



International Association of Tax Judges

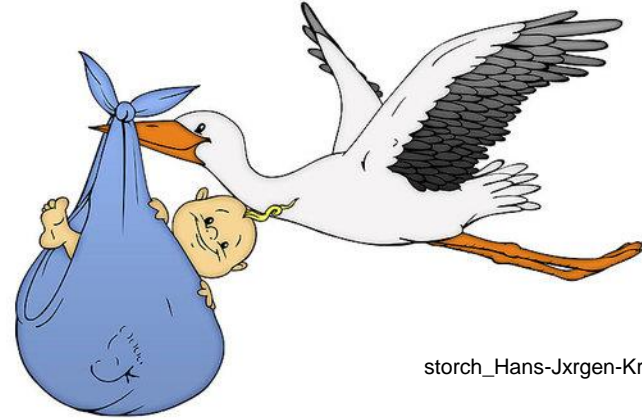
**IATJ 6th Assembly
University of Lucerne
Luzern, Switzerland**

Tax Procedures in Switzerland

Chair
Michael Beusch

Panel
Patrick M. Müller
Thomas Stadelmann

Confoederatio Helvetica



storch_Hans-Jxrgen-Krahl726.jpg



http://blog.buchplanet.ch/wp-content/uploads/2012/09/schweizer_karte1.jpg

Overview of the Swiss taxation system I: Three levels

- Taxes are levied on all three constitutional levels: Federation, cantons, municipalities.
- Federal taxes: Swiss Federal Constitution (Const.) defines the taxes that may be levied by the federal government.
- Cantonal taxes: The cantons are free to define their own tax systems and tax within margin given by the Federal constitution and the Tax harmonization act.
- As a result, tax regulations and burdens can vary widely from canton to canton.
- Communal taxes: Taxation at communal level is based on the cantonal tax legislation. However, the communes themselves fix their own rates of tax.

Overview of the Swiss taxation system II: Taxes

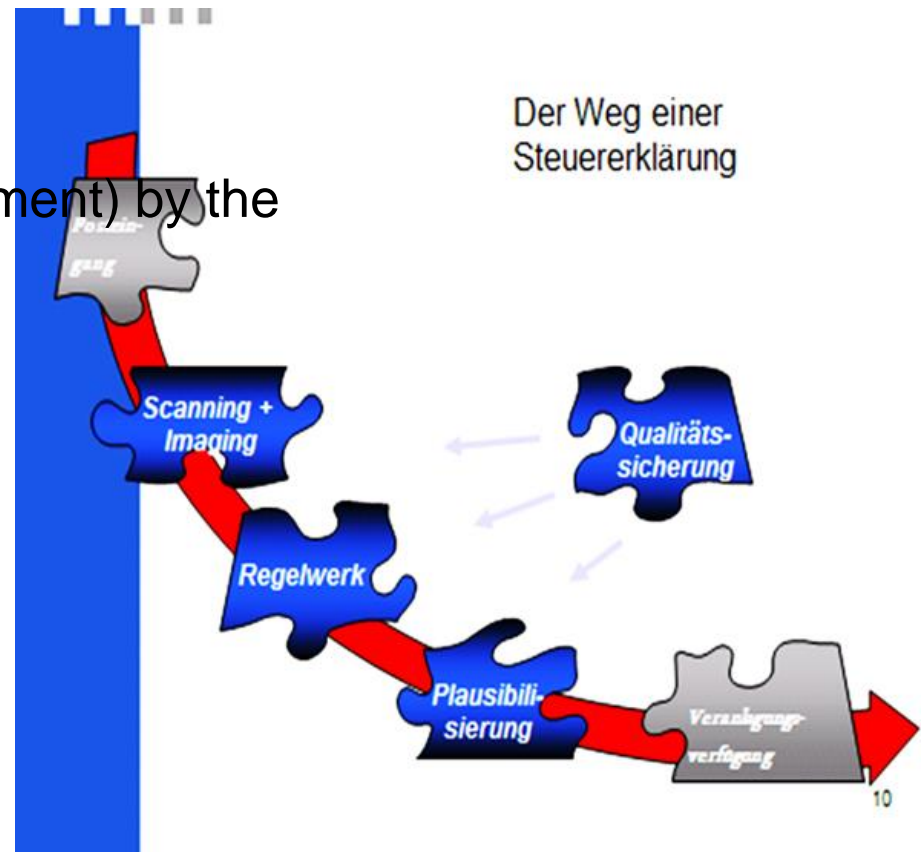
Federal taxes	Cantonal taxes	Municipal taxes
Individual income taxes	Individual income and net wealth taxes	Individual income and net wealth taxes
Corporate income taxes	Corporate income and net wealth taxes	Corporate income and net wealth taxes
Withholding Tax	Real estate capital gains taxes	Real estate capital gains taxes
Value added Tax	Real estate taxes	Real estate taxes
Stamp duty	Real estate transfer taxes	Real estate transfer taxes
Custom duties ...	Inheritance and gift taxes ...	Inheritance and gift taxes ...

