

**The Swiss Federal Supreme Court  
The Third Power within the Federal State**

**2024**

**Bundesgericht  
Tribunal fédéral  
Tribunale federale  
Tribunal federal**



**The Swiss Federal Supreme Court  
The Third Power within the Federal State**

**2024**



Justice is the greatest of all virtues  
Praeclarissima virtus est iustitia

Mural dating from 1583, located at the former High Court building in Vicosoprano (Bregaglia, Grisons)

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## The History of the Federal Supreme Court

### Established in 1848

The Federal Supreme Court was established in 1848 by the Swiss Constitution of 12 September 1848, which transformed the previous federation of states into a single federal state in the wake of the Civil War. It was tasked with «the administration of justice to the extent that this is a federal concern». However, the powers of the then Federal Supreme Court were limited in scope. It handed down rulings primarily in civil-law disputes between the cantons and the Confederation and in cases involving political crimes against the Confederation and infringements of the fundamental rights enshrined in the new Constitution, insofar as these matters were referred to it for resolution by the Federal Assembly. It was composed of eleven non-permanent Justices, had no permanent seat and sat as the situation demanded in the Swiss capital or, when required by the cases to be heard, at another location designated by the President.

### The Federal Supreme Court becomes a permanent court and is tasked with a new remit

The Federal Supreme Court became a permanent court in 1875. This change was precipitated by the new duties conferred upon it by the Swiss Constitution of 29 May 1874. It was tasked with ruling on jurisdictional conflicts between the federal and cantonal authorities and constitutional disputes among the cantons. Its remit also extended to ruling on appeals lodged by citizens against the decisions of cantonal authorities regarding the infringement of constitutional rights but also on matters involving violations of concordats, treaties and federal laws. As a consequence, it became a true supreme court of the Confederation whose task it was to guarantee the fundamental rights and freedoms of Swiss citizens and to ensure the uniform application of Swiss federal law. In the following decades the duties of the Federal Supreme Court expanded continuously owing to the new legislative powers of the Confederation.

In 1875 the Federal Supreme Court had nine ordinary Justices, who were prohibited from pursuing any other occupation, and two court clerks. In time the number of Justices and court clerks had to be continuously adapted to accommodate the Court's growing case load. It also became necessary to create divisions within the Federal Supreme Court because the number of cases to be heard no longer permitted them to be adjudicated in plenary sessions.

Lausanne was designated as the seat of the permanent Federal Supreme Court. The Court first moved into quarters in Casino de Derrière-Bourg, a building formerly located in the vicinity of Place St. François. This building has since been demolished. The Court then moved into the purpose-built Palais de Justice of Montbenon, where it sat for the next forty years. In 1926 it moved its seat to the Mon-Repos courthouse, built in the park of the same name.

### The Federal Supreme Court today

The Swiss Constitution of 18 April 1999 confirmed and consolidated the role of the Federal Supreme Court. It stipulates that the Federal Supreme Court is the supreme judicial body of the Swiss Confederation in civil, criminal, administrative and constitutional matters, and that it administers itself independently and is answerable only to the law. The Federal Supreme Court exercises the administrative supervision over the other federal courts.

In 2007, the former Federal Insurance Court, which was established in 1917 and seated in Lucerne, was integrated in the Federal Supreme Court. Its duties are now carried out by the Third Public Law Division and the Fourth Public Law Division (until the end of 2022 the «social law divisions») of the Federal Supreme Court. These divisions remained in Lucerne and are located in the former administrative building of the Gotthard Railway Company on the shores of Lake Lucerne.

## The Role of the Federal Supreme Court

### The Federal Supreme Court ensures uniform application of Swiss federal law within the 26 cantons of Switzerland

#### The highest judicial authority within the federal state

As the court of final appeal, the Federal Supreme Court issues final rulings on disputes between individuals, between cantons, between individuals and the government, as well as between cantons and the federal authorities. In this function, the Federal Supreme Court covers all legal domains, in principle civil and criminal law, debt enforcement and bankruptcy law, as well as public and administrative law (including social insurance law). The Federal Supreme Court is responsible in particular for protecting the constitutional rights of citizens.

Virtually no cases are heard in Lausanne or Lucerne in the first instance. Initially, cases are dealt with mostly by the courts of first instance, whose designations vary from canton to canton, and by the cantonal authorities responsible for administrative law. In all civil or criminal matters, the cantons are required to additionally establish a second (higher) judicial instance. In public law, the cantonal administrative and social insurance courts serve as courts of first instance to the Federal Supreme Court. Apart from a few exceptions, other judicial authorities at the federal level also serve as the first instance before cases are referred to the Federal Supreme Court.

