

The non-permanent judge system

Summary of the report of the Parliamentary Control of the Administration for the attention of the National Council and Council of States Control Committees

of 5 February 2025

Key terms



Federal courts

There are four federal courts in different locations: the Federal Supreme Court (Lausanne and Lucerne); the Federal Administrative Court (St Gallen); the Federal Criminal Court (Bellinzona); and the Federal Patent Court (St Gallen).

Non-permanent judges

Non-permanent judges perform this role at a specific court in addition to their main employment. They are involved in handling individual cases and receive a daily allowance for their work.



Election of non-permanent judges

The Federal Assembly elects non-permanent judges for a term of six years, using the same procedure as for permanent judges. The Judiciary Committee of the United Federal Assembly is responsible for preparing elections.

Panels of judges

Cases brought before a court are decided by a panel consisting of up to seven judges. This may include non-permanent judges. The size of the panel depends on the type of proceedings and the significance of the legal issue.



Main points at a glance

In principle, the system of non-permanent judges in the federal courts is expedient. Although it improves the efficiency of judicial decision-making, it quickly encounters limitations. The courts deal appropriately with the risks the system poses to independence and consistency within the judiciary. The non-permanent judge system could also be used in the Federal Administrative Court under certain conditions.

In response to a proposal by the National Council Legal Affairs Committee (LAC-N), the Federal Assembly Control Committees (CC) tasked the Parliamentary Control of the Administration (PCA) with evaluating the non-permanent judge system in January 2023.

During its meeting on 24 August 2023, the Courts/OAG sub-committees of the National Council and Council of States CCs decided that the evaluation should review whether it is appropriate to use non-permanent judges in the Federal Supreme Court (FSC), the Federal Criminal Court (FCC) and the Federal Patent Court (FPatC). The sub-committees also decided the evaluation should analyse the extent to which it would be appropriate to use non-permanent judges in the Federal Administrative Court (FAC), which does not currently use this system.

To this end, the PCA commissioned an online survey of non-permanent and permanent judges and clerks at the federal courts. In addition, the PCA held group discussions and individual interviews. It also created statistical analyses of the frequency with which non-permanent judges are used. In addition, the PCA commissioned an external legal opinion to determine the extent to which the legal framework for employing non-permanent judges is expedient.

Based on these analyses, the PCA has reached the following conclusions:

Legal provisions do not clearly state the reasons for using non-permanent judges

The legal frameworks governing the FSC and FCC remain largely unclear as to the circumstances in which non-permanent judges might be required or may be appointed. By contrast, the FPatC is staffed almost exclusively by non-permanent judges, who are used in all panels. As such, no specific reasons for their use are required in this court (see section 7.1 of the full evaluation).

Non-permanent judges generally alleviate pressure on the courts, but their use can result in additional work

Overall, the use of non-permanent judges improves the efficiency of judicial decision-making. The courts can use non-permanent judges when they have a heavy caseload or permanent judges are absent, ensuring that judgments can be handed down within a reasonable time frame (see section 3.1 of the full evaluation). In particular, non-permanent judges ensure that cases can be dealt with in the various procedural languages (see section 3.2 of the full evaluation). However, non-permanent judges can only be used efficiently if they handle cases for the relevant court on a regular basis, so that they are familiar with the procedures and judicial decision-making. Without the necessary experience, use of non-permanent judges can result in additional work for the courts. One example of this is if their preparatory work on judgments has to be extensively revised (see section 3.3 of the full evaluation).

More frequent use of non-permanent judges is only possible to a limited extent

Overall, the frequency with which non-permanent judges are used in the federal courts is appropriate. Frequency of use varies greatly between courts and, in the case of the FCC, between chambers. This is due in particular to the range of different tasks performed by non-permanent judges in the courts. The frequency with which non-permanent judges are used also depends on how often they are asked to sit and whether they accept such requests (see section 6.1 of the full evaluation). In the Higher Appeals Chamber of the Federal Criminal Court in particular, it has proved difficult to form panels due to the non-permanent judges' limited availability. In light of the difficulties involved, the courts have some reservations about an increased use of non-permanent judges (see section 6.2 of the full evaluation).

The courts deal appropriately with the risks to independent and consistent judicial decision-making

The courts have issued guidelines designed to ensure the independence of judicial decision-making when non-permanent judges are used. These are appropriate from a legal perspective and have proved effective in practice. The FPatC ensures the independence of non-permanent judges through detailed recusal rules (see sections 4.1 and 4.2 of the full evaluation). Overall, the quality of judicial decision-making is preserved, even if some non-permanent judges lack the necessary experience (see section 5.1 of the full evaluation). Wherever possible, panels are composed in such a way that non-permanent judges are in the minority. This ensures consistency in judicial decision-making (see section 5.3 of the full evaluation).

Parliament does not always elect judges with the necessary skills

The courts generally have a positive view of their cooperation with non-permanent judges (see section 6.2 of the full evaluation). Negative experiences often occur in cases where potential problems were already evident when the judge in question was elected. The courts consider the vacancy notices for non-permanent judges to contain the key suitability criteria for the post. However, the Judiciary Committee, which is responsible for preparing elections, does not always check candidates' availability, experience and language skills to an adequate degree and sometimes prioritises other criteria such as party affiliation and gender. The FPatC's experience with the electoral procedure is more positive. This is partly because a preliminary consultation committee preselects candidates, and partly because the candidates are not generally affiliated with any political party, which means that party-political representation plays no role in their election (see section 5.2 of the full evaluation).

Non-permanent judges could be used at the FAC under certain conditions

There are currently no non-permanent judges at the FAC. However, given the results of the evaluation at the other courts, the PCA considers that the use of non-permanent judges may be appropriate. They may help the FAC to cope with short-term peaks in workload within individual divisions or with absences among permanent judges due to illness (see section 8.2 of the full evaluation). However, non-permanent judges would have to be used on a regular basis to enable them to familiarise themselves with their division's judicial decision-making and avoid creating additional work for

the court. Due to their limited availability, non-permanent judges are not a suitable solution for systemic overload (see section 8.1 of the full evaluation). Depending on the division within the FAC, non-permanent judges with a legal background or specialist judges, i.e. people with technical training, would be more appropriate (see section 8.2 of the full evaluation). However, the FAC itself is sceptical about introducing non-permanent judges into its procedures (see section 8.1 of the full evaluation).

The full report is available in French, German and Italian (www.parl.ch/de/pvk).