

Swiss Law relating to Foreigners 1860–1978

Kaatje Sprenger

The processes of migration are nothing new in Switzerland; both immigration and emigration have been occurring for a very long time. The perception of migrants in their country of destination not as a potential but as a problem is often the result of social and economic tensions. In Switzerland this is clearly observable in the changes in legislation relating to migrants (the recruitment of, and restrictions on, foreign labour).

Consideration of a variety of political decisions demonstrates how legislation relating to immigration has corresponded ever more closely to the requirements of the Swiss economy and undergoes strong politicisation in the 1960s. At this time it becomes apparent that migration is not a temporary phenomenon - neither for the migrants, who, contrary to their own plans, remain in Switzerland longer (bringing their families here), nor for the Swiss economy, whose demand for cheap labour remains unabated. Only from the 1960s is a strategy of 'external restriction, internal concessions' and an active 'policy of assimilation' taken into account so as to ease the social and economic integration of migrants. This debate has lasted until the present day and is more topical than ever (c.f. the immigration policy guidelines of the various Swiss cities).

From the mid-nineteenth century until the First World War: friendship treaties and open borders

In the mid-nineteenth century, Switzerland has a severe shortage of labour. A large number of German, Austrian, and Italian workers are employed in manufacturing, hotels and restaurants, and roadmaking, canal-building, and urban development. The Swiss railway network is also under construction at this time. In particular, a large proportion of women are in the textile industry.

Friendship treaties exist with practically all the neighbouring countries. These govern the exchange of labour and guarantee extensive freedoms of movement, settlement and occupation. For instance, the agreement between Italy and Switzerland (there are already 200,000 Italians here before 1914) states:

"Between the Swiss Confederation and the Kingdom of Italy there shall exist abiding friendship and mutual freedoms of settlement and trade. In every canton of the Swiss Confederation, Italians shall, as regards their persons and property, be received and treated on the same basis and in the same manner as the natives of the other cantons are now, or in future shall be, treated." ¹

For practical purposes, foreigners have the same rights as Swiss citizens not resident in their native cantons. A restriction of immigration or a refusal to allow settlement on the part of the state is hardly possible. The liberal climate is also apparent in the fact that anarchist, antimilitarist, and socialist circles are allowed to develop lively political activities. Expulsions do occur, but only in cases of serious offences against internal security.

At Federal level, moreover, there is a trend towards an active naturalisation policy as an answer to the immigration question; naturalisation is to be seen as a prerequisite to integration, rather than used as a reward, and is to be possible after two years. However, the Federal suggestion finds no favour with the cantons or, especially, with the local councils. An example of the attitude of the Federal Council is the text of this proposal for new legislation regarding citizenship:

"It is a most lamentable state of affairs when persons who are in reality Swiss are claimed abroad as citizens and are pressed into foreign military service . . ." ²

The Canton of Zurich supports this posture and regrets that an effective support of the state apparatus is lost through foreigners' lack of political rights. It proposes that the foreigners be received as residents, so that they have not only the rights, but also the interests, of Swiss citizens (Haug 1980:19).

In fact, there are continuing political discussions about the 'answer to the immigration question'. However, a curtailment of the legal and economic equality of foreign migrants with native residents is rejected, due to economic requirements, obligations under international law, and the Federal Council's liberal conception of Switzerland.

¹ See para.1 of article 1: Settlement and Consular Agreement between Italy and Switzerland (*Niederlassungs- und Konsularabkommen zwischen Italien und der Schweiz*) of 22.7.1868, cited in Haug 1980.

² See legislation relating to citizenship (*Bürgerrechtsgesetz*) 1898, in Haug 1980:19.

The end of liberal migration law due to the First World War: the restrictive phase

In 1914, foreigners constitute 15.4% of the total population (in 1998, 19%). During the First World War, Switzerland becomes a centre for socialist circles, pacifists, and deserters. The attitude towards foreigners begins to turn; they are presented as profiteers, spies, and revolutionaries who endanger the system and abuse Swiss hospitality. Therefore a supervisory body is formed with the creation of the immigration office (*Fremdenpolizei*). Expulsion on political grounds is made easier, naturalisation made more difficult, and residence made subject to numerous restrictions. Amongst other measures, the duties of registration and disclosure on the part of employers and landlords are introduced, and freedom of movement within the country is withdrawn.³ The numerous settlement agreements with the neighbouring countries are rescinded. In 1919, the Federal Council proposes that naturalisation only be granted to those foreigners

"who as a consequence of their lengthy sojourn in our land have made the fundamental concepts of our public life their own and have, through their work, taken part in the economic life of Switzerland . . ."4

The period of mass immigration with problem-free settlement is thus at an end, and with it a liberal migration law, which does not return in this form.

