

The Swiss legal system on advance requests for assisted suicide from persons without the capacity of judgment

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Résumé

Cet article décrit le système juridique suisse applicable aux questions relatives à la fin de vie. Il présente le cadre actuel, en mettant l'accent sur la question des demandes anticipées d'assistance au suicide émanant de personnes incapables de discernement et atteintes de démence. Plus précisément, l'auteur soutient que ce cadre devrait être adapté, en tenant davantage compte du droit civil et du droit de la santé, tout en s'inspirant des législations étrangères.

Mots-clés

Suicide assisté – Euthanasie – Suisse – Droit pénal – Directives anticipées – Décisions de fin de vie – Autonomie – Droit médical.

Abstract

This article describes the Swiss legal rules applying to end-of-life issues. It presents the current framework, with a focus on advance directives for assisted suicide from persons without the capacity of judgement. More specifically, the author argues that this framework should be improved by reforming criminal law and taking greater account of civil law and health law, drawing inspiration from foreign legislation.

Keywords

Assisted suicide – Euthanasia – Switzerland - Criminal law - Advance directives - End-of-life decisions – Autonomy - Medical law.

1. Introduction

Regarding fundamental rights and freedoms, the autonomy to terminate one's life is unequivocally acknowledged. Human dignity, liberty, and personal autonomy constitute core principles. Personal freedom, as delineated in Article 10 para. 2 of the Swiss Constitution (Cst.)¹, encompasses the liberty and self-determination in managing one's intimate and private affairs (in accordance with Article 13 Cst., which protects privacy), as well as the right to make decisions regarding medical treatment and the right to end one's life². Swiss law recognises the freedom to end one's life, including the manner and timing of such actions. Finally, human dignity, which underpins the right to self-

1 - Federal Constitution of The Swiss Confederation of 18 April 1999, RS (recueil systématique) 101.

2 - TF, 6B_646/2020, consid. 1.3.2; ATF 142 I 195, ECtHR, *Haas v. Switzerland*, 20 January 2011, application n° 31322/07, § 51 ; ATF 133 I 58, consid. 6.1, ECHR, *Pretty v. United Kingdom*, 29 April 2002, application n° 2346, § 67.

determination, is safeguarded by Article 7 of the Constitution. The freedom to end one's life, to choose the manner and timing of doing so, is an aspect of personal autonomy protected also by Article 8 of the European Convention on Human Rights (ECHR), which guarantees the right to respect for private and family life. This freedom extends the scope of Article 8 ECHR³. The ECtHR has also found that an applicant's wish to receive a lethal substance in order to end her life falls within the scope of the right to respect for private life under Article 8 ECHR (*Gross v. Switzerland*, 2013, § 60)⁴. The European judges also considered that the right to self-determination in medical matters justified limiting the right to life, in accordance with the right to respect for private life. Furthermore, Article 2 ECHR is not absolute⁵. For example, in the recent *Medmoune v. France* judgment (2026), a medical decision to discontinue life-sustaining treatment for a patient who had drawn up advance directives to the contrary was found to be compatible with the requirements of Art. 2 ECHR⁶.

There is no specific federal law or definition of assisted dying and assisted suicide in Swiss Law. *Assisted suicide* is legal under three conditions (Article 115 of the Criminal Code⁷): the person must be capable of judgement (as defined by Article 16 of the Swiss Civil Code⁸); they must realise the final act themselves (for example, the administration of a lethal dose); and finally, the person providing assistance must not have selfish motives. In practice, the private organisation will assess the patient's capacity to exercise judgment through a doctor to avoid being convicted under Article 115 of the Criminal Code. The legislator did not incorporate additional conditions within Article 115 of the Criminal Code, such as illness, suffering, functional limitations attributable to disability, or advanced age of the individual seeking assisted suicide. For example, there exists no legal basis or Swiss case law contraindicating assisted suicide for adults who are 'in good physical health'⁹ or with a 'mental disorder'¹⁰. Furthermore, no specific criteria have been established for minors. Swiss law also remains silent on the means that should be used to undergo assisted suicide (eg. use of a "Sarco capsule"¹¹ or a lethal medicine). However, a lethal medicine must always be prescribed by a physician (Art. 40 LPMed¹², Art. 26 LPth¹³, Art. 11 LStup¹⁴ etc.)¹⁵.

Nevertheless, a longstanding tradition of assisted suicide persists, regulated in detail by professional codes and supported by private organisations with established statutes and extensive experience¹⁶. Furthermore, legislation at the cantonal level has considerably developed¹⁷.

