



Twenty Years of Research Into the Swiss Justice System

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ABSTRACT

At the same time the International Association for Court Administration (IACA) was established 20 years ago, a new era began for research into the justice system in Switzerland: while the focus of scientific research up to that time had been on procedural law issues, it increasingly turned to questions relating to the organization of the courts and of court management.

This contribution charts the main content of and milestones in research into the justice system in Switzerland over the past 20 years – from its beginnings right up to our current research topics.

In particular, it shows that New Public Management has been the nucleus of justice research in Switzerland, and that this major inter-university, interdisciplinary research project has given a new dimension on research into the justice system. It also shows that research into the justice system in Switzerland has numerous international connections and that the researchers are internationally integrated.

The article concludes with current research needs – in particular with regard to a reliable empirical basis for the Swiss courts, the economic impact of court activities and the digital transformation of the judiciary.

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As the International Association for Court Administration (IACA) was established 20 years ago, a new era began for research into the justice system in Switzerland: while the focus of scientific research up to that time had been on procedural law issues, it began increasingly to turn to questions relating to the organization of the courts and of court management.

This contribution charts the main content of and milestones in research into the justice system in Switzerland over the past 20 years – from its beginnings right up to the current research topics. This account does not claim to be exhaustive, but sketches out the main lines of development, including their international relevance.

RESEARCH INTO THE JUSTICE SYSTEM: A YOUNG SCIENTIFIC DISCIPLINE

Until the 1990s, science in the field of justice concentrated largely on procedural matters, and less on issues related to the organization of the justice system (law on the organization of the court system, court management, etc.). By way of introduction, the development of research into the justice system as a scientific discipline will be briefly analyzed in a European context.¹

Courts and other authorities of the judiciary – like other public administrative institutions – always had to be managed. As a result, court administration is as old as public administration. But somehow for decades – longer in Europe than in the USA – this form of administration was not visible and not the subject of political and scientific discussion. One reason might be that court administration was not the responsibility of the courts, but was a task for the justice ministry in central government, as is still the case in many European countries. In addition, courts were the subject of research, but not under the heading of “court management”. For example, in Germany at the beginning of the 1970s under the title “*Richterzeitstudien*” (surveys of judges’ workloads), sociologists carried out large caseload studies related to the civil courts of first and second instance that were categorized under the disciplines of sociology of law and industrial sociology.² More recent research reveals that the first attempts at court management in Switzerland date back to the 19th century, when statistics were first used in public administration.³

Court management as a field of research was the result of three separate factors. The first was the general debate on management in public administration that started in the 1990s in the context of the *New Public Management (NPM)* movements in several countries. Around the same time as this debate on management models for public administration, a discussion also arose about management in the judiciary. In

1 This section was largely taken from D. Kettiger, A. Lienhard, P. Langbroek, M. Fabri, Court Management – A Young Field of Public Management, in: E. Ongaro, (ed.), *Public Administration in Europe, Governance and Public Management*, Palgrav Macmillan, Cham 2019, 856–2 (eBook) <<https://doi.org/10.1007/978-3-319-92856-2>> [accessed 10 October 2024] pp. 309–311.

2 See Bundesrechtsanwaltskammer (eds.), *Tatsachen zur Reform der Zivilgerichtsbarkeit*, Band II, Tübingen 1974, p. 60 ff.; Bundesrechtsanwaltskammer (eds.), *Tatsachen zur Reform der Zivilgerichtsbarkeit*, Band I, Tübingen 1974, p. 182 ff.; G. Griebeling, *Die Arbeitszeit des Richters*, *Deutsche Richterzeitung* 71, p. 228 ff.

3 See S. Aerschmann, *Von der Macht der Zahlen*, *Schriftenreihe zur Justizforschung* Band 14, Bern 2017.

Germany, this debate, which covered a broad academic spectrum and was at times rather heated, originated in part from a book written by a former judge in the German Federal Constitutional Court, Wolfgang Hoffmann-Riem.⁴ In Switzerland, the discussion on court management was conducted primarily in the context of NPM projects in the Swiss cantons or states, but was often limited to the question of whether the judiciary should be included in the new NPM model concerned. It can be shown that in cantons that implemented NPM models for general administration, court management today is more developed than in other cantons.⁵

The second factor was the activities of the *European Commission for the Efficiency of Justice* (CEPEJ).⁶ This commission of the Council of Europe was established on 18 September 2002 with the aim of improving the efficiency and functioning of justice systems in member states and developing the instruments adopted by the Council of Europe to this end. The activities of the CEPEJ focus on judicial time management,⁷ quality of justice,⁸ enforcement and mediation. The CEPEJ has published numerous studies on its field of activity and also runs a permanent system for monitoring the courts in member countries.

The third factor in the origin of court management – and so for research – was the *need for management in courts*. The judiciary – like all state organs and public administration institutions – has come under increasing pressure to reform: on the one hand the workload, complexity of the material, and the procedural requirements are steadily increasing. On the other hand few additional resources are being made available.⁹ This puts pressure on the judiciary to raise its efficiency levels, an objective that is achievable only through smoothly functioning and rational court management. Mere “administration” of the courts no longer suffices. Wolfgang Hoffmann-Riem talks of truth, justice, independence and efficiency as the “magic square of the third power”.¹⁰ One of the difficulties that compromises due access to justice is that it often takes too long for the courts to reach, author, and issue a final decision in a given case.

Nowadays the need for and the importance of court management is no longer contested, while the organization of the judicial authorities and the performance of the judiciary and the courts are subject to research and reforms.

At the international level, in particular in the Anglo-American region, a longer tradition of scientific interest in judicial management exists. And in Australia, for example, the Australasian Institute of Judicial Administration (AIJA)¹¹ has been in existence since

4 W. Hoffmann-Riem, *Modernisierung von Recht und Justiz*, Suhrkamp, Frankfurt a.M., 2000.

5 See A. Lienhard, D. Kettiger, D. Winkler, *Status of Court Management in Switzerland*; *International Journal for Court Administration* 4 (3) pp. 41–67.

6 <<https://www.coe.int/en/web/cepej/>> [accessed 10 October 2024].

7 The SATURN program, <<https://www.coe.int/en/web/cepej/cepej-work/saturn-centre-for-judicial-time-management>> [accessed 10 October 2024].

