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Office is consulted in cases of inheritance, where either the testator or the heirs are Swiss living abroad.

The **Federal Bureau of Civil Status** of the Federal Department of Justice and Police insures communication between the competent cantonal authorities and the Swiss diplomatic and consular representations abroad; it supervises all matters concerning civil status. Births, marriages, deaths and all other facts pertaining to personal and family status, are recorded in the registers at home. These records are the basis for issuing Swiss passports and other identity papers.

The Federal Office of Justice also supervises acquisition of real estate by persons resident abroad. Special mention must be made of the fact that Swiss citizens abroad,

although they live outside of Switzerland, do not require any permit.

7. The **Federal Office of Police Matters** and its subsidiary Offices of Welfare and Swiss Nationality of the Federal Department of Justice and Police look after interests of Swiss citizens abroad in various ways: such as legislation regarding nationality, issuing of Swiss passports, assistance to Swiss abroad who are in need, preparing and carrying out relief and welfare agreements.

8. The **Federal Office of Matters relating to Foreigners** of the Federal Department of Justice and Police is responsible for preparing and applying international agreements on entry and departure, as well as on permitting foreigners to stay temporarily or

permanently in our country. These treaties have implications not only for foreigners in Switzerland, but also for Swiss abroad. The Office keeps statistics of the Swiss abroad.

9. Under certain conditions, Swiss citizens abroad have to pay military exemption tax. Its collection by the cantons is supervised by the **Federal Tax Administration**.

The Tax Administration is also empowered to levy withholding tax (Verrechnungssteuer/impôt anticipé) and refunding it to Swiss residing abroad in virtue of double taxation agreements which Switzerland has concluded with other countries.

In addition, the Tax Administration is concerned with carrying out existing and preparing new agreements relating to the prevention of double taxation.

# Who is a Swiss Citizen Abroad?

## The Swiss Abroad and the Regulations regarding Acquisition and Loss of Swiss Nationality

### I

This is an extremely complex subject which reflects in its dispositions the evolution of basic Swiss attitudes. In the course of decades, one repeatedly finds changes in the law which are closely connected with the problem of equality of man and woman. The new rules may not yet be completely satisfactory, and one will have to await the revision of the Civil Code, at present under way, before the options become clear, on which the Swiss people will have to decide in the years to come.

According to the principle at present in force, children of a Swiss married to their mother acquire Swiss nationality at birth. This also applies to children of a Swiss woman not married to their father. Since 1st January 1978, children of a Swiss mother and a foreign father acquire Swiss citizenship at birth (as well as the nationality of the father), provided the parents fulfil the two following conditions:

- the parents must have their legal **residence** in Switzerland at the time of the birth of the child

- the mother must be a Swiss citizen by origin

The Federal Law on Citizenship, in force since 1st January 1953, allows a Swiss woman who marries a foreigner to keep her Swiss nationality on condition that she makes a written declaration when the marriage is officially announced or celebrated. In addition, there are various regulations which enable Swiss women who lost their Swiss nationality on marriage, to regain Swiss citizenship. These regulations were supplemented in 1956 by

Art. 58bis which allows renaturalization of women who had lost their Swiss citizenship before the law came into force, even if they were not Swiss citizens at birth.

## II

### Summary of the Federal Law of 29th September 1952 (BüG/LN)

#### 1. Acquisition by law

The first part is devoted to the acquisition of Swiss nationality by law through parentage or marriage. It is noticeable that the foreign woman who marries a Swiss acquires Swiss nationality automatically, whilst the Swiss woman who marries a foreigner cannot transmit her citizenship to her husband. This state of affairs is causing a lot of discussions. According to certain opinions, the possibility of acquiring Swiss citizenship by marrying Swiss men should be curtailed for foreign women.

#### 2. Loss by law

##### a) by marriage

As we have already seen, the Swiss woman loses her Swiss nationality on marrying a foreign national, unless she expressly declares her wish to retain it. The relevant declaration must be given in writing

- in Switzerland: to the civil registry official who makes the official publication or performs the marriage ceremony
- abroad: at the Swiss Consulate or Embassy **before** the marriage takes place

##### b) by forfeiture

The child born abroad of a Swiss citizen himself born in a foreign country, who has another nationality, forfeits Swiss citizenship on completion of the 22nd year, if he

or she has not made a declaration by that time that he or she wishes to retain Swiss nationality; this has to be done to a Swiss representation abroad or authority at home, either by personal call or in writing. The same ruling applies to children who have acquired the Swiss nationality of the mother at birth. Whoever for some reason could not make the declaration in due time can do so within one year after the hindrance has ceased to exist.