Advance directives (Art. 370 to 376 of the Civil Code¹⁸), regulated at the federal level since 2013, are an important legal tool in the medical field to express the autonomous will of the person who drafts them and, once the person is no longer capable, to serve as a surrogate for that will. In the context of end-of-life care, they may, for example, relate to the management of suffering, refusal of treatment, or refusal to prolong life. To be binding (Art. 372 CC), an advance directive must comply with certain formal requirements (signature, date). Consequently, if the advance directives reflect the patient's wishes, they must be considered in the medical decision. This last point has been

3 - European Convention on Human Rights of 4 November 1950, RS 0.101.

4 - ECtHR, *Gross v. Switzerland*, 14 May 2013, application n° 67810/10, § 60, § 63, § 67.

5 - O. Guillod, *Droit médical*, 2020, Bâle/Neuchâtel, 636p, spec. § 652, § 653.

6 - ECtHR, *Medmoune c. France*, 5 February 2026, application n° 55026/22.

7 - Swiss Criminal Code of 21 December 1937, RS 311.0.

8 - Swiss Civil Code of 10 December 1907, RS 210.

9 - Which is possible according to Supreme Court Decision of 2024 ATF (Arrêt du Tribunal Fédéral) 150 IV 255, consid. 3.3.3.

10 - Which is possible according to Supreme Court Decision ATF 133 I 58.

11 - A. Pillotin, S. Hotz, "Assisted suicide with sarco-capsule in Switzerland, do we need to think about safty rules?", *Jusletter*, 27 January 2025. Available online : https://jusletter.weblaw.ch/jusliissues/2025/1226/assisted-suicide-wit_bdf4a4eeaf.html__ONCE&login=false (last consulted the 8 february 2026).

12 - Federal Law on University Medical Professions of 23 June 2006, RS 811.11.

13 - Federal Law on Medicines and Medical Devices of 15 december 2000, RS 812.21.

14 - Federal law on narcotics and psychotropic substances of 3 october 1951, RS 812.121.

15 - ATF 150 IV 255, consid. 3 ; Arrêt du Tribunal cantonal neuchâtelois du 23 avril 2013 (CPEN.2013.75, RJN 2014, p. 260).

16 - For instance, EXIT A.D.M.D. Suisse romande: <https://www.exit-romandie.ch/> (last consulted the 23 february 2026).

17 - For instance: Act on palliative care and the regulation of the practice of assisted suicide in institutions (*Loi sur les soins palliatifs et l'encadrement de la pratique de l'assistance au suicide en institution (LSPASI)*) of 10 march 2022, RS 805.2 (Valais) ; art. 27d of the Public Health Act (*Loi sur la santé publique (LSP)*) of 29 May 1985, RS 800.01 (Vaud). See also: Guidelines of the Swiss Academy of Medical Sciences (SAMW) on the Management of Death and Dying, available online : https://www.samw.ch/dam/jcr:3154cd58-a2bf-4d2a-b11c-27a46174bbe0/guidelines_sams_dying_and_death.pdf (last consulted the 23 february 2026).

18 - Swiss Civil Code of 10 December 1907 (CC), RS 210.

confirmed by Swiss case law and by the European Court of Human Rights in its judgment in *Gross vs. Switzerland*¹⁹. The patient must be capable of judgment and have received detailed information on how the medication works before drafting advance directives. This helps prevent hasty, ill-considered decisions²⁰ and ensures a professional perspective is incorporated into the process.

2. Criminal legal framework

Following Article 115 of the Criminal Code, encouraging someone to commit suicide is a criminal offence. The Criminal Code imposes several restrictions on self-determination and the freedom to end one's life. Any act of homicide is prohibited, without exception, even if it is intended solely to alleviate the suffering of the victim. The Criminal Code distinguishes between several forms of homicide in Articles 111 (murder), 112 (assassination), 113 (crime of passion) and 114 (murder at the request of the victim).

Different forms of assisted dying can be found in Swiss law:

- "Passive assisted dying" is based on 'letting die' through omission. The caregiver refrains from action in accordance with the wishes of the patient. It is not considered to be a criminal offence.
- "Indirect active euthanasia" can for instance be the anticipated administration of a painkiller whose side effect hastens their death. Depending on the circumstances it might not be punishable. The key factor here is the intent: if the substance is administered to relieve suffering, even if it results in premature death, the act does not constitute homicide. Indirect active euthanasia is legal in Switzerland. However, if the primary intention is to hasten death, the act becomes punishable.
- "Direct active euthanasia" involves ending a person's life to shorten their suffering, even in the case of an incurable illness, including through the action of a doctor administering a lethal substance. It is prohibited by the Criminal Code in its provisions on homicide (Art. 111 and seq.).
- "Assisted suicide" is authorised under Art. 115 of the Criminal Code as long as it is not carried out for selfish reasons. The distinction between assisted suicide and direct active euthanasia lies in the identity of the person performing the lethal act. In the first case, assisted dying is supported by an 'assistant' at the request of the patient. In the second case, the death is based on the act of another person. Such an intentional act constitutes homicide at the request of the victim, which is illegal in Switzerland.

