

## Article 57 of the Federal Constitution of 1848

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The Federal Constitution of 12 September 1848 left asylum in the hands of the cantons. It allowed them to refuse extradition for political offences while giving the Confederation the power to expel foreigners who endangered the internal or external security of Switzerland (Art. 57 of the Federal Constitution of 1848).<sup>1</sup> The Federal Council used this power against Italian refugees in Ticino on several occasions. In 1848 it had refugees of military age removed from the canton into the interior. After the rising of February 1853 it expelled a number of refugees from Swiss territory, and Martinola records that Austria forced Switzerland to expel refugees and to close the Elvetica.<sup>2</sup>

The federal government defended its policy towards Vienna with arguments that reveal its legal conception. In a dispatch of 1854 it insisted that Austria could obtain information about refugees in Switzerland without difficulty and could raise with the federal authorities any case of a refugee who endangered its security. It distinguished between political refugees and military deserters, whom it tried to return to the Austrian army where feasible. It also pointed to a new cantonal law on the residence of foreigners in Ticino as evidence of better control of the frontier.<sup>3</sup> The dispatch quoted the Austrian position in terms that the Federal Council evidently found acceptable: "Austria demands no treaty, no obligation; it seeks no victory over Switzerland", only information about refugees who posed a danger. The Confederation thus offered transparency about persons and cooperation against concrete threats, in exchange for the preservation of the principle that refugees were not surrendered. That bargain, transparency and cooperation on request while the principle of protection stayed in place, is a recurring structure in the Swiss handling of foreign pressure, from refugees in the nineteenth century to bank accounts in the twenty-first.

## 1 Neutrality and the use of Swiss territory

The refugee question was also a question of neutrality. A neutral state that allowed its territory to be used as a base for armed expeditions against a neighbour exposed itself to the reproach of taking sides, and in the worst case to military reprisals. The Confederation therefore regarded the prevention of armed incursions from its territory as part of its neutral duties. When war between Piedmont and Austria broke out again in March 1849, the Federal Council placed troops from Ticino and Thurgau under the command of Colonel Eduard Salis and instructed them to prevent any armed crossing of the frontier and to keep refugees away from it.<sup>4</sup> The deployment ended on 7 April 1849, after the Piedmontese defeat at Novara had settled the war. Austria for its part had extended its frontier measures to Ticino, treating the canton as if it were hostile territory, which the Federal Council protested as an excess.<sup>5</sup>

Mazzini, who rejected Swiss neutrality as an obstacle to the European revolution, never accepted this reasoning.<sup>6</sup> For the Ticinese radicals the situation was more complicated. Many of them had fought as volunteers in 1848, and they regarded the Italian cause as their own, yet they also held federal offices and knew that the security of the canton depended on the respect that the great powers showed to Swiss neutrality. The federal authorities resolved the dilemma by separating the person of the refugee from his military activity: asylum for the first, internment and, if necessary, expulsion to prevent the second. Neutrality thus shaped asylum law from within. It explains why internment away from the frontier became the standard instrument, and why the Confederation, while it never surrendered political refugees to Austria, accepted the obligation to prevent them from making war from Swiss soil.

## 2 Federal centralization of asylum policy

The decades after 1848 saw a gradual centralization of asylum policy. The cantons kept the formal competence to grant asylum, but the Confederation decided on expulsions, internments and the conduct of relations with foreign states. Ticino, whose radical governments sympathized with the Italian exiles, found itself repeatedly overruled by Bern. The tension between a canton that protected exiles for political and cultural reasons and a federal government that weighed the interests of the whole country is one of the constants of the period. It reappeared in the Wohlgenuth affair of 1889, when pressure from the German Reich, Austria and Russia led to the re-establishment of a permanent office of the

Federal Attorney General to coordinate the surveillance of foreign political activity by the cantonal police.<sup>7</sup>

The Swiss law of asylum of the nineteenth century had no statute of its own. It consisted of constitutional provisions, bilateral extradition treaties with political-offence clauses, decisions of the Federal Council and a practice that changed with the political situation. The Asylum Act of 26 June 1998 (AsylA, SR 142.31), which defines refugees as persons exposed to serious disadvantages for reasons of race, religion, nationality, membership of a particular social group or political opinion (Art. 3(1) AsylA), is a product of the twentieth century and of the Refugee Convention of 1951.<sup>8</sup> Its core idea, protection of the person against persecution for political reasons, goes back to the practice that Ticino and the Confederation developed for the Italian exiles.

### 3 Notes

1. Kälén, "Asyl" (above), on the cantonal competence and on Art. 57 of the Federal Constitution of 1848. ↩
2. Engels, "The Federal Council and the Foreign Ambassadors" (above), for 1848; Martinola, "La tipografia Elvetica di Capolago" (above), for 1853: Austria was able to "estorcere alla Svizzera [...] l'espulsione [...] degli esuli rifugiati nel Cantone e insieme la chiusura della tipografia". Martinola gives no figure for the number of refugees expelled. ↩
3. Federal Council, dispatch to the Swiss representative in Vienna, 1854, DDS, vol. 1, doc. 201, <https://dodis.ch/41200> (consulted 4 October 2026). ↩
4. Federal Council, minutes of 17 March 1849, DDS, vol. 1, doc. 19 (above). ↩
5. Federal Council, minutes of 17 March 1849 (above), which also record the end of the deployment on 7 April 1849 "im Hinblicke auf die seit Abschluss des Waffenstillstandes zwischen Österreich und Piemont in Folge des Treffens bei Novara nunmehr wesentlich veränderten Umstände", and the complaint of the federal commissioner Sidler against the extension of Radetzky's frontier measures to Ticino. ↩
6. Moos, "Mazzini, Giuseppe" (above). ↩
7. Albert Portmann-Tinguely and Philipp von Cranach, "Flüchtlinge", in HLS, version of 7 January 2016, <https://hls-dhs-dss.ch/de/articles/016388> (consulted 4 October 2026). ↩

*Article 57 of the Federal Constitution of 1848*

8. Asylum Act of 26 June 1998 (AsylA), SR 142.31, Art. 3, English text reproduced at <https://www.droit-bilingue.ch/en-de/1/14/142.31-3-6.html> (consulted 4 October 2026). ↩

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