#### 3. Acquisition of Swiss citizenship by decision of the authorities

##### a) Ordinary naturalization

Ordinary naturalization applies to foreigners who have lived in Switzerland for 12 years, of which three must have been during the five years immediately before an application is made. For the calculation of the 12 years, the time the applicant spent in Switzerland between the age of 10 and 20 or being married to a Swiss woman, counts double. Children who have been living with their foreign mother and her Swiss husband have the same advantage as regards the time spent in Switzerland before their 10th year. In

addition cantons and communes may make their own regulations regarding residence.

Once the federal naturalization permit has been given, Swiss nationality is acquired by getting citizenship of a canton and a commune. The competent cantonal and communal authorities are entitled to set fees and taxes which may amount to several thousand francs.

##### b) Renaturalization

By contrast, renaturalization carries no fees except those covering registry expenses. As we have already seen, the law provides various ways of renaturalizing former Swiss women. There are two categories: women who lost their Swiss nationality through marriage before the law of 1952 came into force and whose marriage continues, may apply for renaturalization under Art. 58bis of the BüG/LN. Those who lost their Swiss nationality since 1st January 1953, may apply for renaturalization

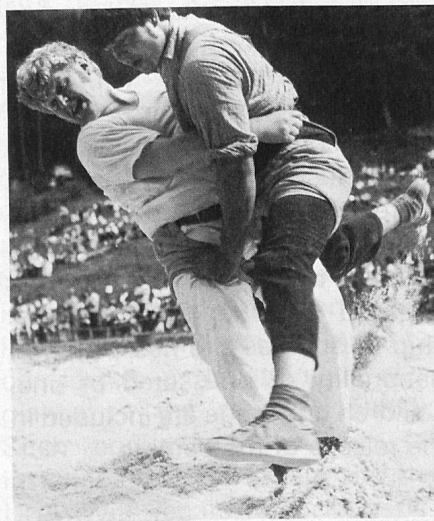
aa) if the husband is dead or the marriage has been annulled or dissolved or if the spouses have been legally permanently separated or have been living apart for three years

bb) if the woman had reasonable excuses for not making the declaration to retain Swiss citizenship

