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# Status of Court Management in Switzerland<sup>1</sup>

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## 1. Introduction

### 1.1 Context

At an international level, and in particular in the Anglo-American region, there is a long tradition of scientific study of court management. Thus in Australia there has for quite some time been the Australasian Institution of Judicial Administration (AIJA)<sup>2</sup>, which concerns itself with every aspect of court administration. In the USA too, research and education in the field of court management has been institutionalized for a long time, in particular by the National Center for State Courts (NCSC)<sup>3</sup> and the related Institute for Court Management (ICM)<sup>4</sup>. In Europe, a working group known as the European Commission for the Efficiency of Justice (CEPEJ)<sup>5</sup> deals with issues of court management as part of the activities of the Council of Europe. The fact that court management is also increasingly becoming an important topic in the European area was demonstrated by the establishment, in 2008, of a new professional journal that focuses on court management, the International Journal for Court Administration (IJCA).<sup>6</sup>

In Switzerland, the issue of court management was discussed for the first time in the course of the *New Public Management (NPM) projects* in the cantons, but was often limited to the question of whether to include the courts in the relevant cantonal NPM model.<sup>7</sup> Generally speaking, court management was a matter that was only sporadically raised, such as at a symposium of the Swiss Society of Administrative Sciences (SSAS) in 2003<sup>8</sup> or more recently in an article in which theses on good court management are formulated.<sup>9</sup> In Switzerland even today there is a general dearth of empirical and other theoretical findings on the mode of operation of the justice system and its interaction with society, or with specific social target groups. For example, it was only in 2009 that the first indications were obtained of how cases in various categories were handled by the highest administrative and social insurance courts in Switzerland.<sup>10</sup> In the fields of criminal and civil justice, no such information is available at all. There is also a lack of empirical principles related to the “self-image of judges”, i.e. how judges in Switzerland see themselves.<sup>11</sup> Empirical research into the activities of lay judges also remains in its infancy in Switzerland, whereas in other countries, the relevant principles are available.<sup>12</sup> It has, however, been possible to obtain initial findings on the functioning of the federal courts while evaluating the effectiveness of the new federal justice system.<sup>13</sup>

In order to conduct more detailed research into the workings of the Swiss justice system and to devise principles for optimizing processes, in May 2012 work began on a project on “Basic Research into Court Management in Switzerland”<sup>14</sup> involving universities in Switzerland<sup>15</sup> and abroad<sup>16</sup>; the project is supported by the Swiss National Science Foundation (SNSF). To get this research project underway, the Centre of Competence for Public Management (CCPM) of the University of Bern, as the project's leading house, conducted a survey of Swiss courts on the status of court management. In the following remarks the methods and the results of this survey are summarized and commented on. The findings of the survey will be subject of further research work within the project.

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<sup>1</sup> Study within the framework of the research project “Basic Research into Court Management in Switzerland” which is supported by the Swiss National Science Foundation (SNSF)

<sup>2</sup> <http://www.aija.org.au/> (Status: 07.08.2012).

<sup>3</sup> <http://www.ncsc.org/> (Status: 07.08.2012).

<sup>4</sup> <http://www.ncsc.org/Education-and-Careers/Courses/ICM-History.aspx> (Status: 07.08.2012).

<sup>5</sup> See [http://www.coe.int/t/dghl/cooperation/cepej/default\\_en.asp](http://www.coe.int/t/dghl/cooperation/cepej/default_en.asp) (Status: 07.08.2012).

<sup>6</sup> See also on the topicality of the subject LANGBROEK (2008), p. 1 ff.

<sup>7</sup> See for example MEIER (1999).

<sup>8</sup> See KETTIGER (2003).

<sup>9</sup> See LIENHARD (2009a), LIENHARD (2009b).

<sup>10</sup> See Lienhard /Kettiger (2009), Lienhard/Kettiger (2010).

<sup>11</sup> Approaches to the “self-image of judges” – mainly fragmentary or from a sectoral or disciplinary viewpoint – can be found in EHRENZELLER/LUDEWIG-KEDMI (2006); LUDEWIG-KEDMI (2007).

<sup>12</sup> See e.g. MACHURA (2003); MACHURA (2006).

<sup>13</sup> See Lienhard/Rieder/Kiliass/Schwenkel/Hardegger/Odermatt (2010).

<sup>14</sup> See <http://www.justizforschung.ch>.

<sup>15</sup> University of Bern, University of Lucerne, University of St. Gallen, University of Zurich, IDHEAP Lausanne.

<sup>16</sup> University of Utrecht (The Netherlands).

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## 1.2 The Field in Question: Court Management

### 1.2.1 The Constituent Aspects of Court Management<sup>17</sup>

The court system in Switzerland – like all state bodies – is under increasing pressure to reform. On the one hand, workloads, the complexities dealt with and procedural requirements are all tending to grow in volume, whilst at the same time, there are scarcely any additional resources allocated or available to cope with the problem<sup>18</sup>. In addition, observers in Switzerland have noted a tendency towards ever larger court organizations.<sup>19</sup> The outcome is that judicial authorities are forced to increase their efficiency<sup>20</sup>. This can ultimately be achieved only through a truly effective system of court management<sup>21</sup>. Simply “administering” the courts is no longer sufficient. The former President of the Cantonal Court of Appeal in the Canton of Zurich, *Rainer Klopfer*, described the importance of court management as follows: “A court, as a major institution providing services, and as the most important supervisory body, needs a professional, efficient administration. This does not happen without management, but this in no way means that the independence of judges is compromised, just the opposite. It produces better working conditions for the judges and means that they can better fulfill their core duty, namely to adjudicate”<sup>22</sup>.

In recent times, endeavors to improve court management in theory and practice<sup>23</sup> have produced a number of constituents for a system of good court management that may be listed as follows<sup>24</sup>:

- strategic principles;
- management structures;
- management support;
- management instruments;
- caseload management<sup>25</sup>;
- court controlling<sup>26</sup>;
- client-friendly practices;
- career development and job satisfaction;
- quality assurance and development; and
- certification.

### 1.2.2 Management and Quality Standards in the Justice System

In the 1960s and 1970s, research in the field of economics focused intensively on the issue of how companies should be controlled and managed. The aim was to establish theoretical concepts of management that were able to take account of both the complex internal structure of companies as well as their position embedded in a complex environment. The best known management model to emerge from this work – in the European area at any rate – is the “St Gallen Management Model”.<sup>27</sup> As these integrated management models, based on scientific principles, achieved acceptance, this model was refined by the University of St Gallen and today, under the title “New St Gallen Management Model”<sup>28</sup>, it represents one of the most important sets of principles in business management. In the course of the debate on New Public Management (NPM), in the second half of the 1980s, two special management models for public administration were devised in Switzerland.<sup>29</sup> The development of these management models stemmed from the recognition that although integrated control and management is essential for modern administration, the models devised for private companies are not suitable for the special circumstances and tasks of public administration and therefore cannot be adopted indiscriminately in the public sector.

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<sup>17</sup> The text of this sub-chapter corresponds in part to LIENHARD (2009a), Margin no 25 ff., and LIENHARD/KETTIGER (2009), p. 415 f.

<sup>18</sup> See LIENHARD (2005), p. 461 f.; KETTIGER (2003a), p. 9 ff.

<sup>19</sup> In most cases, this is a consequence of the reorganisation processes. The size of the courts in Switzerland is nevertheless still below average in comparison with other countries. For example, a Dutch regional court has around 100 judges.

<sup>20</sup> See LIENHARD (2005), p. 461 f.; MEIER (1999), p. 2; for more detail KETTIGER (2003b), p. 176 ff.; HOFFMANN-RIEM (2001), p. 211 ff., talks of truth, justice, independence and efficiency as the „magic square of the third power“.

<sup>21</sup> For more detail on court management, see LIENHARD (2009a), Margin no 25 ff.; LIENHARD/KETTIGER (2009), p. 415 f.

<sup>22</sup> KLOPFER (2005).

<sup>23</sup> See for example LIENHARD (2005), p. 460 ff.; KETTIGER (2003b), p. 173 ff.; PARLIAMENTARISCHE VERWALTUNGSKONTROLLSTELLE (2001).

<sup>24</sup> See for more detail LIENHARD (2009a), Margin no 31 ff.

<sup>25</sup> See BANDLI (2009), BANDLI (2012), p. 111; LIENHARD/KETTIGER (2009).

<sup>26</sup> See LIENHARD (2007).

<sup>27</sup> See ULRICH/KRIEG (2001).

<sup>28</sup> See RUEGG-STÜRM (2002).

<sup>29</sup> See THOM/RITZ (2008), p. 41 ff.; SCHEDLER/PROELLER (2011), p. 19 ff., in particular p. 22.

There was also a need for a refined purpose-built management model for non-governmental organizations (NGOs), and more particularly non-profit organizations (NPOs) due to their special position in society and their tasks.<sup>30</sup> Around the same time as this discussion of management models for public administration, a debate arose on more management in the justice system, covering a wide academic spectrum and being quite heated at times. In Germany, this stemmed in part from a book by Wolfgang Hoffmann-Riem<sup>31</sup>. In Switzerland, the issue – as already mentioned – was taken up by Kettiger and Lienhard.<sup>32</sup> No management model was produced however, nor even any approaches to one. Nonetheless there are thesis-type model concepts on the social function of the justice system<sup>33</sup>. The question of whether management elements exist in the justice system cannot therefore be based on a specific model but must borrow from the existing management models for the private sector and public administration.

In order to devise the specific questions that enable an analysis and evaluation of the management organization of judicial authorities to be made, use can also be made of quality management tools that have been specifically developed for courts or that are regarded as suitable for the justice sector. The latter can be found primarily in the following *quality assurance systems*:

- *ISO 9001 (DIN EN ISO 9001)*: EN ISO 9001 lays down the minimum requirements for a quality management system (QM system) that an organization has to satisfy in order to provide products and services that meet the expectations of clients and any official requirements. At the same time the management system should be subject to a constant process of improvement.
- *Common Assessment Framework (CAF)*: This approach to quality assurance developed for public administrations at the behest of the EU and based on EFQM attempted to devise a uniform scheme for quality assurance for administrations throughout Europe.<sup>34</sup> In the course of this project very specific questionnaires were developed in particular in Germany.<sup>35</sup> The CAF is also regarded as suitable set of instruments for courts as well.<sup>36</sup>
- *Trial Court Performance Standards (TCPS)*: In the USA, the National Center for State Courts (NCSC) developed a system for measuring performance and quality with 22 standards and 68 related indicators that are structured into five subject areas (Access to Justice; Expedition and Timeliness; Equality, Fairness and Integrity; Independence and Accountability; Public Trust and Confidence).<sup>37</sup> The TCPS was primarily developed from the viewpoint of the criminal justice system. As a quality assurance instrument, the TCPS has proven in court practice to be too expensive and complicated.<sup>38</sup> Nonetheless the list of 22 standards and 68 indicators provides a reference point for quality aspects in the justice system and indirectly for questions relating to the organization of the courts.
- *CourTools*:<sup>39</sup> Also developed by the NCSC in the USA, the system of court performance measures known as CourTools offer courts a balanced perspective on how the court is conducting its business. It provides key figures for the running of courts. A version of CourTools has been developed for trial courts and for appellate courts.
- *CEPEJ question list*: The European Commission for the Efficiency of Justice (CEPEJ) has devised its own question list for investigating the quality of the justice system and the courts by way of self-evaluations.<sup>40</sup> Like the TCPS, this provides reference points for important organizational questions in the justice system.

In addition, various organs of the Council of Europe have issued guidelines (soft law) on court organization for the purpose of implementing the guarantees of the European Convention on Human Rights (ECHR).<sup>41</sup> Of importance in particular are:

- the recommendation by the Council of Ministers dated 17 November 2010 “On judges: independence, efficiency and responsibilities”<sup>42</sup>;

<sup>30</sup> A great deal has been written about this, see e.g. SCHWARZ (1984); TIEBEL (2006).

<sup>31</sup> See HOFFMANN-RIEM (2001).

<sup>32</sup> See KETTIGER (2003); LIENHARD (2009a).

<sup>33</sup> See KETTIGER (2003b), p. 199 ff., KETTIGER (2007), p. 247 ff.

<sup>34</sup> See [http://www.caf-netzwerk.de/clin\\_227/nn\\_376176/SharedDocs/Publikationen/CAF/caf\\_Broschuere2002.templateId=raw,property=publicationFile.pdf/cafBroschuere2002.pdf](http://www.caf-netzwerk.de/clin_227/nn_376176/SharedDocs/Publikationen/CAF/caf_Broschuere2002.templateId=raw,property=publicationFile.pdf/cafBroschuere2002.pdf) (Status: 07.08.2012); see also <http://www.bka.gv.at/DocView.axd?CobId=23866> (Status: 07.08.2012).

<sup>35</sup> See e.g. [http://www.caf-netzwerk.de/clin\\_227/nn\\_1645010/CAF-Netzwerk/Shared/Publikationen/caf\\_arbeitsbogen\\_stand\\_oktober\\_2009.templateId=raw,property=publicationFile.pdf/caf\\_arbeitsbogen\\_stand\\_oktober\\_2009.pdf](http://www.caf-netzwerk.de/clin_227/nn_1645010/CAF-Netzwerk/Shared/Publikationen/caf_arbeitsbogen_stand_oktober_2009.templateId=raw,property=publicationFile.pdf/caf_arbeitsbogen_stand_oktober_2009.pdf) (Status: 07.08.2012).

