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Applied Legislation in favour of the Swiss Abroad

Social Assistance and the Swiss Abroad

Up to the end of 1973, cantons and communes supported needy Swiss abroad to varying degrees without legal obligation. By the Federal Law on Social Benefits to Swiss Abroad of 21st March 1973 their rights have been substantially improved. It is the purpose of the law to render assistance which results in equal treatment for all Swiss abroad.

According to this law, Swiss citizens who are resident or have lived abroad for over three months, receive welfare assistance if they cannot meet their living expenses through their own efforts and from their own means, contributions from private sources or social benefits from the country of residence.

The benefits provided by the Confederation may consist in cash sums towards living expenses in the country of residence, or in

meeting the cost of repatriation if a return to Switzerland is in the true interest of the person requiring help or his family. Accommodation and care of the repatriated Swiss are incumbent on the cantons. The Confederation, however, refunds them the cost of assistance for a maximum of three months, provided the repatriated Swiss was abroad for at least three months. Dual nationals in need have to apply in the first place to the authorities of the country with which they have the closer relations.

Anyone who wishes to claim social benefits from the Confederation, should apply to his Swiss Embassy or Consulate who will pass on the application with a report to the Federal Office of Police. In urgent cases, the Swiss representations can grant temporary help without reference to Berne.

Like most cantonal laws on social assistance the federal law contains provisions regarding refunds. Payments are refundable from the moment the assisted person no longer needs help and is assured of a reasonable livelihood for himself and his family. Assistance received before the age of 20 is not repayable. Furthermore, repayment of social welfare benefits lapses after 10 years.

Switzerland has concluded with France and the Federal Republic of Germany agreements on social assistance which are not affected by the new law, and under which the country of residence gives to nationals of the other state the same assistance as to its own citizens. It bears the cost for the first 30 days. Further expenses are refunded by the homeland.

Federal Law on the Political Rights of the Swiss Abroad

Early History

The question of voting rights at federal level for the Swiss abroad first emerged during the deliberations on the Federal Constitution of 1848. At that time it hardly aroused much interest. In 1965 the Federal Council explicitly mentioned voting rights in its message to Parliament about the proposed constitutional article on the Swiss abroad. Once the people and the cantons had accepted the amendment in October 1966 the

road was clear to enact regulations on these political rights.

The federal law of December 1975 states in article 1 that a Swiss living abroad can make use of his political rights only in Switzerland. In other words, he has the so-called *Aufenthalterstimmrecht* (droit de vote au lieu de séjour).