8 <<https://www.coe.int/en/web/cepej/cepej-work/quality-of-justice>> [accessed 10 October 2024].

9 See D. Kettiger, *Wirkungsorientierte Verwaltungsführung in der Justiz: Ausgangslage – Entwicklungen – Thesen*, in: D. Kettiger (ed.), *Wirkungsorientierte Verwaltungsführung in der Justiz – ein Balanceakt zwischen Effizienz und Rechtsstaatlichkeit*, Bern 2003, p. 9; A. Lienhard, *Staats- und Verwaltungsrechtliche Grundlagen für das New Public Management in der Schweiz*, Stämpfli, Bern 2005, p. 461 s.

10 See Hoffmann-Riem, supra note 4, p. 211 s.

11 <<https://aija.org.au/>> [accessed 10 October 2024].

1976, dealing with issues of judicial management. In the USA too, research and education on the matter of judicial management has been institutionalized for quite some time, in particular in the Federal Judicial Center (1967/FJC) which focuses on the federal courts and the National Center for State Courts (1971/NCSC)¹² and the related Institute for Court Management (1970/ICM), both of which focus on the court systems of the individual states.

THE BEGINNING: NEW PUBLIC MANAGEMENT AND GENDER RESEARCH

NEW PUBLIC MANAGEMENT IN THE JUSTICE SYSTEM

In the debate that arose around New Public Management (NPM), in the second half of the 1980s, specific *management models for public administration* were developed in Switzerland.¹³ Around the same time as this debate on management models for public administration, a discussion also arose about *management in the judicial system*. However, it did not result in any management model being developed – or even in any groundwork for such a model. In Switzerland, the discussion and research on court management was conducted primarily in the context of NPM projects in the cantons, but was often limited to the question of whether the judicial system should be included in the new NPM model concerned, and thus to the question of *judicial management*.¹⁴ As a result, the courts in certain cantons (e.g. Bern, Lucerne and Solothurn) were integrated into a system of new public management.¹⁵ The issue of judicial management was raised only sporadically, for example in rather scarce publications or at a symposium given by the Swiss Society of Administrative Sciences (SSAS) in Olten in 2003.¹⁶ More recently, the topic has been taken up again, and elements of good judicial management have been sketched out.¹⁷

GENDER AND JUDGING

In the 1990s in Switzerland, there was a considerable drive towards gender equality in society, business and politics. This led – in a similar way to that in the USA¹⁸ and

¹² <www.ncsc.org> [accessed 10 October 2024].

¹³ See N. Thom, A. Ritz, *Public Management: Innovative Konzepte zur Führung im öffentlichen Sektor*, 4. Ed., Gabler, Wiesbaden 2008, p. 41 ff.; K. Schiedler, I. Proeller, *New Public Management*, 5. Ed., Haupt, Bern 2011 p. 19 ss.

¹⁴ See P. Maier, *New Public Management in der Justiz*, Bern/Stuttgart/Wien 1999; See Lienhard, *supra* note 9, pp. 460–479.

¹⁵ See Lienhard et al., *supra* note 5, pp. 41–67.

¹⁶ See Kettiger *supra* note 9; A. Lienhard, Staatsrechtliche Rahmenbedingungen für die Umsetzung von NPM in den Gerichten, in: D. Kettiger (ed.), *Wirkungsorientierte Verwaltungsführung in der Justiz – ein Balanceakt zwischen Effizienz und Rechtsstaatlichkeit*, SGVW, Bern 2003, pp. 35–46; H.-J. Mosimann, Erfahrungen mit NPM am Sozialversicherungsgericht des Kantons Zürich, in: D. Kettiger (ed.), *Wirkungsorientierte Verwaltungsführung in der Justiz – ein Balanceakt zwischen Effizienz und Rechtsstaatlichkeit*, SGVW, Bern 2003, pp. 65–73.

¹⁷ See A. Lienhard, Supervisory Control and Court Management, *International Journal for Court Administration* 2(1), pp. 30–44.

¹⁸ The “Gender and Judging” project of the Women and Gender in the Legal Profession Group started in 1994, see U. Schultz, G. Shaw, Preface, in: U. Schultz, G. Shaw (eds.), *Gender and Judging*, Hart Publishing, Oxford and Portland (Oregon) 2013, p. vi.; C. Epstein Fuchs, *Women in Law*, University of Illinois Press, New York 1993.

in Germany¹⁹ – to research projects on the position of women in the justice system, in particular as judges. Almost at the same time as the research projects in the USA and the UK,²⁰ the Competence Centre for Forensic Psychology (*Kompetenzzentrum für Rechtspsychologie*) at the University of St Gallen, with support from the Swiss National Science Foundation (SNSF), conducted a research project from 2004 to 2007 into “professional difficulties, moral dilemmas and coping strategies for judges and lawyers” (*Berufsschwierigkeiten, Moraldilemmata und Bewältigungsstrategien von RichterInnen und RechtsanwältInnen*), culminating in a scientific conference in December 2006.²¹ The research project led to various publications.²² The issue of gender in the justice system was not raised again in any comprehensive way until 2019.²³

RESEARCH PROJECTS CONDUCTED BY THE KPM CENTER FOR PUBLIC MANAGEMENT

BASIC RESEARCH INTO COURT MANAGEMENT IN SWITZERLAND

Despite the scientific discourse on NPM in the justice system,²⁴ there was a general lack of empirical and theoretical findings in Switzerland with regard to how the court system operated and on its interaction with society or with specific target groups in society. In order to conduct more detailed research into the Swiss justice system and to generate principles for optimization, in the spring of 2012 the research project entitled “Basic Research into Court Management in Switzerland” began, again supported with funding from the SNSF.²⁵

The *research question* encompassing the entire project was: how should the courts best be organized in order to guarantee the sustainable administration of justice? In various sub-projects and a cross-sectional project, the main issues were identified. The aim was to take an *interdisciplinary* approach to these issues. The project involves questions from the fields of legal science, business administration, administrative science, (legal) sociology, psychology (in particular occupational psychology and the psychology of decision-making) and also questions of political and media science. The *methodology* used in the research project followed the particularities of the various disciplines involved. It was therefore based, among other things, on literature and document analyses, comparative analyses, comparisons of legal systems, interpretation and also on empirical studies (surveys, interviews) in Switzerland and abroad.