Overview of the Swiss taxation system III: Administration

- As a rule, each governmental body assesses and collects those taxes it is entitled to levy
- The proceedings can vary considerably from canton to canton
- Exception: Federal income tax: It is assessed and collected by the cantons on behalf of the confederation
- The federal tax administration, however, determines the rules and regulations for the administration of the federal tax and supervises the cantons in order to ensure uniform application

Direct taxes - Course of tax proceedings: Assessment

- Tax **declaration** by taxable person.
- **Verification** of declaration (assessment) by the Tax Administration.
- Tax **assessment** (decision).



Direct taxes - Assessment: Investigation, cooperation, burden of proof

Let's talk
quickly about:

The burden of
proof





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- Burden of proof:
The tax authority has to prove the facts which lead to taxation and the facts which increase taxation, while the taxpayer bears the burden of proving the facts which cancel or reduce taxation.
- Obligation to cooperate and investigation of the tax authorities:
The tax authority has the obligation to investigate all circumstances that are decisive for complete and correct taxation. As part of this duty the tax authority also has to investigate circumstances that reduce taxation such as deductions or debts.





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- Cooperation:
Duty of the taxpayers to assist in the determination of tax relevant facts by the tax authority: Taxpayers have to declare in their tax return all tax factors. At the request of the tax authority, taxpayers are also obliged to provide further information (in writing or orally) and to submit further documents.
- Third parties:
A third party that possesses tax relevant information about taxpayers is obliged to issue to them the corresponding written attestations. i.e. An employer is obliged to attest the wages of the taxpayer.

A		Lohnausweis - Certificat de salai		
B		Rentenbescheinigung - Attestati		
C				
	<small>AHV-Nr. - No AVS - N. AVS</small>	<small>Neue AHV-Nr. - Nouveau No AVS - Nu</small>		
D		E		
	<small>Jahr - Année - Anno</small>		<small>von - du - dal</small>	<small>bis - au - al</small>
H				



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- Bank secret: Relevant bank information can be submitted only with the permission of the taxpayer.
- A breach of the duty to cooperate by the taxpayer may result in a reversal of the burden of proof and may finally lead to an assessment at the legal discretion of the tax authority and in a fine.

