

Zeitschrift: The Swiss observer : the journal of the Federation of Swiss Societies in the UK
Herausgeber: Federation of Swiss Societies in the United Kingdom
Band: - (1962)
Heft: 1418

Artikel: The Swiss constitution and the Swiss abroad
Autor: [s.n.]
DOI: <https://doi.org/10.5169/seals-693589>

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The Swiss Observer

FOUNDED IN 1919 BY PAUL F. BOEHRINGER.

The Official Organ of the Swiss Colony in Great Britain

Advisory Council: R. J. KELLER (Chairman), GOTTFRIED KELLER (Vice-Chairman), DR. E. M. BIRCHER, O. F. BOEHRINGER, J. EUSEBIO, A. KUNZ, A. STAUFFER, G. E. SUTER.

EDITED BY MRS. MARIANN MEIER WITH THE CO-OPERATION OF MEMBERS OF THE SWISS COLONY IN GREAT BRITAIN.

Telephone: CLERKENWELL 2321/2.

Published Twice Monthly at 23, LEONARD STREET, E.C.2.

Telegrams: FREPRINCO, LONDON.

Vol. 48. No. 1418

FRIDAY, 12th OCTOBER 1962

THE SWISS CONSTITUTION AND THE SWISS ABROAD

Early in 1951 the Commission of the Swiss abroad (ASK) was invited by the Federal Political Department to comment on the desirability of a special article in the Swiss Constitution concerning the Swiss abroad and, if in the affirmative, to suggest a possible form of such an article. The Central Council of the New Helvetic Society in Switzerland appointed a special commission consisting of two legal advisers and the then President of the ASK. On 16th September 1960 a lengthy report was handed to the Federal Political Department by these experts. In it the desirability of such an article was affirmed on the grounds that the Swiss abroad constituted a vital part of the Swiss people and as such were a more important subject for a special article than many others that had found their way into the Constitution.

Whether such an article is really necessary could be answered with less unanimity. One might argue that things had worked well so far without it and that looking after the interests of the Swiss abroad was a matter of Federal Politics, just as diplomatic protection was one of the duties of the Federal Council (Art. 102. 8-BV). It is certainly not a pressing problem, which is just as well since in Swiss democratic life important things mature slowly.

The proposal of the New Helvetic Society contained six points:

- 1) a general declaration by which the Confederation strengthened the position of the Swiss abroad and fostered their relations with the mother country;
- 2) competence to support institutions of the Swiss abroad, benevolent and welfare organisations, schools, various holiday and educational projects, the Solidarity Fund, the Secretariat of the Swiss abroad in Berne — all of which have been supported by the Confederation without a specific article empowering the authorities;
- 3) a directive according to which diplomatic protection and the safeguarding of legitimate rights, as well as possible claims for retribution vis-à-vis foreign states, would be anchored in the Constitution;
- 4) authority to give help to individual colonies after catastrophes, another field in which the federal authorities have acted without specific constitutional competence;
- 5) directives regarding the political rights of the Swiss abroad;
- 6) finally general instruction to the federal legislature to have regard to the special circumstances of the Swiss abroad when legislating.

The NHG was aware that this constituted a very full catalogue of wishes and had no illusions as to their realisation.

The Federal Political Department commissioned Dr. Hans Kuhn to give an expert opinion on these points. Generally speaking, he came to favourable conclusions, but he also pointed out that in some cases specified decrees might even hinder the federal authorities.

Last year, when the Swiss abroad met in St. Gall, the full text of the NHG proposals was submitted to the Assembly. A resolution in general terms was passed in favour of the proposals.

The text of a new article to be incorporated in the Constitution according to the six points of the proposal was widely discussed in Swiss societies everywhere. In Great Britain the societies agreed in principle almost exclusively, though stressing that it was not so much an article which was desired as a more general consideration of the Swiss abroad by the authorities at home when dealing with questions concerning them and more consultation of the Commission, the ASK, which after all is the true parliament of the Swiss abroad. It was along these lines that the ASK, at its meeting in March, decided to proceed.

In May 1962, the authors of the first draft and the Director of the Secretariat of the Swiss abroad (Dr. Halbheer) met Monsieur Maurice Jaccard and two other members of the Federal Political Department under the chairmanship of Dr. Kuhn. Some of the formulations were clarified and some points simplified. The question of military service and the duty of the authorities to consult the ASK in questions relating to the Swiss abroad were incorporated. The text thus finally arrived at cannot be published yet as it constitutes purely a basis for further study by the federal authorities.

At this year's Assembly of the Swiss abroad at Sion, the main topic for discussion was the question of a special constitutional article and the political rights of the Swiss abroad. In a brilliant exposé Dr. G. Schuerch, the President of the organisation of the Swiss abroad (ASO), explained the history of the proposals as outlined above. He then went on to report how, in the course of the deliberations, it was felt that it might possibly be advisable to limit our wishes to a general article of competence, seeing that any constitutional directives which encroach on foreign politics would of necessity bring forth reactions from foreign states. On the other hand, any suggestions which would alter in the slightest the equilibrium of our democracy must be evaded for fear of adverse reactions at home.