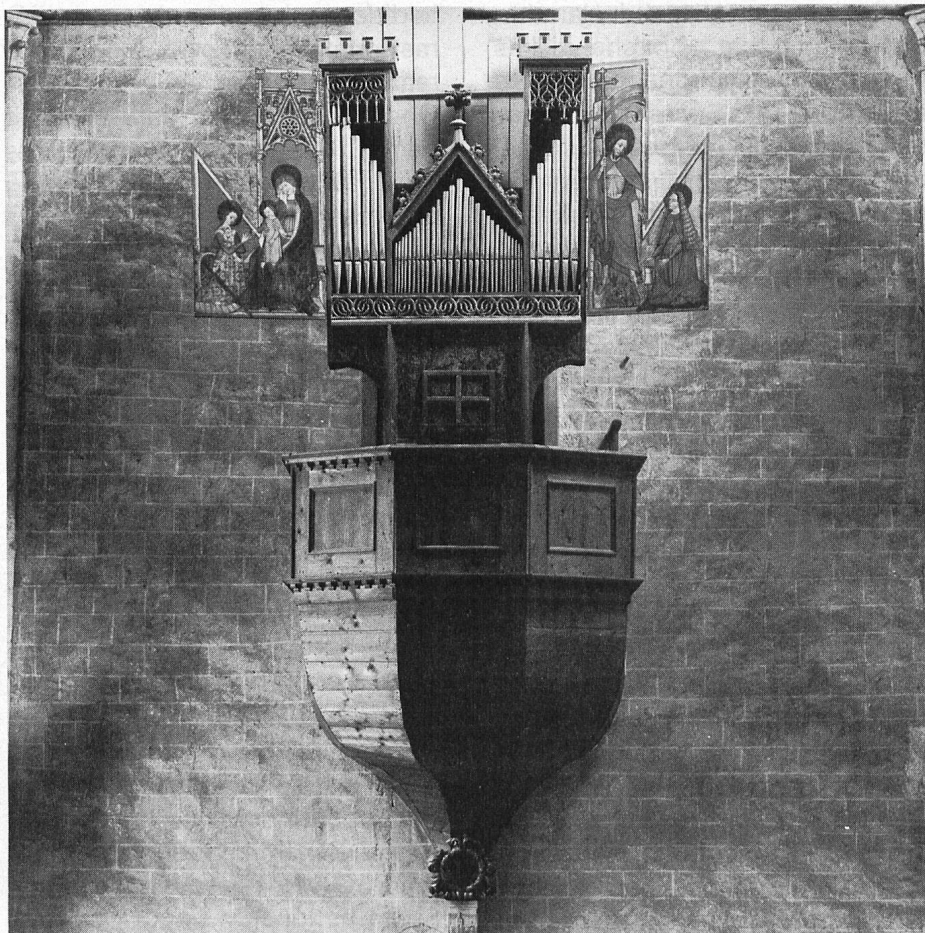
cc) if the woman is stateless

Applications under aa) must be made within 10 years after fulfilment of the requirements, and under bb) within one year of the grounds for excuses having ceased, but at the latest within 10 years of the marriage taking place. If a woman gets renaturalized under aa) her children under age may be included if they live in Switzerland. Under cc) they can be included if they themselves are stateless.

A national sport: «Schwingen»







Valère at Sion where one finds one of the oldest organs in Europe (1390)

*We thank the Swiss National Tourist Office for all pictures published in this issue.*

#### **c) Facilitated naturalization**

Children of a Swiss-born woman who have lived in Switzerland for at least 10 years can benefit from facilitated naturalization if they are living in Switzerland and make the application before completion of their 22nd year. They then acquire the cantonal and communal citizenship of their mother free of charge, except for registry expenses.

Furthermore, children under age whose mother kept her Swiss nationality on marrying a foreigner can also benefit from facilitated naturalization if they are living in Switzerland and the father has died or the parent's marriage has been dissolved or annulled or if the spouses are legally separated or have been living apart for three years.

#### **4. Loss of Swiss nationality by decision of the authorities**

The law permits every Swiss to give up Swiss citizenship if he is not resident in Switzerland, is at least 20, has another nationality or is assured of one. A married woman can only give up the Swiss nationality together with her husband; she has to give her written consent. If she fails to do so her husband's application may be rejected. Finally, it should be pointed out that a Swiss woman married to a foreigner can be released from her Swiss citizenship as soon as she has a foreign nationality or is assured of one. Children under age are included in the release of the parents.

### **Final remarks**

The new provisions of the citizenship law which came into force on 1st January 1978, may appear discriminative to some Swiss abroad, especially the ruling that a child can acquire its Swiss mother's nationality only if the parents live in Switzerland at the time of its birth. A more liberal solution was however not possible, since limits are set in this area by the Federal Constitution. Under its terms federal law can lay down that the Swiss nationality will be granted to children born of foreign parents only if the mother was originally Swiss and is resident in Switzerland with her foreign husband. The revision of the citizenship law which is at present being carried out endeavours to bring about equal rights for men and women. It seems reasonable to seek a solution by which children of a Swiss mother shall acquire Swiss citizenship on the same conditions as those of a Swiss father. Such a provision will require an amendment of the Federal Constitution. The whole procedure may take considerable time, and it is impossible to foresee how the people and the cantons will vote on the constitutional amendment.

\* \* \*

**If you have any questions regarding Swiss citizenship, please raise them with the Swiss representation where you are registered**

# The Special Position of Dual Nationals

In the first place the Swiss abroad are subject to the laws of their country of residence. Each country has its own regulations on the acquisition of nationality by foreigners. There are states where nationality is acquired by birth (*ius soli*), as in France, Great Britain and most American countries.

Moreover, some Swiss living abroad may find it useful to apply for the citizenship of their countries of residence, for instance to hold a certain job or secure a livelihood. That is not prohibited by Swiss law, and does not result in automatic loss of the Swiss citizenship.