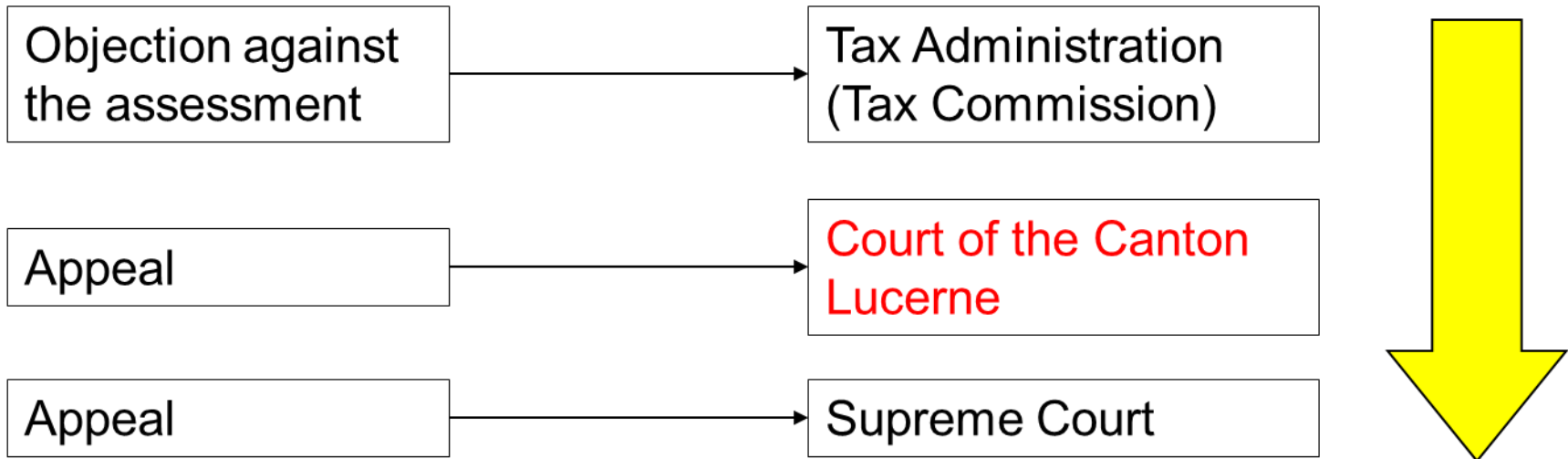


Direct taxes - tax proceedings: Review and appeal

Legal proceedings Canton of Lucerne – Federal Court

Proceeding:

Authority:





The Court of the Canton of Lucerne

- Overview
- Human Resources
- Allocation





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The Court of the Canton of Lucerne

Human Resources

Function	Number of people	Jobs
Judge	24	20.5
Deputy Judge	10 - 20	
Expert Judge	20 - 25	
Court Clerk	43	
Secretary	15	



The Court of the Canton of Lucerne

Allocation of the Court

- **The departments rule on the basis of three judges on the bench.**
- **Five judges are involved in litigation of fundamental importance or on request of one of the judges involved.**
- **The head of the departments or the judges named by them rule basically as single judges up to a claim value of CHF 10'000.-**



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The Swiss Supreme Court





The Swiss Supreme Court

- Functions:
 - ‘Guardian of the Constitution’
 - assuring unity of law
 - developing consistent case law
 - granting judicial protection as court of last resort
- Organization:
 - 38 full-time and 19 part-time judges
 - approx. 130 court (law)-clerks
 - 7 chambers; in 1 chamber tax law (6 judges)

Direct taxes - tax proceedings: Procedural rights

The right to be heard



Article 29 Federal Constitution

...

2 Each party to a case has the right to be heard.

Direct taxes - tax proceedings: Procedural rights

Series of minimum guarantees

- Authorities must consider evidence that is offered by the taxpayer if the evidence is legally allowed and appropriate to establish the relevant facts.
- Right to inspect records: The authority must
- provide access to the complete dossier.
- Courts have the duty to inform taxpayers about which persons will be judging their case.