The inter-war years and the Second World War: migration policy as economic policy

The cornerstone of a restrictive immigration policy is found in the Federal law of 1931 relating to residence and settlement (ANAG), which has constituted the foundation of legislation until today. It divides immigrants into various categories, each with a different legal status. For the first time, a link between the state of the Swiss labour market and the permit-issuing behaviour of the immigration authorities is visible; labour can be sent away whenever it is no longer required. A model of temporary immigration is publicised and promoted. As a consequence of the presence of numerous political refugees and due to international pressure, further restrictions are introduced: expulsion of foreigners for political activity, and abolition of the rights to free assembly, freedom of expression in print, and freedom of opinion.

³ *Verordnung des Bundesrates* of 21.11.1917, in Haug 1980:29.

⁴ c.f. BBl 1919 IV, page 226 und page 230, in Haug 1980:33.

Labour shortage after the Second World War

70,000 refugees, migrants and military internees leave Switzerland after the Second World War. The manufacturing capacity of Swiss industry has survived the war, and productivity has risen.

There is a shortage of some 150,000 workers, above all in poorly paid production sectors. The employers call for foreign labour, which is, in the face of opposition from trade unions, recruited from Italy, since recruitment from Germany and Austria is initially hindered by the Allies. Switzerland now pursues a labour market policy which is directly adapted to the requirements of the domestic economy. Through a policy of active recruitment, foreign - mostly Italian and predominantly unskilled or short-term semiskilled - labour is brought to Switzerland. In 1948 the first recruitment agreement is made with Italy. The foreign workers find their economic situation in Switzerland far better than in their country of origin.

Nobody anticipates a longer-term immigration; the labour shortage is seen as a temporary circumstance. Therefore, migration policy rests on two pillars: the rotation principle and the buffer theory. The rotation principle limits the residence of workers to two or three years. It is predominantly young unmarried men that will not burden the domestic social system (education and health costs, housing needs) who are enlisted, and a third of the labour force is exchanged annually. Furthermore, the immigrant contingent acts as a crisis buffer and can, in terms of legal fundamentals, easily be adjusted to the needs of the labour market.

As in the inter-war years, a permit is required to take or change a job. The foreigners are chiefly employed as manual labourers (for which no vocational qualification is required), so that Swiss workers are promoted to become qualified skilled workers (the "phenomenon of underclassing"- "*Phänomen der Unterschichtung*" - according to Hans-Joachim Hoffmann-Nowotny 1973).

The migration policy crisis of the 1960s: from a policy of rotation to a policy of "assimilation"

Until 1962, an almost unrestricted number of immigrants are permitted, because the labour market needs additional workers. Nonetheless, the restrictions regarding dwelling place, change of job, accompanying family, etc. continue.

Amongst five million Swiss live one million foreigners, who are largely excluded from social and political life. In 1962, the Federal Council establishes a commission to investigate the effects of the foreign workforce on the Swiss economy. Their study criticises the purely

economic orientation of immigration policy, recommends a limitation of the number of foreigners and simultaneously proposes measures to ease "adaptation"⁵

The following conclusions of the commission are explosive: the recruitment of cheap labour, restricted in their mobility, lowers wages and curbs the rise of prices. Through this it is possible that small and medium enterprises with ageing business structures are sustained, thus slowing technical advance and the consolidation process. Therefore the competitiveness of Switzerland in world markets is endangered.

In 1964 the rotation principle is abandoned with the "Italian Agreement". The most important new rules concern the capacity of family members to join workers in Switzerland, which is possible after 18 months, as long as there is sufficient housing available. This agreement between Switzerland and Italy is a hot topic for weeks and leads to many a heated debate in local bars and cafes.

The intervention of politics in the labour market

As a consequence of the BIGA study of 1962, the Federal Council seeks to put a brake on immigration. From the beginning of 1965, every commencement of work is made dependent on the prior issue of a residence permit, and the proportion of foreigners employed by a business is prescribed by the state (allocation of quotas). One head of HR says:

"the measures of the Federal Council have had the effect that the foreign workers now fear for their jobs; this has the consequence that they stand out by their different relationship to work, to the company and to their superiors . . . because the Italians know that, if they are given notice to quit they can hardly get another job in Switzerland . . ." (cited in Braun 1970:131).

In the decisions of the Federal Council the talk is of a determined "damming of the influx of foreign labour" (terminology!), and there is a section on the theme of "the danger of foreign inundation" (*Überfremdungsgefahr*): it aims to protect the national character, defined as the common will of the state, a vaguely described instinctive and mental condition which replaces the lack of a common language and race. The restrictions on immigration are partially abandoned with the economic upturn of 1968/9, but the "fear of foreign inundation" (*Überfremdungsangst*) grows further.