"It is therefore a command of reason", Dr. Schuerch continued, "to be content with a minimum when continuing the preparatory work on a constitutional article

— the principle of which we want to uphold unswervingly — and then to see to it on the political level that, based on such an article, the necessary measures in favour of the Swiss abroad be taken by way of legislation and administration. If we succeed in getting a short article of competence into the Constitution which would allow the legislative and executive authorities to find adequate solutions of our problems in a better way than hitherto, we can serve the cause more than with a special comprehensive constitutional statute which would be so controversial as to jeopardise its own success."

Dr. Schuerch said that the one thing the Commission (ASK) could not afford was to get a proposal into parliament which would not receive the necessary majority there or in a plebiscite. If ever a constitutional article needed unqualified support by the people it was one concerning the Swiss abroad; for such an article would symbolise an act of faith by the mother country towards her children abroad. Therefore, we would be advised to isolate controversial questions for the moment and to submit the principle, plain and simple, to the Swiss Sovereign for acceptance.

Therefore, Dr. Schuerch felt, the other points should not be incorporated, but should be dealt with individually as and when they arise. Precisely the question of consulting the ASK shows that a specific article would not fill the bill. The Commission must consolidate its status as democratic parliament in order to reach a position which would give it the right to be consulted and to have a say in any matter affecting the Swiss abroad. Serious work and pertinacity were needed to reach this goal, but Dr.

Schuerch affirmed that the leaders of the ASO were willing to strive for the realisation of our wishes.

The speaker then suggested several forms of such a general article. It might seem sufficient to say "The Confederation consolidates the position of the Swiss abroad and fosters good relations amongst them and towards their homeland". On the other hand one could say that the Confederation should consider the Swiss abroad in its legislation and that it should take the necessary measures in conjunction with the ASO to consolidate their position and foster good relations, within the framework of Constitution and international law.

It would be possible gradually to win over political forces at home for some new legislative and administrative decrees, and that would in the long run be easier and more successful than to fight for a comprehensive article all at once. The Swiss citizen, Dr. Schuerch said, did not trust such global solutions — he did not buy the cat in the bag. He was willing to accede a principle right to his compatriots abroad, but he would want to safeguard his prerogative of dealing with individual problems as they arose.

Dr. Schuerch concluded by expressing his hope that in two years' time we might have such an article commended by the Federal Council to Parliament, perhaps even already accepted by the people. We, the Swiss abroad, have been asked to support the efforts of the ASK. The Commission will, as ever, work hard towards the realisation of an article and will not relinquish the principle even if the original proposals have been modified.

Mariann.

POLITICAL RIGHTS FOR THE SWISS ABROAD

This is by no means a new question. Already in 1874 the Swiss Colonies of Milan and Mulhouse wanted to take part in the voting on the revision of the Federal Constitution. The Federal Council refused this request because according to the law voting took place at the place of residence. In 1907 the Swiss went to the poll regarding military re-organisation. For the same reason the Swiss abroad were again barred from taking part. In 1925 the Federal Council altered its attitude and allowed voting to Swiss from abroad whilst temporarily in Switzerland. Thus, some 500 Swiss from abroad cast their vote in a plebiscite on the so-called "Krisenartikel" on 26th June 1935. They voted in whatever commune they had deposited their passport. Two years later these rights were again withdrawn.

At the Assembly of the Swiss abroad in 1947 it was the London Swiss Colony which asked for voting rights for Swiss abroad temporarily in Switzerland ("Aufenthalterstimmrecht"). Though, in March 1961, when the Swiss Societies in U.K. were asked for an opinion in the matter, most of them were against it, but stipulated that the ASK (Commission) should be consulted more freely.

When Parliament reconsidered the Swiss law of 1872 regarding elections and polls in 1951, it was felt premature to settle the political rights of the Swiss abroad, but the Federal Council was asked to study the question.

The ASK (the private Parliament of the Swiss abroad) has now taken the first steps towards the realisation of such a wish, Dr. Halbheer, the Director of the ASS (Secretariat of the Swiss abroad) reported in an excellent speech at the Assembly at Sion. He knows from his close work

with the Swiss Colonies abroad what a lively interest they take in the happenings at home and he feels it is understandable that Swiss who have been paying military tax or doing military service should feel badly about not being allowed any political rights. He mentioned over 150 young Swiss who came to Switzerland every year for their "Rekrutenschule".

The majority of the Swiss in foreign lands do not wish to make use of political rights from their place of residence abroad. It is only a few Auslandschweizer close to the borders who would be in favour of this. At Sion, one of the Swiss delegates from France reminded the Assembly of a proposal which was still lying in Berne regarding voting by correspondence. Dr. Halbheer was of opinion that only a minority would want this, but that all of them would welcome effective representation at home and would possibly appreciate an "Aufenthalterstimmrecht", the right to vote when in Switzerland.

Some forty National Councillors and half as many Councillors of State constituted a group of Swiss parliamentarians disposed specially well towards us Swiss abroad. This group has been re-activated and they see no difficulty in the realisation of such a project. As one of them, National Councillor Ph. Schmid-Rudin, until recently Central President of the Swiss Mercantile Society in Switzerland (SKV) and a champion of our cause for decades, wrote in the "Schweizerisches Kaufmaennisches Zentralblatt", it seemed to him such an innovation would be easy to introduce and he considered it fully justified.

Nobody expected far-reaching consequences of such voting rights. Much more influential would be an effective representation of the Swiss abroad in the mother country