Peculiarities of the Swiss Tax Court procedures

- Written form
- Cognition
- Finding of the judgement
- Multilingualism of federal (and some cantonal) courts
- Public deliberation at the Supreme Court
- Panel composition
- Dissenting opinion in cantonal courts

Peculiarities of the Swiss Tax Court procedures

Fact finding in court

- Same evidence as in tax assessment proceedings
- e.g. summoning of witnesses, visual inspection, use of non-legal expert knowledge and skills: expert evidence

Peculiarities of the Swiss Tax Court procedures

The law-clerk made in Switzerland

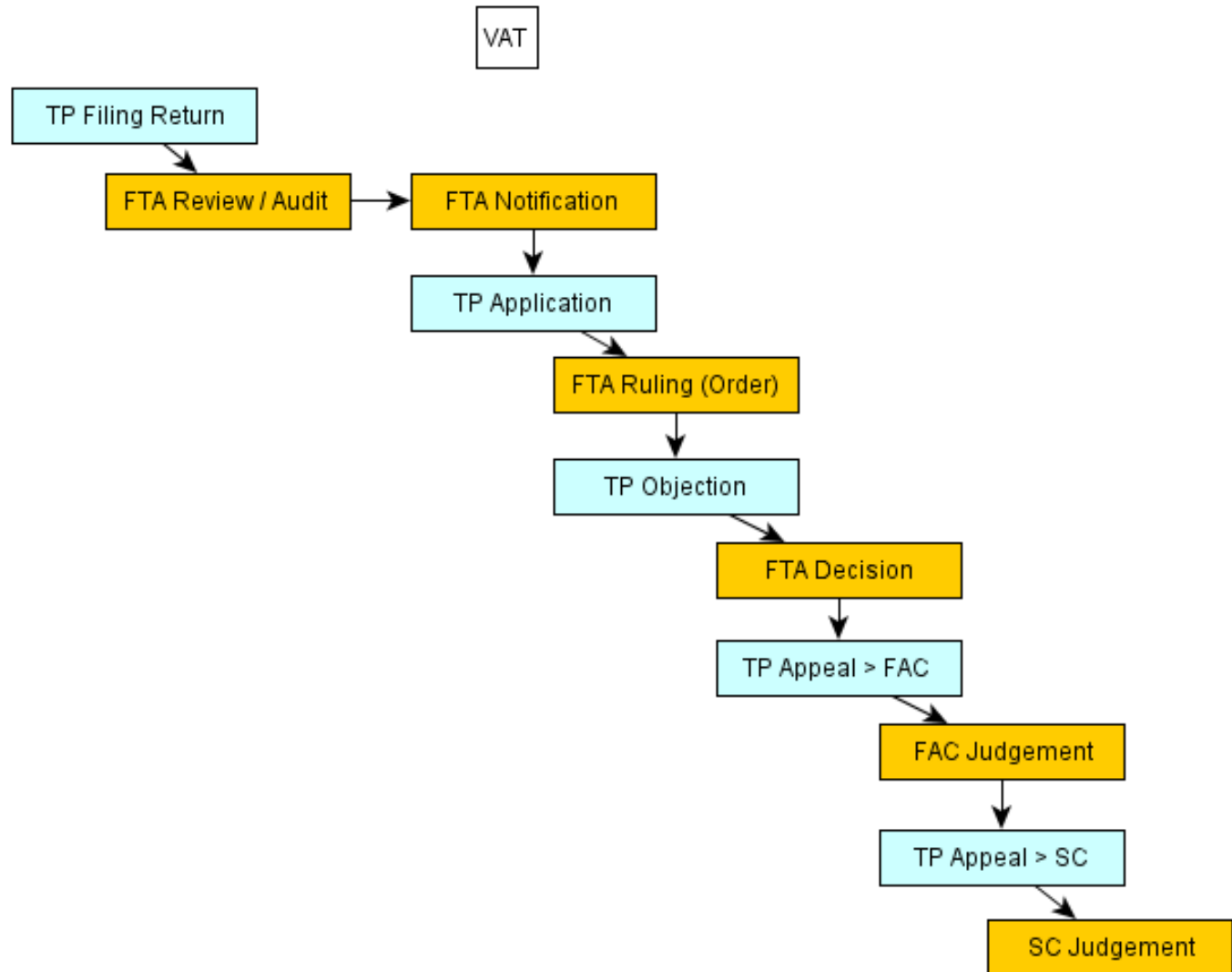


The law-clerks are involved in the instruction of the cases and in the decision. They have an advisory vote.