<sup>36</sup> The European Institute of Public Management (EIPA) offers seminars on the subject of the CAF in the justice system.

<sup>37</sup> See [http://www.ncsconline.org/d\\_research/TCPS/Contents.htm](http://www.ncsconline.org/d_research/TCPS/Contents.htm) (Status: 07.08.2012).

<sup>38</sup> See SCHAUFFLER (2007), p. 119 f.

<sup>39</sup> See [http://www.ncsconline.org/D\\_Research/CourTools/index.html](http://www.ncsconline.org/D_Research/CourTools/index.html) (Status: 16.07.2012).

<sup>40</sup> European Commission for the Efficiency of Justice (CEPEJ) (2008).

<sup>41</sup> For more detail on this, see TSCHIRKY (2011).

- The report of the Venice Commission from March 2010 referring to the aforementioned recommendation by the Council of Ministers<sup>43</sup> “Independence of the Judicial System Part I: The Independence of Judges”<sup>44</sup>.
- Various recommendations made by the Consultative Council of European Judges (CCJE).
- In contrast to the position with the ECHR, there are no guidelines for court organization directly related to UN Pact II. On the other hand, there are various (non-legally binding) documents from organizations affiliated to the UN (but not from UN organs) that make reference to Art. 10 of the UN Universal Declaration of Human Rights<sup>45</sup>, which also calls for access to an independent court.
- The Syracuse Draft Principles on the Independence of the Judiciary.<sup>46</sup>
- The Montreal Universal Declaration on the Independence of Justice.<sup>47</sup>
- United Nations Basic Principles on the Independence of the Judiciary.<sup>48</sup>
- These principles also provide reference points on what must be taken into account in court management.
- The various documents on the quality of court organization and court management contain a certain number of requirements at various levels.<sup>49</sup> On the one hand they contain basic elements for court systems with direct reference to case law (e.g. independence of the courts, access to the courts, accelerated procedures) and on the other, support elements for court management (e.g. quality assurance systems, caseload management, controlling). This investigation concentrates on elements in the second category.

### 1.3 The Subject of the Survey: the Organization of Courts in Switzerland

When considering the following description of the results of the survey on court management in Switzerland, it should be noted that the courts in Switzerland are organized in a wide variety of ways. Due to the federal system of justice, court organization is the responsibility of the cantons: each of the 26 cantons has far-reaching autonomy relating to the structure of its justice system.<sup>50</sup> In the criminal and civil justice systems, the cantons have their own trial and appeal courts<sup>51</sup>. In the administrative justice system, decisions are commonly made by administrative judicial authorities as the prior instance to the administrative and social insurance courts. Whereas the *regulations on civil and criminal procedure* were harmonized in 2011 for all the cantons, the procedural rules for the administrative justice system still vary from canton to canton.

The decisions of the cantonal appeal courts can normally be referred to the Federal Supreme Court. The Confederation also has its courts of prior instance (Federal Administrative Court<sup>52</sup>, Federal Criminal Court, Federal Patent Court), whose decisions can normally be appealed to the Federal Supreme Court. The federal courts each have their own procedural codes.

In addition, the size of a canton has a significant influence on court organization. In small cantons (e.g. Appenzell-Ausserrhoden, Appenzell-Innerrhoden, Nidwalden, Obwalden, Zug) and the city cantons (Basel-Stadt, Geneva) the entire judicial infrastructure (ordinary and appeal courts) is normally centralized in one location. In the larger cantons (e.g. Aargau, Bern, Graubünden, Vaud, Zurich) there is a high degree of regional decentralization among the ordinary courts; the appeal courts however, are generally based in one location.

The varying size of the cantons and the structural diversity in court organization leads to considerable differences in the size of the courts. This ranges in Switzerland from ordinary cantonal civil and criminal courts with one professional judge, to the Federal Administrative Court, which has around 75 professional judges<sup>53</sup>. In the Cantons of Appenzell-Innerrhoden, Appenzell-Ausserrhoden, Glarus, Obwalden and Uri, the ordinary court or courts (in the civil and criminal justice systems) have 3 or fewer professional judges. In the same 5 cantons and in the Canton of Nidwalden, furthermore, the appeal court

<sup>42</sup> Council of Europe, Recommendation CM/Rec(2010)12.

<sup>43</sup> Council of Europe, Recommendation CM/Rec(94)12.

<sup>44</sup> Venice Commission, CDL-AD(2010)004.

<sup>45</sup> See GASS/KIENER/STADELMANN (2012), p. 34.

<sup>46</sup> See GASS/KIENER/STADELMANN (2012), p. 35 ff.; this is the result of a conference of experts organised in May 1981 by the Association of Penal Law and the International Commission of Jurists.

<sup>47</sup> See GASS/KIENER/STADELMANN (2012), p. 42 ff., this is the result of the “First World Conference on the Independence of Justice” held on 10 June 1983 in Montreal.

<sup>48</sup> See GASS/KIENER/STADELMANN (2012), p. 57 ff., this is the result of the “Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders” held from 26 August to 6 September 1985 in Milan.

<sup>49</sup> See also LIENHARD (2009a), Margin no 79.

<sup>50</sup> The Swiss federal system of justice is subject of research work conducted by the authors for the Forum of Federations that will be published in 2013.

<sup>51</sup> The cantonal appeal courts have a variety of different names: e.g. Appellationsgericht, Obergericht, Kantonsgericht.

<sup>52</sup> For more detail on this, see BANDLI (2012).

<sup>53</sup> See <http://www.bvger.ch/gericht/organisation/index.html?lang=de> (Status: 07.08.2012).

or courts (in the civil, criminal and administrative justice systems) have 3 or fewer professional judges.<sup>54</sup> Lay judges are used in a variety of ways in the cantonal courts with regard to the relationship between lay and professional judges, their duties (e.g. advisory activities) and working hours. The characteristics mentioned of the organization of Swiss courts have considerable effects on the organizational and operational structures of the individual courts and therefore on court management as well.

### 1.4 Methodology and Procedure

In May 2012, an empirical survey of selected elements of court management was conducted in the cantonal appeal courts for criminal, civil and administrative matters<sup>55</sup>, as well as the federal courts (Federal Supreme Court, Federal Criminal Court, Federal Administrative Court, Federal Patent Court). The selection of the elements of court management is based on the management models and quality assurance tools mentioned in 1.2.2. The following six elements, described using a variety of different terms, are elements of almost all of the listed models and tools and are also of special interest in relation to the research project "Basic Research into Court Management in Switzerland":

- *Strategy*: The focus in this case is primarily on the strategic management instrument, the strategic management body and the operationalization of the strategic goals.
- *Management processes*: Important aspects in this area are the caseload management system and/or control, case processing and the case supervision system, the quality management system, certification, performance objectives as well as the service level mandate and/or the public service agreement.
- *Organizational structure*: This element covers firstly the structure of the budget and the right to make budgetary proposals, secondly the provision and the upkeep of the required buildings or offices and of the furniture and fittings and thirdly the provision, maintenance and operation of the IT systems. Also of interest in relation to the organizational structure are the court management board and management support.
- *Staff resources*: In this element, recruiting staff, retaining staff and career development, the basic and continuous professional education of judges and instruments of reflection (e.g. meetings and peer reviews) are relevant.
- *Public relations*: This element covers communication with the public (e.g. media and public relations) as well as feedback instruments for the legal profession and the public.
- *Culture*: In relation to this, the focus is on culture-forming measures, such as codes of conduct.

The survey of cantonal courts of appeal and the federal courts was conducted using a written questionnaire structured according to the abovementioned elements and including a total of 39 questions on the subject of court management. When devising the questionnaire, reference was made to the latest questionnaire from the CEPEJ for evaluating justice systems in order to prevent any overlap.<sup>56</sup> Both quantitative and qualitative data were generated using what were mainly closed but in some cases open questions, together with the opportunity to provide further details and comments. The most significant results of the survey are presented and discussed below.

## 2. Results of the Survey

### 2.1 General Remarks

As can be seen from Table 1, a total of 32 appeal courts in 23 cantons and 3 federal courts completed the questionnaire. The appeal courts in the Cantons of Appenzell Ausserrhoden, Fribourg and Schwyz as well as the Federal Patent Court did not take part in the survey.<sup>57</sup> The response rate is accordingly very high.

The following remarks are based on data generated by the 35 completed questionnaires from the 32 cantonal and the 3 federal courts listed in Table 1. In some cases additional available information was also used.

### 2.2 Strategy

According to the survey, in nine of the 23 cantons assessed, the appeal courts have a strategy or a set of guiding principles. These are the Cantons of Aargau, Basel-Landschaft, Basel-Stadt, Bern, Geneva, Glarus, Lucerne, Neuchâtel and Obwalden (see Graphic 1). In three further cantons, one of the two appeal courts has a strategy or set of guiding

<sup>54</sup> The Cantonal Court of the Canton of Appenzell-Innerrhoden has what is probably a unique feature: all of its judges work on a part-time or voluntary basis and are therefore lay judges. This includes the Cantonal Court President as well.

<sup>55</sup> Not including special courts (such as independent social insurance courts).

<sup>56</sup> See European Commission for the Efficiency of Justice (CEPEJ) (2011).

<sup>57</sup> The Federal Patent Court and the Cantonal Court of Appeal of the Canton of Appenzell Ausserrhoden did not explain in any detail why they were unable to participate in the survey. The Cantonal Court of Appeal in the Canton of Fribourg decided not to answer the questionnaire because it is currently undergoing reorganisation. The Cantonal Court of Appeal and the Administrative Court in the Canton of Schwyz did not take part due to its excessive workload.

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principles. In the cantons of Ticino and Thurgau this is the Administrative Court, in the Canton of Zurich, the Cantonal Court of Appeal. What is interesting is that the cantons where the courts have no strategy, (with the exception of the four Cantons of Graubünden, St. Gallen, Vaud and Valais) are small cantons with, in some cases a small and very centralized court infrastructure. All the federal courts considered have a strategy or a set of guiding principles.

As far as the key elements of the strategy are concerned, three principal themes can be recognized: firstly independence, secondly quality, efficiency and expeditiousness and thirdly the issue of setting priorities for case processing. In addition, other than in one canton, it is always the judicial authority that is responsible for deciding on the strategy or the guiding principles. This suggests that in this area of court management, the principle of separation of powers and judicial independence are strictly observed. In only very few cantons and in only one federal court, however, is there an implementation plan for the strategy or the guiding principles.

As far as the body responsible for deciding on the strategy or the set of guiding principles is concerned, the cantons presented a varied picture. In six courts an independent judicial authority is responsible, in 11 cantons and in the federal courts each court is responsible for itself and in one court an executive board is responsible.

## **2.3 Management Processes**

### **2.3.1 Case Processing and Case Monitoring (Business Oversight)**

With the exception of the Canton of Jura, all the appeal courts in the 23 cantons assessed have a system for case processing and case monitoring (case management), which records the number of new cases and the number of cases that have been decided. In most cantons the system also records the number of cases that have been referred back by a superior authority for reconsideration and/or the duration of the proceedings. In a few cantons, the system records the number the cases which went to trial. In addition, in the Cantonal Courts of Appeal in the Cantons Basel-Landschaft, Solothurn and Uri, the system records the criminal proceedings under threat of time-bar. In the courts of first instance, the system in each case records the same information as in the cantonal appeal courts. According to this study in the Cantonal Court of Appeal in the Canton of Jura, the individual court presidents are solely responsible for case processing and case monitoring, which is why there is no centralized tool.

In all the three federal courts assessed, there is a system for case processing and case monitoring that records the number of new cases, the number of decided cases and the duration of the proceedings. In the Federal Criminal Court and in the Federal Administrative Court the number of cases that have gone to trial is also recorded, as well as the number of cases that have been referred back for reconsideration by the superior authority. In the Federal Criminal Court the system also records the criminal proceedings under threat of time-bar.

### **2.3.2 Caseload Management System**

The following survey results relating to the caseload management system must be regarded with caution. It cannot be said with any certainty if the courts use a system where the caseload is weighted or whether the figures relating to the allocated cases have simply been recorded.

As the survey showed, in nine cantons (Aargau, Basel-Landschaft, Graubünden, Lucerne, St. Gallen, Thurgau, Vaud, Valais and Zug) the appeal courts have a caseload management system (see Graphic 2). In the Cantons of Bern, Ticino and Zurich each administrative court also has this type of system. At most of the appeal courts in the total of twelve cantons, there is a caseload management system that covers both the workload of the divisions/chambers and the workload of the judges. Of the federal courts, only the Federal Administrative Court has a caseload management system. This covers the workload of the divisions/chambers.

The results also indicate that the issue of whether there is a caseload management system available or not depends on the size and the structure of the canton concerned. For the appeal courts and the courts of first instance, the caseload management system is largely identical, other than in the Canton of Basel-Landschaft.

### **2.3.3 Allocation of Cases**

As far as the allocation of cases to divisions/chambers and judges is concerned, in only three of the cantons assessed (Geneva, Nidwalden and Solothurn) is there no standardized method. In a further four cantons (Glarus, St. Gallen, Thurgau and Zug) there is no standardized method for the administrative court, but in the Cantonal Court of Appeal there is such a method. In the Canton of Zurich, this method exists only in the Administrative Court. Among the federal courts, the Federal Criminal Court has no standardized method for the allocation of cases.

