

The right to leave and the right to settle

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The Locarnese were given a right to leave that was, in substance, an obligation to leave. Modern law separates the two. Article 24 of the Federal Constitution gives Swiss citizens the right to establish their domicile anywhere in the country and the right to leave or to return to Switzerland.¹ Article 12(2) of the International Covenant on Civil and Political Rights provides that everyone shall be free to leave any country, including his own, and Article 12(3) allows restrictions only where they are provided by law and necessary to protect national security, public order, public health or morals or the rights and freedoms of others.² Switzerland has not ratified Protocol No. 4 to the European Convention on Human Rights, which contains a parallel guarantee of freedom of movement and a prohibition of the expulsion of nationals, so that the Covenant and the Federal Constitution are the main sources of the right to leave.³

The comparison with 1655 is instructive. Bächtold's observation that the Reformed Locarnese could still emigrate in 1555, while the Reformed of Arth a century later were refused permission to leave and the dispute ended in war, shows that the right to leave was historically the first and most fragile of the freedoms of religious minorities.⁴ A state that refuses to let its dissenters leave and refuses to tolerate them at home leaves them no lawful option. The modern right to leave any country, including one's own, is the legal response to that experience. For a financial centre whose clients include persons from states with exit restrictions, capital controls or politically motivated prosecutions, this right defines the outer boundary of what a client can lawfully do and what a Swiss adviser can lawfully assist.

The freedom to settle elsewhere is a different matter. The Locarnese could leave Locarno, but they needed Zurich's permission to settle there, where the guilds opposed them. Today Swiss citizens have a constitutional right to settle in any canton. Foreign nationals depend on immigration law and, for citizens of the European Union and the European Free Trade

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Association, on the free movement of persons under the bilateral agreements. Wealthy foreigners who wish to settle in Ticino typically rely on residence permits for persons without gainful activity, often combined with lump-sum taxation under Article 14 of the Federal Act on Direct Federal Tax, which Chapter E.V discusses.⁵ The structure of 1555, in which the right to leave depended on one sovereign and the right to settle on another, therefore persists for anyone who is not a citizen of the destination state.

1 Notes

1. Cst. Art. 24, ICL translation (above) ("Swiss citizens have the right to establish domicile anywhere within the country. They have the right to leave or to return to Switzerland"). ↩
2. ICCPR, SR 0.103.2, Art. 12(2) and (3), Humanium (above) ("Jedermann steht es frei, jedes Land einschliesslich seines eigenen zu verlassen"). ↩
3. humanrights.ch, Überblick über die Menschenrechtsabkommen des Europarates und ihre Ratifikation durch die Schweiz (December 2016), https://humanrights.ch/cms/upload/pdf/161219_Ueberblick_MR_Abkommen_Europarat.pdf (Protocol No. 4 not ratified). Status after December 2016. ↩
4. Bächtold, "Landfriedensbünde" (above). ↩

5. Federal Act on Direct Federal Tax of 14 December 1990, SR 642.11, Art. 14(1) (expenditure-based taxation for persons without Swiss citizenship, unlimited tax liability for the first time or after ten years' absence, and no gainful activity in Switzerland), German and French text at [droit-bilingue.ch, https://www.droit-bilingue.ch/de-fr/6/64/642.11-14-17.html](https://www.droit-bilingue.ch/de-fr/6/64/642.11-14-17.html); Federal Act on Foreign Nationals and Integration of 16 December 2005, SR 142.20, Art. 28 (persons no longer gainfully employed who have reached a minimum age, have special personal ties to Switzerland and have the necessary financial means) and Art. 30(1)(b) ("wichtigen öffentlichen Interessen"), <https://www.droit-bilingue.ch/de-fr/1/14/142.20-28-33.html> and <https://www.droit-bilingue.ch/de-fr/1/14/142.20-30-36.html>; Agreement between the Swiss Confederation, of the one part, and the European Community and its Member States, of the other, on the Free Movement of Persons of 21 June 1999, in force since 1 June 2002, SR 0.142.112.681, Annex I, Art. 24 (persons not pursuing an economic activity who prove sufficient financial means), original publication at <https://fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/oc/2002/243/de/pdf-a/fedlex-data-admin-ch-eli-oc-2002-243-de-pdf-a.pdf>. ↩

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