⁵ «Das Problem der ausländischen Arbeitskräfte», the commission's report, published by BIGA 1964 (in Braun 1970:18).

The politicisation of the public in the issue of immigration

The question whether the "guest workers" are using the Swiss economy or not comes to be something of a controversy among the public after the foreign labour force has also been made a political theme of various parties. In 1963, on the occasion of the election of the National Council, comes the foundation of a Party Against Inundation by Southerners (*Partei gegen die Überfremdung durch Südländer*). In 1965 the Democratic Party of Canton Zurich files a "foreign inundation initiative", which it withdraws three years later. National Action against Foreign Inundation of Folk and Homeland (*Nationale Aktion gegen die Überfremdung von Volk und Heimat*) files a petition for a referendum against foreign inundation. According to a contemporary investigation this party seeks "following notorious and familiar patterns to lift a feeling of unease in the broad public out of its social and socioeconomic context and to colour it with an ethnic-nationalistic ideology . . ." (Braun 1970:425).

The Federal Council reacts to the petition for a referendum against foreign inundation of 29 June 1967 thus:

"It is only the combined effect of both defence mechanisms, specifically the curbing of the influx of foreigners on the one hand and the promotion of assimilation and the facilitation of naturalisation on the other hand which will enable the danger of foreign inundation to be effectively confronted . . . Assimilation will be encouraged through tolerance, equal economic opportunities, and cultural similarity. It will be hindered or obstructed by segregation, excessive cultural differences, feelings of superiority, and by the fear that foreigners threaten the independent life of the native population . . . Assimilation . . . cannot, however, be primarily the business of government agencies. It must devolve far more upon - besides the schools - private initiatives, and above all upon employers, professional societies, associations and other organisations, and then also on every single worker at the workplace, and upon every single neighbour in the locality" (cited in Braun 1970:435).

The 1970s: a policy of stabilisation, the export of unemployment and departure

On 7 June 1970 the submission of National Action, the so-called 'Schwarzenbach Initiative' is decided on in a referendum and is narrowly rejected with 54% voting against it.⁶

Switzerland's image abroad as a pluralist democracy is tarnished. A latent xenophobia is mostly found in those groups most strongly affected by immigration (unskilled and semi-

⁶ Further initiatives to limit immigration and encourage seasonal work follow.

skilled workers), and among Swiss who, while profiting from occupational upward mobility, seek to isolate themselves from those 'below' (Hoffmann-Nowotny 1973).

The foreign inundation initiatives unleash various reactions: the foreigners begin to organise themselves and to articulate their interests. A broad movement of activists for a 'more human immigration policy' launches the 'togetherness initiative' (*Mitendand-Initiative*). The Federal Council implements measures to stabilise the number of foreigners and develops draft legislation relating to immigration. So as to improve relations between the native and immigrant populations and encourage integration, in addition it establishes the EKA (*Eidgenössische Konsultativkommission für das Ausländerproblem* - the 'Federal Consultative Commission for the problem of Foreigners'), which publishes its report in 1977⁷. This makes an effort to take a more objective approach once more and attaches great importance to information, and help with adaptation and integration. What remains problematic is the EKA's conception of integration as a one-sided process of assimilation, understood as "the foreigner's gradual convergence with and adaptation to the culture of Switzerland through the adoption of our habits, customs and usages, moral values and mindset"⁸.

The economic crisis of 1974 brings about a loss of 16% of all jobs in industry. 190,000 foreign workers have to leave Switzerland so that widespread unemployment among the Swiss workforce can be avoided. Because businesses, in construction and the hotel and restaurant industry especially, cannot do without foreign labour at peak periods, they increasingly revert to the use of seasonal workers and cross-border commuters. The number of seasonal workers rises by 38% between 1976 and 1978.

Literatur

Braun, Rudolf. 1970. *Soziokulturelle Probleme der Eingliederung italienischer Arbeitskräfte in der Schweiz*. Erlenbach: Eugen Rentsch Verlag.

Haug, Werner. 1980. ... *und es kamen Menschen*. Basel: Z-Verlag.

Hoffmann-Nowotny, Hans-Joachim. 1970. *Migration*. Stuttgart.

Hoffmann-Nowotny, Hans-Joachim. 1973. *Soziologie des Fremdarbeiterproblems*. Stuttgart.

Nigg, Heinz (1999) Here and away. Living in two worlds. Zurich: www.migrant.ch
Translation: Simon Milligan



Except where otherwise noted, this site is
licensed under a Creative Commons Attribution 2.5 License:
<http://creativecommons.org/licenses/by/2.5/>

⁷ c.f. EKA-Broschüre Nr. 5, «Information», August 1977, cited in Haug 1980:61.

⁸ EKA-Konzept zum Ausländerproblem, Bern 1973/1975, cited in Haug 1980:65.