



**The Paths to the Swiss Federal
Supreme Court
An Outline of Switzerland's
Judiciary Structure**

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Preface

The goal of this guide is to illustrate for non-legal professionals in an easy-to-understand manner Switzerland's system of courts, how they function and the sequence for lodging appeals. A certain amount of simplification cannot be avoided due to the concise nature of this guide.

Legislation relating to civil and criminal law has long fallen within the province of the Confederation, however until recently the procedural law relating to these areas was governed at the cantonal level. Until 2011 each of Switzerland's 26 cantons and the Confederation had its own codes of civil and criminal procedure. With the acceptance of judicial reform by the Swiss people and the cantons in 2000, the Confederation was given legislative power over the entire body of civil and criminal procedure law. This resulted in the unified Swiss Code of Civil Procedure and the Swiss Code of Criminal Procedure, which have been in effect throughout Switzerland since 2011. The cantons continue to be responsible for the organisation of cantonal courts, hence their organisation continues to be characterised by marked variety. As to administrative law, each canton and the Confederation have their own administrative code of procedure.

I. Courts and Judges

A Cantonal Level

1 Civil Courts

Depending on the nature of the case or the amount in dispute, a person seeking judicial recourse in a civil case (i.e. in legal matters between individuals) may resort to the conciliation authority, a court of first instance or the *Kantonsgericht* ("cantonal court"; the name of this court varies from canton to canton).

a Conciliation Authority

With the exception of divorce proceedings, for example, dispute resolution (arbitration or mediation) takes place before the actual decision-making proceeding is conducted. The goal of dispute resolution is to amicably resolve disputes at this stage if at all possible. Depending on the canton, a justice of the peace, mediator or judge of first instance is charged with dispute resolution. The justice of the peace (or an equivalent body, often known by another name) adjudicates claims with low litigious values.

b Court of First Instance

A district court or lower district court (variously called *Bezirksgericht*, *Amtsgericht*, *Kreisgericht* etc. depending on the canton) adjudicates cases as the court of first instance. Its jurisdiction also extends to certain matters falling under divorce, family, property and succession law as well as the Code of Obligations.

c Court of Second Instance

Decisions handed down by the court of first instance can be appealed to a court of second instance at the cantonal level, variously referred to as *Kantonsgericht* ("cantonal court"),

Obergericht (“cantonal court of appeals”), *Cour de justice* etc. depending on the respective canton. The main role of the court of second instance is to examine appeals against rulings made by the forum of first instance. As an exception, e.g. in disputes falling under competition law or involving intellectual property rights, only one cantonal forum is provided for.

2 Criminal Courts

Criminal proceedings are initiated against someone who is suspected of having committed a criminal offence. This is followed by the criminal justice authorities (police, public prosecutor) initiating investigations. If sufficient probable cause is found for the charges, the public prosecutor files an indictment. Under certain conditions, minor offences or misdemeanours can be adjudicated by the public prosecutor or the authorities responsible for prosecuting contraventions.

a Courts of First Instance

If the public prosecutor files an indictment, the accused must stand trial. The court renders a verdict of “guilty” or “not guilty”. If someone is found guilty the court sentences him or her (sanctions and other consequences).

b Objections Authority and Court of Appeals

Judgements rendered by the forum of first instance can be appealed to the court of second instance. The Confederation and the cantons can have the objections authority and the court of appeals embodied in a single court (e.g. *Obergericht* (“cantonal court of appeals”).

3 Administrative Courts

The administrative courts primarily handle appeals lodged by individuals against decisions rendered by cantonal or municipal authorities. In certain matters, these courts apply federal law at the first instance. Examples of the work of administrative courts include matters relating to national and regional spatial planning, taxation or the revocation of driving licences. There is only one administrative court in each canton. Currently, several cantons are in the process of incorporating the administrative courts into their courts of second instance.

4 Specialised Courts

The cantons can refer cases falling under certain areas of law to special courts that are characterised by their expertise. The commercial courts present in some cantons are examples of these courts. Other specialised tribunals also exist to resolve tenancy and labour disputes (tenancy courts and labour courts). In criminal law, examples include the juvenile courts and courts for white-collar or economic crimes (fraud, forgery of documents, etc.). Examples of specialised administrative courts are the social insurance courts.