Many Swiss women who marry foreigners acquire their husbands' citizenship, and become dual nationals if they declare in writing before marriage their intention to retain their Swiss nationality. Not only Switzerland, but foreign countries too, now allow citizenship to pass on to children not only through the father but also through the mother, for instance the Federal German Republic and France. Thus many children born of Swiss fathers and of mothers from these foreign countries become dual nationals.

There are then several reasons for acquiring another citizenship. It is not surprising that the number of dual nationals grows year by year. In the period between 1974 and 1977 this number has increased by over 16000. At the end of 1977 there were abroad more dual nationals than purely Swiss citizens, the ratio being 52 to 48.

The status of the dual nationals is particularly complex. On the one hand they are subject to Swiss law by virtue of their Swiss citizenship, but on the other hand they are first of all subject to the law of their second homeland if resident there. The fact that the dual national who

is resident in Switzerland is in the first instance regarded as a Swiss, has consequences on citizenship and the rights and duties deriving from it, such as the rights to settle, to obtain a passport, to vote, to work, to benefit from social assistance, to acquire real estate or the duty to belong to OAI/DI (AHV/IV – AVS/AI) and do military service. The reverse situation of a dual national residing in his other home country affects mainly military duties. That country can call him for military service without regard to his Swiss nationality. Serious conflicts may then arise, but a state may lessen them under its own law. Thus a Swiss dual national who has done military service in the other country can no longer be taken into or stay in the Swiss army. In certain circumstances these dual nationals do not have to pay military tax. They are not liable to punishment if, while resident in their second homeland, they do military service there. Dual nationals who are resident abroad cannot undergo initial military training (*Rekrutenschule/Ecole de recrues*) in Switzerland, even on a voluntary basis. The Confederation has concluded agreements on dual nationals' military service with some states, such as the USA, France, Argentina and Columbia. These are all countries applying the principle of **ius soli**. As regards the exercise of political rights, dual nationals abroad are on equal footing with purely Swiss citizens. They must however ascertain whether participation in Swiss referendums and elections is permitted by their second homeland. In certain cases that might be considered a violation of allegiance to the second country. Such could be the case, for instance, in Great Britain and the USA. With regard to social assis-

tance the principle is that the Confederation helps a Swiss dual national who is in need in his second homeland only if the Swiss citizenship is predominant. The main responsibility, however, always rests with the country of residence.

In the field of social insurance there are no restrictions for dual nationals. They too can join the OAI/DI (AHV/IV – AVS/AI), on a voluntary basis. The only exception applies to the generation subject to transitory arrangements; extraordinary benefits, that is without contributions having been paid, are granted only to those dual nationals whose Swiss citizenship is predominant and whose income is below a certain limit.

Dual nationals abroad are required, just as the purely Swiss, to register with Swiss Embassies and Consulates, this in their own interests. It must be pointed out, however, that as a rule diplomatic protection against the authorities of the second homeland cannot be

Saints of the Middle Ages in the Church of Munstair





invoked, since that country regards these dual nationals in the first place as its own citizens. The acquisition of a second nationality may at times prevent difficulties in finding work, strengthening prospects, holding a certain job, etc. Yet it must be recognized that dual nationality may in certain cases bring conflicts of interests. For this reason, the Council of Europe concluded on 6th May 1963 an agreement aiming at preventing the voluntary

acquisition of another nationality and thus reduce the occurrence of plurinationality. But it has been shown that member states go their different ways in national legislations; the latest example is the change in the Swiss citizenship law of 25th June, 1976, regarding children of foreigners living in Switzerland and of Swiss-born mothers. It is not easy to make general regulations valid for all dual nationals. In each particular case

specific circumstances and national legislation must be taken into consideration. It is therefore advisable that dual nationals get in touch with Swiss Embassies and Consulates when they foresee difficulties, unless they prefer making inquiry with the authorities of their country of residence. Many dual nationals, however, attach importance to concealing their second nationality from the authorities of the country of residence whose citizens they are.

## **Diplomatic and Consular Protection of the Swiss Abroad**

How their interests are taken care of has always preoccupied our compatriots living outside Switzerland – especially so at the Assemblies of the Swiss Abroad. As the heading shows, one must differentiate between diplomatic and consular protection.

### **1. Diplomatic Protection**

When extending diplomatic protection, a state exercises its own laws. It uses its own judgment to decide whether and when to give diplomatic protection taking into account possibly higher interests. The individual has no legal rights to diplomatic protection by his country.