¹⁹ See A. Hassels, C. Hommerich, *Frauen in der Justiz – eine empirische Analyse der Berufssituation, Karriereverläufe und Karrierechancen von Richterinnen, Staatsanwältinnen und Rechtspflegerinnen*, Köln 1993.

²⁰ For the results, see Schultz et al., *supra* note 19; E. Rackley, *Women, Judging and the Judiciary*, Routledge, Oxon 2013.

²¹ See R. Ludewig, K. Weislehner, E. Angehrn, Einleitung, in: R. Ludewig, K. Weislehner, E. Angehrn (eds.), *Zwischen Recht und Gerechtigkeit – Richterinnen im Spiegel der Zeit*, Stämpfli, Bern 2007, p. XV s.

²² See Ludewig et al., *supra* note 20; R. Ludewig-Kedmi (ed.), *Moraldilemmata von Richtern und Rechtsanwältinnen: Berufsschwierigkeiten und Bewältigungsstrategien*, Lachen 2006.

²³ See section “Female judges in Swiss Courts”, *infra*.

²⁴ See Section “New Public Management in the justice system”, *supra*.

²⁵ See in detail A. Lienhard, D. Kettiger (eds.), *The Judiciary between Management and the Rule of Law, Results of the Research Project “Basic Research into Court Management in Switzerland”*, Stämpfli, Bern 2016; the text in this sub-chapter comes partly from A. Lienhard, D. Kettiger, Grundlagentexten guten Justizmanagements in der Schweiz, *Justice – Justiz – Giustizia* 2016/1.

The research project comprised five interdisciplinary *sub-projects*, which aimed to answer specific questions (see diagram). The structure of the research project was subdivided into an examination of the internal organization of the justice system on the one hand and of its environment on the other. The examination of the internal organization followed the elements inherent (and in some cases expressly distinct) in conventional management models: resources, processes, organization (structure) and culture. The processing of the general constitutional and administrative questions that emerged was pooled in a *cross-sectional project*. Internal coherence was ensured by an *overall project management team* and by holding regular administrative and content-related coordination meetings and workshops. *Six universities participated* in the project: the universities of Bern, Lucerne, St. Gallen, Zurich, Lausanne, and Utrecht (Netherlands). The “leading house” was the KPM²⁶ Center for Public Management at the University of Bern. In addition, there was close contact and an ongoing exchange of knowledge with the *Judicial Academy*.²⁷ The overall project management team was supported by a *scientific advisory board* composed of recognized experts from Switzerland and abroad.²⁸

The research project gave rise to 14 dissertations and scientific studies.²⁹ A summary of the results was published in three languages³⁰ and the project was concluded with a scientific conference on 13 November 2015.

ANONYMITY OF COURT JUDGMENTS

Since around 2010, there has been a lively debate in Switzerland as to which court judgements should be published on the internet. In order to create the basis for an objective discussion, two empirical studies were conducted – five years apart – on the publication of court judgments, which also covered the topic of anonymization.³¹ These studies indicated that the issue of anonymity in court judgments had been insufficiently researched. As a consequence, the eJustice.CH association held a scientific symposium in 2019 on the issue, the results of which were summarized in a symposium publication.³²

The findings from the aforementioned work, the fact that Switzerland is pressing ahead with the digitalization of its justice system, and the fear that artificial intelligence (AI) could make it easier to lift the veil of anonymity, inspired the KPM Center for Public Management at the University of Bern to launch a related research project. The “Open Justice v. Privacy” project deals with the anonymization of court

²⁶ Kompetenzzentrum Public Management.

²⁷ A list of those participating and a summary of the topics researched is available in A. Lienhard D. Kettiger, *Justizforschung – Nationalfondsprojekt auf der Zielgerade, Justice – Justiz – Giustizia* 2015/3; see also Lienhard, Kettiger (eds.), *supra* note 25, Annex 3.

²⁸ See Lienhard, Kettiger (eds.), *supra* note 25, Annex 3.

²⁹ See Lienhard, Kettiger (eds.), *supra* note 25, Annex 1.

³⁰ Lienhard, Kettiger (eds.), *supra* note 25, and in completely identical versions in German and French.

³¹ See D. Hürlimann: *Publikation von Urteilen durch Gerichte*, *sui generis* 2014; D. Hürlimann, D. Kettiger, *Zugänglichkeit zu Urteilen kantonaler Gerichte: Ergebnisse einer Befragung*, *Justice – Justiz – Giustizia* 2018/2.

³² D. Hürlimann, D. Kettiger (eds.), *Anonymisierung von Urteilen, Helbing & Lichtenhahn*, Basel 2021, <<https://www.helbing.ch/annot/44433A484C567C7C353538387C7C504446.pdf>> [accessed 10 October 2024].

decisions in an interdisciplinary way. It is part of the National Research Programme “Digital Transformation” (NRP 77) funded by the Swiss National Science Foundation (SNFS) and conducted by several institutes at the University of Bern and the Bern University of Applied Sciences.³³

In a first module, the aim is to clarify the legal situation regarding the electronic publication and anonymization of court decisions. A doctoral thesis in law will contain an analysis focusing on the relevant field of constitutional and international law (working with classic legal methods, such as interpreting the relevant rules and comparative law). In addition, there is a master’s thesis on the subject of civil liability for failing to anonymize published court decisions³⁴ and another master thesis on private databases for court decisions.³⁵

Secondly, there is work in computer science to analyze court decisions and determine how artificial intelligence can generate information from anonymized decisions. For this purpose, a dataset containing several hundreds of thousands of Swiss court decisions has been created. Currently a substantial volume of research is being undertaken into Natural Language Processing (NLP) and using NLP. The research includes attempts at de-anonymization. This part of the project was quite successful in research on legal NLP. So far, the research in computer science has shown that it is not possible to build an inexpensive general de-anonymization tool.³⁶

A third module aims to assess the positions of the various actors in the judicial system, i.e. courts, lawyers, litigants, media, society, and to examine the opinions of experts and the public regarding transparency and privacy.

The research project ends in May 2024. Some major publications are still to come.

