



SWITZERLAND

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I. INTRODUCTION

'Mors certa, hora incerta' ('Death is certain, its hour is uncertain'), a Latin proverb states. The practice of euthanasia, meaning 'good death' in Ancient Greek, has somewhat alleviated the tragedy of human existence alluded to in the proverb: not only are we all at the mercy of death, but we are also unable to predict the moment in time when it will strike. From this perspective, the legality of assisted suicide reinforces individual autonomy. Conversely, euthanasia is considered incompatible with the sanctity of life and human dignity, as the latter requires everyone to respect the intrinsic value of every life in all circumstances. Yet euthanasia is surrounded by a *constitutional void* in Switzerland, as the case law of the Swiss Federal Supreme Court in 2024 demonstrates (see section III/2 below). This is due both to the broad support that the liberal regulation of euthanasia has enjoyed for decades, and to the fact that federal statutes, including the Swiss Criminal Code, are binding on courts even if they are found to be unconstitutional.¹

According to the Swiss Criminal Code, assisted suicide is only punishable if it is carried out 'for selfish reasons'.² Every assisted suicide is nevertheless treated as an 'unnatural death' and thus requires an inquest conducted by the police and the public prosecutor's office. The number of people in Switzerland who have opted for euthanasia has risen steadily over the last two decades, from 187 in 2003 to 1,594 in 2022. These figures exclude the approximately 200 people living abroad who choose Switzerland as their final earthly destination to end their lives through euthanasia each year. Consequently, the phrase 'going to Switzerland' has become increasingly associated with 'death tourism to Switzerland', particularly in the United Kingdom. In stark contrast, assisted reproductive techniques are comparatively tightly regulated in Switzerland. Donation of embryos and all forms of surrogate motherhood are, for instance, banned as a matter of federal constitutional law.³ It therefore seems

fair to say, albeit somewhat provocatively, that while one *comes* to Switzerland to die, but *leaves* in order to reproduce, embarking on assisted reproductive treatment.

II. MAJOR CONSTITUTIONAL DEVELOPMENTS

In 2024, *old age* has also been placed at the center of constitutional law in a very different sense, namely in relation with *anthropogenic climate change and human rights law* (see section III/3 below), as well as in connection with both *social insurance* and mandatory *health insurance*. Direct democracy is often credited with curbing excessive government spending and the size of the welfare state. A striking example of this is the rejection of a proposal to increase the statutory minimum annual leave for employees from four to six weeks by two-thirds of Swiss voters in a referendum held on 11 March 2022. The validity of this assumption was tested through several constitutional amendments voted on in referenda in 2024. Overall, a total of six referenda on amendments to the Federal Constitution were held on three dates in 2024. Voter turnout on these voting days was approximately 45 per cent on both 9 June and 22 September, and 58 per cent on 3 March.

On 3 March 2024, a majority of voters (58.3 percent) and cantons approved an increase in old-age pensions (popular initiative 'For a better life in old age'). The mandatory 'Old-age and survivor's insurance' (OASI) scheme began operating in 1948 and aims to cover subsistence needs in old age or in the event of a primary earner's death. OASI pays out uniform pensions (monthly cash benefits) to men and women that have either reached the legally specified age limit (generally 65 years of age since 1 January 2024) or are widows or orphans ('survivors'). As a result of the 3 March 2024 vote, the annual amount paid to recipients of OASI will increase by 8.3 percent as from 2026 (13 pensions per year instead of 12). OASI is primarily funded through contributions (pay-as-you-go system): percentage-based wage contributions from employees, income percentages for the self-employed, and premiums from non-working individuals (students, early retirees, etc.). Additional sources of revenue include federal subsidies (mainly from taxes on tobacco and alcohol), subsidies by the cantons, and interest. Due to the proportionate salary contributions and uniformly determined premiums, OASI not only provides compulsory insurance against certain risks (e.g. old age,

incapacity to work, death of a breadwinner), but also has a redistributive effect. In effect, OASI-contributions amount to a tax on higher incomes. Due to the underlying pay-as-you-go system, OASI is vulnerable to demographic changes, such as an ageing population and increased life expectancy. An increasing number of pensioners are being financed by an ever-decreasing number of employees. Against this backdrop, referenda on the designation of OASI-benefits may also be perceived as challenging the legitimacy of democratic decision-making processes; an increasing number of benefit recipients may compel a decreasing proportion of providers to contribute additional transfer payments. The Federal Parliament will decide which sources to use to cover the additional financial requirements of the OASI. The main options are additional salary deductions and a higher value-added tax.