B Federal Level

1 Federal Supreme Court

The Federal Supreme Court's main role is to adjudicate appeals of rulings of the highest cantonal courts of appeals and of rulings by Swiss federal courts, in domains governed by federal law such as civil, criminal, administrative and constitutional law.

The Federal Supreme Court is Switzerland's highest court of appeals. Its jurisprudence ensures uniform application of federal law throughout Switzerland and its continued development.

2 Federal Administrative Court

The former Federal Appeals Commissions and Governmental Complaint Committees have been combined to form the newly-created Federal Administrative Court. The Federal Administrative Court previously sat in Berne, but relocated to its definitive site in St. Gall in mid 2012. At first instance, the Federal Administrative Court deals with appeals brought against Federal Government decisions, i.e. decisions concerning the hiring of federal government employees, federal taxation, customs and applications for asylum etc. Some of the Federal Administrative Court's decisions can be appealed to the Federal Supreme Court.

3 Federal Criminal Court

The Criminal Division of the Federal Criminal Court in Bellinzona is the court of first instance for criminal offences falling under federal jurisdiction (e.g. terrorism, offences

linked to explosions, transmission of classified information, high treason, money laundering, organised crime, economic crimes). Its decisions can be further appealed to the Federal Supreme Court.

The First Appeals Chamber of the Federal Criminal Court is also responsible for appeals against official actions or the failure to act by federal prosecutors, appeals against coercive measures and for ruling on jurisdiction conflicts. Decisions concerning coercive measures can be appealed to the Federal Supreme Court. The Second Appeals Chamber rules on appeals relating to international cooperation in criminal prosecution. Legal recourse in appealing its decisions to the Federal Supreme Court is limited.

4 Federal Patent Court

The Federal Patent Court adjudicates civil-law disputes concerning patents as the patent court of first instance at the federal level. It renders its decisions as a lower court of the Federal Supreme Court. The Federal Patent Court opened its doors in St. Gall on 1 January 2012.

5 Military Courts

The military courts primarily sanction criminal offences committed by military personnel during their service applying the Military Penal Code.

C Judges, Composition of Courts, Lawyers

General Remarks

In Switzerland, not all judges hold a bachelor's, master's or doctoral degree from a law school. Justices of the peace, for example, are often persons without any formal legal training who are chosen from among individuals known for their common sense and ability to reconcile parties. Some judges do not serve on a full-time basis. Some of them are professors of law or lawyers who serve only part-time as judges. An increasing number of the judges presiding over the courts are women. In some cases (such as rape), their participation might even be required. To relieve the courts' caseload substitute (part-time) judges are engaged who take part in court proceedings with the same privileges and duties as their full-time counterparts.

1 Composition of Courts

The minimum number of judges varies considerably according to legal discipline, forum and type of case.

a Civil Courts

Generally, dispute resolution proceedings are presided over by a single mediator sitting alone or with the help of two assessors (laypersons or non-lawyers). Justices of the peace may be appointed as conciliation authorities on account of their proximity to the public.

The judges of first instance frequently render their decisions alone. A collegiate court generally rules in disputes of greater importance.

As a general rule, the court of second instance renders its ruling as a collegiate court.

b Criminal Courts

Depending on the severity of a crime and the respective cantonal organisation, a judge sitting alone or a collegiate court rules on cases at first instance. The jury courts previously assigned to serious offences in some cases were abolished in the wake of the Swiss Code of Criminal Procedure enacted into law in 2011.

The court of second instance ruling in criminal matters is generally a collegiate court.

c Administrative Courts

The rulings of these courts are usually issued by a panel consisting of three judges.

The presiding judge is a trained legal professional. Legal training is not a prerequisite for the assessors, who are often professionals in relevant fields (e.g. tax advisors, certified accountants or notaries are selected in tax cases).

d Federal Supreme Court and Federal Courts of First Instance

At the federal level, decisions are rendered for the most part by panels consisting of three or five judges, all of whom are jurists. In special circumstances, especially in asylum matters, a judge sitting alone of the Federal Administrative Court may rule on a case.