An analysis of the results shows that the Federal Administrative Court<sup>58</sup> and the Courts of Appeal in the Cantons of Graubünden and Neuchâtel all have a computer controlled case allocation system. The Court of Appeal in the Canton of Solothurn is currently introducing this type of system for the Insurance Court. The most common method of case allocation is one in which a legal instrument (an act, procedural rules, regulations) determines which division or chamber is responsible for what category of legal dispute or category of case. In a second step, cases are allocated to individual judges according to their workloads (with a view to distributing the workload as fairly as possible).

### 2.3.4 Quality Management and Certification

In a good third of the cantons assessed (Aargau, Bern, Geneva, Lucerne, Neuchâtel, Solothurn and Zurich) the appeal courts have a quality management system (QM system)<sup>59</sup> and/or performance measurement system (see Graphic 3). In each of the Cantons of Ticino, Thurgau and Zug one of the two appeal courts has such a system. For the lower courts, no precise conclusion can be drawn. Of the federal courts, the Federal Supreme Court and the Federal Administrative Court have a QM system. Only in one canton and in the Federal Supreme Court does the QM system or performance system also covers the work of the individual judges.

In the cantonal appeal courts and in the federal courts, quality is measured on the basis of a variety of indicators<sup>60</sup>. The indicators most commonly applied are the number of cases concluded, the duration of proceedings<sup>61</sup>, the number of pending cases, the number of new cases and the amount of work done by the judges and the court staff. Only in two cantonal appeal courts are the costs of the proceedings also used as a factor in quality and/or performance. Likewise there are only two courts in which the percentage of cases processed by a single judge, together with the satisfaction of users (in relation to the service provided by the court) is systematically recorded. The satisfaction of the court staff is recorded only in three of the cantonal appeal courts and in the Federal Supreme Court. (For more on quality trends see 2.5.4, on feedback instruments see 2.6.2).

An additional step with regard to quality management is certification, which involves the evaluation of existing quality management instruments by an external professional agency that has been specially authorized for this purpose.<sup>62</sup> According to our survey, not one court authority in Switzerland has a certified quality management system (e.g. ISO 9001, ISO/IEC 27001, EFQM, GoodPriv@cy<sup>63</sup>).

### 2.3.5 Service Level Mandate and Performance Objectives

A service level mandate or a public service agreement with courts or individual divisions in the sense of contract management exists only in the cantonal courts and only in the Cantons of Bern, Lucerne, Solothurn and Zurich<sup>65</sup> (see Graphic 4). In these cantons<sup>66</sup>, where the central administration generally has implemented the principles of NPM<sup>67</sup>, the service level mandate for courts is directly related to the cantons' financial planning and budget processes.

Irrespective of the issue of outcome-oriented public management systems, in eleven further cantons (Aargau, Basel-Landschaft, Geneva, Glarus, Graubünden, Obwalden, St. Gallen, Schaffhausen, Ticino, Uri and Zug) the cantonal appeal courts work with performance objectives, which are normally set by the plenum or by the administrative committee. In a total of nine cantons (Aargau, Bern, Basel-Landschaft, Geneva, Obwalden, Schaffhausen, Solothurn, Zug and Zurich), lower courts are also required to meet performance standards.

<sup>58</sup> See also BANDLI (2012), p. 111 f.

<sup>59</sup> The quality management system does not have to comply with a recognised standard (e.g. ISO, EFQM, see 1.2.2); it may be a custom-made system, but it has to be clearly defined.

<sup>60</sup> The survey offered a choice of the following indicators: new cases; duration of proceedings; concluded cases; pending cases; work performance of the judges and the court staff; percentage of cases dealt with by a single judge; execution of decisions in criminal cases (sentences and summary penalty orders); satisfaction of the court staff; satisfaction of court users (in relation to the service provided by the court); legal and organisational quality of the court; costs of court proceedings.

<sup>61</sup> From a certain duration of proceedings, the issue is no longer simply quality management but a potential violation of the fundamental right to have legal cases heard by a court within a reasonable time (Art. 29 para. 1 Federal Constitution, Art. 6 ECHR), see CALVEZ (2006).

<sup>62</sup> See LIENHARD (2009a), p. 14.

<sup>63</sup> A Swiss standard for data management and data protection.

<sup>64</sup> This result corresponds to the authors' own investigations in 2010/2011.

<sup>65</sup> In the Canton of Zurich, only the Cantonal Court of Appeal has a service level mandate or a public service agreement; the Administrative Court has no service level mandate.

<sup>66</sup> See the FLAG 2009 report, BBI 2009 7915, p. 7954; KOLLER/HIRZEL/ROLLAND/DE MARTINI (2012), p. 145.

<sup>67</sup> i.e. running the administration according to the principles of outcome-oriented public management (in particular with a service level mandate and global budget), see SCHEDLER/PROELLER (2011).

The Federal Criminal Court and the Federal Administrative Court also work with internal performance goals. In the Federal Administrative Court the plenum of judges is responsible for determining the annual goals for the divisions.

## **2.4 Organizational Structure**

### **2.4.1 Court Management Board**

According to our survey, only the Cantonal Court of Appeal in the Canton of Appenzell Innerrhoden, the Administrative Court in the Canton of Graubünden, the Cantonal Court of Appeal and Administrative Court in the Canton of Obwalden, the Cantonal Court of Appeal in the Canton of Schaffhausen and the Court of Appeal in the Canton of Ticino have no court management board (see Graphic 5). However, the Cantonal Court of Appeal in the Canton of Schaffhausen has an internal management board. In all the other cantons surveyed and in the federal courts assessed, there is a court management board. The organizational structure and the responsibilities of the court management board vary considerably. Often the court management board consists of an administrative committee (a body made up of judges).

### **2.4.2 Management Support**

In addition to the court management board, a management support office is also an element of court management. Management support includes both efficient (staff) services assisting the Presidium, the plenum and the management board as well as the operational management of the administration of justice.<sup>68</sup>

In the Cantons of Appenzell Innerrhoden, Glarus, Graubünden, Nidwalden, Obwalden, Schaffhausen and Uri, the appeal courts have no management support office of their own. In the Canton of Ticino it exists only in the Administrative Court and in the Canton of Thurgau only in the Cantonal Court of Appeal. In all the other cantons, the cantonal appeal courts have some form of management support office. In the Cantons of Basel-Stadt, Geneva, Lucerne, Neuchatel, St. Gallen, Valais, Zug and in certain cases in the Cantons of Bern, Thurgau and Zurich, the courts of first instance have a management support office of their own design. The three federal courts assessed also have a management support office.

The structure of the management support office in the cantonal appeal courts and federal courts varies considerably (see Table 2). With the exception of the Cantonal Court of Appeal in the Canton of Valais, the management support office in the courts always comprises a general secretary or a court administrator. In a number of courts, the support also includes an IT service, a financial services section and a human resources section. Only in the appeal courts in the Canton of Zurich and in the federal courts is the management of office space one of the tasks of the management support office.

### **2.4.3 Budget<sup>69</sup>**

The budget for the courts in the Cantons of Aargau, Bern, Geneva, Lucerne and Solothurn (to a certain extent) consists of product group budgets with global financial requirements (in keeping with the principles of NPM) (see Graphic 6). In the majority of cantons, the courts' budget is structured according to the type of costs (traditional input control), whereby in 7 cantons the courts have a global budget. The budgets of the federal court are structured according to the type of costs.

In most cantons the courts can make their own budget proposals to the cantonal parliament (irrespective of whether such autonomy is mentioned in the cantonal constitution). Only in the Cantons of Basel-Stadt, Neuchatel, Schaffhausen, Ticino and Uri is the right to make budgetary proposals on behalf of the courts the responsibility of the cantonal government (see Graphic 7).<sup>70</sup> Examples can be found of the model whereby the courts submit their own budget directly to the parliament (Aargau, Basel-Landschaft, Zug) and the model in which the cantonal government integrates the courts' budget proposal unamended into the overall cantonal budget. All three federal courts assessed have the right to make budgetary proposals and submit their own budget directly to parliament.

### **2.4.4 Court Buildings**

Responsibility for the management of the court building in almost every case is that of the office of the central administration in charge of cantonal real estate. This applies both to the acquisition of premises and to their maintenance and cleaning. Only in the Cantons of Graubünden, St. Gallen and Zurich are the courts authorized in accordance with

<sup>68</sup> See LIENHARD (2009a), p. 9.

<sup>69</sup> The issue of the budgets is often closely related to the public service agreement and/or the performance objectives (see above 2.3.5).

<sup>70</sup> In the cantons not included in the results of the survey, i.e. Appenzell Ausserrhoden, Fribourg and Schwyz there is no independent right to make budgetary proposals (information from additional investigations). Canton Appenzell Ausserrhoden however has the following rule: if the cantonal government and Cantonal Court of Appeal are unable to agree on a joint proposal, the President of the Supreme Court has the right to participate in the meetings of the Finance Committee and of the Cantonal Parliament on the budget, where he or she has the right to make proposals (Art. 92 para. 2 Justice Act, bGS 145.31).

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their budget to acquire premises on their own. In the Cantons of Graubünden<sup>71</sup> and Zurich<sup>72</sup>, real estate management is an inherent part of the autonomy of the courts, enshrined in the respective cantonal constitutions. In the Cantons of Lucerne and Schaffhausen, the courts nonetheless have the right to choose their premises from the properties offered by the relevant office of the central administration.

In the federal courts assessed (Federal Supreme Court, Federal Criminal Court and Federal Administrative Court), a standard rule in each of the acts governing these courts states that the court premises are provided by the Federal Department of Finance. The latter must however take appropriate account of the needs of the court in question<sup>73</sup>. The federal courts are responsible for organizing the cleaning and routine maintenance of their buildings.

#### **2.4.5 Furniture and Fittings**

The purchase of furniture and fittings is dealt with in a wide variety of ways. Some courts are free to purchase what they need in the open market (even in cantons where the courts are otherwise not responsible for managing their buildings), some courts obtain their furniture from a mandatory supplier via an administrative office, while others are provided with furnished premises by the central administration. For the most part, the courts themselves are responsible for acquiring their own furniture and fittings.

The federal courts are free to purchase their own furniture and fittings on the open market.

#### **2.4.6 Information Technology**

When it comes to information technology, the situation as regards hardware and software is similar to that with furniture. The courts in the Cantons of Basel-Stadt, Graubünden, Valais and Zurich are free to acquire what they need on the market. This also applies for certain specialized IT requirements in the Cantons of Aargau, Basel-Landschaft, Bern, Glarus, Lucerne, Obwalden, St. Gallen, Uri and Zug as well as in the three federal courts assessed. In many cantons, however, the central administration is responsible for their courts' information technology. The courts in the Cantons of Aargau, Basel-Stadt, Geneva, Lucerne, St. Gallen, Solothurn, Valais and Zurich have their own IT services section, and this is also the case in specialized sectors in the Cantons of Bern and Zug, as well as in the federal courts (see Table 2).

### **2.5 Staff Resources**

#### **2.5.1 Long-term Plan**

In only eight of the 23 cantons assessed have the appeal courts developed a long-term plan in relation to the recruitment, selection, basic and advanced training, evaluation, career development and salary of judges and/or the court registrars and/or the administrative staff (see Graphic 8). Only the Administrative Court in the Canton of Bern has a plan for all three types of staff mentioned. The Court of Appeal in the Canton of Aargau has a plan for the first two types of staff; the Court of Appeal in the Canton of Basel-Stadt and the Cantonal Court of Appeal in the Cantons of Geneva and Vaud have a plan for the last two types of staff. In addition, the Cantonal Court of Appeal in the Canton of Basel-Landschaft and the Administrative Court in the Canton of Zurich have a plan for court registrars only; the Court of Appeal and Administrative Court in the Canton of Lucerne on the other hand have a plan for administrative staff only. Of the federal courts assessed, the Federal Supreme Court and the Federal Criminal Court have a plan, the former for all three types of staff and the latter for court registrars and for administrative staff.

#### **2.5.2 Appointment and Pre-Selection of Judges**

The judges in the federal courts are elected by the Swiss Parliament, while the judges in the cantonal appeal courts and in the courts of first instance in the Cantons of Bern, Jura, Lucerne, Neuchatel, Nidwalden, Schaffhausen and Ticino are elected by their cantonal parliaments. In the Cantons of Geneva, Glarus, Obwalden, Uri and Zug all the judges in the lower and appeal courts are appointed by a vote of the local electorate. The Cantons of Vaud and Valais have a special system for appointing judges: the cantonal parliament elects the judges of the Cantonal Court of Appeal, who then appoint the judges of the lower courts. In the Cantons of Aargau, Basel-Landschaft, Graubünden, St. Gallen, Solothurn, Thurgau and Zurich, the cantonal parliament elects the judges in the cantonal appeal courts, while the electorate votes on the judges in the courts of first instance. The powers of appointment with regard to both the appeal and lower courts are allocated either to the electorate or to the cantonal parliament in the Cantons of Appenzell-Innerrhoden and Basel-Stadt, based primarily on the distinction between professional judges, legally-qualified substitute judges and lay judges.

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<sup>71</sup> See UHLMANN/KIENER (2010), Margin no 41 ff.

<sup>72</sup> See HALLER (2009), Margin no 13, 28 and 36.; SCHMID (2007), Art. 73, Margin no 12.

<sup>73</sup> Additional investigations by the authors, see Art. 25a para. 1 FSCA for the Federal Supreme Court and identical provisions for the Federal Criminal Court and Federal Administrative Court.

