

# **Case Assignment by the Federal Courts**

**Summary of the report by the Parliamentary Control of the  
Administration for the National Council Control Committee and the  
Council of States' Control Committee**

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## Summary

***The procedures for assigning cases in the federal courts are fundamentally appropriate. Cases are assigned to the judges on the basis of objective criteria. However, not all criteria are listed in the regulations and taken into account in the instruments used. Moreover, the way in which cases are assigned is not sufficiently documented, and this reduces transparency and traceability.***

*In January 2019, the Control Committees of the Federal Assembly (CCs) commissioned the Parliamentary Control of the Administration (PCA) to evaluate case assignment in the federal courts, i.e. the Federal Supreme Court (FSC), the Federal Administrative Court (FAC), the Federal Criminal Court (FCC) and the Federal Patent Court (FPatC).*

*In September 2019, the Courts/OAG subcommittees of the CCs responsible for the evaluation decided that the procedures for assigning cases, their compatibility with superordinate law and their suitability for ensuring independent and impartial judgments should be examined. They decided not to proceed with evaluating the formation of panels of judges in individual cases.*

*In a legal analysis, the PCA examined the extent to which the regulations of the four federal courts comply with superordinate law and the recommendations of international organisations. In doing so, it had recourse to external legal advice. In a document analysis, it examined the procedures by which cases are assigned and the instruments used. It also conducted some 30 interviews, primarily with persons responsible for assigning cases in the courts.*

### ***The statutory requirements are essentially in line with superordinate law, with some shortcomings (Chapter 3)***

*The federal courts generally comply with the central requirements of the Federal Constitution and of international law regarding the assignment of cases in the courts. The laws pertaining to the courts and their own regulations lay down procedures that ensure their legality, independence and impartiality (Section 3.1). However, these regulations are not exhaustive. Criteria that are taken into account when a panel of judges is formed frequently do not feature, such as the languages spoken by the judges (at the FPatC), or their absences, gender or special knowledge (at the FAC) (Section 3.2). Contrary to international recommendations, none of the courts defines in its regulations the way in which changes can be made to the composition of a panel of judges (Section 3.3).*

### ***There is a lack of transparency in procedures for assigning cases (Chapter 4)***

*There is very little documentation of the tasks involved in assigning cases (Section 4.1) and the course of proceedings (Section 4.2), creating a lack of transparency both within the court and publicly. Furthermore, case assignment is rarely reviewed. Only the FSC compiles reports on case assignment. The FAC does not do so, although some information can be ascertained from its system. No information on this issue is currently available from the FCC and the FPatC (Section 4.3). Since the legal bases of the federal courts are formulated in an open manner, it is all the more*

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*important that individual case assignment is precisely documented so that any suspicion that the procedure for selecting judges is manipulated with the intention of influencing the outcome of a case can be ruled out.*

***The instruments do not consistently ensure objective formation of a panel of judges (Chapter 5)***

*The evaluation found that the use of computer programs to automatically select panels of judges results in a more objective assignment of cases. This is the practice at the FSC and the FAC. However, the potential of these programs is not fully exploited (Section 5.1). Excel tables are also used as a tool in assigning cases, in particular at the FCC and the FPatC. Even though used pragmatically, these are rudimentary and do not take into account all the criteria involved in assigning cases. They are therefore only partially suitable for ensuring that panels of judges are formed in an objective process (Section 5.2).*

***The criteria for assigning cases are appropriate but are not applied consistently (Chapter 6)***

*The criteria for assigning cases, e.g. judges' specific knowledge or absences, are sometimes applied very differently by the individual courts and even by the various divisions within the courts. It is not entirely clear how this affects the formation of a panel of judges (Section 6.1), nor how the criteria are prioritised (Section 6.2). Because it is not clear exactly how the criteria are applied, the objectivity of the procedures is called into question.*

***A degree of discretion in case assignment contributes to an efficient and effective judicial process (Chapter 6)***

*Without having looked at case assignment in individual cases, the PCA was still able to conclude that the existing degree of discretion helps to strike a balance between strict automatic processes and the flexibility necessary to ensure effective and efficient judicial processes. However, some of the differences in the statutory bases, procedures and instruments for case assignment, and the way cases are actually assigned, cannot be explained by the specific characteristics of the individual courts (Section 6.3).*

The full report is available in German, French and Italian ([www.parliament.ch](http://www.parliament.ch)).