#### Interpreting the law takes front and centre stage

The work of the Federal Supreme Court varies considerably from the cantonal and federal courts of first instance. The federal Justices do not re-establish the facts of the case but rely on the previously established facts; they can be corrected by the Federal Supreme Court only if it finds that they have been incorrectly established in a flagrant manner by the lower court, or that they have been based on a violation of law.

The federal Justices only address questions of law. The Federal Supreme Court ensures that federal law is uniformly applied and that the boundaries set by federal law are not transgressed in the course of the enactment, application and interpretation of law and the administration of justice. As a result of its rulings, the Federal Supreme Court contributes to the development of law and its adaptation to changing circumstances.

#### Appeals

Anyone seeking justice essentially has four legal recourses for lodging an appeal with the Federal Supreme Court: the three types of standard appeal (relating to civil, criminal and public law disputes) and the subsidiary constitutional appeal. Under the three standard appeal categories, any type of grievance is admissible: incorrect application of the law and infringement of constitutional rights. This makes it easier for individuals to have recourse to the law.

If a standard appeal is not admissible, then cantonal rulings may be appealed by means of the subsidiary constitutional appeal. This appeal only addresses issues of the infringement of constitutional rights.

#### Rulings

The divisions of the Federal Supreme Court generally render their rulings in panels consisting of three Justices. Five Justices may sit on a panel when fundamental legal issues are at stake or when one of the Justices requests this.

In the great majority of cases rulings are passed by way of circular. This is not possible unless all of the Justices agree to the proposed draft ruling.

Rulings are handed down in public deliberation when the Justices are not unanimous, the division president orders this or when one of the Justices requests this. In this case the Justices deliberate and render their decision in the presence of the public. First the draft ruling and any draft opposing ruling are read, and then the other Justices express their opinions. In doing so, each of the Justices speaks in their native language. When the deliberation is concluded, a vote is taken by a show of hands and the verdict is passed according to the majority.

#### Decision

Generally speaking, the Federal Supreme Court renders its rulings in the language of the decision being contested. However, the parties to the proceeding are free to draft their petitions in one of Switzerland's four national languages; the petitions are not translated.

If an appeal is granted, the lower courts need as a general rule only re-examine the case if the Federal Supreme Court is unable to rule itself due to insufficient facts.

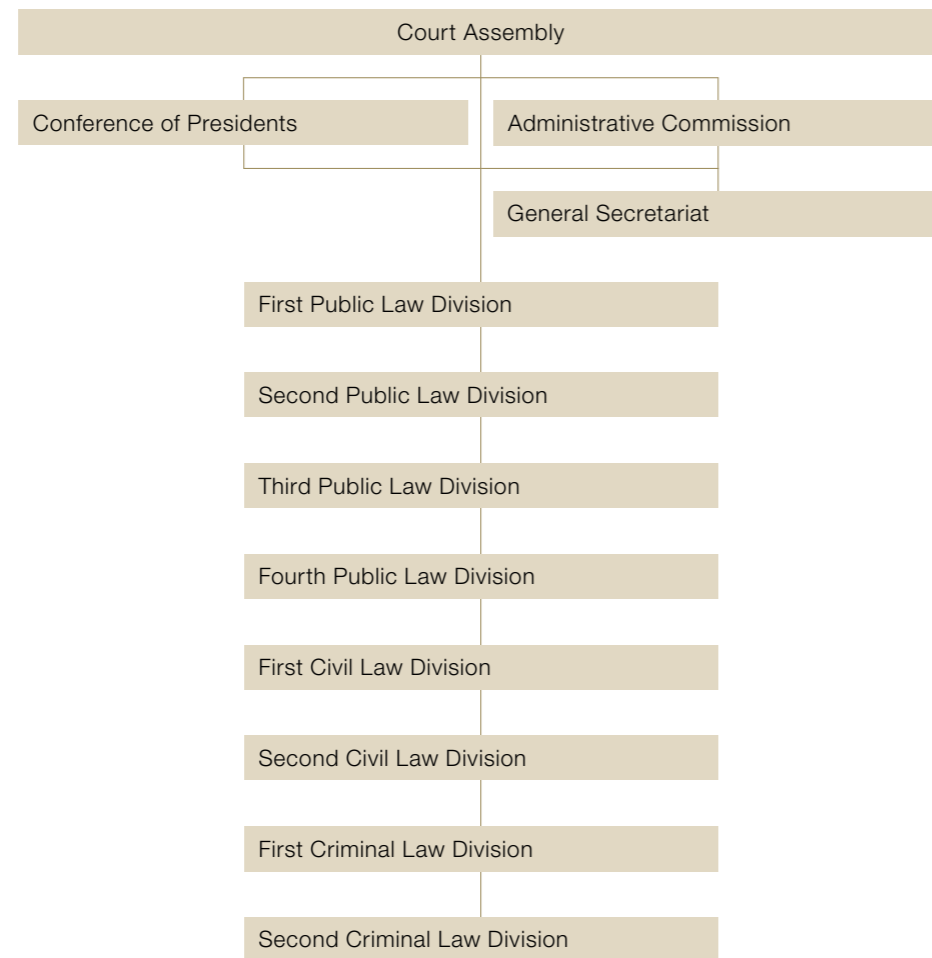
#### Federal Criminal Court, Federal Administrative Court and Federal Patent Court