Another draft constitutional amendment affecting OASI – the popular initiative ‘For secure and sustainable old-age provision’ – was also rejected by voters on 3 March 2024, with 75.8 percent voting against. Had the initiative been accepted, the statutory retirement age for employees would have been linked to the population’s average life expectancy. While this would have eased the demographic challenges OASI faced, it would also have increased the retirement age.

On 9 June 2024, citizens voted on three amendments to the Federal Constitution, rejecting all three. The popular initiative ‘For freedom and physical integrity’ was overwhelmingly rejected, with 73.7 percent of voters and all cantons opposing it. The initiative was primarily directed against the introduction of compulsory vaccination policies for infectious diseases. The proposed constitutional amendment would have required the consent of individuals for all ‘infringements of the physical or mental integrity of a person’ and for any ‘infringement of a person’s physical or mental integrity’, and would have prohibited penalization or the imposition of any social or professional

disadvantages for refusal of consent. During parliamentary deliberations on the bill, the potential impact on the penal system and guardianship law was emphasized.

The other two constitutional amendments were related to health insurance. The Swiss Federal Constitution, article 117 section 2, states that the Federation ‘may declare health and accident insurance to be mandatory, either in general or for specific sections of the population’. According to statutory provision, everyone residing in Switzerland must take out health insurance, or have it taken out by their legal representative, within three months of moving to Switzerland or being born there. The corresponding insurance premiums account for a significant proportion of household income, but vary greatly depending on the canton. In 2019, households in urban cantons spent around 15 percent of their income on health insurance premiums. An amendment to the Federal Constitution that stated ‘premiums to be borne by the insured may not exceed ten percent of disposable income’ was rejected by 55.5 percent of citizens and around half of the cantons. Similarly, a constitutional amendment that would have linked healthcare costs to the development of average wages without specifying the necessary regulatory instruments was also rejected, this time by 62.8 percent of voters and around three-quarters of the cantons (popular initiative ‘For lower premiums – cost brakes in the healthcare system’). On 22 September 2024, the popular initiative ‘For the future of our nature and landscape (biodiversity initiative)’ was rejected by 63.0 percent of voters and almost all cantons. Particular concern was expressed about the potential for disproportionate restrictions on agriculture.

In terms of the relationship between the size of the welfare state and direct democracy, the 2024 referenda on constitutional amendments fail to provide a clear picture. Benefits for pensioners were increased and the idea of raising the retirement age was firmly rejected. However, shifting some of

the burden of high compulsory health insurance premiums from low-income earners to the public budget failed to gain the support of a majority of voters.

III. CONSTITUTIONAL COURT CASES

*1. Federal Supreme Court (BGE 151 I 41, 22 May 2024): Members of Parliament switching parties – sanctions under constitutional law for failure to honor an incomplete contract with the constituents?*⁴

The first Federal Constitution of the Swiss Confederation of 12 September 1848 marked Switzerland’s transition from a confederation of states to a federal state. The structure of the Swiss federal parliament was modelled on that of the United States. The Federal Assembly (Federal Parliament) is therefore divided into two chambers: the Council of States (counterpart to the US Senate) and the National Council (counterpart to the US House of Representatives). Since the adoption of a constitutional amendment in a referendum on 13 October 1918, the National Council has been elected on the basis of proportional representation.⁵ Proportional representation has been adopted by almost all of Switzerland’s 26 cantons for the election of parliaments since it was first introduced in the canton of Ticino in 1891. Proportional representation more accurately reflects the electorate’s political preferences than majority voting. According to recent case law of the Federal Supreme Court, the cantons are in principle required to elect their parliaments according to a system of proportional representation, due to the constitutional principle of equality before the law⁶ and the guarantee of political rights.⁷ Regardless of the electoral system, the constitutional principle that members of parliament vote according to their conscience and are thus barred from voting on the instructions of another person (constitutional principle of ‘free parliamentary mandate’) applies not only to Federal Parliament⁸ but also, according to the case

law of the Federal Supreme Court, to the parliaments of the constituent states (cantons).