CASELOAD STUDIES

Caseload studies for ascertaining case weighting originated in the USA. They date back to the 1960s and nowadays are a widely used method for objectively determining a court’s judicial staffing requirements.³⁷ In Europe, determining the weighted caseload has a long tradition, above all in Germany, where systems for calculating human resources needs have been in use for many years.³⁸ Today caseload studies are carried out periodically under the heading of the “*Personalbedarfsberechnungssystem*

³³ See A. Lienhard, D. Kettiger, Court Decisions between Transparency and Privacy: a Report from an ongoing Swiss Research Project, *The Court Administrator*, Vol. 14, spring 2023, pp. 23–25; see also <<https://www.nfp77.ch/en/c1Qw3hiAvSYfVs3z/project/court-decisions-in-the-field-of-tension-between-transparency-and-privacy>> [accessed 10 October 2024].

³⁴ T. Munz, Staatshaftung für mangelhafter Anonymisierung von Gerichtsurteilen, *Justice – Justiz – Giustizia* 2022/1.

³⁵ L. Grob, Datenschutzrechtliche Aspekte bei der Veröffentlichung von Gerichtsurteilen in sekundären Entscheid-Datenbanken, *Justice – Justiz – Giustizia* 2024/2.

³⁶ A. Nyffenegger, M. Stürmer, J. Niklaus, Anonymity at risk? Assessing Re-Identification Capabilities of Large Language Models, *arXiv:2308.11103v1 [cs.CL]* 22 August 2023.

³⁷ A. Lienhard, D. Kettiger, Research on the caseload management of courts: methodological questions. *Utrecht Law Review* 7(1), 2011, pp. 66–73. DOI: <<http://doi.org/10.18352/ulr.147>> [accessed 10 October 2024], p. 68; See also D. Winkler, *Fallgewichtung an schweizerischen Gerichten: Methodik von Studien der gewichteten Geschäftslast*, Schriftenreihe zur Justizforschung 18, Stämpfli, Bern, 2020, p. 161.

³⁸ See Winkler, *supra* note 37, p. 199 ss.; Bundesrechtsanwaltskammer (ed.), *Tatsachen zur Reform der Zivilgerichtsbarkeit*, Band I, Tübingen, 1974.

PEBBSY”³⁹ (system for calculating personnel requirements).⁴⁰ Caseload studies conducted in Europe include projects in the Netherlands,⁴¹ Belgium⁴² and the Balkan states.⁴³

In Switzerland, caseload-weighting studies have been rare. Only the following studies have been conducted according to the methods based on weighted caseloads so far:

- Comparison of administrative courts in various cantons;⁴⁴
- Federal Administrative Court;⁴⁵
- Courts and the Cantonal Prosecution Service in the Canton of Basel-Stadt;⁴⁶
- Courts in the Canton of Basel Landschaft;⁴⁷
- Regional courts in the Canton of Graubünden.⁴⁸

In addition, a study has been devised that uses a different methodology (comparison based on statistics relating to cases and personnel that does not involve case-weighting studies).⁴⁹

The research has also produced publications on methodological questions.⁵⁰ Particular problems arise in Switzerland in connection with caseload studies, in view of the fact that the courts are often very small.⁵¹

³⁹ Pronounced “Pepsi”.

⁴⁰ See Winkler, supra note 37, p. 2009 ss; R. Riedel, Improving Caseload and Workload Systems in Courts and Administrations: Special Types of First Instances Criminal Cases in Regional Courts in Germany, *EGPA Policy Paper 1/2017*, Brussels, European Group for Public Administration (EGPA), 2017.

⁴¹ See Winkler, supra note 37, p. 247 ss.

⁴² Winkler, supra note 37, p. 266 ss.; R. Depré, et al., Etude de faisabilité de la mise en œuvres d'un instrument de mesure de la charge de travail destiné au siège, Bruxelles, Politique scientifique fédérale, 2007.

⁴³ See P. Langbroek, M. Kleinman, *Backlog Reduction Programmes and Weighted Caseload Methods for South East Europe: Two Comparative Inquiries*, Sarajewo, Regional Cooperation Council, 2016, p. 40 ff.

⁴⁴ See A. Lienhard, D. Kettiger, Caseload Management in the Law Courts: Methodology, Experiences and Results of the first Swiss Study of Administrative and Social Insurance Court, *International Journal of Court Administration* 3(1) 2010, pp. 30–49.

⁴⁵ See A. Lienhard, D. Kettiger, B. Ehrenzeller, U. Cavelti, *Geschäftslastbewirtschaftung am Bundesverwaltungsgericht: Schlussbericht*, Universität Bern/Universität St. Gallen, 2011 (unpublished).

⁴⁶ See A. Lienhard, D. Kettiger, H. P. Uster, D. Winkler, *Geschäftslast sowie Aufbau- und Ablauforganisation der Gerichte und der Staatsanwaltschaft im Kanton Basel-Stadt*, final report, 12 February 2015, <https://www.kettiger.ch/fileadmin/user_upload/Dokumente/Downloads/BS_Justiz_Schlussbericht_def_150212.pdf> [accessed 10 October 2024].

⁴⁷ See A. Lienhard, D. Kettiger, *Geschäftslast der Gerichte im Kanton Basel-Landschaft*, University of Bern, Report 2021 (unpublished).

⁴⁸ See D. Kettiger, *Befragung der Regionalgerichte zur Geschäftslast*, Ergebnisse, Report, 12 April 2023 (unpublished).

⁴⁹ D. Kettiger, *Personelle Ressourcen der Staatsanwaltschaft des Kantons Glarus*, Report commissioned by the Chief Prosecutor and Cantonal Government dated 26 March 2013 (unpublished).

⁵⁰ See e.g. Winkler, supra note 37; A. Lienhard, D. Kettiger, supra note 37; T. Stadelmann, Geschäftslasten-Ausgleich – ein pragmatischer Lösungsbeitrag aus der Praxis, *Justice – Justiz – Giustizia* 2018/1; C. Reiter, H.-J. Mosimann, Der Belastungsausgleich zwischen Richterinnen und Richtern, *Justice – Justiz – Giustizia* 2021/2.