How to use the political rights at federal level

To be able to vote the citizen who

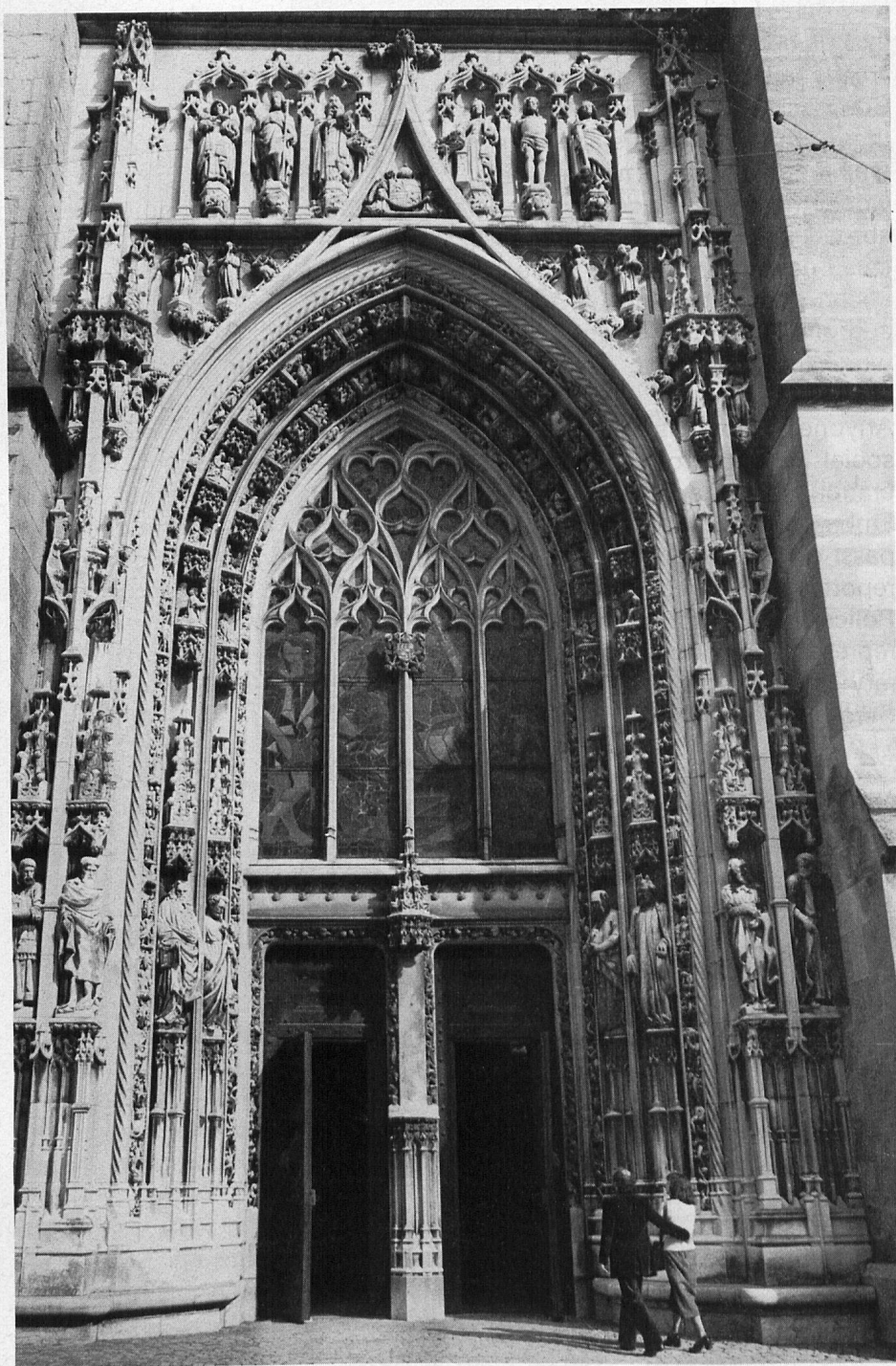
lives abroad must fulfill the following conditions:

- have Swiss citizenship
 - have no legal domicile in Switzerland
 - be registered with a Swiss Embassy or Consulate, and
 - be of sound mind (under terms of art. 369 of the Swiss Civil Code)
- To participate in federal elections and referendums he takes the following steps in this order:
- notify the Swiss Embassy or Consulate where he is registered,

in writing, by telephone or personal call. It is advisable to use for the purpose the application form attached to the leaflet «Voting Rights for Swiss Abroad» and to complete it carefully

- read with great care the confirmation received from the voting commune regarding entry in the voting register, collection times of voting papers, and the address of polling station

The West Gate of Lausanne Cathedral



- within three weeks before the referendum or election, call at the registry office of the voting commune or the commune where he is staying (commune of presence) to collect the voting papers

- fill in the voting or election slip a) put in the ballot box if the commune of presence and the voting commune are one and the same, or

- b) post it in the commune of presence to the voting commune

Please note

- The application to take part in federal referendums and elections need be made only once.

- It is afterwards not possible to change the voting commune.

- It is however possible to change the commune of presence by informing the appropriate Embassy or Consulate at least three months before a federal referendum or election.

- It is advisable to follow closely the dates of the federal elections and referendums published in the «Review», so that if possible voting can be combined with a stay in the homeland.

- In view of the availability of the postal vote inside Switzerland the voter from abroad is well advised to call at the registry office of the commune of presence within three weeks before the poll but not later than the Thursday before.

The Swiss abroad are entitled to sign referendum or initiative petitions so long as they do so on the lists of their voting communes.

The Swiss from abroad who is registered in a voting commune and is temporarily in Switzerland, can vote in the three weeks before a federal poll either at the polling station of his voting commune or by mail from his commune of presence.