If the legal remedy before the Federal Supreme Court is clearly inadmissible, the decision not to proceed may be made by a single judge.

2 Election of Judges

At the cantonal level, judges are elected by popular vote or the Swiss Parliament or are appointed by the court, depending on the respective canton and the nature of their office. They must periodically submit to re-election, typically every four to six years.

The federal judges and the justices of the Federal Criminal Court, Federal Administrative Court and the Federal Patent Court are selected by the United Federal Assembly for a term of six years. They may be re-elected.

3 Training of Judges

In Switzerland, there is no required course of study for judges. Judges are often selected from among persons who are experienced in judicial matters, such as lawyers, court clerks or civil servants, who have both extensive legal knowledge and solid practical experience.

All federal judges are trained and highly experienced legal professionals, although this qualification is not required by the Federal Constitution. Generally, they have already served as cantonal judges, professors of law, lawyers or senior civil servants.

4 Lawyers

In Switzerland, all those seeking justice have the option of pro se legal representation; they are not compelled to be represented by an attorney-at-law.

In practice, however, a lawyer will be recommended if the case is the slightest bit complex. A party who cannot afford a lawyer may request an attorney paid for by the state. The request will be accepted if the relief or remedy being sought is not doomed to failure from the outset.

II. Legal Proceedings

(important stages, legal remedies)

Until 2011 each canton had its own civil and criminal procedure rules. This came to an end with the enactment into law of the Swiss Code of Civil Procedure and the Swiss Code of Criminal Procedure on 1 January 2011, the two codes serving to unify the civil and criminal procedure rules throughout Switzerland. Each canton continues to have its own code of administrative procedure, as does the Confederation, and no unification is planned in this area.

A Cantonal Level

1 Civil Proceedings

A party wishing to assert a civil claim must refer the lawsuit to the competent court, normally after having submitted to dispute resolution. The opposing party submits a statement of defence to the claim. If the circumstances require, the court may order a second exchange of written submissions. Each party must produce evidence of the facts alleged by it. After examining the evidence submitted, the court issues a ruling.

In certain circumstances the ruling may then be referred to a higher court through an appeal. In this case, the higher court may review the entire case (facts of the case, correct application of law). If no appeal is possible, the decision can be contested by way of an “objection”. This remedy enables a complete review of the application of law to be performed. However, the facts of the case cannot be reviewed unless they have been patently incorrectly established.

The enforcement of judgements in cases involving monetary awards is governed by the Debt Enforcement and Bankruptcy Act.

2 Criminal Proceedings

The main stages of a criminal proceeding are:

- Preliminary proceedings: The preliminary proceedings are initiated by investigations on the part of the police or the opening of a formal investigation by the public prosecutor. The goal is to determine whether there is sufficient probable cause for filing an indictment.

- Dismissal of the case, issuing of a summary penalty order or filing an indictment: Where the prerequisites are not satisfied for issuing a summary penalty order or bringing charges, the pretrial investigation is generally definitively dismissed. If the public prosecutor’s investigation indicates there is sufficient evidence, the proceeding can be concluded by issuing a summary penalty order in minor cases and under certain conditions. If this is not possible, an indictment is filed with the competent court.
- Main proceedings: The main proceedings are conducted before the court of first instance and are concluded by a verdict.
- Appellate proceedings: The verdict may be appealed (by the accused, civil parties or the public prosecutor) by way of lodging an objection or an appeal.

A convicted offender may seek a pardon, this falling within the competence of the Swiss Parliament.

3 Administrative Proceedings

An individual wishing to appeal against a decision rendered by an administrative body or an administrative objections board must submit it to the Administrative Court. This court renders its decision after consulting the administrative body. If the dispute involves the application of federal law, it can generally be submitted to the Federal Supreme Court by way of a public lawsuit.

B Federal Level

General Remarks

Appeals to the Federal Supreme Court are allowed if a violation of federal law, international law, intercantonal law or cantonal constitutional rights is alleged. As a general principle, the facts of the case cannot be reviewed unless they are patently incorrect or are based on infringement of federal law.