Judicial reform saw the creation of further federal judicial authorities. The Federal Criminal Court in Bellinzona officially opened its doors on 1 April 2004. The Federal Administrative Court temporarily opened its doors on 1 January 2007 in Bern and was relocated to its definitive site in St. Gallen in mid-2012. The Federal Patent Court opened its doors at the same location at the beginning of 2012. In some cases, the decisions of these three federal courts of first instance may be appealed to the Federal Supreme Court. All three courts are subject to the administrative supervision of the Federal Supreme Court.

#### The European context

The European Convention on Human Rights (ECHR), which has been in force since 1953, protects basic human rights at a European level. Switzerland has been a member of the Council of Europe since 1963 and therefore must guarantee the protection of human rights as provided for by this Convention. Under certain conditions a party may appeal a decision of the Swiss Federal Supreme Court to the European Court of Human Rights in Strasbourg and request that it should be reviewed to determine if a violation of the Convention has occurred.

## Organisation



### Supervisory bodies

The supervisory bodies of the Federal Supreme Court are the Court Assembly, the Administrative Commission and the Conference of Presidents. The Court Assembly consists of all ordinary Justices and is mainly responsible for the Court's internal organisation. It designates the divisions, appoints their presidents and issues the procedural rules for the Court. The Administrative Commission is responsible for managing the Court's administration. It is comprised of the President of the Federal Supreme Court, the Vice-President and one other Justice. The Conference of Presidents consists of the presidents of the various divisions and is responsible for the coordination of judicial decision-making among the divisions. The President of the Federal Supreme Court acts in an advisory capacity. The Secretary-General participates in meetings held by the Court Assembly, the Administrative Commission and the Conference of Presidents in an advisory capacity.

### Federal Justices

A total of 40 Justices sit on the bench of the Federal Supreme Court. Currently 15 women and 25 men serve as federal Justices. Of the federal Justices currently serving on the bench, three have Italian, 14 French and 23 German as their native language. The Justices are forbidden from engaging in any gainful occupation outside of their work as federal Justices. The federal Justices have the status of government officials.

The federal Justices are proposed by the Judicial Committee and elected by the United Federal Assembly (National Council and Council of States) for a term of office of six years. They can be re-elected an unlimited number of times until the age of 68. Anyone who has the right to vote at the federal level may be elected a federal Justice; the law does not prescribe any legal training. In practice, however, only proven jurists from the judiciary, practicing legal profession, academia or from the public sector are elected.

### Deputy federal Justices

The Federal Supreme Court numbers 19 deputy Justices, who are also elected by the Federal Assembly. The deputy federal Justices serve in a part-time capacity, otherwise they are professors, practicing lawyers or cantonal judges. As a general rule, they serve as replacements for Justices who have recused themselves or have taken ill, or when the Court's docket has become overly full. In the proceedings on which they sit they have the same rights and obligations as the ordinary federal Justices.

### Court clerks

The court clerks are the judicial staff of the Justices. They participate in the instruction of the cases as well as in the adjudication and have an advisory voice. Previously their primary task was to draft the written judgements after the decisions had been rendered in court. Due to the increasing case load of the Court, the court clerks are now also tasked with drafting the draft ruling in many cases. However, the judgment is always made by the Justices involved. Currently about 145 court clerks serve on the Federal Supreme Court, approximately half of whom are women.

## Presidency of the Court's Assembly

### President and Vice-President



  
**Yves Donzallaz**  
President



  
**François Chaix**  
Vice-President

At the suggestion of the Federal Supreme Court, the United Federal Assembly elects the President and the Vice-President from the pool of ordinary Justices. They are elected for a term of two years and can be re-elected once. The President chairs both the Court Assembly and the Administrative Commission and is the official representative of the Federal Supreme Court.

