

THE SWISS JUDICIAL SYSTEM

Under the Federal Constitution of 1999, the Swiss court system has a pyramidal structure. The civil, criminal and administrative courts of first and second instance form the lower half of the pyramid in the canton districts and the Federal Tribunal (Federal Supreme Court) forms the top. Each of the 26 Swiss canton districts are equally autonomous and have their own complete judicial system with courts of first instance and appeal. The canton courts are also responsible for overseeing the application of federal legislation. The Federal Court as the court of last instance has the power to decide on appeals from cantonal courts. Federal laws are not subject to any judicial review under the Constitution, as the framers of the Constitution did not want to grant judges the power to invalidate laws that the people had previously adopted by way of a referendum. There are four federal courts: The Federal Tribunal (*Bundesgericht*) in Lausanne, the Federal Criminal Court (*Bundesstrafgericht*) in Bellinzona, the Federal Insurance Court (*Eidgenössisches Versicherungsgericht*) in Luzern, and the Federal Administrative Court (*Bundesverwaltungsgericht*) in St. Gallen.

Federal Tribunal (*Bundesgericht, Tribunal Fédéral –Federal Supreme Court*)

The Federal Tribunal is the highest court and is located in Lausanne, in the Canton of Vaud. The Federal Tribunal consists of 38 judges and 31 substitute judges that oversee the application of federal laws and regulations. The Federal Tribunal also hears appeals in disputes involving federal civil and commercial law against final judgements of the cantonal Courts of Appeals and the Commercial Courts, provided that in commercial matters the amount in dispute exceeds CHF 30,000. Leave to appeal is not required for the Federal Tribunal to hear a case.

The Federal Tribunal also hears nullity appeals and constitutional complaints if constitutional rights have been violated in cantonal proceedings and if no other form of federal appeal is available and, subject to a few exceptions, all cantonal means of appeal have been exhausted.

Cantonal Courts of Second and Last Instance (*Obergericht, Appellationsgericht, Kantonsgericht, Tribunal cantonal, Cour de justice*)

Appeals and pleas for nullity from a first instance cantonal court are heard at the cantonal Court of Appeal of that jurisdiction. Notwithstanding an Appeal Court decision, parties may also file an appeal to the Federal Tribunal claiming that the rules of Swiss federal civil law have been violated by the cantonal court. In addition, the Federal Tribunal acts upon constitutional complaints in civil cases.

Three cantons (Appenzell, St. Gallen and Zurich) have a Court of Cassation (*Kassationsgericht*) as the cantonal court of last instance, to hear nullity appeals against decisions of the Courts of Appeal and the Commercial courts. A nullity appeal is usually available only in cases of gross procedural defects, such as an arbitrary determination of facts. Where a judgement of the Zurich Commercial Court is believed to be based on an arbitrary determination of facts (which is a violation of cantonal procedural law), as well as on a misapplication of federal substantive law, two appeals must be filed simultaneously: a nullity appeal to the Zurich Court of Cassation and an ordinary appeal to the Federal Tribunal. The Federal Tribunal will then stay the appeal proceedings under the Court of Cassation has decided.

From: Special Cantonal
Courts of First Instance

To: Bundesgericht

Cantonal Courts of First instance (*Kantonsgerichte, Bezirksgericht, Amtsgericht / Tribunal de première instance*)

This jurisdiction covers civil, criminal and administrative law cases that have not been assigned to special cantonal courts. Some of the small cantons have only one single first instance court, while the larger cantons have set up several District Courts, each of which acts as the court of first instance in a specific territorial district of the cantons (*Bezirksgericht, Amtsgericht*).

Cantonal courts have a full-time judge as president plus two to four lay judges.

Within a first instance court, usually either a collegial body or a single judge will be dealing with a case depending on the amount in dispute. In the Canton of Zurich, for example, a single judge decides commercial cases with an amount in dispute of up to CHF 20,000, while cases with a higher amount in dispute are heard by a collegial body consisting of three judges.

Several cantons (Zurich, Bern, Fribourg, Geneva, Ticino) have a jury for first instance trials in serious criminal cases. However, the jury does not deliberate alone and sits together with professional judges on questions of conviction as well as sentence.

Many civil law cases have to start with the Justice of Peace (*Friedensrichter*).

Special Cantonal Courts of First Instance

(*Arbeitsgericht / Tribunal de travail, Tribunal des prud'hommes*)
(*Mietgerichte / Tribunaux des baux*)
(*Handelsgericht / Tribunal de commerce*)

There are specialised courts for labour disputes as well as rent tribunals for landlord/tenant disputes. These courts are usually composed of a regular presiding judges and two lay judges that are representatives from each side of the dispute (for example, a representative of the employer as well as the employee, or a representative of the landlord and as well as the tenant.)

There are also four cantons (Aargau, Bern, St.Gallen and Zurich) in which civil matters are heard in a commercial court, if they involve commercial transactions worth over CHF 8,000, and if both parties or at least the defendant are listed as firms in the commercial register. The commercial courts also decide cases regardless of the amount in dispute in most intellectual property matters. The judges in commercial courts include judges from the cantonal courts of appeals, as well as commercial judges who are not full-time judges but rather senior business executives who are appointed to the Court upon nomination by business associations from the canton. Decisions of labour and rent tribunals, as well as the Commercial courts are not open to ordinary cantonal appeals and may only be appealed to the Federal Tribunal.

There is an official collection of Swiss Federal laws in German, French and Italian available at <http://www.admin.ch/ch/d/as/> Legislation and Case law from the Canton courts can be online at <http://www.law-links.ch/schweiz.html#S02> Decisions of the Federal Tribunal can be found in at <http://www.bger.ch/>