The Swiss Abroad and Military Obligations

1. Reporting

Please produce every time the military service book (Dienstbüchlein/livret de service) or the registration card (Erfassungskarte/carte de recensement).

1.1. Before leaving the country the Swiss citizen who has been granted leave to go abroad must

a) return his personal equipment to the arsenal;

b) notify the *Sektionschef/chef de section* of his impending departure, either personally or in writing;

c) follow the instructions on form 2.47 (in German) or 2.48 (in French) or 2.49 (in Italian), which is pasted inside the back cover of the military service book.

1.2. Once abroad the citizen under obligation to report must

a) register with the nearest Swiss Consulate **within one month** of arrival at the new place of residence;

b) notify any change of address to the same Swiss representation or that nearest to his new place of residence.

1.3. While abroad during military service age:

According to a Federal Council decree of 17th November 1971, the Swiss citizen living abroad should inform the appropriate Swiss consulate in writing whether he wishes to do military service in Switzerland on a voluntary basis, including basic military training (*Rekrutenschule/Ecole de recrues*).

1.4. On returning to Switzerland to resume residence the Swiss citizen under obligation to report must

a) give notice to the appropriate Swiss representation before leaving the foreign country, and

b) report within **eight days** of arrival in Switzerland to the head of section in the place where he takes up residence.

1.5. Swiss seamen:

A Swiss citizen of military service age employed on an ocean-going ship belonging to a Swiss company must report within **eight days** after the start of employment to the district commander (*Kreis-kommandant/commandant d'arrondissement*) in Basle.

1.6. Temporary stay in Switzerland (maximum three months):

Swiss citizens from abroad liable to call-up for basic training or military service who stay in Switzerland for more than a month without taking up permanent

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residence must apply **within a month** to the district commander of their place of temporary residence for exemption from their military obligations.

2. Military Exemption Tax

2.1. Principle:

A Swiss citizen who performs his military duties only partly or not at all by personal service has to pay military exemption tax.

2.2. Exemption:

The Swiss resident abroad is released from paying military exemption tax if he has been abroad for over three years.

2.3. Collection of military exemption tax:

The tax is levied yearly by the cantons, under federal supervision, and collected by the Swiss representations abroad.

2.4. Refund:

Should military service be performed for a year for which military exemption tax has already been paid, application for a refund may be made to the military exemption tax administration of the canton on whose account the tax has been levied. The application must be accompanied by the military service book. The right to claim a refund lapses five years after that in which service was carried out.

3. General Mobilization of the Swiss Army

According to a decree issued by the Federal Council on 26th December, 1961, the Swiss citizen who is abroad on leave from the *Auszug/élite* (20 to 32 years of age) or the *Landwehr* (33 to 42) and remains under obligation to obey mobilization orders must return to Switzerland "by the quickest possible way. He reports to the nearest arsenal for re-equipment and further orders. The mobilization order will be sent to all concerned.

Swiss Citizens Abroad and their Rights in Personal and Family Matters

In personal and family matters the Swiss abroad come as a rule under the law and jurisdiction of their country of residence. Questions of inheritance are generally dealt with according to the law of the **last** place of residence of the deceased. However, it can happen that the country of residence decides not to apply its own laws to foreigners, for instance as regards adoption, divorce, change of name, or succession; the Swiss abroad then come under Swiss law.

It is also possible that the courts of the country of residence simply consider themselves incompetent in such matters, when a Swiss citizen is involved. He can then call on the judge or other proper authority of his place of origin and the matter will be dealt with in Switzerland, a succession for instance at the deceased's place of origin.

Civil Capacity

In countries which put questions of personal legal status like civil

capacity, capacity to contract, coming of age, etc, under the law of the country of residence, Swiss citizens are subject to it. In the other cases, Swiss living abroad, are treated according to Swiss law.

Change of Name

Until a short time ago, only the canton of origin could authorize a change of name. According to a new trend the Swiss abroad can, in principle, register with the Swiss Civil Registry a change of name duly authorized by the legal authorities of his/her country of residence. Nevertheless, it must be pointed out that a simple declaration of change of name before a foreign notary public (as is possible for instance under Anglo-Saxon law) is not recognized in Switzerland.