The (constitutional) principle of ‘free parliamentary mandate’ rests on the idea that the mandate of a member of parliament granted by the citizens amounts to a fiduciary relationship. This concept was famously articulated by Edmund Burke in his speech to the voters of Bristol on 3 November 1774. Accordingly, Members of Parliament are not ‘ambassadors’ bound by the instructions of their constituents, but rather trustees whose duty is to act in accordance with their conscience and the greater good of the nation as a whole. However, the concept of personal trusteeship is difficult to reconcile with a proportional representation election system. In such an election, voters select a party’s list of candidates rather than elect a specific individual to represent them. Proportional representation, therefore, at least in principle, rests on the premise that members of parliament remain loyal to the party on whose list they were elected. This engenders the question of whether an elected representative defecting from one party to another after election day (i.e. party switching) should be sanctioned under constitutional law.

This question lies at the heart of the judgment decided by the Federal Supreme Court on 22 May 2024 in the matter of *Benjamin Gautschi and Others versus Isabel Garcia and Parliament of the Canton of Zurich*. On 12 February 2023, Isabel Garcia was elected to the Parliament of the Canton of Zurich on the Green Liberal Party (GLP) list. On 23 February 2023, eleven days after her election and only one day after the deadline to contest the election certification had expired, Isabel Garcia joined the Free Democratic Party – The Liberals (FDP). In a broadly similar case, the Federal Supreme Court stated in 2008 (BGE 135 I 19; *Barbara Keller-Inhelder*) that joining a different party shortly after election day could be considered ‘questionable’ and result in a ‘considerable loss of political credibility’,

but would not entail any legal consequences due to the principle of ‘free parliamentary mandate’. In the case of *Isabel Garcia*, the Federal Supreme Court modified its case law. The Court ruled that various constitutional guarantees, including freedom of expression,⁹ freedom of association,¹⁰ protection of political rights,¹¹ and the principle of ‘free parliamentary mandate’,¹² would entitle any member of parliament to switch to a different party and parliamentary group after election day without facing legal consequences, such as the duty to stand in a by-election. According to the Court, however, these principles would not apply if a prospective member of parliament had already made a firm decision to defect to another party before election day, and had made corresponding arrangements or statements. The Court stated that a candidate in such a situation would have misled the electorate and infringed upon their political rights. The Federal Supreme Court therefore instructed the Administrative Court of the Canton of Zurich to investigate whether, prior to the election, Isabel Garcia had already decided to switch parties but had kept her voters in the dark about her intentions.

The Swiss Federal Constitution enshrines the protection of political rights¹³ in a similar vein as fundamental rights. According to long-standing case law, the protection of political rights¹⁴ ensures that no election or voting result will be recognized unless it ‘reliably and unadulteratedly expresses the free will of the voters’. The respective constitutional guarantee can be invoked in court by any eligible voter. As a result, any citizen of the relevant jurisdiction (Federation, canton, municipality etc.) may take legal action against, for example, the outcome of a referendum distorted by biased official information. The same applies to elections in which the responsible authorities have failed to treat all candidates on a strictly neutral basis and on an equal legal footing.

Against this background, the Court’s decision to impose constitutional sanctions on a Member of Parliament who leaves his or

her party under certain aggravating circumstances is consistent in principle. However, it is questionable whether there are any judicially manageable standards that can distinguish objectively between a Member of Parliament’s right to follow his or her political convictions (i.e. the constitutional principle of ‘free parliamentary mandate’) and voters’ right not to be misled by candidates when deciding which candidates to support (i.e. the constitutional protection of political rights). The timing of party switching can hardly be the decisive factor in determining whether voters have been misled. In a parliament where factional discipline prevails, defecting from a party or faction later in the term of office would similarly breach the trust of the individuals who made the decision to support the respective list at the ballot box.

