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NEWSLETTER

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Circulation: 20'000
(distributed electronically)

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How to become a judge, and how is a judge appointed to a case?

Dear Sir or Madam,

Maybe you have wondered once how you could be accepted into the selected circle of judges, and how you become a presiding judge in a specific case?

Switzerland does not have any vocational training for judges. To be elected as judge of a court of law he or she needs both the will to be a judge and membership of a party. Anybody wishing to become a judge normally checks which party has a vacancy for a judge, as judges are elected strictly according to proportional representation. Very often a candidate only becomes a party member after expressing the desire to become a judge. Whether it is SP (left of centre) or SVP (right of centre) does not matter as the difference here is only a letter. Once the candidate has been nominated there will be a tacit election. This suits all parties; as any judge elected from their ranks will fill the party's coffers with the mandate retainer.

How do you become a judge?

In some situations, depending on the rank, a legal education is required, or even being called to the bar. Being elected as judge means status as a civil servant, further education and training have all ended. Many judges have reached their seat after many years working as law clerks, which means a high number of judges have never had to prove themselves in the private sector.

There is no quality control within the courts, nor is there any obligation to continue education or training. A supervisory authority, evaluating the administration of justice by the judge, does not exist, either. Whether as a consequence a judge is a "good judge" or not depends to a very large extent on the judge's attitude – nor does a judge know whether he or she is a good judge as generally judgements are confirmed on appeal in most cases, and only considerable errors are amended on appeal.

However, legal systems in other countries have specific education and training. Switzerland is somewhere mid-table.

How does a judge get appointed to a case?

The assignment of judges in Switzerland has a weak legal foundation, which is completely the opposite abroad. In the USA, the United Kingdom, Liechtenstein, Denmark and other countries it is mandatory to draw lots to assign judges for criminal proceedings. In Germany, once a lawsuit has been filed, a judge is assigned according to a predefined court assignment plan. Should this not be the case, the whole criminal proceedings are null and void. See recommendations by international judges in the 2014 report of the European Network of Councils for the Judiciary (ECHR).

The 2014 report on international standard reference for judges proclaims 11 standards, which are:

1. *Assignment of court cases according to art. 6 ECHR*
2. *Public announcement of the assignment criteria*
3. *Fair allocation*
4. *Established procedure of allocating judges*
5. *Impartial allocating procedures*
6. *Considering the complexity of a case during allocation procedure*
7. *Regulated allocation procedure*
8. *Principle of seniority*
9. *Duty to state reason for judge allocation*
10. *Justification of the set-up of the judicial body*
11. *Announcement to involved parties about the set-up of the group of judges*

These specifications are not implemented in Switzerland, which is why a large amount of allocations of judges is in breach of the ECHR. This is the case for courts ruling in first instance, for cantonal appeal courts and for the Federal Supreme Court.

A case example from Basel-Stadt

After a lawsuit is filed, a criminal judge at the criminal court of Basel-Stadt appoints himself as judge. Strictly speaking the case should be allocated by a president, but as he follows the case, due to extensive media coverage, he appoints himself as judge although he is only a deputy. As the defendant is a well-known politician of the Swiss People's Party, he appoints two SP judges into the group of judges. The 1895 Court Organisation Act demands the need for a court plan that requires confirmation by the appeal court. However, such a plan does not exist. After the judges appointment comes the sentence. As the opinion of the court contains flaws, it takes five months from sentencing to first notice of the judgement, another six months to a second notice of the judgement, and as it still has flaws, the third notice comes 18 months after sentencing.

Now it is the turn of the appeal court. First the presiding judge, Ms S, appoints herself. After her impartiality has been challenged in court, judge S. herself, for the hearing against her, appoints judge G. as judge in this particular hearing. As then the impartiality of judge G. in this hearing is also challenged, he proceeds in a similar way and subsequently appoints judge M. as judge for the hearing against him. Later on, at the behest of the Federal Supreme Court, judge S. has to stand down as judge of the original case, but is still allowed to appoint judge G. as successor in these proceedings. No judge's appointment has either been recorded or documented. The reprimands against the appointment of the judges by the complainant had been qualified as trouble-making.

Conclusion

The allocation of judges in Switzerland is insufficiently regulated. On top of that, no lawyer will risk tackling this issue, as by questioning he or she may fall out of the judges' favour. This is also because there are no courses of study and no specific academic training for judges. A lawyer, whether an attorney in the USA or a solicitor in England, is far from being a judge. Being a judge needs specific education, but nowhere in Switzerland is this taught.

Kind regards

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