## The Federal Supreme Court divisions

The 40 federal Justices are elected by the United Federal Assembly. The Federal Supreme Court is composed of eight divisions, with five Justices each. The tasks of the divisions differ according to the legal domains they cover (public law, private law, criminal law and social law). The different divisions essentially deal with the following fields of law:

### First Public Law Division

Expropriations, national and regional spatial planning and construction law, environmental protection, political rights, international judicial cooperation in criminal matters, road traffic (including the revocation of driving licences), citizenship, public service personnel, fundamental rights such as equality under the law, guarantee of ownership, freedom of art and guarantees of due process.

### Second Public Law Division

Rights of foreigners, public commercial law and other areas of administrative law (e.g. state liability, subsidies, radio and television), fundamental rights such as freedom of religion and conscience, freedom of language and economic freedom.

### Third Public Law Division

Taxes, old-age and survivors' insurance, disability insurance, loss of earnings compensation, health insurance and occupational pensions.

### Fourth Public Law Division

Disability insurance, accident insurance, unemployment insurance, cantonal social insurance, family allowances, social assistance, military insurance, supplementary benefits and transition benefits for older unemployed persons.

### First Civil Law Division

Code of Obligations (law of obligations), insurance contracts, intellectual property rights, competition law: national and international arbitration, provisional and final dismissals of objection.

### Second Civil Law Division

Civil Code (law of persons, family law, law of succession and property law), proceedings concerning debt recovery and bankruptcy (without provisional and final dismissals of objection).

### First Criminal Law Division

Substantive criminal law (without the execution of penalties and measures), Code of Criminal Procedure and appeals against final rulings in criminal proceedings (without no-proceedings orders and abandoning proceedings).

### Second Criminal Law Division

Execution of penalties and measures, interlocutory rulings in criminal proceedings, no-proceedings orders and abandoning proceedings.

