

Rules of Procedure of the Judiciary Committee for the Committee Procedure with regard to Removal from Office or Non-Re-election

of 3 March 2011

The Judiciary Committee of the United Federal Assembly, based on Article 40a of the Parliament Act of 13 December 2002¹ (ParlA), adopts the following Rules of Procedure:

Art. 1 Scope of Application

These Rules of Procedure apply to the removal from office and non-re-election of judges of the Federal Criminal Court, the Federal Administrative Court and the Federal Patent Court as well as the Attorney General, the Deputy Attorneys General and the members of the Supervisory Authority for the Office of the Attorney General of Switzerland. They also apply to the non-re-election of judges of the Federal Supreme Court.

Art. 2 General principles

¹ When conducting the procedure for removal from office, the Judiciary Committee shall ensure that the reputation and independence of the judiciary and the prosecution authorities are safeguarded. It shall guarantee the persons concerned fair proceedings in accordance with the rule of law.

² It shall observe the fundamental rights guaranteed by the Federal Constitution² (Cst.) and respect in particular in its proceedings:

- a. the right of the person concerned to equal and fair treatment (Art. 29 para. 1 Cst.);
- b. the right to have their case decided within a reasonable time (Art. 29 para. 1 Cst.);
- c. the right to be heard (Art. 29 para. 2 Cst.),
- d. the right to be treated in a non-arbitrary manner (Art. 9 Cst.);
- e. right to privacy (Art. 13 para. 1 Cst.).

Art. 3 Recusal of members of the Committee

¹ At the start of proceedings, the members of the Committee shall disclose any circumstances that could give rise to an appearance of partiality or bias in a specific case.

² If, on objective grounds, there is an appearance of partiality or bias, the Committee member concerned shall recuse themselves for the duration of the proceedings. Reasons for recusal are in particular:

- a. relationship by blood or marriage of a Committee member with the person concerned;
- b. a close personal relationship, e.g. friendship or enmity, between a Committee member and the person concerned;
- c. the involvement of a Committee member in matters that may be held against the person concerned.

³ The fact that a Committee member belongs to the same political party as the person concerned does not constitute grounds for recusal.

⁴ If there is any dispute as to whether a Committee member should recuse themselves, the Committee shall make the final decision.

⁵ Committee members who have to recuse themselves from proceedings may be replaced for the duration of that case.

Art. 4 Consensus

The Committee shall decide by a majority of votes (Art. 159 para. 2 Cst. in conjunction with Art. 46 ParlA). However, the Judiciary Committee shall endeavour to reach a consensus when deciding whether to initiate proceedings, submit a proposal to the United Federal Assembly or discontinue proceedings.

Art. 5 Opening of the proceedings for removal from office

¹ If the Judiciary Committee becomes aware of circumstances that seriously call into question the professional or personal suitability of a judge, the Attorney General or a deputy attorney general, it shall decide ex officio without delay, i.e. at its next ordinary meeting at the latest, whether to initiate proceedings for removal from office.

¹ SR 171.10

² SR 101

² The Judiciary Committee shall hear the person concerned before deciding whether to initiate proceedings for removal from office.

³ It shall initiate proceedings if there are reasonable grounds to suspect that a person referred to in Article 1 has intentionally or through gross negligence seriously violated their official duties or has permanently lost the ability to exercise their office (see Art. 10 Federal Administrative Court Act of 17 June 2005³, FACA; Art. 14 Patent Court Act of 20 March 2009⁴, PatCA; and Art. 21 and 26 Criminal Justice Authorities Act of 19 March 2010⁵, CJAA).

⁴ It shall notify the person concerned in writing of the opening of the proceedings, of the allegations made, in particular the suspicion of a serious breach of official duty, and of the main procedural steps and their rights.

⁵ It shall not open proceedings if the suspicion is unfounded.

Art. 6 Provision of information to the public

¹ The Judiciary Committee shall decide on the information to be provided to the public.

² In principle, the Judiciary Committee shall only inform the public about the opening of proceedings and the individual stages of the proceedings in exceptional cases and only if the public interest in the information in that specific case outweighs the need to protect the privacy of the person concerned.

³ Before informing the public, the Judiciary Committee shall inform the person concerned and the president of the authority concerned.