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Whether there is a procedure for the pre-selection of judges essentially depends on whether the judges are appointed by a vote of the electorate or of parliament (see above). Where the people decide, there is normally no pre-selection, but in contrast there normally is pre-selection in the case of parliamentary appointments. In all the parliamentary elections to the cantonal appeal courts, other than in the Cantons of Basel-Landschaft, Jura and Valais, a pre-selection process is carried out by a parliamentary committee. The same applies for appointments to the federal courts. Although the judges in the cantonal appeal courts are elected by the people, in the Cantons of Geneva, Obwalden and Zug there is also a form of preliminary examination of candidates for election to the appeal courts by a cross-party committee. In certain cantons, e.g. in the Cantons of Bern, Basel-Stadt, Geneva, Graubünden, Neuchatel, Solothurn, Thurgau, Ticino and Zug, candidates must hold a law degree, and in some cases must also hold a lawyer's practicing certificate.

### **2.5.3 Professional Induction and Advanced Training for Judges**

The Cantonal Court of Appeal in Basel-Landschaft, the Court of Appeal in Basel-Stadt, the Administrative Court in Glarus, the Cantonal Court of Appeal and Administrative Court in Lucerne, the Cantonal Court of Appeal and Administrative Court in Obwalden, the Administrative Court in Thurgau, the Cantonal Court of Appeal in Uri, the Cantonal Court of Appeal in the Valais and the Federal Supreme Court are the only courts where judges systematically undergo a professional induction process at the start of their activities. This ranges from a personal induction session provided by the president of the court of appeal in a half-day information event to an obligation for professional judges in the district courts in the Canton of Thurgau to attend the certified training course for judges at the Swiss Judges' Academy. In the Federal Supreme Court, the judges receive training on using the office automation equipment, the case law databases, the library database and library and the statistics and controlling application as well as information on safety precautions and the support provided by the various court services.

In all the cantons and in all federal courts, judges are permitted to attend at least part of their advanced training during normal working hours; the courses are normally paid for.

### **2.5.4 Staff Appraisal Interviews and Satisfaction**

Only one cantonal appeal court (the Administrative Court in the Canton of St. Gallen) has regular staff appraisal interviews with judges. Interviews with judges in the courts of first instance are held in the Cantons of Bern and Lucerne. In theory, this should also be the case in the Canton of Zurich, but in practice the interviews seldom take place. There are no interviews of this type in the federal courts. With the exception of the Cantonal Court of Appeal in the Canton of Graubünden and the Court of Appeal in the Canton of Ticino where there are no appraisal interviews, and the Cantonal Court of Appeal in the Canton of Valais, all the cantonal appeal courts and all the federal courts hold appraisal interviews for court registrars. Likewise with exception of the two courts that do not hold any appraisal interviews and the Cantonal Court of Appeal in the Canton of Appenzell-Innerrhoden, all the appeal courts and all the federal courts hold appraisal interviews for the administrative staff. In a good half of the cantons and in all the federal courts, the performance assessment for court registrars and for administrative staff has an effect on salary – but does not affect judges' salaries.

With the exception of the courts in the Cantons of Jura, Lucerne, Neuchatel, Obwalden, Schaffhausen, Ticino, Vaud and Zurich and the Cantonal Court of Appeal in Graubünden, all the cantonal courts of appeal and lower cantonal courts and the Federal Supreme Court and the Federal Administrative Court periodically evaluate the satisfaction of their staff. In the Cantons of Aargau, Bern and St. Gallen, the evaluation is an element of the regular staff survey which covers all cantonal staff.

### **2.5.5 Quality Circles and Peer Reviews<sup>74</sup>**

In 15 of the 23 cantons assessed, the appeal courts organize regular meetings for judges, quality improvement conferences and other events, at which they are given the opportunity to discuss legal concerns, and in particular those proposed by the judges themselves (e.g. supervision, peer reviews).

Basically the judges discuss their experiences and improvements in quality at regular plenary, divisional or chamber meetings at which other issues can also be discussed. The Court of Appeal in the Canton of Aargau holds regular judges conferences and the Cantonal Court of Appeal in the Canton of St. Gallen organizes selective supervision in the area of family law. No meetings of this type are held in the Cantons of Nidwalden, Obwalden, Ticino, Uri, Vaud, Valais and Zurich or in the Cantonal Court of Appeal in the Canton of Glarus and the Administrative Court in the Canton of St. Gallen. All federal courts assessed organize regular meetings to discuss legal issues.

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<sup>74</sup> This aspect of court management is closely related to quality management (see above 2.3.4). It is considered here in order preserve consistency between questionnaire and the evaluation.

With the exception of the Cantons of Appenzell-Innerrhoden, Glarus, Nidwalden, Obwalden, Uri, Vaud, Valais, the Administrative Courts in the Canton of Graubünden and St. Gallen and the Court of Appeal in the Canton of Zurich, the judges in all the cantonal appeal courts conduct a form of peer review or supervision between colleagues (discussion of cases with colleagues). In most cases, this peer review is informal, only the Cantons Schaffhausen and Solothurn and the Administrative Court in the Canton of Zug have a formalized form of peer review, for the appeal and lower courts. Among the federal courts, the Federal Supreme Court and the Federal Criminal Court conduct a form of peer review.

## 2.6 Public Relations

### 2.6.1 Communication and Information

In the Cantons of Aargau, Bern (only in the Administrative Court), Basel-Landschaft, Basel-Stadt, Geneva, Jura, Lucerne, Obwalden, Solothurn, Ticino (only in the Court of Appeal), Vaud, Valais and Zug, the appeal courts have a communication concept (see Graphic 9). With the exception of the Cantons of Bern, Basel-Landschaft and Ticino, in these cantons the lower courts have a similar concept. In the cantons where the appeal courts have no communication concept, the lower courts do not have one either. All the federal courts assessed have a communication concept.

Apart from the Cantons of Appenzell-Innerrhoden, Glarus, Jura, Neuchatel, Nidwalden, Schaffhausen and Ticino and the Administrative Court in Graubünden, all the cantonal courts have a person responsible for communication (see Graphic 10). However only the courts in the Cantons of Aargau, Bern, Basel-Stadt, Geneva, Lucerne, St. Gallen, Solothurn and Thurgau, as well as the Cantonal Court of Appeal in Graubünden have a media spokesperson. All three federal courts assessed have a person responsible for communication and a media spokesperson.

In the Cantons of Bern, Basel-Stadt and Zurich and in the Federal Criminal Court, external communication is part of the responsibility of the general secretary or the 1<sup>st</sup> court registrar. In the Cantons of Basel-Landschaft and Thurgau and in the Cantonal Court of Appeal in Graubünden, the Administrative Court in the Canton of St. Gallen and in the Federal Supreme Court, the president of court or the court presidium is responsible for media matters. The rules on responsibilities in the Cantons of St. Gallen and Solothurn are interesting. In the Cantonal Court of Appeal in the Canton of St. Gallen, general enquiries are answered by the general secretary, while questions on specific court cases are answered by the judges responsible for the cases in question; in the Cantonal Court of Appeal in the Canton of Solothurn, the court of appeal registrar is responsible for matters involving any of the courts, and the head court registrar for matters concerning the chambers. The Canton of Zug has set up a joint media unit for the courts, the Office of the Cantonal Prosecutor and the Cantonal Police.<sup>75</sup>

### 2.6.2 Surveys on Satisfaction and Feedback Instruments<sup>76</sup>

To date, only the Cantonal Courts of Appeal in the Cantons of Appenzell-Innerrhoden<sup>77</sup>, Geneva<sup>78</sup>, Bern<sup>79</sup>, Solothurn<sup>80</sup>, Valais and Zurich have carried out surveys in order to assess the public's trust in and satisfaction with the services provided by the courts (see Graphic 11).<sup>81</sup> The Cantonal Court of Appeal in the Canton of Basel-Landschaft is planning a survey of this type. So far, the federal courts have not carried out any surveys of this nature.

As far as methods for providing feedback on how a court is functioning is concerned, in almost all of the cantonal appeal courts and federal courts, it is possible to give informal feedback by making a telephone call, sending an e-mail or letter and/or by filing an appeal with the supervisory authority.

### 2.6.3 Cooperation with the Bar Association

In the following cantons there are institutionalized forms of cooperation between the courts and the relevant cantonal bar association: Aargau, Bern, Basel-Landschaft, Basel-Stadt, Geneva, Glarus (only with the Administrative Court), Lucerne, Neuchatel, St. Gallen, Schaffhausen, Solothurn, Thurgau (only with the Cantonal Court of Appeal) and Vaud. Normally this cooperation takes the form of an annual meeting of delegations from the courts and the bar association in order to discuss current problems and concerns. There is also institutionalized cooperation between the Federal Supreme Court

<sup>75</sup> Additional investigations by the authors.

<sup>76</sup> This aspect of court management is closely related to quality management (see above 2.3.4). It is considered here in order preserve consistency between questionnaire and the evaluation.

<sup>77</sup> A survey was carried out for the first time in spring 2012, but at the time of this survey the results had not been evaluated.

<sup>78</sup> A survey on satisfaction is carried out every five years, see <http://ge.ch/justice/enquetes-de-satisfaction>.

<sup>79</sup> A survey was carried out 10 years ago, see OBERGERICHT DES KANTONS BERN (2001).

<sup>80</sup> The last survey took place in 2008, the next is planned for 2013. The survey is organised by the Court Administration Committee. Lawyers are asked about the courts that they appear in. See <http://www.so.ch/gerichte/gerichtsverwaltung.html> (Status: 07.08.2012).

<sup>81</sup> Findings also based on specific studies.

and the Swiss Bar Association (SBA): there are annual meetings between the court management board of the Federal Supreme Court and the Executive Board of the SBA.

## 2.7 Culture

The survey reveals that in the majority of appeal courts and in the federal courts, a culture of stimulating and inspiring improvements in the entire organization is encouraged (see Graphic 12). Here, no connection with the size of the courts can be detected. However it is only in the Cantons of Geneva and Lucerne that specific projects are currently undertaken. These cantons have two things in common; both cantons have managed courts and in both cantons existing courts have been merged to form one court. Clearly it was recognized in this connection that the cultural aspect is important. It is also interesting that the Cantonal Court of Appeal in the Canton of Aargau is part of an ideas management scheme involving the entire cantonal administration and that this cultural aspect is accordingly institutionalized.

In 10 cantonal appeal courts and in the Federal Supreme Court and the Federal Criminal Court, judges are encouraged to follow proven practices and codes of conduct. The Cantonal Court of Appeal in the Canton of Basel-Landschaft has its own code of conduct for judges.<sup>82</sup> The Canton of Zug is in the process of drafting a code of conduct for its civil court of first instance.

It is only at the appeal courts in the Cantons of Bern (only at the Cantonal Court of Appeal), Basel-Landschaft, Basel-Stadt, Geneva, Graubünden (only at the Cantonal Court of Appeal), Lucerne, Solothurn, Thurgau (only at the Administrative Court), Uri, Vaud, Zug (only at the Administrative Court) and Zurich (only at the Administrative Court) that clear efforts are being made to improve the culture of cooperation. According to the information provided by these courts, the cooperation culture is primarily encouraged through joint professional or social events.

With the exception of the Cantons of Appenzell-Innerrhoden, Glarus, Jura, Ticino and Valais, a culture of sharing knowledge is encouraged at the cantonal appeal courts. In the federal courts, a similar culture is encouraged. A common method of sharing knowledge is for courts to make their own judgments and the judgments of other courts in the canton (case law collections, landmark rulings) systematically available. The Cantonal Court of Appeal in the Canton of Aargau, the Court of Appeal in the Canton of Basel-Stadt, Cantonal Court of Appeal in the Canton of Neuchâtel, the Administrative Court in the Canton of Thurgau, the Cantonal Court of Appeal in the Canton of Zug, the Federal Supreme Court and the Federal Administrative Court all do this. In certain cantons, landmark rulings made by the appeal courts are systematically published and also made accessible to the public (e.g. in the Cantons of Aargau<sup>83</sup>, Basel-Landschaft<sup>84</sup> and Zug<sup>85</sup>). The appeal courts in the Cantons of Glarus, Jura, St. Gallen, Thurgau, Ticino, Valais and Zurich provide generous support with advanced training (see section 2.5.2), but do not encourage a culture of sharing knowledge as a general principle.

## 2.8 Current Reform Projects

With the introduction the new Civil and Criminal Procedure Codes that apply throughout Switzerland, in most cantons major reform projects have been completed since 1 January 2011. Despite this, as of spring 2012, reform projects of varying magnitude are being carried out in almost half of the cantons (see Graphic 13). For example, in the Cantons of Aargau and Basel-Landschaft, revisions of the law on the organization of the courts are making their way through the legislative process. In the Canton of Basel-Landschaft, the cantonal parliament decided on 21 June 2012 to amend the Court Organisation Act, primarily in order to institutionalize court management bodies.<sup>86</sup> In the Canton of Lucerne, the new Cantonal Constitution provides for the merger of the canton's two appeal courts, the Cantonal Court of Appeal and the Administrative Court, into a single Cantonal Court of Appeal.<sup>87</sup> The Canton of Bern has recently strengthened the institutional independence of its courts<sup>88</sup>. The courts are currently working to implement this. Another interesting project is being conducted in the Canton of Basel-Stadt, where a review of the organization of the entire prosecution service and civil and administrative justice systems is taking place. Some reforms in the organization of the courts are related to the new federal provisions on the protection of children and adults, which will come into force on 1 January 2013.

