

THE SWISS JUDICIARY: THE FEDERAL TRIBUNAL

INTRODUCTION

The Swiss federal court is known as the Federal Tribunal. It is the youngest of the three organs of the Swiss Federal Government since it was created by the Constitution of 1874. The Constitution of 1848 provided for a court for the administration of justice in the Federal sphere, but it was not vested with the power of resolving conflicts between the Confederation and the Cantons or among the Cantons themselves. Such cases were heard and decided by the Federal Assembly. The Federal Court had no fixed location for the transaction of business and it lacked qualified professional personnel. The Constitution of 1874 did not bring about radical changes in the powers and jurisdiction of the existing court. But in actual practice, its powers were considerably increased. The subsequent constitutional amendments further increased its powers. The Court, as at present constituted, first assembled in 1875. It was established at Lausanne. In this unit we shall discuss the various aspects related to the Federal Tribunal.

STRUCTURE AND ORGANISATION OF THE FEDERAL TRIBUNAL

Composition and Organization:

The Constitution clearly states that the organization of the Federal Tribunal, the number of its members and deputy members, their term of office and pay will be fixed up by law of the Federal Assembly. The law fixed the number of judges between 26 and 28 and the number of alternates or substitutes between 11 and 13. At present, however, the number of full time federal judges is 38 and the number of deputy judges is 19. The term for which the judges of the Tribunal are elected is six years. However, the judges may be and often are re-elected. In practice, judges resign at the age of seventy.

The Tribunal has its own President and Vice-President elected for two years. They are not, however, immediately re-eligible.

The Constitution does not prescribe any judicial qualifications for the judges. It only says that any Swiss citizen who is eligible for contesting election for the National Council is allowed to contest for a seat in the Federal Tribunal. The Constitution, however, imposes two restrictions- *firstly*, the members of the Federal Assembly and the Federal Council and the officials appointed by these authorities may not at the same time be members of the

Federal Court; and *secondly*, members of the Federal Court may not hold another office, be it in the service of the federation or in the Cantons, nor any other profession or industry.

According to the Constitution, the Federal Assembly while electing judges and alternates (deputy judges) must see that all the three official languages are represented in it.

It may be mentioned here that despite the absence of prescribed qualifications for the members of the Federal Court and their substitutes, due care is taken to select men of legal learning and ability. Generally, legal luminaries have been elected as the judges. The Federal Tribunal is the only national court in the country.

There are no inferior Federal Courts. It does not have its branches in the Cantons, unlike that of the American Supreme Court which has its branches in the States. The Federal Tribunal is, however, divided into **assizes** for criminal cases. The Tribunal has no staff for the execution of its awards unlike the American Supreme Court which maintains its own staff for the execution of its awards. The Federal Council itself executes the decisions of the Tribunal

- **Seat of the Tribunal:** The Tribunal has been established at Lausanne – the capital of Vaud which is a French-speaking Canton.
- **Working of the Tribunal:** The Tribunal is divided into three divisions, each consisting of at least eight judges for trying cases pertaining to civil laws and public laws. Criminal cases dealing **treason** are decided by the Tribunal with the assistance of a jury which consists of twelve members. Records of the court are maintained in three languages.

JURISDICTION OF THE FEDERAL TRIBUNAL

The Federal Tribunal is vested with both original and appellate jurisdiction. Its original jurisdiction extends to civil, criminal, administrative and constitutional cases. The Tribunal has no power of interpreting the Constitution and declaring a federal law invalid. It cannot question the validity of laws passed by the Federal Assembly. It can, however, inquire into the constitutionality of Cantonal laws and actions of Cantonal executives and sometimes Federal executives.

- **Original Jurisdiction:** The original jurisdiction of the Federal Tribunal can be sub-divided into the following:

- **Civil Jurisdiction:** The civil jurisdiction of the Federal Tribunal extends to cases involving conflicts between the Confederation and the Cantons or between the Cantons themselves. It hears cases where a private person or corporation sues the Confederation or a Canton or where the Confederation or a Canton sues a private person or corporation if the object of the dispute is of such importance as shall be determined by the federal legislation and if such corporations or persons are plaintiffs.

The Federal Tribunal, further, takes up cases relating to loss of nationality (Statelessness) and also disputes between Communes of different Cantons concerning questions of citizenship. The Tribunal has been empowered to ensure the uniform application of laws concerning commerce and transactions affecting moveable property, suits for debt and bankruptcy, protection of copyrights and industrial inventions, including designs and models. The Constitution confers a general power on the Confederation to legislate in any fields of civil law. This all-embracing power conferred on the Confederation enlarges the civil jurisdiction of the Federal Tribunal.

- **Criminal Jurisdiction:** With regard to the original criminal jurisdiction of the Tribunal it tries the following cases:
 - Cases of high treason against the Confederation, revolt and violence against federal authorities;
 - Crimes and offences against the Law of Nations;
 - Political crimes and offences which are the cause and consequence of disorders, necessitating armed federal intervention;
 - Offences committed by officials appointed by a Federal authority when brought before the Court by that authority.

The Constitution provides that the Federal Tribunal shall pass judgment on the aforementioned criminal cases with the assistance of a jury to give a verdict on facts. The Court also has original jurisdiction over other serious crimes such as counterfeiting and voting frauds.