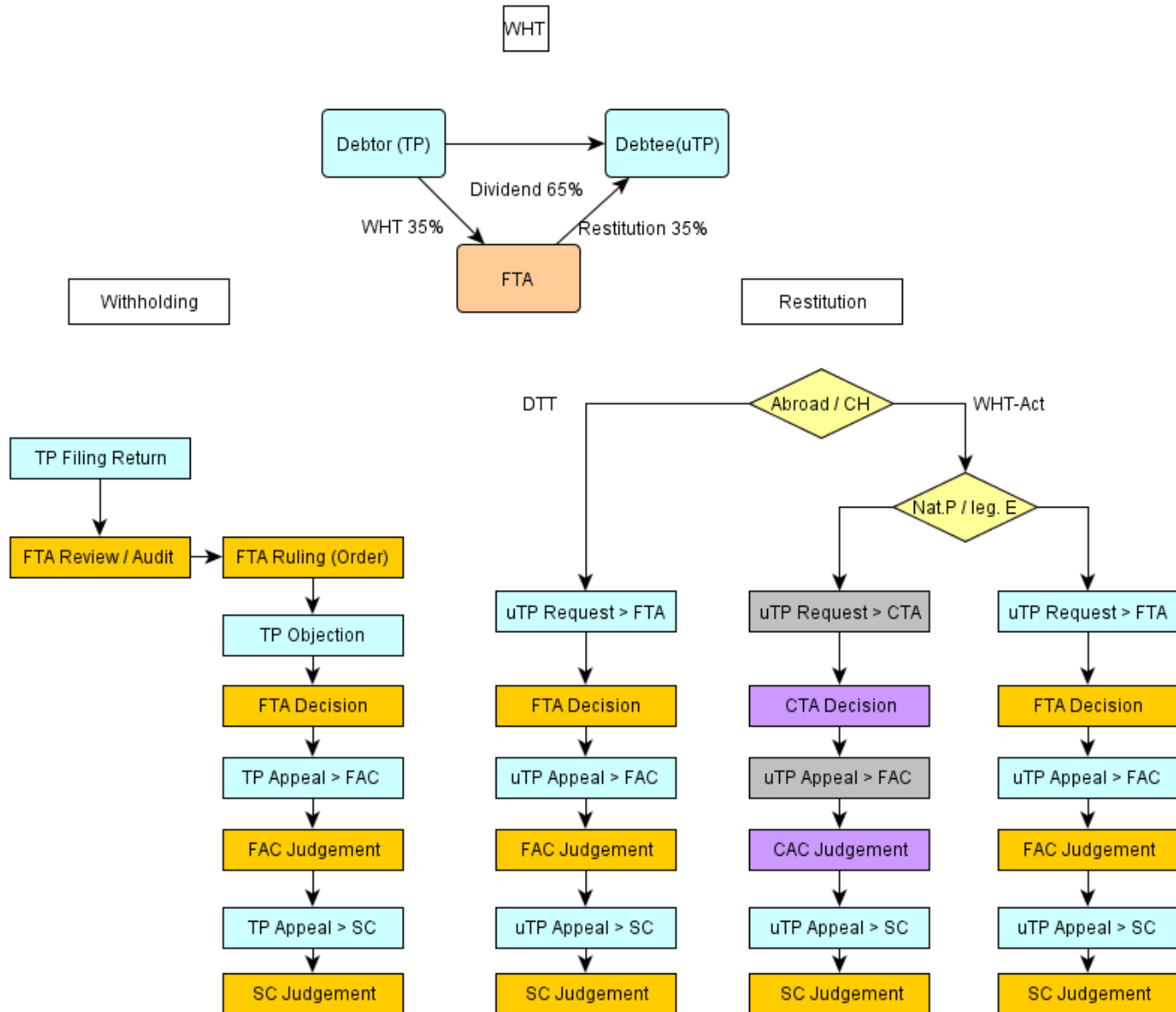
They work under the responsibility of a judge or a judge talks and edits the decisions.