The stages of the proceedings are usually: the submission of a written appeal, an invitation to the respondent to present his or her position (first exchange of written submissions), and the ruling. If necessary, a second exchange of briefs may be ordered before the final ruling is rendered.

In the rare cases where the Federal Supreme Court adjudicates as the first and only instance (disputes between cantons or between a canton and the Confederation), the stages of the proceedings are similar to those on the cantonal level.

1 Appeals in Civil Matters

In principle, civil cases have already been judged by two courts at the cantonal level. The Federal Supreme Court therefore rules only on appeals of decisions made by the highest cantonal courts of appeals.

In proprietary rights disputes, the Federal Supreme Court may examine an appeal in a civil proceeding for the applicability of federal law, provided that the amount in dispute is at least CHF 30,000. The minimum amount in dispute applicable to labour and tenancy disputes is lower, i.e. CHF 15,000.

Regardless of the value of the dispute, access to the Federal Supreme Court is guaranteed if a legal issue of fundamental importance arises.

In civil matters the Federal Supreme Court is also authorised to examine rulings related to debt recovery and bankruptcy as well as rulings in public law that possess a direct relation to civil law, e.g. an authority's denial of authorisation of a name change.

2 Appeals in Criminal Matters

The Federal Supreme Court mainly adjudicates appeals in criminal matters that are filed against the verdicts handed down by the highest cantonal courts of appeals and the Federal Criminal Court. This remedy is permissible if the lower court's ruling is in violation of federal law. As in civil cases, the facts on which the lower court's decisions are based cannot be reviewed by the Federal Supreme Court. However, civil claims that are connected to a criminal proceeding can be lodged in the same appeal.

3 Appeals in Public Law Matters

Appeals can be filed with the Federal Supreme Court against public law rulings handed down by the cantonal administrative courts, the cantonal social insurance courts and (with certain exceptions) the Federal Administrative Court.

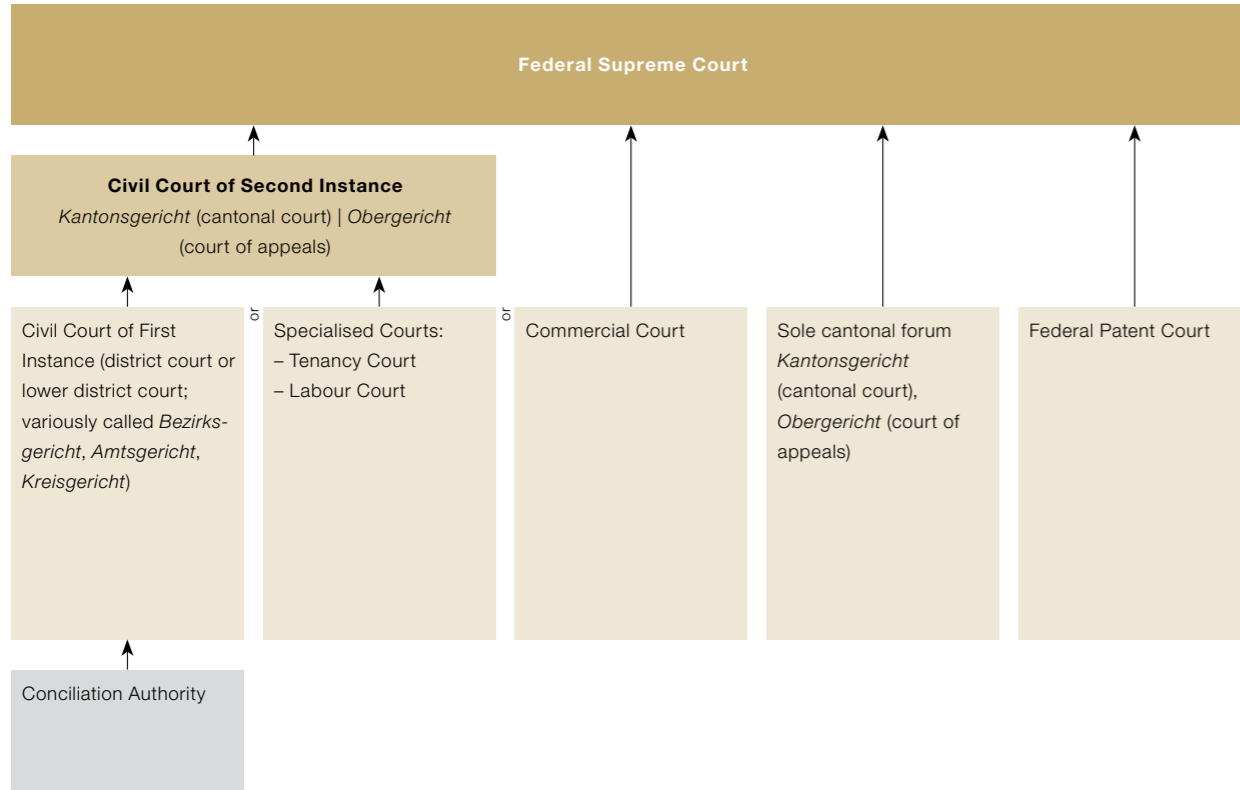
4 Constitutional Jurisdiction / Subsidiary Constitutional Appeal