⁵¹ See A. Lienhard, D. Kettiger, Caseload Studies – How to Deal with Small Courts, in: E. Bauw, A. Buijze, R. Widdershoven (eds.), *Met recht, raad en daad*, Liber Amicorum Philip Langbroek, Den Haag 2023, pp. 81–88.

Position of the public prosecutor in the state structure

On 1 January 2011, the system of prosecution in Switzerland underwent a considerable and historic change: with the entry into force of the *Swiss Criminal Procedure Code* (CrimPC),⁵² Switzerland's law on criminal procedure was standardized and the various cantonal prosecution systems were harmonized. By abolishing the position of the investigative magistrate,⁵³ public prosecution services were given a new position in the criminal-justice chain, assuming responsibility for orchestrating preliminary proceedings. The independence of prosecutors was increased, at least as far as all legal acts carried out in the course of the criminal prosecution process are concerned.

The new system of prosecution in Switzerland spawned lively debates and inspired research on the position of the public prosecution services in the new system from a constitutional and administrative law angle as well as from the standpoint of administrative theory. The public prosecution service was subjected to intense studies.⁵⁴ Legal experts generally assume that the public prosecution service is a constitutional *compositum mixtum*, i.e. that the function it serves in the state places it somewhere between a judicial and an executive authority.⁵⁵ Also subject to research was the interface between the public prosecution service and the police.⁵⁶

Composition of the judicial panel

The decisions of the Federal Supreme Court and public criticism of the practices of the Federal Administrative Court led around the year 2000 to a broad scientific consideration of the issue of how judicial panels are composed in the courts, in particular in the Federal Administrative Court.⁵⁷ One issue was whether the process

⁵² Swiss Criminal Procedure Code (Criminal Procedure Code, CrimPC) of 5 October 2007, SR 312.0; also referred to as CCrP or CPC.

⁵³ Also called examining judges or investigative judges; in Belgium “juge d’instruction/onderzoekrechter”; in Switzerland before 2011 “juge d’instruction” in the French speaking part, “Instruktionsrichter”, “Untersuchungsrichter” or “Verhörrichter” in the German speaking part.

⁵⁴ See C. Mettler, *Staatsanwaltschaft*, Basel/Genf/München 2000; S. Hänzli, Einführung des Staatsanwaltschaftsmodells im Kanton Bern, Systeme der Aufsicht und Wahl im Spannungsfeld der judikativen, legislativen und exekutiven Gewalt, Master thesis, University of Bern, Bern 2007.

⁵⁵ See A. Lienhard, D. Kettiger, Die organisatorische Einordnung der Staatsanwaltschaft in die kantonale Behördenstruktur, *Justice – Justiz – Giustizia* 2/2008; R. Kiener, *Richterliche Unabhängigkeit*, Stämpfli, Bern 2001, p. 319; Mettler, supra note 54, p. 73 s.; R. Kiener, B. Cupa, Hybrider Status – relative Unabhängigkeit. Zur institutionellen Stellung der Staatsanwaltschaft, in: A. Cavallo et al. (eds.), *Liber amicorum für Andreas Donatsch*, pp. 395–416. Schulthess: Zürich, 2012.

⁵⁶ See D. Kettiger, A. Lienhard, The Position of the Public Prosecution Service in the New Swiss Criminal Justice Chain, in: A. Hondeghem, X. Rousseaux, F. Schoenaers, *Modernisation of the Criminal Justice Chain and the Judicial System*, Springer, Cham 2016, pp. 51–64.

⁵⁷ See D. Kettiger, Die aktuelle Bundesgerichtspraxis zur Spruchkörperbildung, *Justice – Justiz – Giustizia* 2018/4; R. Kiener, D. Henseler, Anforderungen des Europarats und der OSZE an die Spruchkörperbildung in Gerichten in: *Festschrift für Thierry Tanquerel*, Basel 2019 pp. 193–200; K. Büchel, R. Kiener, A. Lienhard, M. Roller, Automatisierte Spruchkörperbildung an Gerichten, *Justice – Justiz – Giustizia* 2021/4; G. Gertsch, Richterliche Unabhängigkeit und Konsistenz am Bundesverwaltungsgericht: eine quantitative Studie, *Schweizerisches Zentralblatt für Staats und Verwaltungsrecht* 1/2021, p. 34 ff.; A. Brunner, Verfassungsrechtliche Vorgaben an die Besetzung gerichtlicher Spruchkörper, *Schweizerisches Zentralblatt für Staats und Verwaltungsrecht* 6/2021; D. Thurnherr, *Spruchkörperbildung durch das Bundesverwaltungsgericht*, Report, University of Basel, 24 March 2023.

of randomly forming panels of judges should be automated; i.e. could it be left to an IT system?⁵⁸

Judicial councils in Switzerland

At a cantonal level, organizational reforms relating to the supervision of the judicial system and the appointment of judges have taken and are still taking place. Each canton has its own model for supervising the judiciary and its own systems for appointing judges. With regard to the supervision of the judiciary, the majority of the cantons – and the Confederation – have opted for oversight by parliament. Furthermore, the six cantons, Fribourg, Geneva, Neuchâtel, Jura, Ticino and Valais, have established a justice committee, which in addition to having the task of supervising the judiciary also in certain cases has responsibilities in relation to the appointment of judges. In contrast to other countries, in Switzerland justice committees are an exception. Although the roots of the oldest justice committee in Switzerland – the justice committee in the Canton of Geneva – date back to the 1940s, generally speaking justice committees in Switzerland are a fairly young institution. Little information is available about the functions and experiences of justice committees in Switzerland or the challenges that they face.

In view of this, a dissertation at the KPM Center for Public Management at the University of Bern is considering the following research questions: what is the function of a justice committee? What tasks do justice committees in Switzerland have? How are justice committees in Switzerland organized? What are the advantages and disadvantages of justice committees when compared with traditional models? The aim of the work is to find out whether appointing a justice committee adds value in relating to supervising the judiciary and/or appointing judges.⁵⁹

Female judges in Swiss courts

To date, a comprehensive survey of the numbers of female judges has never been carried out. As a result, a research project was initiated in 2017 to investigate the issue of gender in the judiciary.⁶⁰ In a comprehensive study, the empirical part of which contains the results of a survey of the 165 federal and cantonal courts with regard to the percentage of women and part-time work for judges, the percentage of female judges and their work situation is being reviewed.⁶¹

INTERNATIONAL NETWORKING

EUROPEAN GROUP FOR PUBLIC ADMINISTRATION

Permanent Study Group XVIII on “Justice and Court Administration” was set up in the European Group for Public Administration (EGPA) in connection with the “Basic Research into Court Management in Switzerland” project⁶² which has already been

⁵⁸ See Büchel et al., *supra* note 57.