International public law holds the view that it is the home country that has been wronged by one of its citizens sustaining an injustice. A state can protect diplomatically only its own citizens. Therefore there must not be the slightest doubts about nationality (for instance in connection with problems of inheritance, assignments of claims, etc.).

Switzerland can grant diplomatic protection also to Swiss controlled companies, regardless of whether

they are domiciled in Switzerland or abroad. If there are any doubts regarding share holding, the company must supply the necessary information before any steps can be taken.

Measures which can be taken for the protection of economic interests of companies under foreign control, must be distinguished from diplomatic protection (for instance intervention on the strength of a bilateral agreement; participation in public tenders; granting of import quotas and similar matters). The condition, however, is that such companies are domiciled in Switzerland.

Resorting to diplomatic protection presupposes that another state has infringed a rule of international public law. Such an infringement exists for instance in the denial of legal rights (refusing legal proceedings, etc.) as well as under certain circumstances in expropriation and nationalization. The latter is permissible under international public law if it is done without discrimination and if immediate, adequate, and effective compensation is given. Where court proceedings are possible according to internal law or are already pending, all available

forms of appeal must have been used before diplomatic protection can be considered.

### **2. Consular Protection**

When extending consular protection, the state neither acts according to its own law, nor asks for reparation for an infringement of international public law; it acts in the interest of the Swiss citizen concerned. Accordingly, conditions which have to be fulfilled before a consular representative can give consular protection are not as stringent, especially where dual nationals are concerned.

The Consulate gives assistance and advice in cases of arrest. The wish of the arrested citizen to get in touch with his country's representation must be notified immediately by the responsible authorities. Where there may be prolonged custody the imprisoned person is particularly in need of protection by his country's authorities, and the right to consular visits must be insisted upon. The Consulate will arrange for adequate legal counselling and oppose inhuman prison conditions, torture and corporal punishment.

# Registration of the Swiss Abroad with Swiss Diplomatic and Consular Representations in Foreign Countries

The regulations issued by the Federal Council concerning the diplomatic and consular services lay down that a Swiss citizen has to register with the nearest Embassy or Consulate if he or she takes up residence in a consular district for more than 12 months. The consular register then includes the person concerned and the members of his family.

Why this duty which cannot be enforced abroad anyway? The Federal Council introduced the obligation in the first place in the interests of the Swiss abroad themselves. Properly registered, they are known to the competent authorities which can act for them in many different ways, for instance: changes in civil status through births, marriages or deaths; issue or renewal of passports; enrolment in the voluntary OAI/DI or in the Solidarity Fund; assistance in time of need to a Swiss resident abroad; application to be put on the voting register; exemption from military rights and duties; granting of diplomatic or consular protection; delivery of the «Review», etc. It is therefore to the advantage of every Swiss abroad, man or woman, to report to the appropriate Consulate on taking up residence in the consular district, on acquiring Swiss nationality by marriage or when there is an addition to the family.

Generally, the Swiss citizens prove their identity by producing their Swiss passport or other identification papers. An application for registration will, however, be accepted only if the Swiss in question has actually taken up residence in the consular district. Minors and people under guard-

ianship must register at the place of residence of the parents or guardians.

Withdrawal from the register is made either by application or automatically. If, for instance, a Swiss citizen reports his departure from the consular district, his name will be removed from the register. Removal from the register follows automatically when the person concerned no longer manifests himself and the mail addressed to him is returned repeatedly marked «addressee unknown», if he loses his Swiss nationality, on death, etc. A special procedure has been provided for young Swiss abroad who reach the age of majority (20 according to Swiss law) and have been on the registration card of their legal representatives. If these young people do not call at the Consulate de-

spite an invitation to do so, they too will be removed from the register.

Registration is an instrument of work necessary to the Swiss representations abroad; it enables them to render valuable services to Swiss nationals wherever possible. Obviously, this cannot happen without administrative formalities. These have been reduced to a minimum since introduction on 1st January 1979 of new regulations. In addition, no registration fees have been levied for some time, and that too, is a further measure in favour of the Swiss citizens abroad.

**It is in your own interest to report to the appropriate Swiss Embassy or Consulate.**

Viticulture in the Valais, the Fort of Valère