They may be assigned to other tasks, especially in the administration of justice, education and training and in auditing.

(federal) indirect taxes / procedures (1)



(f.) ind. taxes / procedures (2)

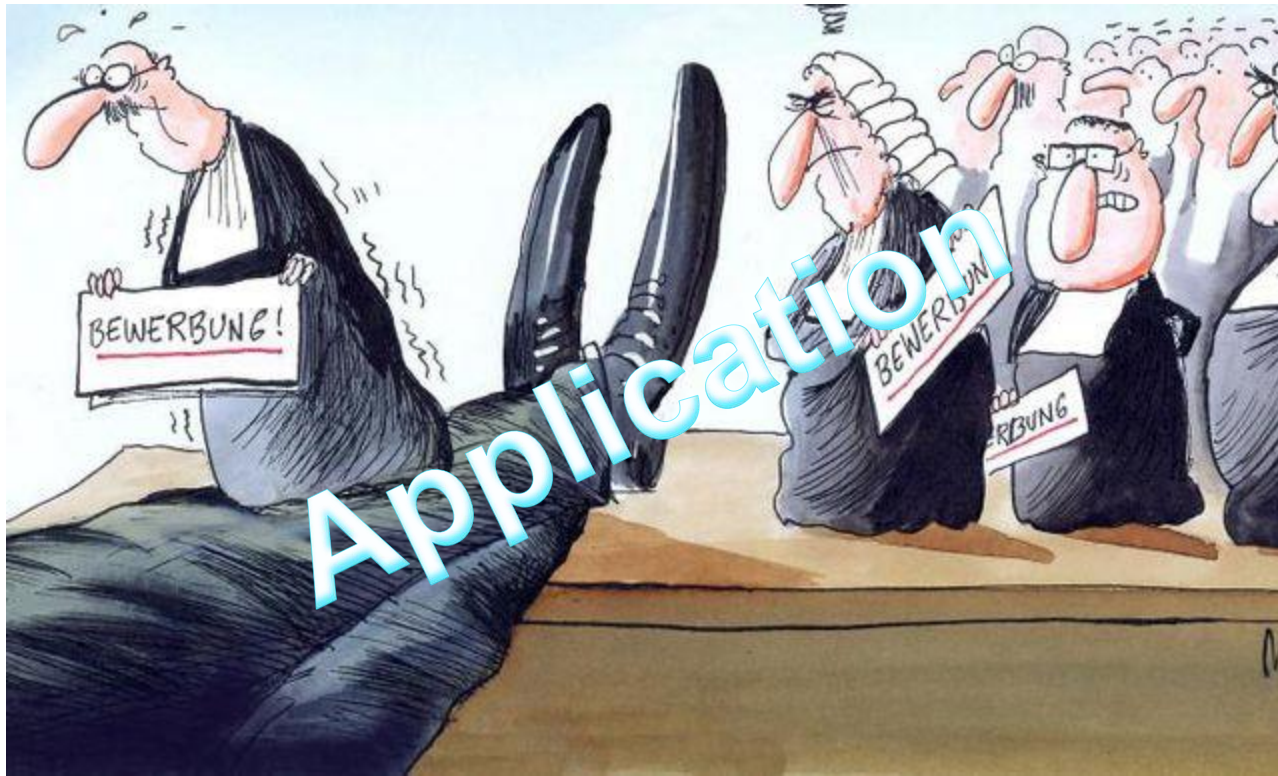




Election of tax-judges in Switzerland

- Requirements and administrative status – interaction with politics
- Non-re-election and removal from office of tax-judges: Ensuring the functioning of the judiciary or encroachment of politics?
- Role of tax judges in Switzerland: Judicial review of political acts and influencing of judges by the politicians?
- Influence of politics on judges in general

Tax-Judge in Switzerland: Requirements and administrative status - interaction with politics



Tax-Judge in Switzerland: Requirements and administrative status - tooth with politics I

- Access to the judge activity in general and also for the activities of a tax judge is quite open.
- The traditional idea of Volksrichtertum, judges of the people, prevails: few legal requirements are set up.
- Legal formation is not consistently demanded, not even for the election to the highest Swiss court, the Federal Tribunal, nor are judge trainings needed.
- In fact in Switzerland most of the judges have a degree as lawyers.