The Constitution empowers the Confederation to legislate in the field of criminal law. In criminal cases, the Court holds assizes from

time to time at fixed centres in which the country is divided for this purpose. In these assizes, a section of court consisting of three judges, sits with a jury chosen by lot from the neighbouring villages. Concurrence of five-sixths of the jury is necessary to convict an accused person.

The Federal Tribunal sits in four chambers for exercising its criminal jurisdiction: the Federal Criminal Court, the Court of Accusation, the Court of Cessation and the Extraordinary Court of Cessation of seven judges. The Federal Court of Accusation prepares the business for the Federal Criminal Court and decides if there is *prima facie* case and decides the place of criminal jurisdiction.

- **Constitutional Cases:** The Federal Tribunal has a limited constitutional jurisdiction. It adjudicates:
 - conflicts of competence between the federal authorities on one side and authorities of the Cantons on the other side; In all such cases of conflict of competence it is the duty of the Federal Court to uphold the Federal Constitution against the Cantonal and the Cantonal Constitution against ordinary laws and decrees of the Cantons.
 - disputes between Cantons in the field of the constitutional rights of citizens as well as individual complaints concerning the violation of inter-Cantonal agreements and international treaties.

In all the aforesaid disputes, the Federal Tribunal applies the laws and generally binding decrees adopted by the Federal Assembly as well as the international treaties approved by the Federal Assembly.

- **Administrative Cases:** It possesses limited jurisdiction in this field as well. Earlier, these cases used to be taken up by the Federal Council. Since 1925, these powers have been transferred to the Federal Tribunal. In this capacity, it decides disputes relating to the legal competence of public officials and also hears railway suits and administrative disputes in matters of taxation.
 - **Appellate Jurisdiction (Civil Cases):** The Federal Assembly has equipped the federal court with appellate authority by allowing it to hear appeals from the cantonal courts, in cases arising under

federal laws provided that they involve a particular sum of money (previously 8000 *frank* or more).

- **As Guardian of the Constitution:** The federal courts are generally the guardian of the Constitution. The Swiss Tribunal, however, possesses limited powers of judicial review. It is empowered to declare a cantonal law unconstitutional if it comes into conflict with the Federal Constitution or even a cantonal Constitution. It thereby upholds the Federal Constitution and statutes against cantonal constitutions and laws. It even protects the cantonal Constitution against cantonal laws and administrative acts. The Swiss Federal Tribunal does not possess the power to declare a federal law unconstitutional if it violates the Constitution. This right is reserved for the Federal Assembly subject to the final verdict of the people through Referendum.

COMPARISON OF THE SWISS FEDERAL TRIBUNAL WITH THE AMERICAN SUPREME COURT

While making an analysis between the federal judiciary in Switzerland and the United States of America, one can find striking points of difference between the two in terms of its composition, organization and working. The differences between the Swiss Federal Tribunal and the American Supreme Court are discussed below:

- The Swiss Federal Tribunal, though a national court, stands alone in the sense that it does not have its branches or subordinate courts spread over the whole country. The American Supreme Court, on the other hand, has a set of subordinate courts - both circuit and district - located throughout the country.
- The Swiss Tribunal depends upon the Federal Council, acting through the Cantonal governments, for the enforcement of its decisions. The Tribunal does not have separate staff for this purpose. The American Supreme Court, on the other hand, has a regular federal staff to execute its decisions.
- The judges of the Swiss Tribunal are elected by the Federal Assembly in a joint session whereas the judges of the American Supreme Court are appointed by the President with the concurrence of the Senate.

- The judges of the Swiss Tribunal are elected for a period of six years whereas the judges of the American Supreme Court are appointed for life. As for their removal, the judges of the Federal Tribunal can be removed by the Federal Assembly, whereas the judges of the American Supreme Court are removed by the process of ***impeachment***.
- The Swiss Tribunal consists, at present however, of 38 full time federal judges including the President and Vice-President and 19 alternates. The American Supreme Court is composed of nine judges including the Chief Justice.
- The real difference between the Swiss Tribunal and American Supreme Court is between the powers of the two. The Federal Court is bound by an express provision of the Constitution to apply every law passed by the Federal Assembly. The Swiss Tribunal has no power to ascertain the constitutionality of Federal Statutes. This right is reserved for the Federal Assembly subject to the final verdict of the people through Referendum. At the most, the Tribunal is empowered to declare a cantonal law unconstitutional if it comes into conflict with the Federal Constitution or even cantonal Constitution. In sharp contrast, the American Supreme Court enjoys vast powers of judicial review. It can declare any law of the Congress, any executive decree and any State law as invalid if it violates the Constitution. Furthermore, the original jurisdiction of the Swiss Federal Tribunal greatly differs from that of the American Supreme Court. Conflicts of jurisdiction between the Federal Tribunal and the Federal Council are decided by the Federal Assembly. The Federal Tribunal, therefore, has no power, like the American Supreme Court to decide upon the question of its own competence.
- The Swiss Federal Tribunal has not played any important role in the development of the Swiss Constitution while the American Supreme Court has played an important role in this regard.

In the final analysis, it may be stated here that since its establishment at Lausanne in 1875, the Swiss Federal Tribunal has never enjoyed the prestige and independence as enjoyed by the American Supreme Court.