These epistemic challenges highlight the fundamental features of democratic representation. Given the constitutional prohibition on members of parliament to vote on instructions, the parliamentary mandate not only constitutes a fiduciary relationship but an incomplete contract. The specific decisions that a candidate is likely to make based on statements or promises made before election day do not amount to a legally binding pledge. There is no constitutional right that protects voters’ expectations that the promises and intentions they relied on when casting their vote will be acted upon after the election. Such a right does not exist vis-à-vis either an individual candidate or a party as a whole. A manifesto does not represent a contract; at best, it is a working assumption, at worst, a marketing tool. Lists of candidates compiled by parties under a proportional representation electoral system, therefore, provide heuristics for voters to minimize their information-gathering costs. This ‘signaling’ allows voters to take cognitive shortcuts on a rational basis.

In short, imposing consequences for switching parties under constitutional law risks blurring the boundary between law and politics. Failure to act upon the incomplete

contract that a parliamentary mandate represents should incur political, not legal, sanctions. It is fair to argue that refraining from placing oneself on a party's electoral list under the pretence of fraudulent intentions – the reproach levelled against Isabel Garcia, whether right or wrong – falls within the defined obligations of the ‘contract’ between voters and their representatives. However, as with the definition of marriages of convenience, it is difficult to determine objectively where true love ends and deceit begins.

2. Federal Supreme Court (BGE 150 IV 255, 13 March 2024): the legality of aiding a mentally and physically healthy individual as a ‘constitutional void’

In the case of the *Public Prosecutor's Office of the Canton of Geneva versus A. (Pierre Beck)*, the Federal Supreme Court was asked to determine whether Pierre Beck, a doctor and leading figure in Exit, a major organization supporting assisted suicide, could be prosecuted under the Federal Act on Narcotics and Psychotropic Substances (Narcotics Act). Pierre Beck had prescribed sodium pentobarbital to an 86-year-old woman in good health and of sound mind. The woman took the lethal dose of sodium pentobarbital in April 2017 and died alongside her husband, who was suffering from a fatal illness. At the end of 2015, she had made a notarized declaration stating that she did not wish to survive her husband, and had confirmed this to her family doctor in March 2017.

The Federal Supreme Court decided the case on narrow, purely statutory grounds, which testifies to the ‘constitutional void’ mentioned in section I above. The Court held that the Narcotics Act was insufficient to penalize doctors for prescribing sodium pentobarbital to healthy individuals. Such behavior would raise ethical and moral questions that were outside the scope of the Narcotics Act, the Court stated. However, the Court also noted that Pierre Beck could

still face sanctions under civil or administrative law for failing to uphold the standards of the medical profession.

3. European Court of Human Rights (sitting as a Grand Chamber), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (no. 53600/20, 9 April 2024): establishing a right to procedural due process in climate mitigation policies¹⁵

Switzerland joined the Council of Europe (CoE) on 6 May 1963. Its European Convention on Human Rights (ECHR)¹⁶ has been in force for Switzerland since 28 November 1974. Due to both a system of weak constitutional review under the Swiss Federal Constitution and every individuals’ right to file applications with the European Court of Human Rights (ECtHR) should their ECHR rights have been infringed upon by a CoE member, the ECHR has effectively become a shadow- or supra-constitution from a Swiss perspective.

On 9 April 2024, the ECtHR, in a Grand Chamber judgment, in the matter of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, found Switzerland to be in violation of the right to respect for private and family life¹⁷ as well as the right to access to court,¹⁸ both enshrined in the ECHR. As their members were female and on average 73 years old, Verein KlimaSeniorinnen Schweiz (an association under Swiss private law) and four individual applicants (all of them members of the Verein) argued that its members would be significantly and adversely affected by heatwaves occurring more frequently and severely due to omissions by the Swiss federal authorities to reduce the country's greenhouse gas (GHG) emissions. Multiple lines of evidence in fact not only indicate a consistent and almost linear correlation between cumulative emissions of GHGs, above all carbon dioxide (CO₂), and projected global temperature change, but also underscore that the risk of heatwaves exceeding the temperature level harmful to human health increases dispropor-

tionately as a direct effect of the rise in average global temperature.