Swiss law does not allow for any leeway, and an 'advance request' for assisted suicide through advance directives is not legal. A reform of Art. 114 of the Criminal Code would be required to include assistance in dying by a third party.

3. Figures

The Swiss Health Observatory (Obsan) is the main source of information on assisted suicide figures in Switzerland. Since the beginning of the century, there has been a significant increase in the total number of assisted suicides. On average, 18.7 people per 100,000 inhabitants had assisted suicide in 2023. The absolute rate was $n = 1,729$. Ten years earlier, in 2013, the rate was $n = 587$, while in 2003 it was $n = 70$. In terms of annual death statistics, the percentage of assisted suicides rose from 0.2% (2003) to 1.5% (2016) and has now stabilised at 1.5%, given that the death rate has increased in the same way²¹.

19 - ECtHR, *Gross v. Switzerland*, 14 May, 2013, application n° 67810/10.

20 - ATF 150 IV 255 consid. 3; ATF 133 I 58 consid. 6.3.2; Rapport du Conseil fédéral, juin 2011, p. 23.

21 - <https://ind.obsan.admin.ch/indicator/obsan/suizid-und-suizidhilfe> (last consulted the 23 december 2024).

In Switzerland, the average age of people seeking assisted suicide is relatively low (78 years). Chronic illnesses, which are becoming more common with age, are one of the main reasons of requests for assisted suicide in Switzerland²². According to a study covering the period from 1999 to 2008, neurodegenerative diseases accounted for 13% of the reasons for assisted suicide. Other causes included dementia (0.6%) and amyotrophic lateral sclerosis (2.6%). Unfortunately, there is no detailed current data on these points²³.

4. Specific Issues

Assisted suicide is widely accepted by Swiss society, but new challenges, such as the 'Sarco' capsule, have revived discussions about end-of-life care. It is essential to engage in discussions on certain topics, such as advance directives for assisted dying in cases of dementia and the role of civil law.

4.1 Advance Directives and Dementia

People with dementia are particularly vulnerable. Therefore, it is always necessary to question the legitimacy of requests for assistance in dying (assisted suicide) in case of dementia. Ensuring that the person's wishes are based on concrete fears about their future condition is essential. According to the Federal Council's message²⁴, advance directives should be possible in 'all cases' where the patient is no longer capable of discernment, whether due to chronic illness, progressive senile dementia or the aftermath of an accident. In principle, there are no restrictions on content. The advance directive must be sufficiently broad and precise. Advance directives can cover broad decisions such as the maintenance of nutrition and hydration. They are used to regulate future medical care and aspects related to life-prolonging measures that appear unnecessary or disproportionate. They may also apply to pain relief measures or even measures that may cause death. In the spirit of the law, advance directives are a replacement for 'free and informed consent'.

4.2 Limits

A study from 2022 shows that just under one in four respondents (24% of the total sample) had completed an advance directive²⁵. The proportion of people writing advance directives differs according to gender and linguistic regions and generally increases with age. In practice, health professionals often find that advance directives are lacking. The lack of precision in the legal provisions on the content of advance directives is problematic. In other words, sometimes patients do not understand the scope of their advance directives.

The desire to commit suicide is not constant and can sometimes dissipate as a serious illness progresses. In this regard, advance directives constitute a form of commitment and bind individuals in a state in which they will no longer be able to decide. As a result, advance directives may in some cases prove to be an inappropriate means. However, if the advance directives have recently been drawn up (no more than six months ago) and the illness is very serious, these risks are minimal. On the other hand, in cases of dementia, they have a normative force based on a previous competence that no longer exists. The legislator has provided for exceptions in Article 372 para. 2 CC. One may wonder whether professional or semi-professional support could provide solutions to these challenges.