In the appeals submitted to it, the Federal Supreme Court also hears allegations claiming violation of citizens' constitutional rights. The European Convention on Human Rights (ECHR) and other international conventions complete the guarantee of fundamental rights. If a standard appeal is not admissible (e.g. because the amount in dispute does not satisfy the minimum), cantonal rulings may be appealed by means of the subsidiary constitutional appeal founded on an infringement of constitutional rights.

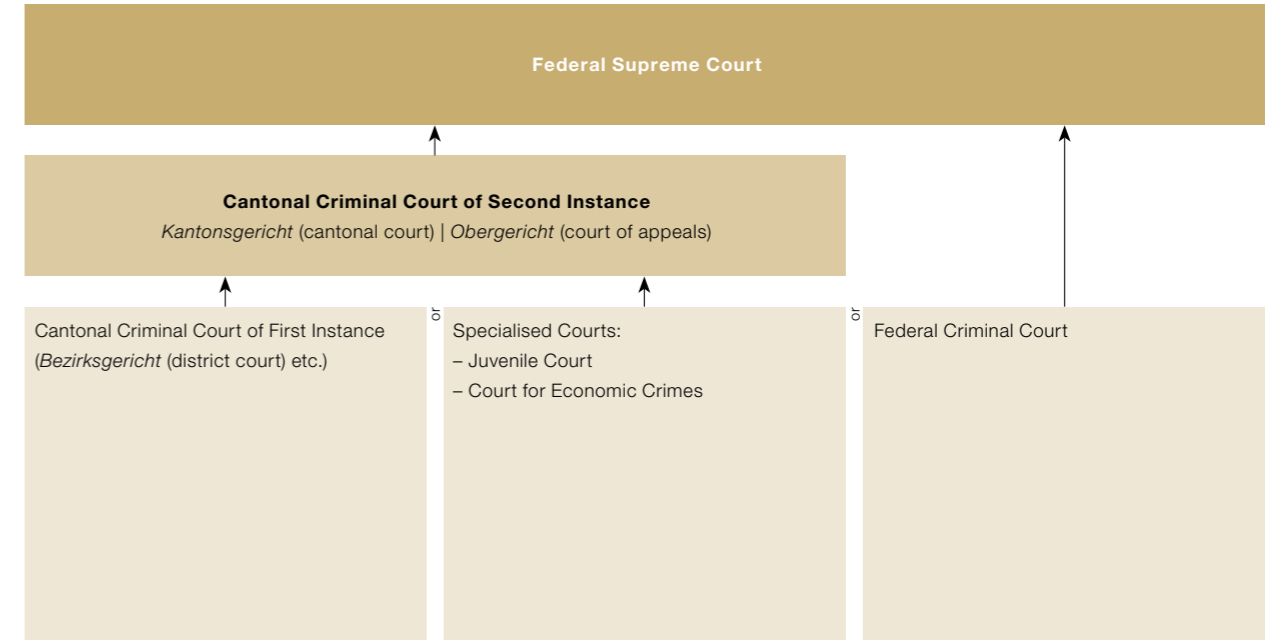
The Federal Supreme Court and other authorities responsible for administering justice are bound by federal law and international public law. Therefore, the Federal Supreme Court has the authority to rule that federal laws that are in contravention of the Constitution are unconstitutional; however, it is obliged to enforce them all the same. Consequently, constitutional jurisdiction is limited. In the context of the law of nations international law prevails, namely human rights, which are also guaranteed by the ECHR and International Covenant on Civil and Political Rights (ICCPR II).

