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## The Federal Criminal Court

### The Court's origins: the Federal Justice Reforms

Until 2004, only two independent (non-military) courts existed at federal level: the Federal Supreme Court, founded in 1848 and located since 1875 in Lausanne, and the Federal Insurance Court, founded in 1917 and based ever since in Lucerne. The Supreme Court was created after the Swiss Civil War (Sonderbundskrieg) as part of Switzerland's transition from a loose federation of states, known as cantons, to a single federal state. The Federal Insurance Court's creation followed the introduction of mandatory federal accident insurance. In 2007, these two courts were unified, with neither court giving up its traditional seat.

Over the years, however, and especially in recent times, the caseload of the Federal Supreme Court has constantly increased. Since the 1980s, its excessive workload has been a permanent topic of political discussion. The need for action was undisputed.

The *Justice Reforms* of 2007 introduced various measures to reduce the Federal Supreme Court's caseload, to simplify appeal procedures, and to improve rights of legal recourse for those seeking justice. Part of the answer was to create three new federal courts. These new courts have distinct areas of legal operation and are subject to the jurisdiction of the Federal Supreme Court: the first to begin its work, early in 2004, was the Federal Criminal Court. It was later followed by the two St. Gallen-based courts, the Federal Administrative Court in 2007 and the Federal Patent Court in 2012. All these new courts, in keeping with the reform objectives, are intended to reduce the Federal Supreme Court's caseload so as to allow it to exercise its role as the supreme court of the land. With regard to criminal law, the reform relieves the Federal Supreme Court of its trial court obligations. In addition, a number of procedural review responsibilities were transferred to the Appeals Chamber of the Federal Criminal Court.

The Justice Reforms, by expanding federal criminal jurisdiction and by creating a federal criminal court, achieved another important policy objective: they created new powers and capacities at federal level for the prosecution of complex criminal cases with international aspects. In line with this, what was known as the *Efficiency Bill* comprehensively reorganised the Office of the Attorney General of Switzerland and expanded its activities as an investigating and prosecuting authority.

On 12 March 2000, the People and the cantons by large majorities approved the constitutional amendment required to implement the Justice Reforms. On 1 August 2003, the Federal Act on the Federal Criminal Court came into force (and has since been replaced by the Federal Act on the Organization of the Federal Criminal Justice Authorities). On 1 October 2003, the Federal Assembly appointed the first eleven members of the new court. The Federal Criminal Court began its activities in Bellinzona in April 2004. In 2007, its jurisdiction was expanded to cover the judicial review of proceedings in the field of international mutual assistance in criminal

matters. For this reason, the Federal Assembly approved and appointed four additional judges.

In October 2013, the Federal Criminal Court inaugurated its new courthouse at Viale Stefano Franscini 7 in Bellinzona. The new building replaced the premises provisionally rented at two locations in Bellinzona since 2004 and provides the ideal environment for the proper, up-to-date processing of cases and administration of justice. At the same time, it gives this still young institution a discreet yet imposing presence in the centre of the city of Bellinzona.

## **Jurisdictions – a broad spectrum**

The Federal Criminal Court is currently divided into two chambers. The *Criminal Chamber*, the criminal court of the Swiss Confederation, tries in first instance those criminal cases that the Criminal Procedure Code expressly makes subject to federal jurisdiction – criminal prosecution is normally the responsibility of the cantons. *Federal criminal cases* primarily comprise felonies and misdemeanours against federal interests (certain criminal offences by or against federal officials, against federal institutions or persons protected under international law, corruption cases etc.), crimes involving explosives, and cases of white-collar crime, organized crime and money laundering with inter-cantonal or international aspects. The Criminal Chamber also tries criminal offences for which jurisdiction is conferred on the Court by other federal acts, such as the Civil Aviation Act, the Nuclear Energy Act, financial markets legislation and the War Material Act.

Judgments of the *Criminal Chamber* of the Federal Criminal Court, just like judgments of cantonal courts of second instance, can be appealed directly to the Federal Supreme Court. This entails a limited review, as the Federal Supreme Court may only overturn the lower court's assessment of the evidence and findings in fact if they are patently incorrect or based on a violation of federal law. Currently there is no court of second instance in federal criminal proceedings comparable to a cantonal supreme court that conducts a comprehensive review of trial-court judgments.

The Federal Criminal Court's *Appeals Chamber* hears federal appeals against procedural acts by the police and the Office of the Attorney General of Switzerland, and against decisions made by the Criminal Chamber of the Federal Criminal Court and by the compulsory measures courts. The latter are in particular responsible for ordering pre-trial detention. The Appeals Chamber's jurisdiction encompasses other matters, namely the appeals and disputes assigned to it by the Federal Act on Administrative Criminal Law. In addition, it rules on conflicts of jurisdiction between different cantons or between cantons and the Confederation. Finally, the Appeals Chamber hears appeals in the area of international mutual assistance in criminal matters. These primarily relate to the extradition of suspects or convicted persons, mutual assistance in the course of foreign criminal proceedings, the delegation of prosecution and enforcement, and the enforcement of foreign criminal judgments.