⁵⁹ See <<https://www.kpm.unibe.ch/forschung/forschungsprojekte>> [accessed 10 October 2024].

⁶⁰ See Section “Gender and judging”, *supra*.

⁶¹ See N. Ochsenbein, *Richterinnen an Schweizer Gerichten, Schriftenreihe zur Justizforschung*, Band 19, Stämpfli, Bern 2021.

⁶² See Section “Basic research into court management in Switzerland”, *supra*.

mentioned. It has held workshops at the annual conferences of the EGPA and given rise to numerous publications.⁶³ The administrative work for the Permanent Study Group is carried out by the University of Bern.

Because of the COVID-19 pandemic, the EGPA annual conference in 2020 had to be cancelled. As a replacement, Permanent Study Group XVIII on “Justice and Court Administration”, under the lead of the KPM Center for Public Management at the University of Bern held a webinar on 3 September 2020 entitled “The COVID-19 crisis – Lessons for the Courts”.⁶⁴

In addition, the networking carried out by this Permanent Study Group resulted in guest researchers from Elte University, Budapest and the Goiano Federal Institute, Brazil, spending time at the University of Bern and collaborating on joint publications with Swiss researchers.⁶⁵

INTERNATIONAL ASSOCIATION FOR COURT ADMINISTRATION

One of the main tasks of the International Association for Court Administration (IACA) is producing since 2008 the *International Journal for Court Administration* (IJCA). The IJCA is an important platform for knowledge transfer when it comes to research into the justice system in Switzerland. The IJCA platform has around 20 publications on subjects relating to the Swiss justice system. Furthermore, personal networking relating to Swiss research into the justice system also takes place, as Prof. Dr. Andreas Lienhard (University of Bern) is a member of the editorial board of the IJCA.

As mentioned, the e-conference of EGPA Permanent Study Group XVIII on “Justice and Court Administration”⁶⁶ led to a special issue on “The COVID-19 crisis – Lessons for the Courts”.⁶⁷

Speakers from Switzerland have also made presentations at international IACA conferences.⁶⁸

JAR ASSOCIATION

The Justice Administration Research Association (JAR Association),⁶⁹ based in Limoges, France, is an independent not-for-profit scientific association that aims to develop an international network of academics, policymakers, and professionals working in the justice administration sector. The association was founded in the spring of 2021 by a group of scholars. The KPM Center for Public Management at the University of Bern was represented on the foundation committee.

⁶³ See Kettiger et al., *supra* note 1.

⁶⁴ See T. Munz, Bericht über die EGPA-IASIA 2020 e-Conference, *Justice – Justiz – Giustizia* 2020/4.

⁶⁵ E.g. M. Sousa, D. Kettiger, A. Lienhard, ‘E-justice in Switzerland and Brazil: Paths and Experiences’, *International Journal for Court Administration* 13(2).

⁶⁶ See Section “European Group for Public Administration”, *supra*.

⁶⁷ *International Journal for Court Administration* Volume 12 issue 2 2021.

⁶⁸ E.g., A. Lienhard, Performance Assessment in Courts – The Swiss Case, Constitutional appraisal and thoughts as to its organisation, *International Association for Court Administration* (IACA), Annual Conference, Sydney September 2014.

⁶⁹ See <<https://jar-association.eu/>> [accessed 10 October 2024].

It is encouraging to see international research into the justice system being carried out by an additional body. The JAR Association, though less than three years old, has already hosted some impressive activities, above all regular webinars and a conference in Rome.

OTHER INTERNATIONAL ASPECTS OF RESEARCH

Specialists from the KPM Center for Public Management at the University of Bern working on research into the justice system have already on various occasions been asked to act as experts for international research projects:

- OECD, Public Governance, Equal Access to Justice, 1st OECD Expert Roundtable, 7 October 2015, OECD Headquarters, Paris;
- OECD, Public Governance, Equal Access to Justice, 2nd OECD Expert Roundtable, 12 December 2015, OECD Headquarters, Paris;
- Montagne Centre, University of Utrecht, Seminar “Economic impact of courts”, 17/18 December 2015, Utrecht;
- European Network of Councils for the Judiciary (ENCJ)/Montagne Centre, University of Utrecht, ENCJ in its report “Independence, Accountability and Quality of the Judiciary 2017” (EU Justice Programme), Seminar methodology assessment of ENCJ report on independence of judiciary.

In addition, the University of Bern hosted a seminar for the European research project “Towards European Caseflow Management development network – Identifying, developing and sharing best practices (EU Grant), Lappeenranta University of Technology, Finland.”⁷⁰

The Swiss judge, university lecturer and researcher into justice systems Stefan Gass acts as an expert and adviser on justice systems for the Council of Europe, the American Bar Association, the European and International Association of Judges, the Federal Department of Justice and Police and the Federal Department of Foreign Affairs (the Swiss Agency for Development and Cooperation [SDC]), in particular on questions of court systems in East- and Eastern Central Europe. He is currently president of the commission on the status of associations of judges and the rule of law in the member states of the European Association of Judges (IAJ/EAJ).

Also worth mentioning is the international networking carried out by Federal Supreme Court Judge Dr. h.c. Thomas Stadelmann: from 2007 to 2018 he was the delegate for the Swiss Association of Judges to the International Association of Judges IAJ-UIM and the European Association of Judges AEM (from 2012 member of the “EAJ-WG on the Situation of Member Associations; from 2014 vice-president of the 1st Study Commission of the IAJ – Organization of the Judiciary, Status of the Judiciary, Rights of Individuals) and since 2016 he has been a member of the board of the Provident Fund for Assistance of Members of the Judiciary in the European Association of Judges.