## Federal Justices, Deputy Federal Justices and Court Clerks

### First Public Law Division | Federal Justices



**Lorenz Kneubühler**



**François Chaix**



**Stephan Haag**



**Thomas Müller**



**Laurent Merz**

### Deputy Federal Justices

Marie-Claire Pont Veuthey

Tanja Petrik-Haltiner

Richard Weber

Mecca Athos

Jeremias Fellmann

### Court Clerks

Olivier Kurz

Fabian Mösching

**Court Clerk Pool**

Tiziano Cramer

Pascal Baur

Andrea Gadoni

Alexandra Gerber

Jacqueline Dambeck

Corsin Bisaz

Philipp Gelzer

Dominique Hänni

Christian Parmelin

Annina Dillier

Beat Dold

Valentin Vonlanthen

Bénédicte Tornay Schaller

Mischa Poffet

Adrian Mattle

Félice Rouiller

Sandrine Arn

Irina Trutmann

Dominique Alvarez



**Second Public Law Division | Federal Justices**



*F. Aubry Girardin*  
**Florence Aubry Girardin**



*Y. Donzallaz*  
**Yves Donzallaz**



*J. Hänni*  
**Julia Hänni**



*M. Ryter*  
**Marianne Ryter**



*M. Kradolfer*  
**Matthias Kradolfer**

**Deputy Federal Justices**

Markus Berger

Vincent Martenet

Tanja Petrik-Haltiner

**Court Clerks**

Raffaella Ieronimo Perroud

Marco Zollinger

**Court Clerk Pool**

Emmanuelle Jolidon

Hector Rastorfer

Marco Savoldelli

Claude-Emmanuel Dubey

Cedric Marti

Michael Müller

Stéphanie Vuadens

David Hongler

Eleonor Kleber

Annekatriin Wortha

Alexandre de Chambrier

Florian Weber

Cornel Quinto

Patrick Plattner

Daniela Ivanov

Lia Meyer

Eloi Jeannerat

Manon Joseph

Third Public Law Division | Federal Justices



**Francesco Parrino**



**Thomas Stadelmann**



**Margit Moser-Szeless**



**Michael Beusch**



**Karin Scherrer Reber**

Deputy Federal Justices

Markus Berger

Court Clerks

Andreas Matter

Stéphanie Vuadens

Jérôme Bürgisser

Jean-Marc Berthoud

Francesca Cometta Rizzi

Rafi Feller

Brigitte Keel Baumann

Klaus Williner

Andrea Bögli

Petra Fleischanderl

Olivier Bleicker

Andreas Traub

Stéphanie Perrenoud

Florian Cretton

Barbara Stanger

André Nabold

Martin Businger

**Court Clerk Pool**

Johanna Dormann

Moritz Seiler

Marco Savoldelli

Martin Kocher

Lilian Nünlist

Isabelle Rupf

**Fourth Public Law Division | Federal Justices**



**Martin Wirthlin**



**Marcel Maillard**



**Alexia Heine**



**Daniela Viscione**



**Jean Métral**

**Deputy Federal Justice**

Sarah Bechaalany

Serge Segura

**Court Clerks**

Claudia Kopp Käch

Mélanie Fretz Perrin

Roger Grünvogel

Lukas Grünenfelder

Elisabeth Berger Götz

Jenny Castella

Isabel von Zwehl

Janina Huber

Beatrice Polla

Franziska Martha Betschart

Christian Hochuli

Philipp Wüest

Jaromir Jancar

Mathieu Ourny

Christoph Grunder

Mark Walther

Claudia Durizzo

Claudio Colombi

**First Civil Law Division | Federal Justices**



**Monique Jametti**



**Fabienne Hohl**



**Christina Kiss**



**Yves Rüedi**



**Marie-Chantal May Canellas**

**Deputy Federal Justice**

Mattia Pontarolo

**Court Clerks**

Géraldine Godat Zimmermann

Olivier Carruzzo

Giorgio Piatti

Jacques Douzals

Thomas Widmer

Isabelle Raetz

Christian Luczak

Valentin Botteron

Matthias Leemann

Matthias Dürst

Diane Monti

Alexander Kistler

Daniel Brugger

Niklaus Matt

Matthias Gross

**Second Civil Law Division | Federal Justices**



**Christian Herrmann**



**Nicolas von Werdt**



**Grégory Bovey**



**Stephan Hartmann**



**Federica De Rossa**

**Deputy Federal Justices**

Christine Arndt

Catherine Reiter

Céline Courbat

**Court Clerks**

Andrea Braconi

Annick Ahtari

Flora Bouchat

Dominique Mairot

Caroline Hildbrand

Véronique Jordan

Marie Dolivo

Marco Levante

Ralph Ludwig Buss