<sup>82</sup> See <http://www.baselland.ch/fileadmin/baselland/files/docs/gerichte/verhaltenskodex.pdf>.

<sup>83</sup> Aargau Court and Administrative Decisions (AGVE), since 2001 also online (<https://www.ag.ch/de/meta/gesetze/agve/agve.jsp>, Status: 27.08.2012).

<sup>84</sup> [http://www.baselland.ch/main\\_rechtsprechung-htm.281760.0.html](http://www.baselland.ch/main_rechtsprechung-htm.281760.0.html) (Status: 27.08.2012).

<sup>85</sup> Court and administrative practices (GVP), see <http://www.zug.ch/behoerden/staatskanzlei/kanzlei/gvp> (Status: 27.08.2012).

<sup>86</sup> Additional investigations by the authors.

<sup>87</sup> See the Dispatch of the Cantonal Council to the Cantonal Parliament B 25 on drafts of amendments to the law to create a Cantonal Court and on other organizational changes in the justice system in the Canton of Lucerne dated 6 December 2011. The Cantonal Parliament debated the bill B 25 in the May session of 2012.

<sup>88</sup> See LIENHARD (2010).

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### 3. Appraisal and Outlook

#### 3.1 General Summary according to Elements of Court Management

##### 3.1.1 Strategy

Strategic principles are an essential prerequisite for taking action and this applies in the justice system as well. In around half of the cantons, this has been recognized by the appeal courts, with the federal courts also having a strategy or a set of guiding principles. The instruments relate both to the fundamental aspects of court systems (e.g. independence) and to the secondary aspects of court management (e.g. efficiency in case processing). Commonly, however, there is a failure to implement the strategic principles effectively (operationalization, implementation plans).

Generally speaking, the strategic principles are devised by the courts themselves – only in one canton was this done by the cantonal government.

##### 3.1.2 Management processes

Although all the courts assessed have a (simple) system for case processing and case monitoring (business oversight) – only around half the cantonal appeal courts use a caseload management system (relating case weighting to resources). At federal level, there is a caseload management system in only one court.

With regard to allocating cases to the divisions/chambers/judges, the majority of courts have a standardized method. However, this is controlled electronically in only two cantonal courts and in one federal court.

The survey shows that the appeal courts in a good third of the cantons as well as two federal courts use a quality assurance system. However, the frequency of appeals and consistency of judgments as well as the satisfaction of parties with the way the courts work and with procedural fees are rarely part of these systems. Not one court is certified.

Around half of the cantons and two federal courts work with performance objectives – in certain cases based on public service mandates or public service agreements.

##### 3.1.3 Organizational Structure

Almost all of the courts assessed in the cantons and all the federal courts assessed have a court management board; however the organizational structure and powers of this body vary quite considerably from court to court. It is surprising to note that one third of the cantons have no actual management support system to call on.

Around half of the cantons have global or product group budgets – but there are none in the federal courts. The right to make budgetary proposals is used in most of the cantonal courts assessed and in all the federal courts.

The management of the court building in most cases is the responsibility of the office of the central administration that is in charge of the real estate of the canton. The acquisition of furniture and fittings is dealt with in a wide variety of ways. Normally, however, the courts are responsible for doing this themselves. The situation is different in relation to information technology, which in the case of most cantonal courts is procured by the central administration. Only the federal courts consistently do it themselves.

##### 3.1.4 Staff Resources

In only eight of the cantons assessed do the appeal courts have a comprehensive long-term plan for human resources. At a federal level, two of the courts assessed have such a plan.

For all parliamentary elections to the cantonal appeal courts, and in some cases also in votes by the electorate, the candidates are preselected in all but three cantons. There is also a selection procedure for elections to the federal courts. The eligibility requirements for election however vary from place to place; a lawyer's practicing certificate is not always required.

Only in around a third of the cantonal appeal courts and in all of the federal courts assessed do judges receive systematic induction at the start of their activities. The situation is quite different in relation to continuing professional education. This is provided in all the courts – albeit in a variety of forms, for example in-house or externally.

Almost all the cantonal appeal courts and federal courts have staff appraisal interviews for court registrars and administrative staff. Only one cantonal appeal court interviews its judges as well. In around two thirds of the cantons and at the Federal Supreme Court and Federal Administrative Court, staff job satisfaction is periodically evaluated.

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Likewise, in around two-thirds of the cantons assessed and all of the federal courts assessed the appeal courts regularly organize quality improvement measures for judges or similar events.

### **3.1.5 Public relations**

Just under half of the cantons and all the federal courts have a communication concept. The vast majority of cantonal courts and all the federal courts have a person responsible for communication or a media spokesperson.

Only four cantonal courts have carried out public satisfaction surveys to date.

### **3.1.6 Culture**

The survey revealed that the majority of appeal courts and all the federal courts encourage a culture that stimulates and inspires improvements in the entire organization. Clear efforts to improve the culture of cooperation are in evidence in around half of the appeal courts in the cantons. The situation is different in relation to the culture of sharing knowledge. In almost all of the cantonal appeal courts and in all of the federal courts this culture is encouraged.

## **3.2 Comparison**

### **3.2.1 Cantons with More or Fewer Elements of Court Management Implemented**

The survey shows that in cantonal appeal courts the level of implementation of elements of court management varies widely (see Graphic 14).<sup>89</sup> There are cantons whose appeal courts already use numerous elements, other cantons that implement these elements only sporadically but nonetheless do it, while others make hardly any use of the options of court management.

### **3.2.2 Factor of Size**

As might be expected, the level of implementation of elements of court management in the larger courts is higher than in smaller courts. The trend is for court management to be in a more advanced state of implementation in the larger cantons than in the smaller ones. This does not however apply to the Canton of Ticino.

### **3.2.3 Relationship with NPM**

Likewise as would be expected, the survey reveals that in the cantons that have implemented the principles of New Public Management (NPM) in their central administration, the tendency is for courts to be making use of elements of court management (see Graphic 15). The implementation of elements of court management is even more readily visible in cantons where the courts are run on the basis of NPM. One exception to this is Canton Solothurn, which, although it is an NPM pioneer canton, is not among the front runners in the overall assessment in relation to the level of implementation of court management.

### **3.2.4 Level of Implementation in the Federal Courts By Comparison with the Cantonal Appeal Courts**

The level of implementation of elements of court management in the federal courts varies. On the one hand, certain elements must be regarded in a positive light, such as the right to make budgetary proposals, controlling in the Federal Supreme Court or caseload management in the Federal Administrative Court. On the other hand, there is clear potential for optimization especially in relation to public satisfaction surveys and the cooperation culture. In contrast to the cantonal courts, there is no significant difference between the courts depending on their size. By way of comparison with the cantonal appeal courts, the federal courts have a high level of implementation. However, neither the federal courts nor the cantonal appeal courts can claim to be playing a pioneering role.

## **3.3 Conclusions / Need for Further Research**

In general, it may be concluded from the survey of the cantonal appeal courts and the federal courts that various elements of court management have already been introduced into the running and organization of the Swiss justice system. The level of implementation is, however, noticeably heterogeneous. This lack of consistency relates not only to the individual elements of court management that have been selected, but also to their inherent structure (e.g. objectives). In addition, implementation in practice appears often to be hesitant, for example, in relation to existing strategies.

The fact that the development and optimization of court management in Switzerland has not yet been completed is also confirmed by the survey itself. Around half of the cantonal appeal courts and some of the federal courts indicate that a wide variety of reform projects are ongoing or planned.

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<sup>89</sup> Based on the results of the survey an evaluation weighted according to the six elements (see 1.4) was carried out of the overall status of court management in the cantonal and federal courts.

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The differences in the level of implementation of the various elements of court management are undoubtedly due in part to Switzerland's federalist system of justice (see above 1.3). Furthermore, if an overall view is taken, the impression is confirmed that conceptual foundations for the management of the justice system are generally lacking. The survey shows that the implementation of management elements in general does not follow any conception. The recently launched research project on "Basic Research into Court Management in Switzerland" should contribute to resolving this difficulty and to finding further and more profound explanations for the differences outlined above.

## **Bibliography**

### **Annex**

Table 1: Courts Surveyed and Response

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Graphic 3: Quality management system

Graphic 4: Service level mandate and NPM

Graphic 5: Court management board

Graphic 6: Budget

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Graphic 10: Person responsible for communication and media spokesperson

Graphic 11: Surveys on satisfaction among the public

Graphic 12: Culture

Graphic 13: Current reform projects

Graphic 14: Status of court management

Graphic 15: Relation of court management with NPM

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**Table 1: Courts Surveyed and Response**

| <b>Canton</b>                      |                                                                            |
|------------------------------------|----------------------------------------------------------------------------|
| Aargau (AG)                        | Cantonal Court of Appeal (CCA)                                             |
| Appenzell Ausserrhoden (AR)        | Cantonal Court of Appeal (CCA)                                             |
| Appenzell Innerrhoden (AI)         | Cantonal Court of Appeal (CCA)                                             |
| Basel-Landschaft (BL)              | Cantonal Court of Appeal (CCA)                                             |
| Basel-Stadt (BS)                   | Court of Appeal (CA)                                                       |
| Bern (BE)                          | Cantonal Court of Appeal (CCA)   Administrative Court (AC)                 |
| Freiburg (FR)                      | Cantonal Court of Appeal (CCA)                                             |
| Geneva (GE)                        | Cantonal Court of Appeal (CCA)                                             |
| Glarus (GL)                        | Cantonal Court of Appeal (CCA)   Administrative Court (AC)                 |
| Graubünden (GR)                    | Cantonal Court of Appeal (CCA)   Administrative Court (AC)                 |
| Jura (JU)                          | Cantonal Court of Appeal (CCA)                                             |
| Lucerne (LU)                       | Cantonal Court of Appeal (CCA) and Administrative Court (AC) <sup>90</sup> |
| Neuchâtel (NE)                     | Cantonal Court of Appeal (CCA)                                             |
| Nidwalden (NW)                     | Cantonal Court of Appeal (CCA)   Administrative Court (AC)                 |
| Obwalden (OW)                      | Cantonal Court of Appeal (CCA) and Administrative Court (AC)               |
| Schaffhausen (SH)                  | Cantonal Court of Appeal (CCA)                                             |
| Schwyz (SZ)                        | Cantonal Court of Appeal (CCA)   Administrative Court (AC)                 |
| Solothurn (SO)                     | Cantonal Court of Appeal (CCA)                                             |
| St. Gallen (SG)                    | Cantonal Court of Appeal (CCA)   Administrative Court (AC)                 |
| Ticino (TI)                        | Court of Appeal (CA)   Administrative Court (AC)                           |
| Thurgau (TG)                       | Cantonal Court of Appeal (CCA)   Administrative Court (AC)                 |
| Uri (UR)                           | Cantonal Court of Appeal (CCA)                                             |
| Vaud (VD)                          | Cantonal Court of Appeal (CCA)                                             |
| Valais (VS)                        | Cantonal Court of Appeal (CCA)                                             |
| Zürich (ZH)                        | Cantonal Court of Appeal (CCA)   Administrative Court (AC)                 |
| Zug (ZG)                           | Cantonal Court of Appeal (CCA)   Administrative Court (AC)                 |
| <b>Federal Courts</b>              |                                                                            |
| Federal Supreme Court (FSC)        |                                                                            |
| Federal Criminal Court (FCC)       |                                                                            |
| Federal Administrative Court (FAC) |                                                                            |
| Federal Patent Court (FPC)         |                                                                            |

- ☐ Courts that answered the questionnaire  
☒ Courts that did not answer the questionnaire

<sup>90</sup> From 1 June 2013, the Cantonal Court of Appeal.