In general, the national law of the husband's country is adhered to in determining the married wife's name. A Swiss or foreign woman

who marries a Swiss resident abroad takes her husband's name, as is customary in Switzerland. Whether a Swiss woman abroad takes her foreign husband's name ultimately depends on the law of his country, even if she keeps her Swiss nationality.

The question of a divorced woman's name is rather complex and would require a special analysis. It may be said that often the law of the country of residence is applicable.

Marriage

If two Swiss citizens marry abroad according to the law of that country the validity of the marriage is recognized in Switzerland, even if the requirements of Swiss law have not been fulfilled. The marriage, however, would not be recognized, if it had been arranged abroad entirely in order to circumvent the grounds for annulment provided in the Swiss law.

Divorce and Separation

In principle, the foreign courts in the country of residence of the defendant are competent in a divorce case.

Nevertheless, the Swiss spouse residing abroad can at any time bring an action for divorce at his Swiss commune of origin. In this case, only Swiss law is applicable. If the divorce of a Swiss couple residing in a foreign country has been duly pronounced there, the divorce is recognized in Switzerland even if it is not entirely according to federal legislation. It must, however, not offend against Swiss public policy, that is to say the fundamental principles of the federal law. The Swiss dual nationals residing in their second homeland also have the right to bring an action for divorce in their Swiss commune of origin. The Swiss spouse – even if dual national – can get a divorce from a foreign partner, whether the foreign state recognizes the divorce or not.

Property Rights between Spouses

According to Swiss law the property rights between husband and wife are subject to the law of the couple's first place of residence. If that place is abroad and the law of the respective country is for any reason not applicable the matter comes under the law of the Swiss homeland.

When residence is taken up abroad the matrimonial property system hitherto valid in Switzerland remains unchanged, unless the law of the new place of residence goes to the contrary.

Similarly, Swiss couples who had their first place of residence abroad and then return to Switzerland remain under the law regarding property rights between spouses as previously applicable,

except in relation to third parties where Swiss law prevails. By common declaration, to the guardianship authorities (Vormundschaftsbehörde/autorité tutélaire) they may put property rights between them under Swiss law.

Filiation

An action for establishing or contesting paternity has, in principle, to be brought to a court at the place of residence of the parties or one party, either at home or abroad.

If the foreign country of residence of the child or of the father or the mother assumes no jurisdiction, an action for establishing or contesting filiation can be brought to a judge of the commune of origin of the child, or one of the parents. The law of the joint place of residence is applicable, and if there is no joint place of residence Swiss law applies.

Adoption

In principle, adoptions have to be obtained in the country of residence. If adoption by a Swiss citizen or Swiss spouses is not possible at the place of residence (because there is no competent

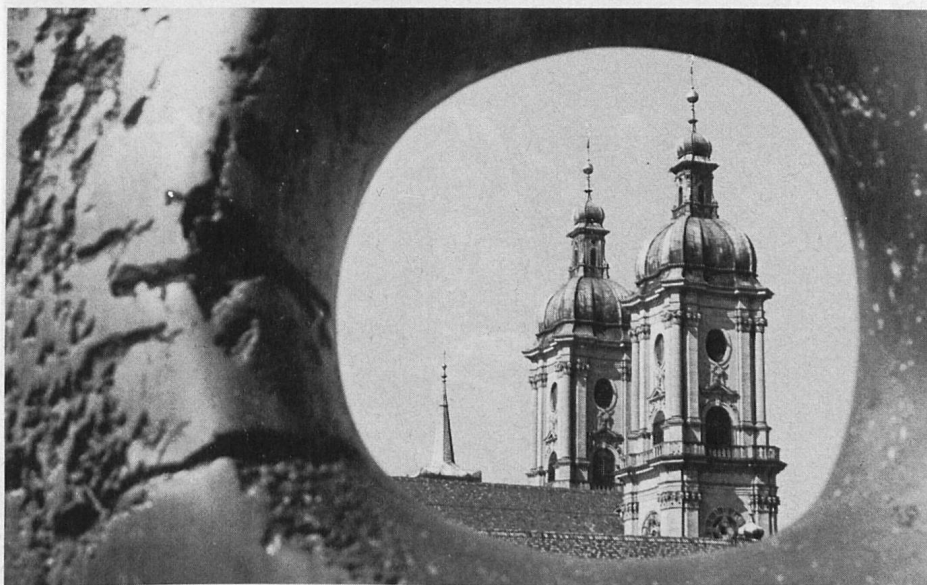
court or because the necessary conditions at that place have not been fulfilled) an adoption can be pronounced by the authorities at home. Should such an adoption not be recognized in the country of residence and it is evident that grave disadvantages will arise for the child, the adoption authorities have to reject the application. Conditions and effects of an adoption pronounced in Switzerland are under Swiss law.