With regard to cantonal law the Federal Supreme Court has full jurisdiction on constitutional questions.

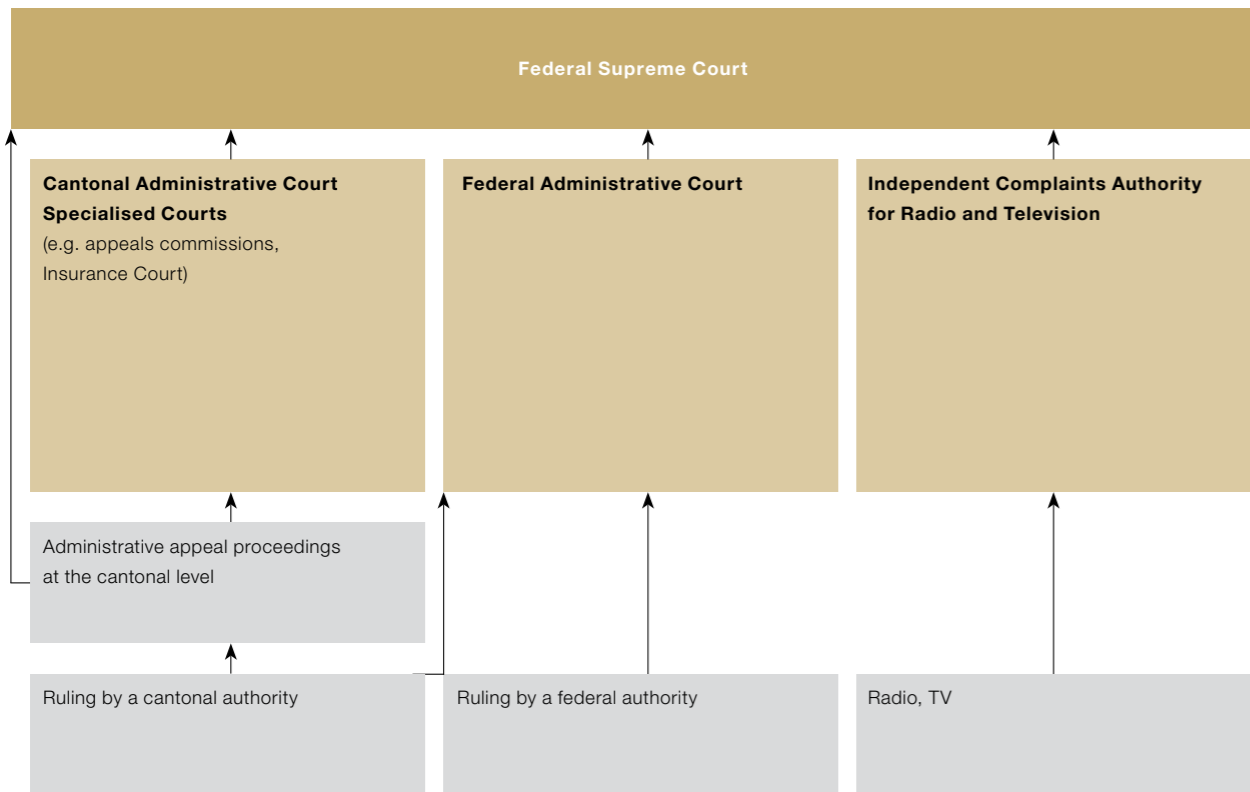
Civil Proceedings



Criminal Proceedings



Administrative Proceedings



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