**Table 2: Services provided by the Management Support Office**

| Canton/<br>Court | General<br>Secretary/<br>Court<br>Administrator | IT Service | Financial<br>Services<br>Section | Human<br>resources<br>section | Service for<br>management<br>of office space | Other           |
|------------------|-------------------------------------------------|------------|----------------------------------|-------------------------------|----------------------------------------------|-----------------|
| AG CCA           | x                                               | x          | x                                | x                             |                                              |                 |
| BE CCA           | x                                               |            | x                                | x                             |                                              |                 |
| BE AC            | x                                               | x          | x                                | x                             |                                              |                 |
| BL CCA           | x                                               |            | x                                | x                             |                                              |                 |
| BS CA            | x                                               | x          | x                                | x                             |                                              |                 |
| GE CCA           | x                                               | x          | x                                | x                             |                                              | x <sup>91</sup> |
| JU CCA           | x                                               |            |                                  |                               |                                              |                 |
| LU CCA/AC        | x                                               | x          | x                                |                               |                                              | x <sup>92</sup> |
| NE CCA           | x                                               |            |                                  |                               |                                              |                 |
| SG CCA           | x                                               | x          | x                                | x                             |                                              |                 |
| SG AC            | x                                               | x          |                                  | x                             |                                              |                 |
| SO CCA           | x                                               | x          | x                                |                               |                                              |                 |
| TG CCA           | x                                               |            | x                                |                               |                                              |                 |
| TI AC            | x                                               |            |                                  |                               |                                              |                 |
| VD CCA           | x                                               |            | x                                | x                             |                                              |                 |
| VS CCA           |                                                 | x          | x                                |                               |                                              |                 |
| ZG CCA           | x                                               |            | x                                | x                             |                                              |                 |
| ZG AC            | x                                               | x          |                                  | x                             |                                              |                 |
| ZH CCA           | x                                               | x          | x                                | x                             | x                                            |                 |
| ZH AC            | x                                               | x          | x                                |                               | x                                            |                 |
| FSC              | x                                               | x          | x                                | x                             | x                                            | x <sup>93</sup> |
| FCC              | x                                               | x          | x                                | x                             | x                                            |                 |
| FAC              | x                                               | x          | x                                | x                             | x                                            | x <sup>94</sup> |

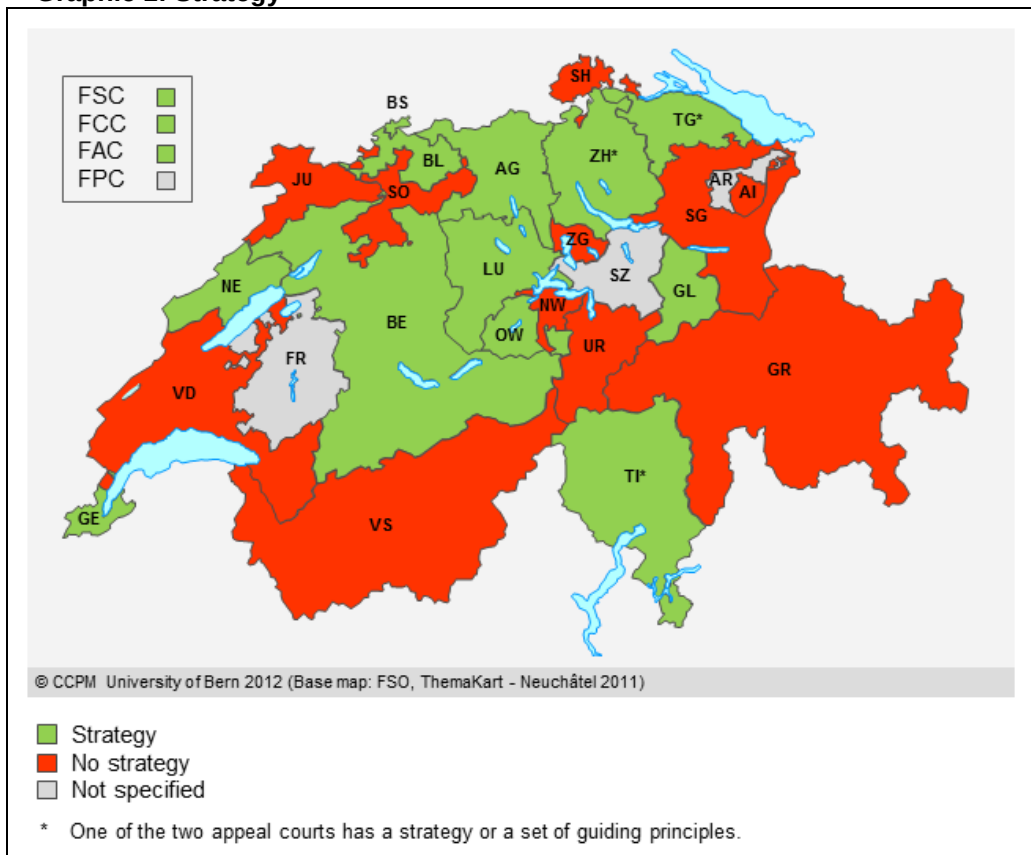
<sup>91</sup> The Cantonal Court of Appeal in the Canton of Geneva also has a security service.

<sup>92</sup> At the Cantonal Court of Appeal and Administrative Court in the Canton of Lucerne a member of staff in the human resources sections is also responsible for staff issues; the real estate office is responsible for managing office space.

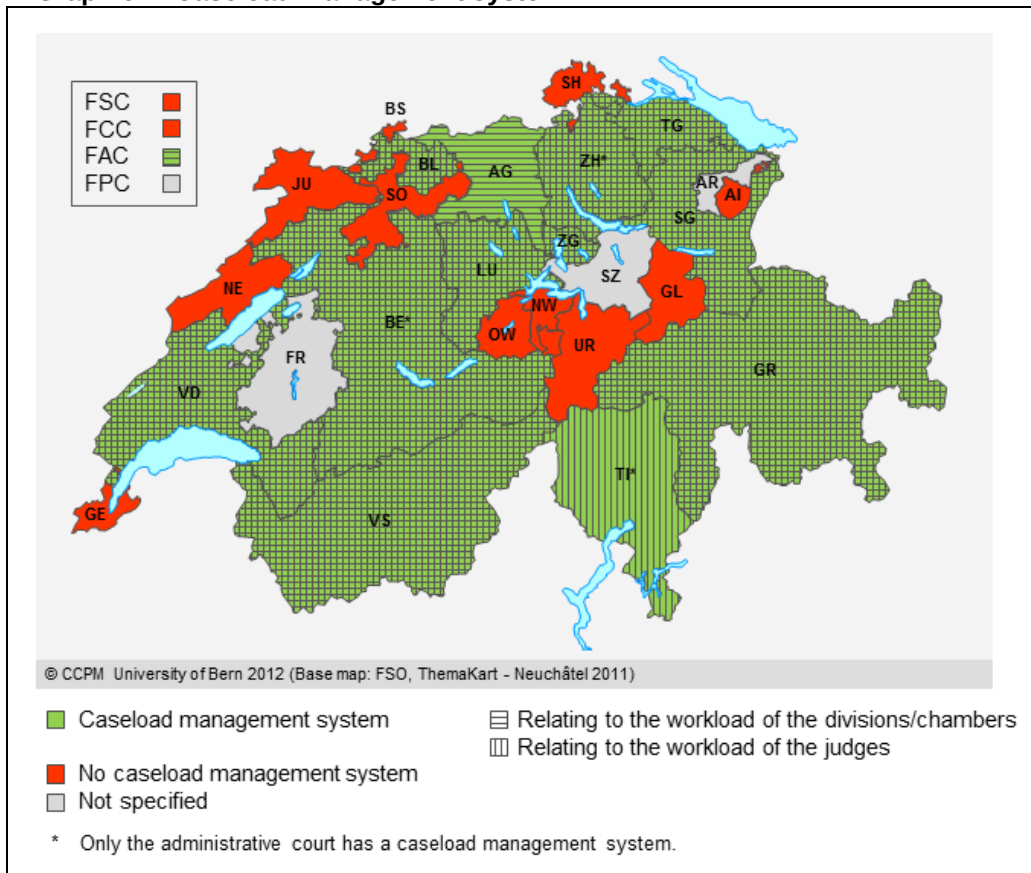
<sup>93</sup> The Federal Supreme Court also has a media contact point, a legal document service (including a specialist translation service), a librarian service, a security service and multilingual chancelleries.

<sup>94</sup> The Federal Administrative Court also has an academic service.

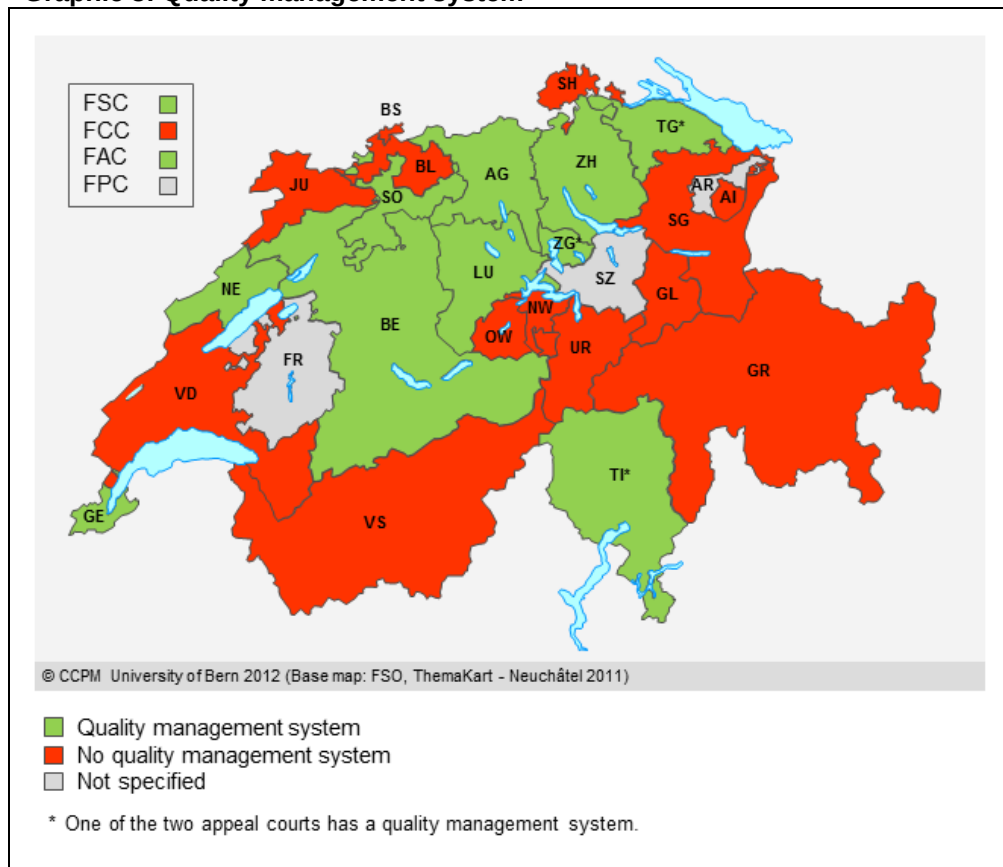
**Graphic 1: Strategy**



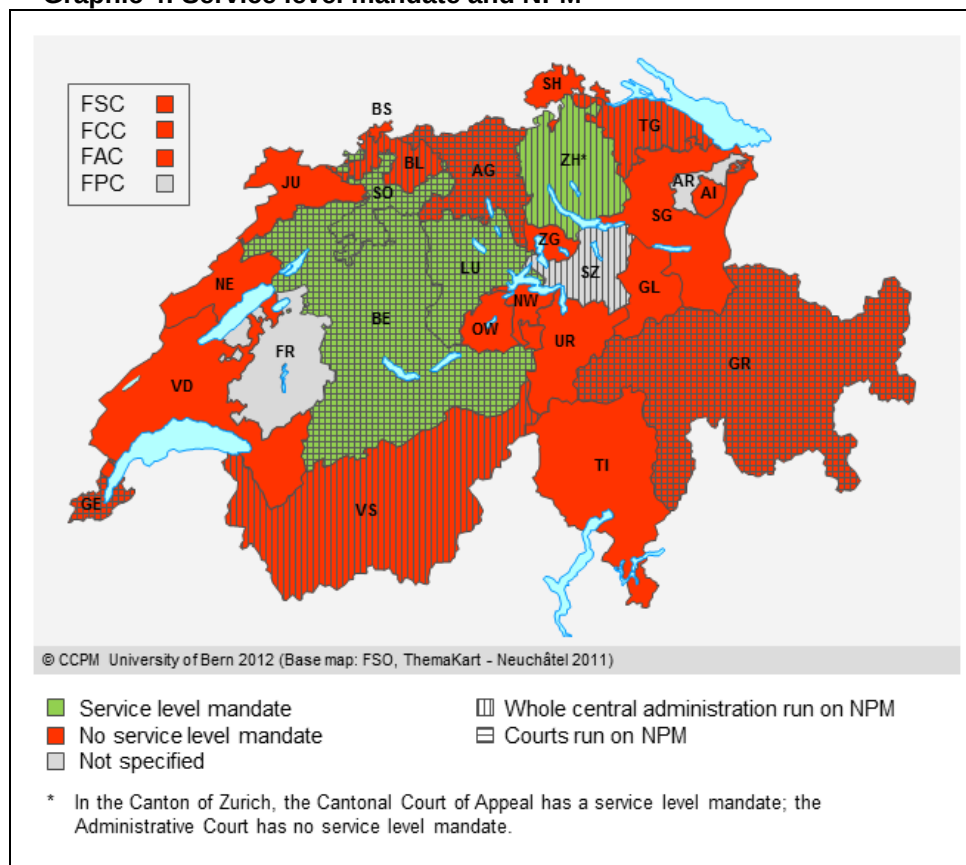
**Graphic 2: Caseload management system**