Tax-Judge in Switzerland: Requirements and administrative status - tooth with politics II

- For the election to specialized administrative courts i.e. tax-courts, the law requires in some cases appropriate specialized knowledge.
- Predominant role of political parties in the electoral process: The candidates must be members - or at least sympathizers – of a political party entitled to a judge.
- Even highly qualified personalities are out of the election, if they do not confess to a political party
- Election to a term of 4 – 6 years
- Continuation of the employment relationship requires a renewed election ("re-election")

Non re-election and dismissal of tax-judges - ensuring the functioning of the judiciary or encroachment of politics?



http://www.yalelawjournal.org/images/stories/removing_federal_judges.jpg

Non re-election and dismissal of tax-judges?

- Swiss public authorities are based on democratic legitimacy and ruled by the principle of limiting power of authorities (checks & balances).
- Unlimited terms of office after the election until retirement do not comply with this order.
- Procedure for dismissal during the relatively short term of office are rarely laid down by law.
- Swiss law grants the judges, at least during the tenure, the degree of stability, which is essential for their independence.
- Swiss scientific justification says: Purposes of re-election procedure are: democratic legitimacy, ability to comply with the demands of their duty.
- Threats to the independence of the judiciary: Lack of barriers against irrational deselection.

Role of tax judges in Switzerland: Judicial review of political acts and/or influencing of judges by the politicians?

- In tax law, appeals mainly serve the enforcing of the objective law.
- The tax judges in many Cantons are appointed by law, to check regulations - not laws - for compatibility with the higher law i.e. the constitution even before the regulations are being applied.
- Judicial "law-making" may provoke a controversy between the powers.
- Tax courts of first instance have to correct deficiencies in the challenged decision also beyond the parties applications, even in the sense of a reformatio in pejus.
- If the tax courts have to decide between conflicting public interests, the party political affiliation of the judge may interfere the independent decision-making.

Influence of the policy on tax judges



<http://www.landsgemeinde.gl.ch/sites/landsgemeinde.gl.ch/files/2011/vereidigung.jpg>

Influence of the policy on tax judges

- The picture shows the swearing in of judges on the occasion of the Glarus Landsgemeinde in 2011.
- The swearing-in ceremony is the obligation of judges to judge completely independent, solely on the Constitution and law, and in this sense.
- The constitution of the canton of Lucerne, like all cantons and the federal government, guarantees an independent, impartial justice.
- The self-government of the courts as part of the organizational independence is guaranteed. For a short time, there is a law that allows the Cantonal Court to submit a nomination for the periodic election of the Court Presidium (President and Vice-President) to Parliament.

Recruitment by proportional party: Judges caught between political party and independence



http://images.nzz.ch/eos/v2/image/view/643/-/text/inset/43259c3b/1.18302559/1400087679/bunde_sstrafgericht.jpg

Recruitment by proportional party: Judges caught between political party and independence

- Party political origin of judges is part of the system in Switzerland.
- The judges of different parties bear the responsibility for the judgment together.
- Party membership of judges is not considered a threat to the independence of the judiciary.
- Party membership should not be a priority for the judges selection.
- Political parties are organized in Switzerland as associations.
- Mandate taxes are common, but not a requirement for eligibility.
- Actually no party financing laws exist in Switzerland.

An insight ...



<https://markuszipf.files.wordpress.com/2014/08/liberty-island-fernrohr.jpg>