Nonetheless, both the Federal Administrative Court (appellate court) and the Federal Supreme Court (apex court) declined to consider the applicants’ motion on its merits. Both domestic courts took the view that the applicants failed to be ‘specifically affected’ by the consequences of the alleged omission of the Swiss authorities to take more stringent measures to mitigate anthropogenic climate change.¹⁹

The ECtHR, in turn, held in its *KlimaSeniorinnen* judgement that Switzerland had failed to comply with the ECHR's ‘positive obligations’ due to insufficient actions taken to mitigate climate change. While judgements of the ECtHR are merely binding *inter partes*, the underlying interpretation of the ECHR by the Court affects all CoE members (principle of *res interpretata*), i.e. 46 states with a combined population of about 675 million. Against this backdrop, the *KlimaSeniorinnen* judgement sketches a framework governing the nexus between those human rights which are enshrined in the ECHR and the mitigation of anthropogenic climate change.

The ECtHR reached its decision by reinterpreting the substantive right to private and family life as a procedural obligation, in light of the 2015 Paris Agreement,²⁰ to define targets, reduction pathways, and remaining carbon budgets through domestic legislation. The ECtHR, therefore, established obligations akin to a right to *procedural due process in climate mitigation policies* on the basis of the substantive guarantee of article 8 of the ECHR. Furthermore, the ECtHR established distinct criteria for the *locus standi* of associations, which are strictly limited to matters of climate change policy. This approach, if followed through at the domestic level, may strengthen the relevance of the judicial branch in tackling the climate crisis.

IV. LOOKING AHEAD

Switzerland is not a member of the European Union (EU), but it is closely linked to it through a dense network of treaties and close economic and cultural ties. In the coming year, the question of how to organize relations with Switzerland's closest partner – often portrayed as a hegemon in domestic politics – will once again dominate the domestic political agenda. Constitutional questions will also have to be resolved in this process, particularly regarding the decision-making procedures to which the negotiated treaties between the EU and Switzerland are subject (i.e. mandatory or optional referendum).

Remaining outside the EU thus comes at the price of constant engagement: after one negotiation is completed, the next looms immediately on the horizon. This has been Switzerland's paradoxical experience over the past three decades. It seems that the same reality is only beginning to dawn on the United Kingdom – nearly a decade after the 'Brexit' referendum.

V. FURTHER READING

Ulrich Haefelin, Walter Haller, Helen Keller, and Daniela Thurnherr, *Schweizerisches Bundesstaatsrecht* (11th edn, Schulthess 2024)