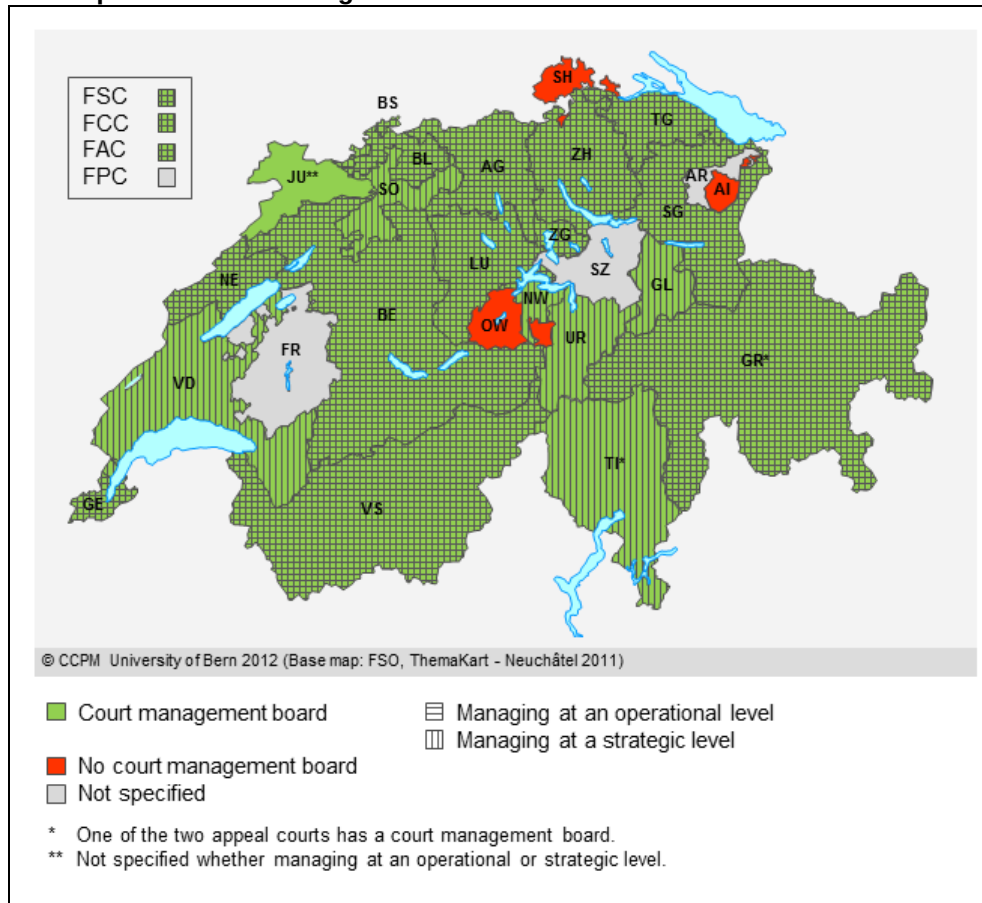
**Graphic 3: Quality management system**



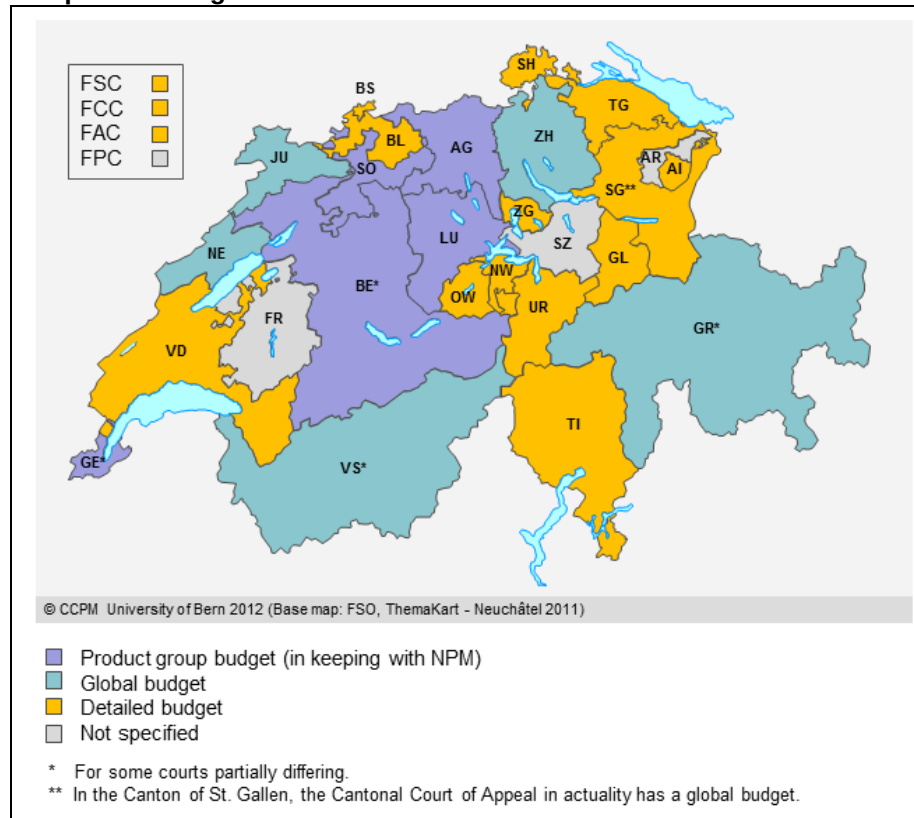
**Graphic 4: Service level mandate and NPM**



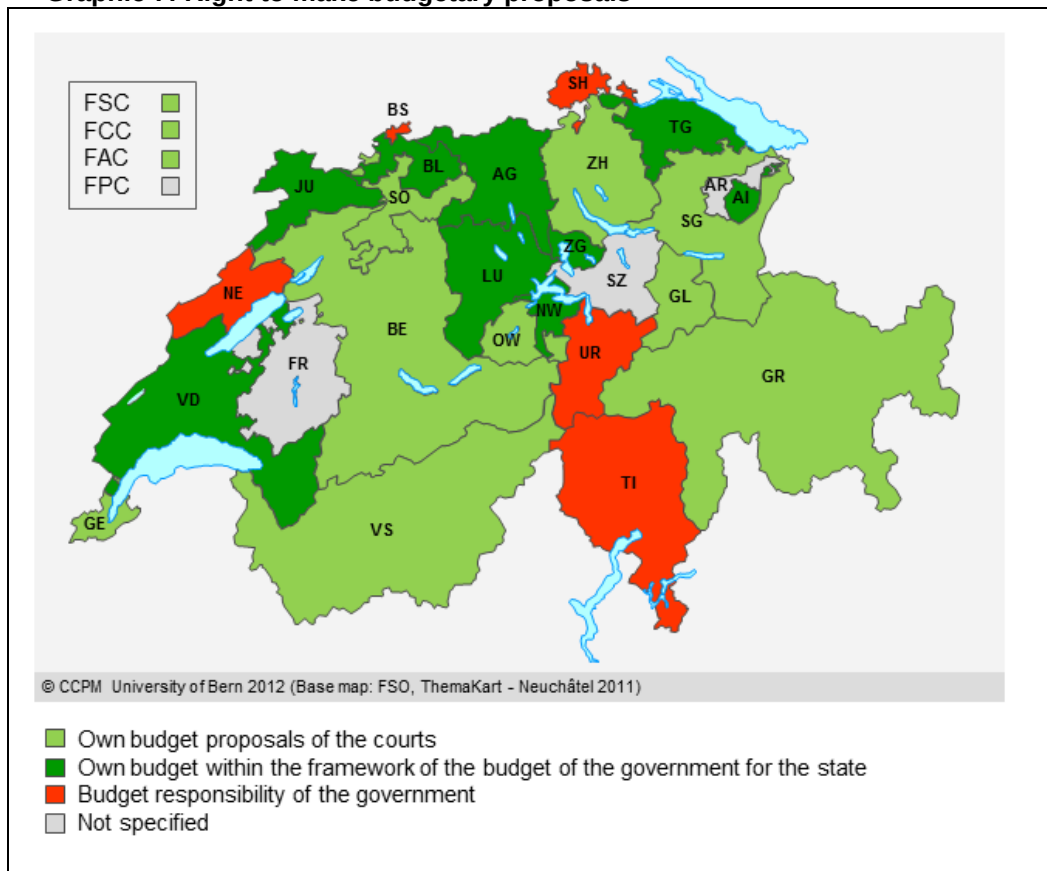
**Graphic 5: Court management board**



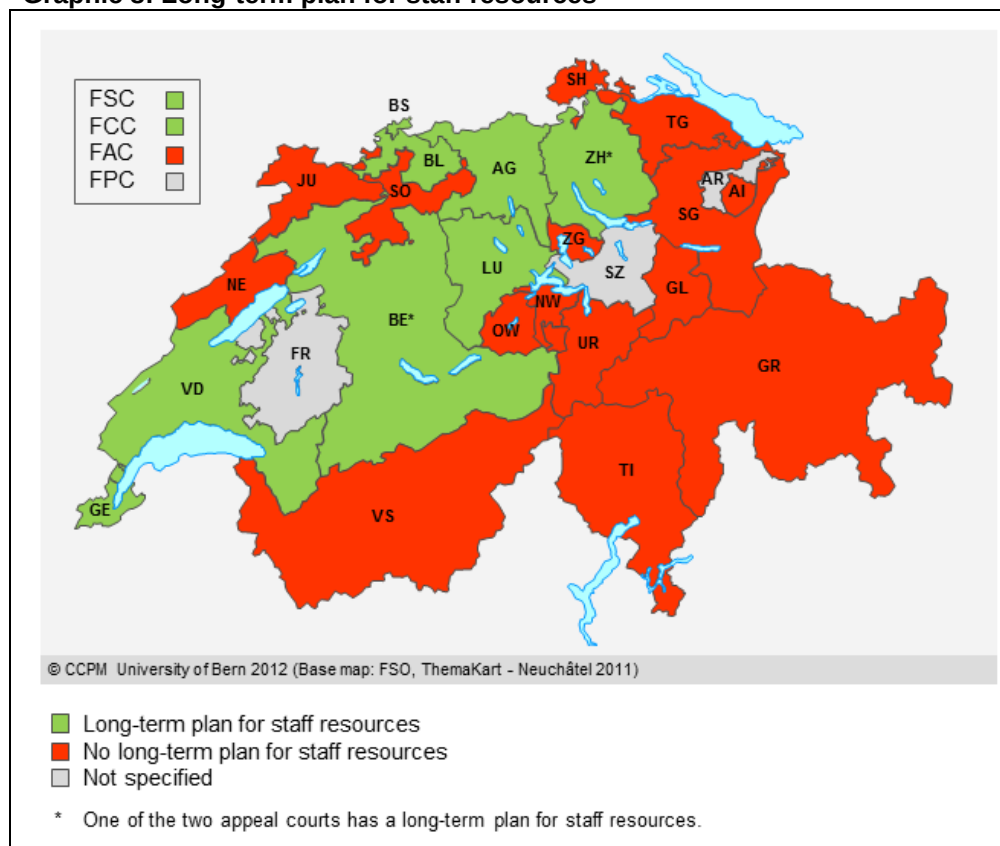
**Graphic 6: Budget**



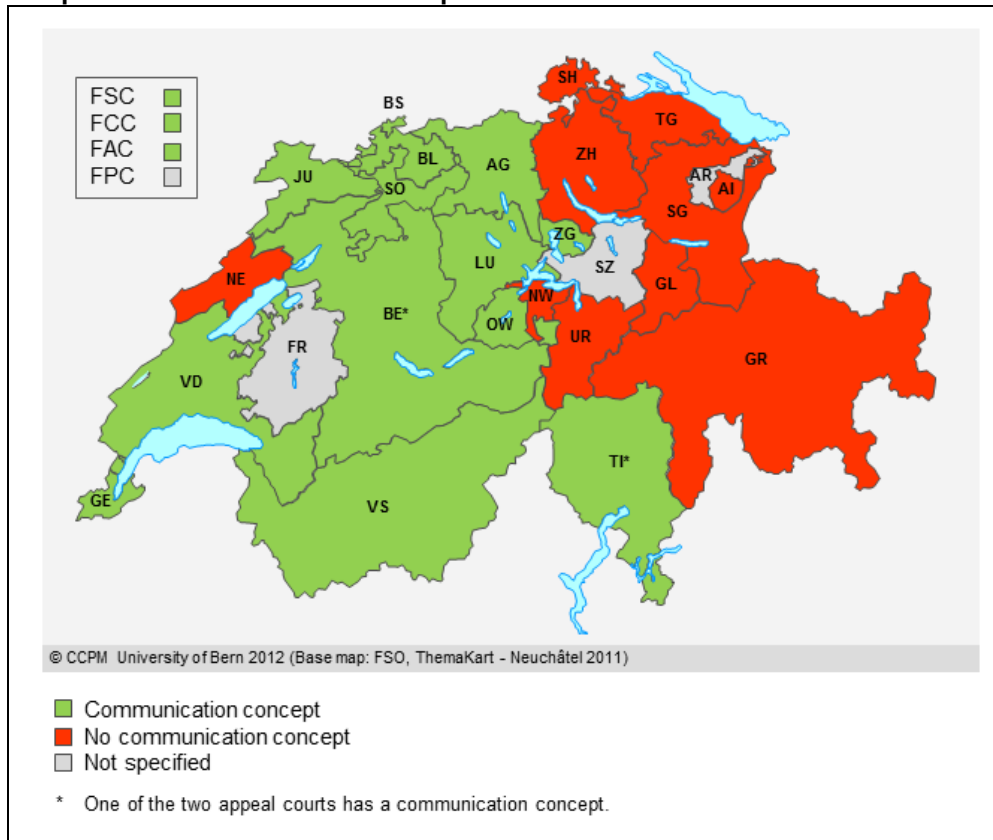
**Graphic 7: Right to make budgetary proposals**



