, the legislature, and the Federal Council, the executive. Through its case law, the Federal Supreme Court contributes to the development of the law and to its adaptation to changing circumstances. Its decisions can be referred to the European Court of Human Rights in Strasbourg.



The Federal Supreme Court

The 38 full-time judges and the part-time judges carry out their duties in one of the seven court divisions in Lausanne or in Lucerne.

They are assisted by 250 members of staff.

The Federal Supreme Court has a variety of tasks such as

- providing those seeking justice with legal redress in specific cases
- ensuring the uniform application of federal law
- contributing to the further development of the law.

On appeal, it **reviews** the decisions of the highest cantonal courts and other authorities of the Confederation to ensure they are compatible with the applicable law. It is also responsible for ensuring that rules applicable to making, applying and interpreting the law are adhered to.

It is the highest court **to rule** on disputes concerning

- private law (disputes between private persons)
- criminal law (criminal proceedings against individual persons)
- public and administrative law (disputes between persons and the State, between cantons, and between the Confederation and the cantons).

The Judges of the Federal Supreme Court are elected by the United Federal Assembly based on linguistic, regional and party-political criteria; their term of office is six years, and they may be re-elected.

In principle, any Swiss citizen may become a Supreme Court judge. The Constitution does not require legal training, but in practice all the judges have legal qualifications.

The Court Registrars were formerly responsible primarily for drafting the written judgements after decisions had been taken in court. Part of the work of the judges was transferred to the registrars due to the increasing volume of cases.

Nowadays, the registrars are involved during the hearings and in many cases they issue draft decisions judgements themselves. Following approval by the instructing judge, these are then presented to the relevant court for a ruling to be made.

Based on these documents and the outcome of the deliberations, to which they also contribute their opinions, the court registrars then formulate the final court decision.

The General Secretariat of the courts serves as the main office for the personnel, organisational, administrative and financial matters of the entire court as well of the Conference of Court Presidents, the administrative committee and the Presidents. At the same time, it also manages the court services.

The court services are responsible for the following tasks:

- *Chancellery Services*: Registration and administration of pending cases, archiving, verifying fee payments and secretarial services;
- *Administrative Services*: personnel and finance service, office supplies, building maintenance, security and usher duties;
- *Scientific Services*: IT, library, legal documentation and publication of court decisions.

The Federal Supreme Court Procedure

In general, a party submits an appeal petition setting forth the grounds of appeal, after which the respondent is invited to make his position known. The Federal Supreme Court may then arrange a further exchange of written submissions before it delivers judgement.

Public law cases: The Federal Supreme Court hears appeals in public law cases against decisions of cantonal authorities and in relation to legislation, as well

as cases relating to infringements of political rights (right to vote, elections and popular votes).

Civil cases: The Federal Court hears appeals against cantonal court decisions. The value of the matter in dispute in cases

relating to property must amount to at least CHF 30 000.– (CHF 15 000.– in employment law and tenancy law).



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First Public Law Division: guarantee of ownership, spatial planning and construction law, environmental protection, political rights, international mutual assistance in criminal matters, road traffic (including driving disqualifications), citizenship, law on public officials, procedural guarantees, interim procedural orders in criminal cases.

Second Public Law Division: law on foreign nationals, taxation, public commercial law, administrative law (state liability, subsidies, radio and television), freedom of religion and conscience, freedom of language and economic freedom.

First Civil Division: Code of Obligations, insurance contracts, private competition law and intellectual property.

Second Civil Division: law of persons, family law, law of succession and property and debt recovery and bankruptcy law.

Criminal cases: The Federal Supreme Court hears appeals against decisions in criminal cases made by the cantonal courts or the Federal Criminal Court.



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Criminal Law Division:

substantive law (including the execution of sentences and measures) and criminal procedural law (other than appeals against interim procedural orders in criminal cases).

Social law cases: The Federal Supreme Court hears appeals in public law matters against Cantonal Insurance Court decisions.



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First Social Law Division:

invalidity insurance, supplementary benefits, accidents insurance, unemployment insurance, cantonal social insurance, family allowances, social assistance and military insurance.



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Second Social Law Division:

old-age and survivors' insurance, invalidity insurance, loss of earnings insurance, health insurance and occupational pensions.

Subsidiary Constitutional Appeal:

If the foregoing appeals are not admissible, action can be taken against violations of constitutional rights by means of a subsidiary constitutional appeal.

The Federal Courts of first instance

The Federal Courts of first instance are responsible for organising themselves but are subject to the supervision of the Federal Supreme Court and the supervisory control of the Federal Assembly. They relieve the pressure of business on the Federal Supreme Court in two ways: firstly because disputes already judged are less likely to be referred to the Federal Supreme Court, and secondly because they allow the Federal Supreme Court to restrict itself to issues of law, without having to consider already settled issues of fact.

The Federal Criminal Court



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Criminal Chamber

The Criminal Chamber has replaced the Federal Criminal Court of the Federal Supreme Court in Lausanne. It is the court of first instance for cases that are subject to federal jurisdiction. These include serious cases of organised crime and white-collar crime, money laundering and corruption.

First Appeals Chamber

(Criminal Procedure Chamber)

The First Appeals Chamber has taken on the duties of the Prosecution Chamber of the Federal Supreme Court, such as hearing appeals against official acts or omissions by the Attorney General of Switzerland and the federal examining magistrates.

Second Appeals Chamber

(Mutual Assistance Chamber)

Since 1 January 2007, a Second Appeals Chamber has been dealing with appeals in international mutual assistance cases, taking over from the cantonal appeal courts and the Federal Supreme Court.

Judges of the Federal Courts of first instance

The office term for the judges is for 6 years, as well as the of the members of the Federal Court. It can end earlier due to retirement age or removal. The conditions of the removal are an intentional violation or a serious act of negligence of the duties or a long-term disability to accomplish his duties, for example due to illness.

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The Federal Administrative Court

The Federal Administrative Court began its duties in Bern on 1 January 2007, succeeding the existing appeals commissions and arbitration boards, as well as federal appeals services. It is planned that the Court will move to St Gallen in 2010.

The main task of the Federal Administrative Court is to sit in judgement on public law disputes that fall within the jurisdiction of the Federal Administration. These include appeals against decisions taken by federal or cantonal courts, but the Federal Administrative Court is also a court of first instance for actions based on federal administrative law.

In certain cases, the decisions of the Federal Administrative Court may be appealed to the Federal Supreme Court. However, in more than half of its cases it sits either as the court of last instance or the court of sole instance.

Organisation

The 72 judges share 64 full-time positions. More than half of the 330 members of staff at the court are women. Just under two thirds of staff are German-speaking, just under one third speak French, and six per cent are Italian-speaking.

The court comprises five procedural divisions, each with two chambers. The divisions are responsible for dealing with proceedings in the following legal fields:

The First Division: federal personnel, data protection, nature and cultural heritage, customs, duties, taxes, infrastructure projects, spatial planning, compulsory purchase, national roads, environmental and water protection, post and telecommunications, and radio and television.

The Second Division: public procurement, trust supervision, commercial register, intellectual property, cartels law and price supervision, professional education, protection of animals, national economic supply, agriculture, lotteries, gambling and casinos, the National Bank, money laundering and the supervision of private insurance companies.

The Third Division: citizenship, law on foreign nationals and aspects of asylum law, adoption agencies, federal maturation examinations, protection of monuments, armaments law, therapeutic products, drugs, radiation protection, foodstuffs, control of diseases and epidemics, health insurance, accident insurance, unemployment insurance.

Fourth and Fifth Divisions: asylum law relating to refugee status and removal.

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The Federal Administrative Court



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