- 1 Swiss Federal Constitution [Fed. Const.], 18 April 1999 <<https://www.fedlex.admin.ch/eli/cc/1999/404/en>> (non-official English translation), article 190; see in more detail Johannes Reich, 'Verhältnis von Demokratie und Rechtsstaatlichkeit' ['The Relation between Democracy and the Rule of Law'] in Oliver Diggelmann et al. (eds), *Droit constitutionnel suisse*. Volume 1 (Schulthess 2020) 333–55 <<https://doi.org/10.5167/uzh-184637>>.
- 2 Swiss Criminal Code, 21 December 1937 <https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en> (non-official English translation)], article 115: 'Any person who for selfish motives incites or assists another to commit or attempt to commit suicide shall, if that other person thereafter commits or attempts to commit suicide, be liable to a custodial sentence not exceeding five years or to a monetary penalty.'
- 3 Fed. Const. (note 1 above), article 119 section 2(d).
- 4 Judgments of the Swiss Federal Supreme Court are available at <<https://www.bger.ch>>.
- 5 Fed. Const. (note 1 above), article 149 section 2.
- 6 Fed. Const. (note 1 above), article 8 section 1.
- 7 Fed. Const. (note 1 above), article 34.
- 8 Fed. Const. (note 1 above), article 161 section 1.
- 9 Fed. Const. (note 1 above), article 16.
- 10 Fed. Const. (note 1 above), article 23.
- 11 Fed. Const. (note 1 above), article 34.
- 12 Fed. Const. (note 1 above), article 161 section 1.
- 13 Fed. Const. (note 1 above), article 34.
- 14 Fed. Const. (note 1 above), article 34.
- 15 This section draws on the comprehensive analysis by Johannes Reich, 'Human Rights as Procedural Due Process in Climate Mitigation Policies: *Verein KlimaSeniorinnen Schweiz v. Switzerland*' in Camille Cameron et al. (eds), *Elgar's Cases in Context – Climate Change Litigation*, Edward Elgar (forthcoming in November 2025).
- 16 European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 Nov 1950), 312 E.T.S. 5, as amended by Protocols Nos. 11, 14 and 15 supplemented by Protocols 1, 4, 6, 7, 12, 13 and 16 on 1 June 2010.
- 17 ECHR (note 16 above), article 8.
- 18 ECHR (note 16 above), article 6.
- 19 For a detailed assessment of the relevant judgement of the Federal Supreme Court see Johannes Reich, '*BGE 146 I 145: Verein KlimaSeniorinnen Schweiz et al v Federal Department of the Environment, Transport, Energy and Communications*' (2020) 121 *Schweizerisches Zentralblatt für Staats- und Verwaltungsrecht* 489, 497ff, available at <https://t.uzh.ch/1q6>.
- 20 Paris Agreement (Paris, 12 December 2015), in force 4 November 2016. Available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf. Ratified by Switzerland on 6 October 2017, No. 0.814.012, available at: <https://www.admin.ch/opc/fr/classified-compilation/20162916/index.html> (authentic French version).

SERBIA

In 2024, Serbia experienced further democratic backsliding despite reform efforts in the judiciary and electoral system. Executive dominance and legislative irregularities persisted. The Constitutional Court struggled with significant backlogs and systemic challenges, which undermined its role as the guardian of the Constitution.

SINGAPORE

The most significant development of 2024 was the Court of Appeal's decision of *Roslan bin Bakar v Attorney-General*,* which upheld the reduction of notice of execution as it violated neither Articles 9 nor 12 of the Constitution.

* [2024] SGCA 51

SLOVAKIA

The 2024 was a year of fundamental reform of criminal codes. When assessing its constitutionality, the Constitutional Court did not succumb to political pressures, also reflected in street protests, and ultimately identified only a few partial shortcomings. It described the reform as a whole as compatible with the Slovak Constitution.

SLOVENIA

In 2024, Slovenia saw notable constitutional activity, including referendums on euthanasia and voting reform, and key rulings on rights to assisted procreation and inadequate judicial salaries. While political consensus for reform was lacking, the Constitutional Court played a central role in addressing major issues and faced some criticism over its composition and independence.

SOUTH AFRICA

On 29 May, South Africa transitioned from a one-party dominant democracy to a truly multi-party democracy. For the first time in the post-apartheid era, no single political party garnered more than 50% of the electoral vote. The country also appointed its first woman Chief Justice — Chief Justice Mandisa Maya.

SPAIN

There was significant controversy resulting from Constitutional Court judgements that considered appeals for protection of fundamental rights from various politicians convicted of misconduct in public office. The possible violation of European Union law by these rulings led the court whose rulings had been overturned to refer the issue to the European Court of Justice.

SWITZERLAND

The European Court of Human Rights established a right to procedural due process in climate mitigation policies after the Federal Supreme Court had declined to consider the application of Verein KlimaSeniorinnen Schweiz on its merits. The latter Court also ruled on euthanasia for healthy individuals and restricted party switching of MPs in view of the relevant proportional representation electoral system.

TAIWAN

The January elections produced Taiwan's first divided government in 16 years. Changed executive–legislative dynamics have reduced the Constitutional Court to a rump court, crippled by convoluted new procedural rules following the departure of seven Justices. Inter-party struggles and separation-of-powers relations have continued to evolve amid rising popular politics.

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