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# Independence of the judiciary under scrutiny

Anyone who wants to become a federal judge in Switzerland must join a political party. This has raised concerns about the separation of powers within the federal structure. The Justice Initiative wants radical change. It will be put to voters on 28 November.

THEODORA PETER

The Federal Supreme Court (FSC) in Lausanne is Switzerland's highest court. It provides final rulings on the legitimacy of verdicts reached by lower courts as well as on points of law that affect the lives of millions of people in Switzerland. As the third branch of the federal state, the FSC is subordinate only to the law. The United Federal Assembly representing both chambers of parliament elects the FSC judges. When doing so, it deliberately takes account of the respective strength of the parliamentary parties to ensure that the FSC adequately represents society and has democratic legitimacy.

However, this unwritten rule – a sort of gentlemen's agreement – means that anyone who wants to sit on the bench must join a political party. Judges must pay an annual subscription fee to “their” party, of between 3,000 and 10,000 Swiss francs depending on the party (federal judges earn a salary of 365,000 francs). This idiosyncrasy has long been the subject of criticism abroad. The Group of States against Corruption (GRECO) – the Council of Europe's anti-corruption body – believes the fee violates the principle of judicial independence. One of the arguments given by Switzerland to justify the tradition is that its political parties receive no public funding, unlike in other countries.

## Unpopular judges voted out

Another GRECO criticism is that the federal judges have to be re-elected by parliament every six years. In its opinion, this procedure risks judges being voted out on political grounds. Indeed, punitive action against unpopular judges is not uncommon in Switzerland. In autumn 2020, the SVP recommended its own federal judge Yves Donzallaz for deselection because Donzallaz had contradicted the party line. In 2015, he had been involved in an FSC decision that saw the Swiss-EU Agreement on the free movement of persons take precedence over the “Stop mass immigration initiative” that the SVP had successfully put to the people. In the end, Donzallaz was comfortably re-elected by parliament – albeit without any votes from “his” party.

The “crucifix case” made headlines in the 1990s, when the FSC established the principle, specifically with regard to primary schools, that crucifixes were contrary to religious neutrality. Catholics thought this verdict was discriminatory. The federal judges involved were re-elected but received a relatively low number of votes as punishment.

## Drawing lots

Businessman Adrian Gasser has long been one of the critics of this intertwining of politics and the judiciary. Gasser is the author of the Justice Initiative being put to voters on 28 November – a radical proposal that calls for federal

The marble entrance to the Federal Supreme Court in Lausanne: will the judges climbing these steps be decided by the luck of the draw in future?  
Photo: Keystone



judges to be appointed by drawing lots, and not through election by parliament. Judges would have greater independence by no longer being bound to any party. A specialist committee appointed by the Federal Council would only scrutinise the professional suitability of candidates. Through this change in the system, Gasser hopes to prevent the courts from “slowly but surely becoming party political instruments”. He says the method of drawing lots was common back in Ancient Greece as a means of counteracting bribery and influence.

Policy-makers are sceptical of Gasser’s proposal. Both the Federal Council and parliament are unanimous in recommending that the popular initiative be rejected, full stop. Leaving the appointment of judges to chance would weaken the democratic legitimacy of the courts and erode public confidence in the decisions they make, argue opponents. The current system is far from perfect, admits the chairman of the parliamentary judicial committee, FDP member of the Council of States Andrea Caroni (canton of Aargau). But the “institutional immune system”, as he calls it, has always helped to avert possible manipulation. Caroni puts forward the Donzallaz case as a recent example.

Those at the centre of the debate – the judges – also reject the idea of drawing lots, although the Swiss Judges’ Association (SJA) believes that the situation could nevertheless be improved. For example, by being elected just once, judges could be spared the party political pressure associated with re-election. This already happens in the canton of Fribourg, where judges and prosecutors are elected for an indefinite period but can still be dismissed on serious grounds. Abolishing party subscription fees would also “boost judicial independence”, says the SJA. However, the Federal Council and parliament refuse to consider any form of counterproposal. Voters will now have the last word.

Justiz-Initiative:  
[www.justiz-initiative.ch/startseite.html](http://www.justiz-initiative.ch/startseite.html)

## Switzerland in figures

### Daddy time

# 78

Swiss fathers enjoy devoting lots of time to their children – if you believe what most of them say. And we want to believe them. However, 78 per cent of fathers with children aged three or younger work full-time in Switzerland. In practice, only two per cent devote maximum time to childcare as the bona fide house husband.

# 97

It is easier for partners to share childcare duties when both receive the same salary for the same amount of work. According to the University of St Gallen, women receive equal pay at 97 per cent of Swiss companies. However, the university only surveyed companies with 100 or more employees – and these businesses were allowed to prepare the relevant salary data themselves.

# 1512

Hence, we should possibly think twice before dismissing the statistics provided by the Federal Office for Gender Equality. These paint a different picture: the average full-time wage in Switzerland is 7,968 francs for men but 6,456 francs for women. Most of this 1,512-franc difference is “inexplicable” – in other words, due to discrimination.

# 25

Not many people know this, but orders for photo books were up by as much as 25 per cent in 2020 (depending on which photo book company you ask). We all had plenty of time to reminisce during last year’s lockdown. The same companies now say that orders have plummeted. This is because wedding and holiday photos were a rarity in 2020.

# 13

With a total of 13 medals, Switzerland ended the Tokyo Olympics in 24th position on the table. To put a much better spin on this: Switzerland would be ranked 15th if its athletes’ performances were judged in relation to population size. That is one medal for every 660,000 Swiss.