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Voting rights for the Swiss Abroad – “Switzerland is already at the limit of what it can offer”

Voting papers for Swiss expatriates arrive too late in many cases. Now the courts are deliberating on the extent to which the state must ensure voting rights for the Swiss Abroad. Constitutional experts believe that the law has promised something that is basically impossible to deliver.

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Had the votes from the "Fifth Switzerland" been received on time, Filippo Lombardi (CVP) would probably have won the latest election to the Council of States in the canton of Ticino instead of his Swiss Social Democratic Party rival Marina Carobbio. The Ticino Administrative Court and the Federal Supreme Court are now looking into the matter.

Postal voting glitches are at the centre of the furore. However, Emeritus Professor of Law and expert on voting rights Pierre Tschannen says that there is one slight problem: "International post is not the responsibility of the Swiss authorities." In other words: according to current legal practice, the Swiss Abroad must bear the risk of voting papers being dispatched in good time but arriving too late. But what would the law say if – as in Ticino – the authori-



Polling officers doing their job. They will not count postal votes that arrive too late.
Photo: Keystone

ties sat on the voting papers for an inordinate amount of time or sent these documents by second-class post, resulting in delivery times of up to 25 days depending on the country? "It's hard to say regarding delays that were actually caused in Switzerland," says Tschannen. "Things might well be different if the outcome of the vote was very close." Hence, the Lombardi case could potentially set a precedent.

Constitutional and democracy expert Professor Andreas Glaser of the University of Zurich is very interested to see how the legal dispute in Ticino pans out. "Usually it is a question of a few missing votes here and there, which have no bearing on the result," he says. "But the delayed votes could play a role this time." This is because 200 voting envelopes reached Switzerland too late – and only 46 votes separated Lombardi and Carobbio.

"Only e-voting can solve the problem in the long run, but there are of course some weighty arguments against e-voting," says Tschannen. Glaser adds that the current situation is unsatisfactory. "It was thought that e-voting would save the day." Instead, voting rights for the Swiss Abroad are impracticable in reality, despite being enshrined in the Constitution.

Do the Swiss Abroad have irrefutable voting rights?

Is there actually any obligation for Switzerland to grant its citizens abroad the right to vote? "There is no obligation under international law for countries to grant voting rights to their expatriates," says Tschannen. "However, the federal government is bound under the Federal Constitution to enact legislation governing the rights and obligations of Swiss Abroad, specifically in relation to political rights."

Thus, the Federal Constitution is implicitly saying that Swiss Abroad are entitled to vote at federal level. The right to vote is also enshrined in the Swiss Abroad Act, which states that votes may be cast in person, by post, or, provided the conditions are met, electronically.

"The unrestricted right to vote is a luxury for Swiss citizens abroad," says Glaser. "Such a generous interpretation of voting rights leaves little room for manoeuvre. Switzerland has no choice but to grant suffrage to its expatriate community. However, Switzerland is already at the limit of what it can offer."

"I take a critical view of voting rights for the Swiss Abroad, and I am not alone in that," says Tschannen. On the one hand, politicians would never change the status quo because the political rights of Swiss expatriates are set in stone. "Nevertheless, voting rights for the Swiss Abroad run counter to the fundamental democratic principle that you may only participate in elections and popular votes if you are directly affected by their outcome."

SIBILLA BONDOLFI is a member of the swissinfo editorial team. This piece is an excerpt from a longer article available in German and French on the swissinfo.ch website.