From the recent ruling of the European Court of Human Rights on February 5, 2026, *Medmoune v. France*²⁶, concerning advance directives to the contrary, to maintain life in a state of illness, even artificially, which were not respected in order to decide to discontinue life-sustaining treatment for a patient, no other conclusions can be drawn for our question of advance requests for assisted suicide, as their content was "manifestly inappropriate in

22 - <https://www.bag.admin.ch/dam/fr/sd-web/xAatMetliXIT/assistierter-suizid-und-sSuizid-in-der-schweiz.pdf> (last consulted the 23 december 2024).

23 - C. Barch et al., « Assisted Suicide in Switzerland. An Analysis of Death Records From Swiss Institutes of Forensic Medicine », *Deutsches Ärzteblatt International*, Vol. 116, 2019, pp. 54-59.

24 - FF 2006 7030s.

25 - https://www.prosenectute.ch/dam/jcr:294d0688-def5-4563-b5b2-1ccdfa58d3e7/Resultate_persönliche_Vorsorge_gfs-zürich.pdf (last consulted the 13 october 2025).

26 - ECtHR, *Medmoune v. France*, 27 February 2026, application n° 55026/22.

view of the clinical situation and the unfavourable prognosis" (§ 14) and the two-year period between the writing of the advance directives (June 2020) and the decision (July 2022) and in view of the fact that the advance directives were written in a different context (§9 in the absence of his mother). – In other words, if a person had written advance directives concerning their wish for assisted suicide, and that person (incapable of discernment) at the time of the decision appeared to be clearly happy, the content could be ignored according to this ruling (§ 48) and Art. 372 para. 2 CC, which will remain possible; and to my view justified.

4.3 Criminal law vs. civil law

Criminal law appears to be an inadequate framework for balancing principles of self-determination and the protection of individuals at the end of life. Currently, a contradiction exists between Swiss civil and criminal law. Swiss civil legislation recognises the validity of advance directives; however, criminal law mandates control over one's actions and the capacity for discernment at the time of suicide. There is no explicit reference to advance directives within criminal law, as understood in civil law. Additionally, the legislative process that led to the adoption of advance directives in 2013 did not address issues related to end-of-life care, particularly concerning palliative care and active assisted dying. This omission may be regarded as a legal loophole.

5. Proposals

The aim of this final section is to formulate a few recommendations. It goes without saying that any legislative review depends essentially on political will in.

5.1 Reforming criminal law

As discussed before, a legal loophole in criminal law should be closed to strengthen self-determination in the medical field. The issue of strengthening individual self-determination and its relationship with Articles 370 et seq. of the Civil Code and Article 115 of the Criminal Code has never been highlighted. Furthermore, the Constitution does not contain a general rule whereby the Criminal Code would take precedence over the Civil Code. The legislator wanted a paradigm shift in adult protection law, giving priority to the self-determination of the individuals concerned. The Criminal Code only makes this partially possible with Articles 114 and 115 of the Criminal Code.

According to our analysis, there are two possible approaches to clearly address a request for assistance in dying through advance directives: by adding additional paragraphs to Article 115 or Article 114 of the Criminal Code.

The first option would be to add a second paragraph to Article 115(2) of the Criminal Code which would specify that the advance directives (Article 370 of the Civil Code) made to request assistance in dying fall within the scope of 'control'. Besides, various proposals to revise Article 114(2) of the Criminal Code have also been submitted to the Parliament over the years. Cavalli parliamentary initiative (00.441) is particularly noteworthy, as it proposes 'the decriminalisation of active euthanasia with a new paragraph 2 in Article 114 of the Criminal Code'. The 1994 Ruffy motion (94.3370) aimed to decriminalise assisted dying ('active euthanasia') under strict conditions, by adding an Article 115*bis* within the Swiss Criminal Code. These initiatives could be other options.

5.2 Collecting data and establishing a register related to death

We would like to emphasise the importance of broadening the debate beyond the national legal framework by conducting in-depth research through qualitative experiences and quantitative figures. Good and bad practices relating to the end of life should also be analysed, both nationally and internationally. This would enrich the debate and improve policies and practices in this area. Establishing registers relating to death (including data on causes of death, place of death, and end-of-life conditions), as well as medical decisions associated with assisted dying, could be a valuable source of information for further research on the end of life. However, it should be noted that there are other types of registries that could be considered, such as medical and hospital registries, as well as those relating to palliative care, which would again require the adoption of specific legal bases.

6. Conclusion

Considering societal changes, the question arises as to whether a person capable of discernment can express in advance their wish to resort to assisted suicide by making use of advance directives. To this end, the Swiss legal framework should be clarified in line with our neighbouring countries to guarantee the respect of self-determination and human dignity at the end of life. A structured, transparent and participatory societal debate on this fundamental issue would be important for the cohesion of the Swiss society.

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