Inheritance

Generally speaking, succession matters are governed by the law of the country of a deceased's last residence. Swiss law is applicable only where the law of that country refers to it. An exception exists with regard to real estate in Switzerland, to which Swiss law is invariably applied.

In a similar light the question of jurisdiction must be seen. The applicable law need not necessarily be the one of the place where probate is granted. Many countries may assume jurisdiction over the estate of a Swiss citizen resident there, but apply Swiss law in questions of legal succession and validity of last dispositions (testament, agreement regarding inheritance).

View of St Gall Cathedral



The Swiss Abroad and Taxation

The obligation to pay taxes is subject to the laws of the place of residence. The Swiss living abroad are therefore taxable in their countries of residence and in Switzerland only if they stay there for any length of time (defence tax: generally six months; if living in one's own house, three months). With one exception, nationality therefore plays no part in Swiss tax matters: According to the fiscal law of the canton Ticino, Ticinesi abroad are fully subject to taxation on assets and revenue.

Economic interests in Switzerland of Swiss living abroad carry a limited liability to taxation by the Confederation and cantons. This is the case notably as regards real estate in Switzerland, claims secured by mortgage, industrial or commercial enterprises, participation in non-limited companies (such as ordinary partnerships), the profits thereof and income

from temporary employment in Switzerland.

In this connection one has to mention the withholding tax. It is levied at source on income from capital (dividends of Swiss companies, interest on Swiss bonds, savings accounts with Swiss banks). Residents in Switzerland will be credited with this tax, or have it refunded if they declare these assets and any income thereof on their tax returns. But the tax is not refunded to persons residing abroad, except where provided otherwise in double taxation agreements signed by Switzerland, as such persons are not liable to taxation in Switzerland on their Swiss assets or bank accounts or any revenue thereof. This is basically also true for Swiss citizens living abroad. Thus, by paying withholding tax they contribute towards the Confederation's expenditure. Repeated

proposals from Swiss abroad that the withholding tax should be refunded to them or used for specific purposes concerning them could not be accepted by the Federal Council, for reasons of international law or because of international commitments.

As a rule a Swiss abroad must declare to the country of residence for tax purposes his whole income and all his assets, including any Swiss capital and revenue thereof. Assets in Switzerland may, as explained before, also be subject to Swiss taxation. Similar situations may arise with regard to inheritance. The federal authorities try to avoid or at least substantially alleviate such double taxation, by concluding international agreements.

To date comprehensive agreements on double taxation are in force with Austria, Canada, Denmark, Finland, France, the Federal Republic of Germany, Great Britain, Hungary, Ireland, Italy, Japan, Malaysia, the Netherlands, Norway, Pakistan, Portugal, Singapore, South Africa, Spain, Sweden, Trinidad and Tobago, and the United States of America. They either allocate the various taxable items exclusively to one of the two signatories, or provide that the country of residence gives credit for taxes levied elsewhere at source or the location of taxable items. Thus, Swiss residents abroad who declare their Swiss revenue and assets to the foreign tax authorities may demand from them that allowance be made for the non-refundable Swiss withholding tax. Many Swiss abroad who have assets in Switzerland, and are accordingly liable to withholding tax, may apply to their country of residence for refunds if they fulfil the conditions laid down.

Sale of a giant Mortadella in Lugano

