

PREPARATION OF THE CCJE OPINION NO. 23 (2020)
ANSWERS FROM THE SWISS REPRESENTATIVE TO THE
QUESTIONNAIRE

Premise: In Switzerland, the judicial organization is a matter of the cantons. Accordingly, the associative life of judges is organized regionally, i.e. there are possibly many local associations, submitted to different statutory rules. An exhaustive overview cannot be offered. The answers to this Questionnaire are based upon consultation with Members of the Swiss Judges' Association Board.

General

Ad Question 1: The Swiss Judges' Association (SJA; www.svr-asm.ch) embodies judges of every court level and jurisdiction. To my knowledge, there is also a national Association of Fiscal Judges. In particular, there is no Association of Women Judges. With regard to local/regional Associations, see the Premise; see further the list of regional Associations that are themselves partners of the national Association, drawn from the latter's website (Statutes, art. 4; www.svr-asm.ch/fr/partner.htm; see also www.svr-asm.ch/fr/links.htm). In the following, the questions of this Questionnaire are answered with regard to the situation of the Swiss Judges' Association, unless otherwise stated.

Membership

Ad Question 2: The requirements for membership are set up by every single Association's Statutes and may vary (see also Answer ad Question 4).

Ad Question 3: Individual solutions are adopted for the membership of the Public Prosecutors as well: some local associations do accept them as members (for example Geneva), others do not (for example Vaud and Zurich). The Swiss Judges'

Association does accept them (www.svr-asm.ch/fr/zweck.htm), but reluctantly and does not promote their application; in fact, only a small number of Prosecutors have joined it.

Legal framework / objectives

Ad Question 4: One has to bear in mind that there is no judicial career in Switzerland: all judges are elected, mostly by the Parliament of the local entity in which they operate. Associations of Judges don't play any role in the judges' professional life. Accordingly, there are no specific legal regulations for them: in other words, associations of judges are associations set up following the private law rules of the Swiss Civil Code, like sports or cultural associations.

Ad Question 5: See PDF-copy of the specific questionnaire, attached. See also Statutes, art. 2 (www.svr-asm.ch/fr/statuten.htm)

Support of individual judges

Ad Question 6: (lit. a) The members of the Swiss Judges' Association do gather mainly at the Association's annual General Assembly and at the courses offered by the same for professional training. Communications occur through the Association's Journal ("Justice-Justiz-Giustizia", see www.svr-asm.ch/en/links.htm). In principle, the Association doesn't have any personal contact with its members, nor does it engage directly to defend individual judges (lit. b and c); there have been very few exceptions with regard to judges who were openly attacked in the press due to the position they had assumed in a case.

Ad Question 7: In those cases, the Association took position in the press to stigmatize the undue influence that journalists and politicians alike were exercising on the independence of those individual judges. In addition, members of the Association's Board paid those judges a visit. This has applied to Justices of the Federal Supreme Court of Switzerland ruling on cases discussed in public

hearings, where everybody can know how each individual Justice has voted in the matter.

Ad Question 8: There is no influence whatsoever—and due to the system of election of the judges in Switzerland, there cannot be any—of the Swiss Judges' Association on appointment or promotion of judges.

Ad Question 9: In disciplinary procedures run by official bodies, the Swiss Judges' Association doesn't intervene at all. The Swiss Judges' Association, however, has set up an Ethical Commission that could express its opinion on ethical matters raised by a judge or on its own initiative (Statutes, art. 10; www.svr-asm.ch/en/ethikkommission.htm). This Ethical Commission has meanwhile been made independent from the Swiss Judges' Association (see the Commission's Regulations, art. 3 § 1, under the last mentioned link).

Ad Question 10: The training of judges, on the contrary, is one of the aims pursued by the Swiss Judges' Association. Due to the aforementioned system of election of the judges, there is, in Switzerland, no state School for Judges or similar institution. For this reason, the Association set up some years ago the Swiss Judicial Academy (<https://www.unilu.ch/weiterbilden/rf/cas-judikative-richterakademie>), offering Certificates of Advanced Studies to lawyers and judicial assistants who wish to become magistrates. Meanwhile, this Academy has also become independent. Furthermore, there is a Foundation for the Training of Judges (www.iudex.ch/fr/index.htm) that was instigated at the initiative of the Swiss Judges' Association.

Resources

Ad Question 11: Yes, there are membership fees, whose amount is fixed by the General Assembly (Statutes, art. 5).

Ad Question 12: The Association can draw (limited) resources

from the membership fees (currently CHF 80.-- p.a.) and the fees required for the training courses it offers. State contributions are not foreseen.

Administration of the Associations of Judges

Ad Question 13: The governing bodies, the secretariat and the officers of the Swiss Judges' Association are selected and appointed according to the Association's Statutes; the terms of office (four years) are also fixed and restricted (see Question 14) according to the Statutes (art. 7a). All the offices are purely honorary; just the secretariat is run by a professional, part-time.