Urs Peter Möckli

Stéphanie Feinberg

Ombline de Poret Bortolaso

Gina Gutzwiller

Simon Zingg

Sarah Gudat-Kappeler

Valentin Monn

Valentin Piccinin

**Court Clerk Pool**

Flavia Antonini

Anouk Lang

Lorenz Sieber

**First Criminal Law Division | Federal Justices**



*Laura Jacquemoud-Rossari*  
**Laura Jacquemoud-Rossari**



*Christian Denys*  
**Christian Denys**



*Giuseppe Muschietti*  
**Giuseppe Muschietti**



*Beatrice van de Graaf*  
**Beatrice van de Graaf**



*Rolf von Felten*  
**Rolf von Felten**

**Deputy Federal Justices**

Yvona Griesser

Cordula Lötscher

Beata Wasser-Keller

**Court Clerks**

Marlène Kistler Vianin

Malorie Rettby

**Court Clerk Pool**

Mengia Ladina Arquint Hill

Stefan Boller

Andrea Gadoni

Damien Vallat

Mona Erb

Vanessa Thalmann

Rosaria Sara Ortolano Ribordy

Nadia Meriboute

Flavia Bianchi

Lea Unseld

Sandra Frey Krieger

Giulia Corti

Doris Pasquini

Sébastien Rosselet

Michael Roux-Serret

Corinne Andres

Delphine Brun

Julien Barraç

Véronica Klinke

Alexandre Dyens

**Second Criminal Law Division | Federal Justices**



**Bernard Abrecht**



**Sonja Koch**



**Christoph Hurni**



**Christian Kölz**



**Yann-Eric Hofmann**

**Deputy Federal Justices**

Caroline Schär

Arthur Brunner

**Court Clerks**

Marc Forster

David Eschle

**Court Clerk Pool**

Fabienne Kropf

Fabio Valentino

Mélanie Nasel

Noemi Rohrer

Grégory Magnin

Alexandre Tinguely

Christine Sauthier

Mélanie Rubin

Sandrine Paris

Myriam Lustenberger

Sonja Mango-Meier

Michael Hahn

Benjamin Clément

Patrick Schurtenberger

Marcus Stadler

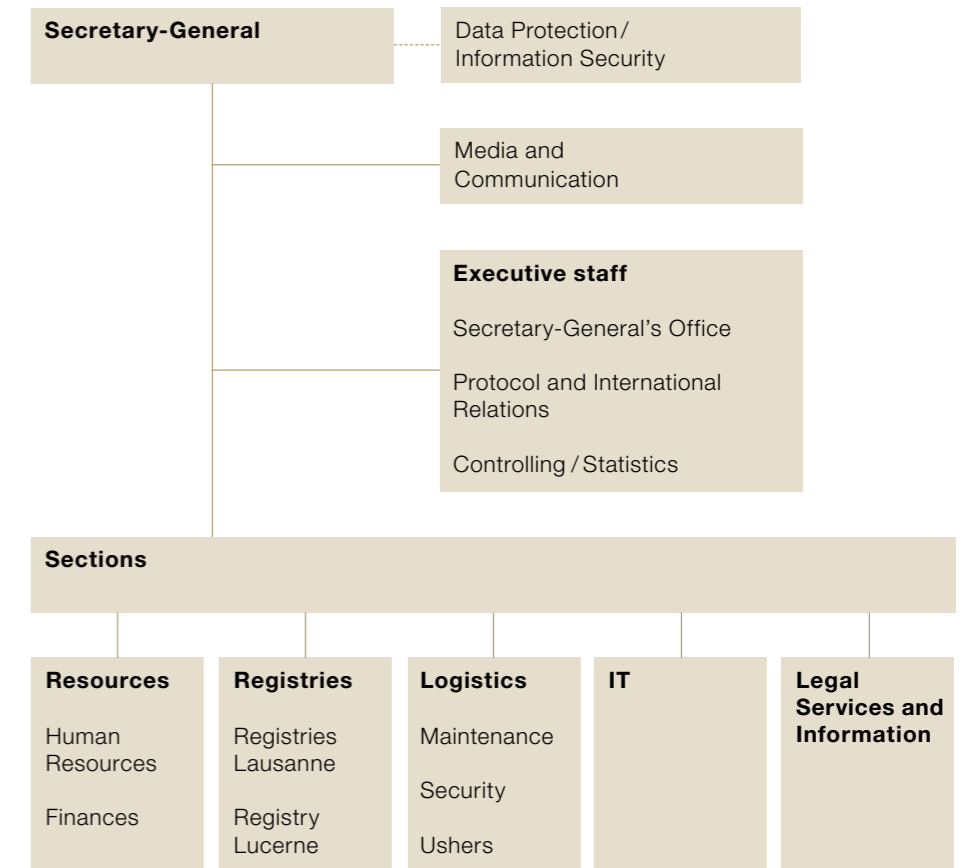
Barbara Kern

Tommaso Caprara

Florence Schwab Eggs

Charles Fagnière

## Secretary-General's Office



The Secretary-General's Office is the administrative headquarters for the Court Assembly, the Administrative Commission, the Conference of Presidents and the President of the Federal Supreme Court. It provides support for all staffing, organisational, administrative and financial matters. The sections support the Justices and the court clerks in their judicial activities. They provide the key tools for office communication, file administration, the library, legal databases, etc. The chancelleries manage the court files and are responsible for issuing the rulings. The logistics ensure that the Court can operate in an orderly and smooth fashion.



**General Secretariat | Secretary-General and Assistants Secretary-General**



*N. Lüscher*  
**Nicolas Lüscher**  
 Secretary-General



*L. Egloff*  
**Lorenzo Egloff**  
 Deputy Secretary-General,  
 Resources



*J. Bühler*  
**Jacques Bühler**  
 First Assistant Secretary-  
 General, Executive staff  
 and General Project Manager  
 Justitia 4.0



*P. Josi*  
**Peter Josi**  
 Assistant Secretary-General,  
 Media and Communication



*C. Magnin*  
**Christine Magnin**  
 Assistant Secretary-General,  
 Protocol/international  
 Relations, Deputy Media and  
 Communication

**Executive staff**

Lead: Jacques Bühler

Secretary-General's Office | Jacqueline Modoux

Protocol and International Relations | Christine Magnin

Controlling/Statistics | Jacques Bühler

**Sections | Responsibles**

Legal services and Information | Thomas Diener

IT | Daniel Brunner

Logistics | Siphra Steiner, ad int.:

Maintenance and Security Lausanne | Thierry Leresche

Ushers Lausanne | Jérôme Eltschinger

Ushers and Security Lucerne | Silvia Benedetto Huber

Resources:

Human Resources | Andrea Lanz

Finances | Pierre-Alain Joye

Registries | vacant:

Central Registry Lausanne | Antonella Turchi, ad int.