⁴ The public shall be informed either in writing or orally by members specifically designated by the Committee, usually by the chair of the Committee.

Art. 7 Rights of persons concerned

¹ The person concerned has the right to attend the hearings at which persons providing information are questioned, to ask supplementary questions and to inspect the documents, expert reports and transcripts of the hearings.

² The person concerned shall be informed of the admission of new files that serve as a basis for the Judiciary Committee's decision.

³ The person concerned may be represented by a lawyer.

⁴ After completion of the investigation and before a report is submitted to the United Federal Assembly, the person concerned has the right to comment in writing or orally on the results of the investigation and the reasons for the decision.

Art. 8 Hearing for the person concerned

The person concerned shall be questioned as a person providing information. They have a duty to appear but no enforceable duty to testify or tell the truth. They may invoke their right to remain silent.

Art. 9 Rights of the Judiciary Committee

In order to clarify the legally relevant facts, the Judiciary Committee has the following rights in terms of Articles 45, 150 and 162 in conjunction with Article 150 ParlA. It may:

- a. invite members of the federal courts to provide information at meetings;
- b. request reports from the federal courts;
- c. obtain and inspect documents and personal data from the federal courts that are required for the fulfilment of their mandate;
- d. with the consent of the federal court concerned, question persons in the service of the court;
- e. with the consent of the Federal Council, question persons in the service of the Confederation;
- f. question external third parties with their consent;
- g. consult external experts;
- h. carry out inspections.

Art. 10 Appointment of sub-committees

¹ In the course of proceedings, the Judiciary Committee may appoint sub-committees to conduct procedural steps that it designates.

² They shall submit a report and proposal to the entire Committee.

³ SR 173.32

⁴ SR 173.41

⁵ SR 173.71

Art. 11 Investigation and assessment of the facts

¹ The Judiciary Committee:

- a. investigates the circumstances of the case ex officio and is responsible for obtaining the necessary evidence;
- b. forms an opinion on the factual circumstances without bias;
- c. assesses the evidence according to the circumstances and its weight;
- d. examines the submissions of the person concerned and considers the evidence that they offer;
- e. undertakes to keep a record of all events relevant to the decision.

² The questioning of persons is recorded for the transcript. The transcripts are submitted to the person questioned for signature.

Art. 12 Procedural deadlines

¹ The Judiciary Committee undertakes to expedite the proceedings and conclude them promptly. It shall hold additional committee meetings if necessary.

² The Judiciary Committee may set procedural deadlines in the course of the proceedings and apply Articles 20-24 of the Administrative Procedure Act of 20 December 1968⁶ mutatis mutandis.

Art. 13 Termination of proceedings by the Judiciary Committee

¹ If the Judiciary Committee establishes that there are no grounds for removal from office (Art. 10 FACA, Art. 14 PatCA and Art. 21 and 26 CJAA), it shall discontinue the proceedings.

² In principle, it shall only inform the public about the discontinuation of proceedings in exceptional cases and only if the opening of proceedings has been made public.

Art. 14 Request to the United Federal Assembly

¹ If the Judiciary Committee finds that the grounds for removal from office (Art. 10 FACA, Art. 14 PatCA and Art. 21 and 26 CJAA) have been established, it shall submit a written proposal to the United Federal Assembly that the person concerned be removed from office, justifying its decision.

² The justification shall include:

- a. a description of the work done by the Judiciary Committee;
- b. a detailed presentation of the facts of the case;
- c. a presentation of the considerations for and against that the Judiciary Committee considered when drafting its proposal;
- d. an accurate summary of the position taken by the person concerned.

Art. 15 Procedure with regard to non-re-election

¹ The provisions on the procedure for removal from office apply mutatis mutandis.

² The members of the Judiciary Committee must submit proposals for non-re-election no later than one meeting before the final decision of the Committee on their list of candidates (general re-election). Proposals based on a finding in accordance with Article 5 paragraph 1 that only becomes known later remain reserved. A proposal for non-re-election must be justified in writing.

Art. 16 Commencement

These Rules of Procedure come into force on 3 May 2011.

3rd of March 2011

Judiciary Committee of the United Federal Assembly
The President: Reto Wehrli