Certain decisions made by the Appeals Chamber of the Federal Criminal Court may be contested in the Federal Supreme Court, depending on the applicable legal framework and specific conditions.

Although the Federal Criminal Court is a federal court, and although certain proceedings are judged conclusively in Bellinzona, the Federal Criminal Court must not be mistaken for the *Federal Supreme Court*: Even in the field of criminal law, the Federal Criminal Court is not the highest legal review authority in Switzerland.

## **No two cases alike**

Today, the Federal Criminal Court handles around 50 criminal cases and 650 appeal cases per year. Given the diverse responsibilities of the Federal Criminal Court, it is easy to understand why these figures cover a wide variety of cases.

In criminal cases, the key part of judicial activity is preparing and conducting the trial, which involves the often particularly time-consuming procedure of hearing the evidence. Once all the evidence has been taken, the judges deliberate on their verdict. When they have reached a decision on whether the accused committed the offences set out in the indictment and satisfies the other conditions for culpability, they issue their verdict: guilty or not guilty. If the verdict is guilty, they impose a sentence, which must fall within the limits prescribed by law, and they also rule on the incidental legal consequences (e.g. the forfeiture of assets or liability for the costs of the proceedings). At the Federal Criminal Court, especially in the case of white-collar crimes or cases of organised crime, very lengthy indictments with numerous accused and additional parties are commonplace; during trials, translations are regularly provided from several languages. The hearings not infrequently last for several days or even weeks. Often a written judgment explaining the reasons for the verdict is required. Judgments running to several hundred pages are not uncommon.

In contrast to the Criminal Chamber, the Appeals Chamber operates primarily as an appellate court. Its tasks involve reviewing the decisions and procedures of the police, the investigating authorities and the Criminal Chamber itself. In cases concerning international mutual assistance in criminal matters, decisions made by the Federal Office of Justice and the cantonal or federal executive authorities are reviewed to ensure there have been no infringements of federal or international law.

The Swiss Criminal Procedure Code specifies the procedures before the Criminal and Appeals Chambers of the Federal Criminal Court. Depending on subject matter, proceedings in the Appeals Chamber may also progress in accordance with the Federal Act on International Mutual Assistance in Criminal Matters or the Federal Act on Administrative Criminal Law.

Since the Federal Criminal Court is a federal institution, the case records may be kept and the public hearings may be conducted in any one of the three official languages (French, German, or Italian).

## **The administration of justice requires organization**

The primary task of any court is to *dispense justice*. At the Federal Criminal Court, this task is entrusted to its two chambers, or more precisely to the judges who are assigned to each chamber. The judges adjudicate their cases either sitting alone or in three-judge panels. They are comprehensively and indispensably assisted by legal clerks. One judge in each Chamber is elected Chamber President, serving a two-year term of office. The Chamber President may be re-elected on two occasions, making the maximum term six years.

Several bodies are responsible for the organisation and the internal administration of the court. The General Secretariat is responsible for the administrative management of the court and runs the court services (chancellery, accounting, human resources, library, IT, logistics and security). It is responsible both for the general organisation of the court and for providing the services required to run the court. The General Secretariat is represented in a consultative capacity in the court's management bodies, does the preparatory work for their meetings and

takes the minutes. The Secretary General also acts as press officer for the court.

As laid down by statute, the management bodies of the Federal Criminal Court are the Plenary Assembly of all judges (the full court) and the Administrative Committee – both chaired by the President of Court. The President of Court is appointed from among the court's judges by the Plenary Assembly, which is also responsible for issuing important regulations, appointing certain court officials, and approving significant transactions. The President of Court represents the Court in its external dealings, especially in relation to the supervisory authorities and the parliamentary commissions. The Administrative Committee consists of the President of Court, the Vice-President and a maximum of three other judges. The Administrative Committee is responsible for all administrative tasks, unless these are delegated to another body, normally the General Secretariat.

While the judges and the court's President and Vice-President are appointed by the Federal Assembly, it is the full court that constitutes both chambers for every two year term from among the appointed judges and which elect each of the Chamber Presidents.

On 1 January 2015, approximately 70 staff worked at the Federal Criminal Court, including 18 judges and 21 clerks.

### **The administration of justice has to be independent and impartial**

Only well-trained, experienced and above all independent judges are able to make decisions which are rational, impartial, and free of irrelevant external influences. From time to time, judges must also have the courage to take unpopular decisions. Their decisions have to be based on a fair, impartial, and transparent process. Compliance with such fundamental principles at the Federal Criminal Court is not simply a formality to be met for the sake of appearances; rather, it is the firm conviction of all of the members that this is the only way that the judicial system can deserve and claim credibility, both in the eyes of the parties to the proceedings and the general public.

### **Information and accountability create transparency**

Communication is not a task to be neglected by a modern judiciary. It is crucial for the Federal Criminal Court that the parties to proceedings and the general public understand and accept its judgments. The Federal Criminal Court informs the general public by publishing its most important judgments. A more comprehensive digest of its case law is available on the internet and leading cases are published annually in an official collection (*Decisions of the Swiss Federal Criminal Court*). In addition, the Annual Report submitted to parliament is made available to the public and provides detailed information on essential aspects of the Court's activities.