Court Registry Lucerne | Silvia Benedetto Huber

## Facts and Figures

### History

|      |   |
|------|---|
| 1848 | With the new Federal Constitution the transition from a confederation to a federal state is realised and a non-permanent supreme court is introduced.                         |
| 1874 | As a result of a constitutional amendment, the Federal Supreme Court becomes a permanent institution.   |
| 1917 | The Federal Insurance Court is established in Lucerne.  |
| 1959 | The Council of Europe founds the European Court of Human Rights.  |
| 1968 | The Federal Insurance Court becomes an independent division of the Federal Supreme Court, but remains in Lucerne.   |
| 1998 | The European Court of Human Rights becomes a permanent institution based in Strasbourg.   |
| 2000 | The Swiss electorate approves judicial reform. The newly extended buildings in Lausanne are inaugurated.  |
| 2004 | The Federal Criminal Court is established in Bellinzona.  |
| 2007 | The Federal Insurance Court is merged with the Federal Supreme Court: the two new Social Law Divisions are based in Lucerne. The Federal Administrative Court is established. |
| 2012 | The Federal Patent Court is established in St. Gallen. The Federal Administrative Court relocates to its definitive site in St. Gallen.                                       |
| 2013 | The Federal Criminal Court inaugurates its new, definitive court building in Bellinzona   |
| 2021 | In a federal referendum, the «Justice Initiative», which demanded that in future Federal Justices be chosen by lot, is rejected.  |
| 2023 | The two social law divisions in Lucerne become the Third and Fourth Public Law Divisions. The Federal Supreme Court receives a second criminal law division.                  |

### The Swiss Federal Supreme Court in 2023

| Pending cases as of<br>1 January 2023     | New cases filed | Decided | Pending cases as of<br>31 December 2023 |
|---|-----------------|---------|---|
| <b>First Public Law Division</b>          |                 |         |   |
| 618                                       | 941             | 1044    | 515                                     |
| <b>Second Public Law Division</b>         |                 |         |   |
| 365                                       | 763             | 720     | 408                                     |
| <b>Third Public Law Division</b>          |                 |         |   |
| 420                                       | 840             | 844     | 416                                     |
| <b>Fourth Public Law Division</b>         |                 |         |   |
| 336                                       | 845             | 818     | 363                                     |
| <b>First Civil Law Division</b>           |                 |         |   |
| 259                                       | 727             | 690     | 296                                     |
| <b>Second Civil Law Division</b>          |                 |         |   |
| 405                                       | 1242            | 1281    | 366                                     |
| <b>Criminal Law Divisions<sup>1</sup></b> |                 |         |   |
| 1087                                      | 2193            | 2015    | 1265                                    |
| <b>Others</b>                             |                 |         |   |
| 3   | 7               | 8       | 2                                       |
| <b>Total</b>                              |                 |         |   |
| 3493                                      | 7558            | 7420    | 3631                                    |

<sup>1</sup>

The figures relate to the Criminal Law Division (until 30 June 2023) and to the I. and II. Criminal Law Division (from 1 July 2023) as a whole.

## Extracts from the Court's Rulings

The rulings handed down by the Federal Supreme Court extend to all conceivable situations in life, as the following selection from the wide variety of the Court's rulings shows.

### Changing parties after the election

Public hearing of 22.5.2024, 1C\_223/2023, First Public Law Division  
If a member of parliament changes parties shortly after being elected by proportional representation, this may violate the constitutionally guaranteed free will of the electorate. The Swiss Federal Supreme Court has ruled in favour of an appeal in connection with the change of party of a Member of the Cantonal Parliament of Zurich. In proportional representation elections, it can be assumed that the party and not the candidate as a person is of primary importance to voters. The Zurich Administrative Court must clarify the exact circumstances surrounding the change of party and then decide anew.

### Baptism in Lake Geneva

Judgment 2C\_87/2023 of 23.2.2024 (intended for BGE publication),  
Second Public Law Division  
The Swiss Federal Supreme Court had to judge the appeal of a religious organisation that wanted to carry out a baptism in Lake Geneva. The church had refused to sign the formal obligation required by Geneva cantonal law to comply with the Swiss legal system and fundamental rights. According to the Swiss Federal Constitution, the regulation of relations between churches and the state is the responsibility of the cantons. The canton of Geneva may require religious organisations to commit themselves in writing to comply with the Swiss legal system and fundamental rights before applying for a permit to use public space for religious celebrations. This obligation represents a minor encroachment on religious freedom and meets with constitutional requirements: It has a legal basis, pursues a public interest and upholds the principle of proportionality. It is therefore admissible.

### Uber drivers are employees

i.a. BGE 149 V 57 of 16.2.2023, Third Public Law Division  
In 2021, the Zurich Social Insurance Court ruled that the «typical» Uber driver who used the Uber app in 2014 should be considered an employee of the Dutch company Uber BV. The Swiss Federal Supreme Court confirmed this ruling. It came to the conclusion that Uber drivers are gainfully employed by Uber BV which must therefore pay OASI (old-age and survivors' insurance) contributions. This is due, among other things, to the far-reaching instructions issued by Uber BV to the drivers. Uber BV also has a permanent establishment in Switzerland.