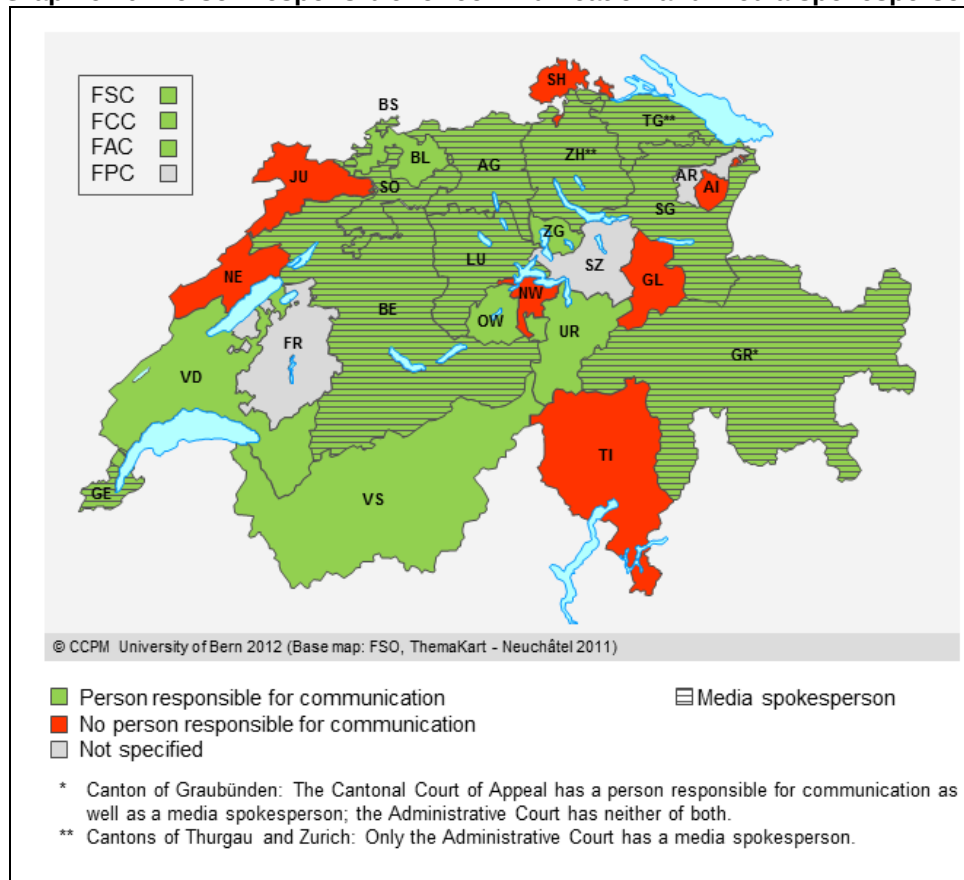
**Graphic 8: Long-term plan for staff resources**



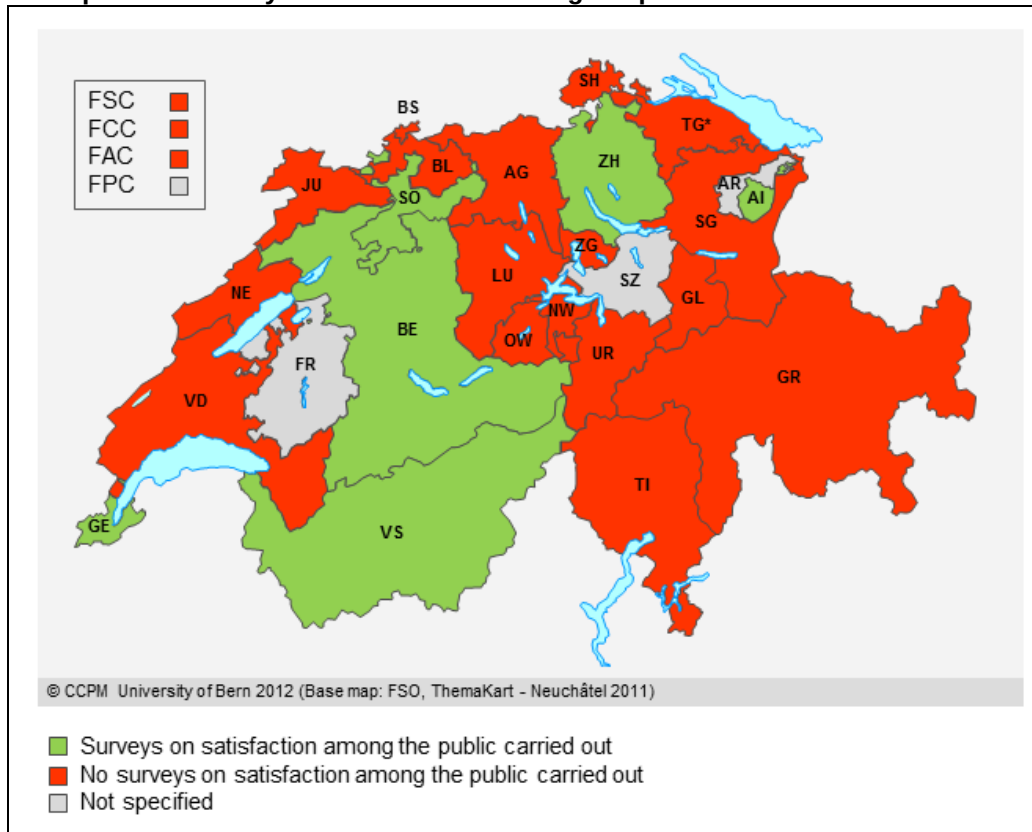
**Graphic 9: Communication concept**



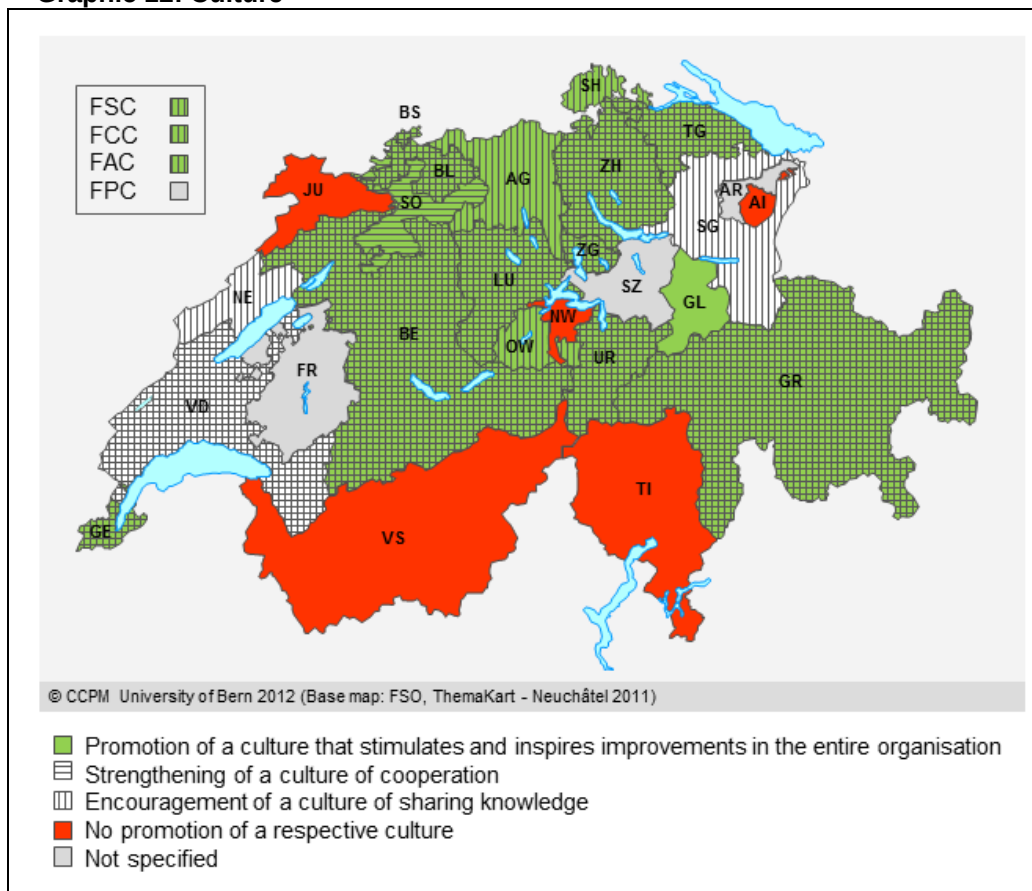
**Graphic 10: Person responsible for communication and media spokesperson**



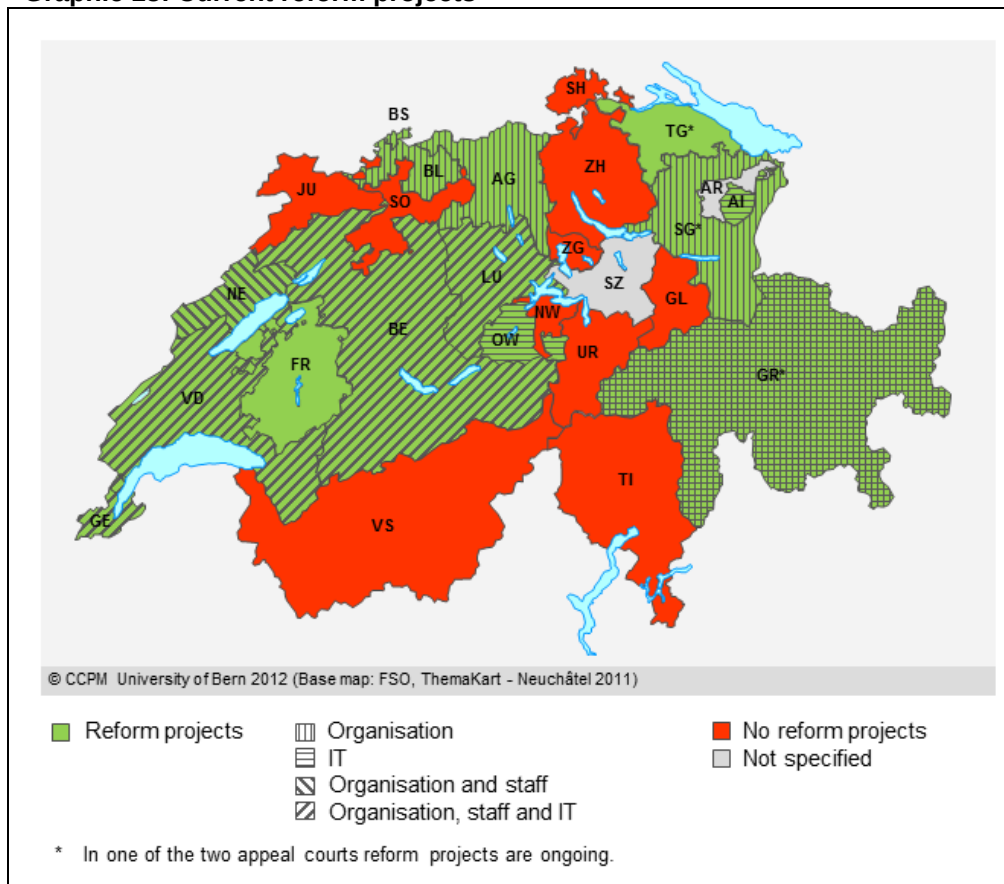
**Graphic 11: Surveys on satisfaction among the public**



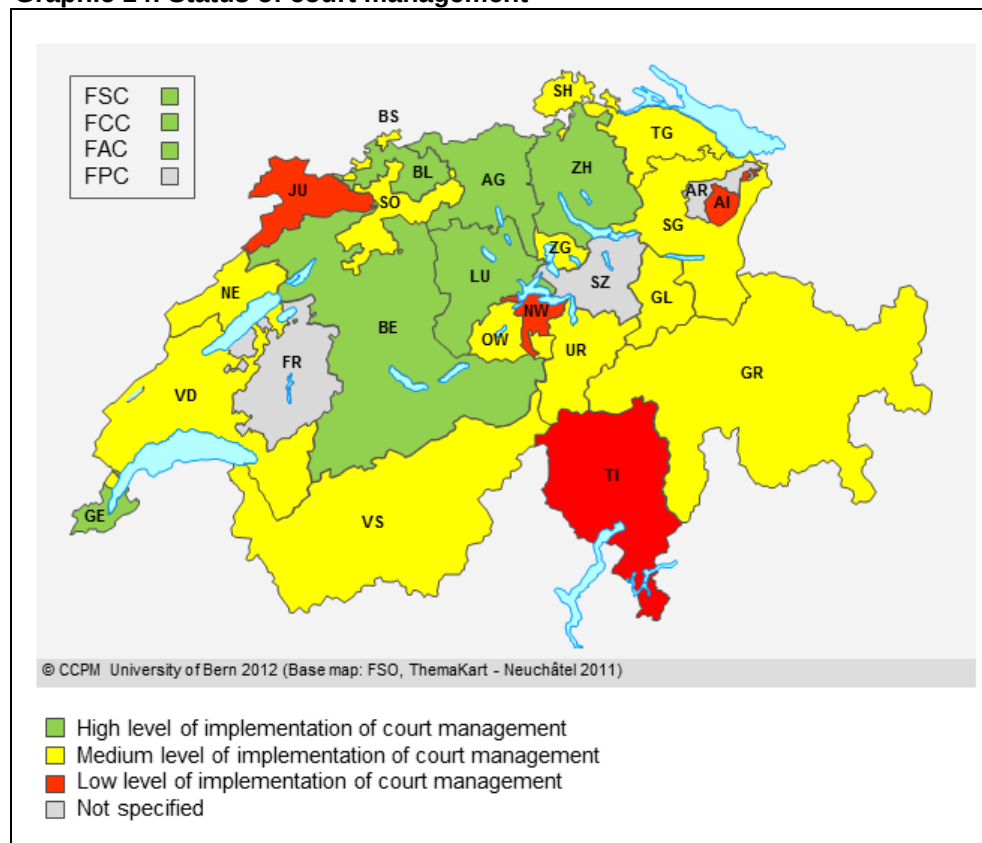
**Graphic 12: Culture**



**Graphic 13: Current reform projects**



**Graphic 14: Status of court management**



**Graphic 15: Relation of court management with NPM**

