

Procedure and timetable

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The procedure of the *sindacato* combined elements of an audit, a court session and a diplomatic conference. The envoys arrived with instructions from their governments, which determined how they were to vote on known issues. They received the outgoing and incoming *landfogti*, heard the reports of the local officials, examined the registers and received petitions. Hearings on appeals were held in the presence of the parties or their procurators, and decisions were taken by majority vote. Since the envoys met only once a year, in summer, a large volume of business had to be dispatched quickly, and cases that required further inquiry could be postponed from one year to the next.¹

The costs of the *sindacato* were borne largely by the subjects. The envoys were entitled to daily allowances, accommodation and hospitality, while the parties who appeared before them paid fees. In addition, it was customary for communities and litigants to offer gifts to the envoys. The eighteenth-century critics regarded these gifts as a form of institutionalized bribery, while contemporaries within the system saw them as a traditional courtesy.² Either way, the institution that was supposed to control the financial conduct of the *landfogto* was itself financed in part by the persons whose cases it decided.

1 An early form of oversight and its weaknesses

Measured against the standards of its time, the *sindacato* was a serious institution. Many European territories had no regular procedure at all for reviewing the conduct of provincial governors, and few had a procedure that allowed subjects to bring complaints directly before the sovereign's representatives every year. The *sindacato* controlled the conduct of the *landfogto*, examined complaints against the measures he had taken and judged appeals against his sentences, so that a governor's decisions could be reversed by the envoys of his own and the other sovereign cantons.³ The

regularity of the procedure also created a form of legal memory: decisions were recorded, repeated and cited, and the ordinances of the *sindacato* accumulated into a body of rules that supplemented the local statutes.

Its weaknesses were structural. The *sindacato* was composed of representatives of the parties with a financial interest in the revenue under review. It met for a short period, without a permanent secretariat and without professional judges. Its members did not always understand Italian and depended on interpreters and on the local *cancelliere*. Its decisions were political compromises among twelve governments with different confessions and different interests. The subjects had no representation in it and could only petition. For these reasons the *sindacato* never became an independent audit authority or an independent court. It remained a meeting of co-owners reviewing the management of their joint estate.

For the practitioner. The *sindacato* is a historical illustration of four principles that are now built into Swiss financial supervision and judicial organization: the separation of the audited from the auditor (today the independence requirements for regulatory audit firms under the Auditor Oversight Act and FINMA practice); - the separation of the judge from the revenue of justice (court fees and fines accrue to the state treasury, never to the judge); - a permanent, professional review body with its own resources (FINMA, the Federal Audit Oversight Authority and the cantonal courts of appeal); - access of the affected persons to the review body as parties with procedural rights of their own.

2 From sindacato to supervisory law

The modern equivalents of the *sindacato*'s functions are distributed among separate institutions with statutory mandates. The audit of public revenue is the task of the cantonal financial control office and, at federal level, of the Swiss Federal Audit Office, whose independence is laid down in the Federal Audit Office Act.⁴ Appeals against judgments lie to courts organized by law, whose independence is guaranteed by Art. 30 para. 1 and Art. 191c of the Federal Constitution.⁵ Complaints against administrative authorities are handled under administrative procedure with rights of access to the file and rights to be heard (Art. 29 para. 2 Cst.). Supervision of financial institutions is carried out by FINMA, which the Financial Market Supervision Act establishes as an institution under public law with its own legal personality and which exercises its supervisory activity independently.⁶ No modern institution descends directly from the *sindacato*. What connects it with modern supervisory law is accumulated experience. The early modern Confederation knew the problem of controlling delegated power but

addressed it through the mutual surveillance of co-owners. The liberal constitutions of the nineteenth century, drafted by men who had grown up with the memories of the bailiwicks, addressed it through the separation of powers, fixed salaries for officials and courts financed from the public budget. Chapter C.I follows that constitutional transition in Ticino.

3 Notes

1. Ostinelli, "Sotto il dominio confederato" (above), on the annual meeting in summer; Würgler, "Diète fédérale" (above), on envoys voting according to the instructions of their cantons at the Diet; Ceschi (ed.), *Storia della Svizzera italiana dal Cinquecento al Settecento* (above). ↩
2. Schinz, *Beyträge* (above); Bonstetten, *Briefe über die italienischen Ämter* (above). ↩
3. Negro, "Lugano (pieve, baliaggio, distretto)" (above) ("controllava l'operato del landfogto, esaminava i ricorsi contro provvedimenti da lui presi e giudicava in appello"); Ostinelli, "Sotto il dominio confederato" (above), on the sindacato as the highest judicial authority in the bailiwick during its sessions. For the proceedings in individual cases see the *Amtliche Sammlung der älteren Eidgenössischen Abschiede* (above). ↩
4. Federal Act on the Swiss Federal Audit Office of 28 June 1967 (Federal Audit Office Act, FAOA), SR 614.0, Art. 1 para. 1 ("Die Eidgenössische Finanzkontrolle ist das oberste Finanzaufsichtsorgan des Bundes. Sie ist in ihrer Prüfungstätigkeit nur der Bundesverfassung und dem Gesetz verpflichtet"), consulted in the bilingual edition at <https://www.droit-bilingue.ch/de-fr/6/61/614.0-1-4.html>. ↩
5. Federal Constitution of the Swiss Confederation of 18 April 1999, SR 101, Art. 30 para. 1 (right to a court established by law, with jurisdiction, independence and impartiality) and Art. 191c ("Die richterlichen Behörden sind in ihrer rechtsprechenden Tätigkeit unabhängig und nur dem Recht verpflichtet"), consulted at <https://www.droit-bilingue.ch/de-fr/1/10/101-30-36.html> and <https://www.droit-bilingue.ch/de-fr/1/10/101-191c-228.html>. ↩

Procedure and timetable

6. Federal Act on the Swiss Financial Market Supervisory Authority of 22 June 2007 (Financial Market Supervision Act, FINMASA), SR 956.1, Art. 4 (objectives), Art. 5 para. 1 (institution under public law with its own legal personality and its seat in Bern) and Art. 21 para. 1 ("Die FINMA übt ihre Aufsichtstätigkeit selbstständig und unabhängig aus"), consulted at <https://www.droit-bilingue.ch/de-fr/9/95/956.1-5-8.html> and <https://www.droit-bilingue.ch/de-fr/9/95/956.1-21-25.html>. ↩

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