### No informal suspension of social welfare

BGE 149 V 250 of 4.9.2023, Fourth Public Law Division  
The authorities had requested information from a social welfare recipient about the income and expenses of his partner, with whom he wanted to cohabit. This was to clarify the family's overall entitlement to benefits. Because he did not submit any documents, the payment of social welfare was suspended without formal procedure. The Swiss Federal Supreme Court partially upheld the appeal of the person in question. According to the ruling, the suspension of social welfare must be made by means of a formal, voidable decision, as this step has drastic consequences for recipients and must be subject to judicial review.

### Accident with pedestrian on mobile phone

BGE 148 III 343 of 20.5.2022, First Civil Law Division  
In 2019, a man was standing at a tram stop with his back to an incoming Zurich public transport tram. He was focused on his mobile phone when he suddenly stepped onto the tracks without looking to his left. The tram hit him and he was seriously injured. According to the Swiss Federal Supreme Court, the City of Zurich, as the owner of public transports, is not financially liable for the accident because the pedestrian acted with gross negligence. It is true that pedestrians hunched over their mobile phones may be part of the everyday urban street scene today. However, this does not change the fact that pedestrians must also pay the required attention in urban traffic.

### Deletion of gender entry not possible in Switzerland

BGE 150 III 34 of 8.6.2023, Second Civil Law Division  
The cancellation of the gender entry obtained in Germany by a person originating from Switzerland cannot be entered in the Swiss civil status and birth register. Gender is one of the elements of civil status that is regulated by the Swiss Civil Code; its indication is one of the Swiss principles of register keeping. According to the clear will of the legislator, the binary gender order (man/woman) should be retained for the time being and the omission of a gender indication should remain inadmissible. The Swiss Federal Supreme Court is not authorised to deviate from this due to the separation of powers.

### Euthanasia for a healthy person

6B\_393/2023 of 13.3.2024 (intended for BGE publication), First Criminal Law Division  
A Geneva doctor did not violate the Narcotics Act by administering the lethal drug sodium pentobarbital to a healthy 86-year-old woman of sound mind who wished to die. According to the ruling, it is not up to the judge to interpret the applicable legal provisions in a particularly far-reaching manner in order to be able to criminalise the doctor's conduct. If necessary, it would be up to the legislator to adapt the legal basis. The Swiss Federal Supreme Court had already ruled in 2021 that the doctor had not violated the Therapeutic Products Act by the conduct he was accused of.

### More electronic monitoring

7B\_261/2023 of 18.3.2024 (intended for BGE publication), Second Criminal Law Division  
The Swiss Federal Supreme Court has extended the scope of application of the electronic monitoring form of imprisonment. Previously, electronic monitoring was considered if the entire custodial sentence—i.e. the unconditionally and the conditionally enforceable part—did not exceed one year in total. Electronic monitoring is now possible if the enforceable part of a partially suspended sentence does not exceed 12 months. The practice of electronic monitoring has thus been harmonised with that of semi-detention.

## The Court's Buildings

### The Mon-Repos Building in Lausanne

The Federal Supreme Court's Mon-Repos Building houses 30 magistrates (Federal Justices) and 300 staff members, and is a symbol of the Swiss Constitutional State. The current Mon-Repos Building is – after the Casino Building at Place St. François and the court building of Montbenon – the third Federal Supreme Court building in Lausanne. The Court moved into this building designed by architects Prince, Béguin and Laverrière in 1927. Due to the pressures of a growing case load and the resulting increase in work towards the end of the last century, it was necessary to rent external office space and, as a permanent solution, forge plans to extend this court building. In 2000, two additional wings were inaugurated.



### The Gotthard Building in Lucerne

Upon being established, the former Federal Insurance Court was located at Adligenswilerstrasse in Lucerne for 85 years. At the end of 2002, it was transferred to the Gotthard Building, then owned by the Swiss Federal Railways and centrally located at the lakeside. Designed in 1887 by architect Gustav Mossdorf as an administrative building for the historic Gotthard Railway Company, it was extensively renovated and restored in 2002. Since 2007 it houses the Third and the Fourth Public Law Division (until the end of 2022 the «social law divisions»), which ensued from the former Federal Insurance Court. The Gotthard Building is home to 10 federal Justices and 70 members of staff.





### **Swiss Federal Supreme Court**

Av. du Tribunal-Fédéral 29, CH-1000 Lausanne 14  
Telephone +41(0)21 318 91 11

Schweizerhofquai 6, CH-6004 Lucerne  
Telephone +41(0)41 419 35 55

E-mail: [direktion@bger.ch](mailto:direktion@bger.ch)

### **Documentation**

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Graphic design: Daniel Dreier SGD

Printed by: Groux & Graph'style