Question 15: There is accordingly no restriction to become an officer: all those who comply with the requirements for membership may become officers.

Interaction with state institutions and political parties

Ad Question 16: The Swiss Judges' Association is regularly involved by the Swiss Federal Office of Justice into the proceedings that will eventually lead to a new law draft. Like many other associations (scientific associations, associations of employers/employees etc.), it has a consultative vote. Furthermore, its representatives can be invited to express the Association's opinion on the Draft Code in the Parliamentary Commissions. The same can take place in the cantons, especially with regard to draft laws that touch upon procedural matters, of particular relevance for the judges.

Ad Question 17: There is no contact at all with the Government nor with the Ministry of Justice.

Ad Question 18: The Swiss Judges' Association has no connection to and no contact with any political party (lit. a and b; see Statutes, art. 2 § 2). Accordingly, no political party has the means of exercising any kind of influence within the Association (lit. c). However, the general Assembly of the Association as well as its Board do pay attention that, when elections of its officers stay ahead,

the political parties represented in the Federal Parliament have a corresponding representation on the Board: through this measure, the Association tries to increase its ability to represent all political forces, which is particularly important as every single judge is elected (or re-elected) respecting the proportion of every political party within the Parliament.

Ad Question 19: There is no Council for the Judiciary in Switzerland.

Ad Question 20: There is no interaction between the Swiss Judges' Association and court administrations. This is also due to the fact that in Switzerland, the judicial organization is a matter of the cantons, with exception of the mentioned federal courts of first instance and the Swiss Federal Supreme Court (see Premise).

Interactions with other organizations

Ad Question 21: Many cantonal/regional associations of judges are themselves partners of the Swiss Judges' Association, within which they have contact (lit. a). Otherwise, it seems that there is no contact whatsoever among the local associations; a former supranational association of the tribunals facing the Lake of Geneva (cantons of Geneva, Vaud and Valais plus France) is apparently not active any longer (lit. b).

Ad Question 22: Up to now, there is no significant contact of the Swiss Judges' Association with NGOs: projects for a closer contact to Transparency International are yet on their way.

Ad Question 23: Common Congresses are organized. Furthermore, the Swiss Judges' Association is member of both the International Association of Judges (<https://www.iaj-uim.org>) and the Association Européenne des Magistrats (https://www.union-syndicale-magistrats.org/web2/fr/aem-mode-d039emploi_p_529) (See www.srv-asm.ch/en/zweck.htm).

Ad Question 24: There is no trade union in which judges are

members.

Ethical standards

Ad Question 25: Due to the particular position of the members of the judiciary, elected and thus at the same hierarchical level as the members of other state authorities, there are no legal provisions establishing ethical standards for judges in Switzerland. The Swiss Judges' Association has taken up this task and set up an Ethical Commission (see references in the answer to Question 9), which meanwhile enjoys full independence. Furthermore, the Swiss Federal Courts (first instance and Supreme Court) have laid down their own ethical standards, as many courts of lower instance have done in most of the cantons.

Ad Question 26: Yes, through their consultative votes, as outlined ad Question 16 above.

Perception

Ad Question 27: The public at large isn't aware at all that such an Association exists. I was told by members of the board that there were numerous (positive) reactions of surprise from the public, as the Association publicly expressed its concerns when a Supreme Court Justice was attacked in the press for the opinion he had given during a public hearing. The conferences dedicated to the training of judges—organized by the Swiss Foundation for the Training of Judges—are well attended, but not overwhelmingly.

5. According to their statutes, what are the main objectives of the Associations of Judges? (please mark yes or no and indicate by "1", "2" and "3" the three most important objectives)

Defending and fostering the independence of judges and the judiciary	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no	1
Defending and fostering the rule of law	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no	3
Fighting for economic safeguards of judges	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no	
Fighting for social and physical security of judges	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no	
Contribution to the development of the law	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no	2
Training of judges	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no	
Ethics and accountability of judges	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no	
Involvement in judicial self-government, especially influencing the election of officers of self-government	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no	
Media work	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no	
Organising conferences	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no	
International contacts and networking	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no	
Other objectives (which)	<input type="checkbox"/> yes <input type="checkbox"/> no	

Support of individual judges

6. a) How do the Associations of Judges interact with individual judges?
 b) Can judges get assistance from the Association (which kind)?
 c) Do the Associations of judges defend individual judges (against what)?
7. If there is an infringement of the independence of a judge or of the judiciary, by what means do the Associations of Judges react?
8. Is there any influence of the Associations of judges on appointment or promotion of judges?
9. Is there any influence of the Associations of Judges in disciplinary procedures?
10. Is there any influence of the Associations of Judges on training?

Resources