There are also connections between the Swiss research into the justice system and the European Commission for the Efficiency of Justice (CEPEJ).⁷¹

⁷⁰ See A. Lienhard, D. Kettiger (eds.), *Innovation on European Caseflow Management in Courts*, Schriftenreihe zur Justizforschung, Band 12, Stämpfli, Bern 2018.

⁷¹ See Section “ESEHA”, *infra*.

ESEHA

ESEHA, in French an acronym of “Etat – Société – Economie – Histoire – Administration” (State – Society – Economy – History – Administration SSEHA), is an association created in 2013 by a team of researchers and specialists in public administration, criminology, and social and economic sciences from the universities of Lausanne, Bern and Geneva. The objective of ESEHA/SSEHA is to analyse institutional diversity in Switzerland and at an international level, especially from the point of view of federalism, from a quantitative and qualitative, socio-economic, geographic and historical perspective.⁷²

ESEHA/SSEHA runs the CHStat statistics portal,⁷³ which provides statistics on the cantons and communes. Based on the work of the Swiss delegation to the CEPEJ, ESEHA/SSEHA also processes information on the Swiss justice system, publishing it on the statistics portal. In addition, ESEHA/SSEHA conducts its own quantitative research into the justice system.

SWISS INSTITUTE FOR THE JUDICIARY

The Swiss Institute for the Judiciary,⁷⁴ established by Federal Supreme Court judge Dr. h.c. Thomas Stadelmann, is constituted as an association under Swiss law and has the task of investigating the workings and effects of the judiciary in scientific detail, as well as making this more accessible to the public and to academia. Target groups are in particular the judiciary, lawyers, the public, academia, and politicians. The Institute takes an interdisciplinary approach. As well as focusing on matters of law, aspects of political and social sciences and aspects of organizational theory and economics are considered.

The Swiss Institute for the Judiciary organizes conferences and webinars on justice-related topics and has built its own network of experts on justice matters.

SWISS JUDICIAL ACADEMY

The Swiss Judicial Academy⁷⁵ is an association established in June 2007 and based in Lucerne. The Swiss law faculties, the Foundation for the Continuing Education of Swiss Judges and the Swiss Association of Judges are all members of the Judicial Academy.

Most judges in Switzerland have a solid legal training. However, they do not necessarily have any specific training for working as judges. The purpose of the Swiss Judicial Academy is therefore to provide a certified course of studies for prospective or working judges and clerks of court (the Certificate of Advanced Studies (CAS) in the “Judiciary”). This aims to teach the principles that are essential for working as a judge. The final dissertations are often practice-oriented research papers on the justice system and in some cases are published in the *Swiss Judges’ Journal* (*Richterzeitung*) or in other professional journals.

⁷² See <<http://www.esaha.ch/>> [accessed 10 October 2024].

⁷³ See <<https://www.chstat.ch/>> [accessed 10 October 2024].

⁷⁴ See <<https://sifj.ch/>> [accessed 10 October 2024]; see also T. Stadelmann, A. Lienhard, A. Sanders, Gründung des Vereins “Schweizerisches Institut für Judikative”, *Justice – Justiz – Giustizia* 2020/4.

⁷⁵ See <<https://www.unilu.ch/weiterbildung/rf/cas-judikative-richterakademie/>> [accessed 10 October 2024].

Since its inception, the eJustice.CH Association has developed in step with its exceptionally rapidly changing environment⁷⁶ and has therefore always kept its finger on the pulse of the latest technical and social developments. It has its origins in the Association for the Swiss Legal Database (*Verein Schweizerische Juristische Datenbank VSJDB*), which was established on 23 January 1985 by the Swiss Bar Association, the Swiss Lawyers' Association and the Swiss Confederation, and which aimed to introduce a national legal database on a not-for-profit basis. This project was overtaken by the rapid technological developments at the end of the 20th century – the federal and cantonal institutions and many private providers began to offer online access to a wide range of legal and court case data. At the association's general meeting on 13 November 1998, members reacted to the changing circumstances by renaming the association as the "Swiss Association for Legal Informatics" (*Schweizerischer Verein für Rechtsinformatik SVRI*) and committed to providing electronic access to legal and court case data to the public, serving as a forum for dialogue between all parties interested in the market for legal information. In response to the progressively more rapid digitalization of everyday life, and in particular the introduction and spread of electronic legal and administrative transactions, the objective of the Association were further amended to take account of the latest developments at the 26th General Assembly on 28 March 2011. This reorientation is emphasized by the new name, the "eJustice.CH Association".

The eJustice.CH Association not only organizes the Magglingen Legal Informatics Seminar (annually) and the Conference for Information Technology and Law (biannually), but has also conducted or instigated research projects on the justice system:

- Anonymity of court judgments;⁷⁷
- Vision for eJustice in Switzerland;⁷⁸
- eJustice barometer.⁷⁹

OBWALDEN INSTITUTE FOR RESEARCH INTO THE JUSTICE SYSTEM

The Obwalden Institute for Research into the Justice System, founded in 2022 at the University of Lucerne (*Institut für Justizforschung IJF*)⁸⁰ and based in Sarnen (Canton of Obwalden) is organized as an independent and autonomous institute in the form of an association. The IJF states that it conducts its own basic interdisciplinary research and also accepts mandates for research into the justice system. As concrete research activities, a prospective project on the relationship between small and medium-sized enterprises and civil justice is mentioned on the website.

⁷⁶ See <<https://www.ejustice.ch/verein/>> [accessed 10 October 2024].

⁷⁷ See Section "Anonymity of court judgments", supra und <<https://www.ejustice.ch/project/anonymisierung-von-urteilen/>> [accessed 10 October 2024].

⁷⁸ See <<https://www.ejustice.ch/project/eine-vision-fuer-ejustice-in-der-schweiz/>> [accessed 10 October 2024]; for the entire vision paper, see <https://www.ejustice.ch/wp-content/uploads/2022/06/Vision-eJustice_de.pdf> [accessed 10 October 2024].

⁷⁹ In cooperation with ESEHA, see Section "ESEHA", supra.

⁸⁰ See <<https://www.institut-justizforschung.ch/>> [accessed 10 October 2024].

Two specific Swiss publication organs are also available for knowledge transfer on Swiss research into the justice system:

- The Swiss journal *Justice – Justiz – Giustizia*⁸¹ posts quarterly online reports on matters concerning the judiciary, including the criminal investigation authorities, from a Swiss point of view. It provides information about all matters of constitutional law relating to the judiciary and the organization of the courts, and is a discussion forum for all those who are working in and with the judiciary. Established in 2005,⁸² *Justice – Justiz – Giustizia* is the official organ of the Swiss Association of Judges. *Justice – Justiz – Giustizia* is intended primarily for members the judiciary, i.e. judges, lay judges, justices of the peace and clerks of court, but also for the members of the criminal investigation authorities, i.e. public prosecutors, and members the federal and cantonal legislatures and executives, and persons teaching and studying law, i.e. professors, assistants and students. Ultimately it is intended for all those who are interested in the justice system. A large part of the research into the justice system in Switzerland results in publications in the *Justice – Justiz – Giustizia*.
- The *Schriftenreihe für Justizforschung (Justice Research Series)*⁸³ is an organ for publishing more complex works, such as post-doctoral theses, doctoral and master theses, research reports and conference proceedings. It was established in 2013 at the instigation of the KPM Center for Public Management at the University of Bern. Publication is possible in German, French or English, as is required. The publishers Stämpfli (Switzerland), Nomos (Germany) and Verlag Österreich are involved. By 2023, 19 volumes had been published.⁸⁴

OUTLOOK AND NEED FOR FURTHER RESEARCH

ONGOING RESEARCH PROJECTS

Virtual court hearings

A dissertation project is currently ongoing at the Institute for Public Law at the University of Bern with the working title “Video court hearings: Constitutional requirements and procedural implementation”. The main aim of the work is to devise the legal requirements for video hearings in courts in Switzerland from a constitutional and organizational perspective, taking account of the relevant procedural principles, and to derive suggestions and draw up proposals for practical implementation. The various, sometimes conflicting interests should be appropriately recognized and taken into account in a balanced manner.

⁸¹ See <<https://richterzeitung.weblaw.ch/>> [accessed 10 October 2024].

⁸² See also on the foundation S. Gass, T. Stadelmann, P. Zappelli, H.J. Mosimann, R. Kiener, A. Colliard, “Justice – Justiz – Giustizia” – Die Schweizer Richterzeitung, *Justice-Justiz – Giustizia* 2005/1.

⁸³ The current editors are Prof. Dr. Andreas Lienhard (Universität Bern), Mag. Daniel Kettiger (Universität Bern), Prof. em. Dr. Yves Emery (Universität Lausanne), Prof. em. Dr. Philip Langbroek (Universität Utrecht), Univ.-Prof. Dr. Georg Lienbacher (Wirtschaftsuniversität Wien).

⁸⁴ <<https://staempflirecht.ch/reihe-schriftenreihe-zur-justizforschung>> [accessed 10 October 2024].

Artificial intelligence in judicial decision-making

A further dissertation on digitalization in the justice system at the Institute for Public Law at the University of Bern aims to tackle in detail the issues surrounding the use of artificial intelligence (AI) in the courts. In particular, the specific rules of Swiss constitutional law will be analyzed against the background of international developments and conclusions derived for implementation in sub-constitutional procedural and organizational law. The project is ongoing.

Quality of court judgments

In addition, a dissertation project at the KPM Center for Public Management at the University of Bern is examining the quality of court judgments. In essence, it involves the question of what makes a “good” judgment. The issue is not whether the decision is substantively correct nor whether the proper procedures have been followed, but rather the “end product” of the proceedings. The focus will be on public law judgments. The research will take a multidisciplinary approach and also include an empirical part. The project is ongoing.

Human beings in digital government

The ongoing research project “Human beings in digital government” (*Der Mensch in der digitalen Verwaltung*) at the KPM Center for Public Management at the University of Bern is considering the effects of the digital transformation of administrative proceedings on citizens, businesses and administration employees, in particular when artificial intelligence (AI) is used, pointing up the relevant administrative and legal principles and requirements.⁸⁵ By taking an interdisciplinary approach with one dissertation each in administrative science and law, the status of digitalization in administrative proceedings will initially be surveyed on the basis of theoretical principles and empirical analyses. In a further step, comparative, cross-dissertation studies will be used to determine the levels of digitalization in administrative proceedings and their potential effects, and an assessment of the areas in which further action is needed will be carried out. The project is expected to continue until 2026.

NEED FOR FURTHER RESEARCH

On conclusion of the research project into “Principles of good court management in Switzerland”⁸⁶ in 2016, the areas in which further research was needed were identified as part of the overall assessment.⁸⁷ In some cases, these further research needs were similar to those identified by EGPA Permanent Study Group XVIII on “Justice and Court Management” in 2019.⁸⁸ Some of the research planned has since been carried out, such as that relating to justice committees in Switzerland⁸⁹ or to the use of specialist

⁸⁵ See <https://www.kpm.unibe.ch/forschung/forschungsprojekte/mensch_in_der_digitalen_verwaltung/index_ger.html> [accessed 10 October 2024].

⁸⁶ See Section “Basic research into court management in Switzerland”, *supra*.

⁸⁷ See A. Lienhard, D. Kettiger, Overall Assessment and Outlook, in: A. Lienhard, D. Kettiger (eds.), *The Judiciary between Management and the Rule of Law, Results of the Research Project “Basic Research into Court Management in Switzerland”*, Stämpfli, Bern 2016, p. 167 ss.

⁸⁸ See Kettiger et al., *supra* note 1, p. 313 ss.

⁸⁹ See Section “Judicial councils in Switzerland”, *supra*.

judges.⁹⁰ Other research needs have yet to be met, for example on quality in the justice system or on the role of the legal profession. Equally, questions relating to the economic effects of court activities have yet to be answered.

Despite the research carried out into the justice system that has been described, Switzerland still lacks a comprehensive and reliable empirical basis for the activities of the Swiss courts and judiciary, and in particular concise and consolidated statistics. However, in the coming years, the research agenda is most likely to be characterized by the digital transformation of the justice system.

COMPETING INTERESTS

The authors have no competing interests to declare.

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⁹⁰ See A. Rüefli, *Fachrichterbeteiligung im Lichte der Justiz- und Verfahrensgarantien, Schriftenreihe zur Justizforschung*, Band. 15, Stämpfli, Bern 2018.

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