

# BASIC PRINCIPLES OF THE REPUBLIC AND CANTON OF NEUCHÂTEL

NEUCHÂTEL

*«The Canton of Neuchâtel is a democratic,  
secular, social State  
that guarantees fundamental rights.»*

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RÉPUBLIQUE ET CANTON DE NEUCHÂTEL

YOU ARE SETTLING IN THE CANTON OF NEUCHÂTEL, ARRIVING FROM ANOTHER COUNTRY OR ANOTHER CANTON. YOU ALREADY LIVE HERE AND YOU ARE OPEN TO NEWCOMERS. WHAT ARE THE BASIC PRINCIPLES OF THE STATE YOU HAVE CHOSEN TO LIVE IN? ARTICLE I OF THE CONSTITUTION OF NEUCHÂTEL OF 24 SEPTEMBER 2000 DEFINES NEUCHÂTEL AS A «DEMOCRATIC, SECULAR, SOCIAL STATE THAT GUARANTEES FUNDAMENTAL RIGHTS». WHAT DOES THAT MEAN?

## INTRODUCTION

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Switzerland, the Canton of Neuchâtel, and all the other Swiss Cantons are States based on certain legal principles. These principles express particular values and are rooted in the history of this country, and more broadly in the history of modern States and of humanity as a whole. These values are summarised in the first paragraph of Article I of the Constitution of Neuchâtel of 24 September 2000 Neuchâtel:

*«The Canton of Neuchâtel is a democratic, secular, social State that guarantees fundamental rights.»*

In other words, this means that the Canton of Neuchâtel is

- a State that guarantees its citizens fundamental freedoms and rights (a liberal State),
- a State in which people participate in the formation of the common will and the exercise of power (a democratic State),
- a State that grants its citizens a certain degree of social protection (a social State),
- a State in which there is no official religion but where religious freedom is the rule (a secular State).

Neither Swiss nor foreign nationals have an obligation to adhere to these principles and values. But everyone, whatever their nationality, is expected to abide to Swiss laws and regulations. As the Federal Court has clearly ruled: *"Foreign residents in Switzerland are subject to the same legal framework as Swiss citizens. However, if they come from other cultures, they have no legal obligation to adapt to the Swiss lifestyle"*.

### WHY SUCH AN APPROACH?

The basic principles of States are generally expressed in laws, which are specific legal rules that all inhabitants should comply with.

Even if there is no legal obligation to adhere to the principles themselves, a STATE like Neuchâtel can only operate if a majority of the population knows, respects and is committed to defending them.

For such a State and such a society to operate, a majority of the population must know and respect these basic principles, even if there is no legal obligation to adhere to them. Commitment to respect them is a matter of personal freedom and responsibility.

This brochure intends to explain how this country understands the basic principles of a democratic, secular, and social State that guarantees fundamental rights. It aims to present these basic values both to people arriving in the Canton and to the residents who welcome them.

### HOW IS THE REPUBLIC AND CANTON OF NEUCHÂTEL DEFINED?

**It is a liberal, democratic, social and secular State.**

**This means that it guarantees all inhabitants fundamental freedoms and rights, that it involves people in the exercise of power, that it grants its citizens social protection, that it has no official religion and that it guarantees religious freedom.**

## «A liberal constitution State guarantees fundamental freedoms»

### A LIBERAL STATE DEFINITION

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A liberal State is a State in which the human being lies at the heart of the social system. A liberal State is a State that acknowledges that each human being has a sphere of independence and freedom materialised in what are called "fundamental rights".

- At the core of these «fundamental rights» is a right that is both the basis and most important of all human rights, **human dignity**.  
**Human dignity is the right not to be treated in a inhuman or degrading way, to be treated like a human being and not like a thing. It forms the inviolable core of personal freedom and protects for example against torture and other forms of cruel or inhuman treatment.**
- Stemming from human dignity, all other "fundamental rights" can be divided into different categories: **freedom** (freedom of the private sphere, communication freedom and economic freedom), **guarantee of the rule of law** and **social rights**.
- Before briefly describing the various categories of "fundamental rights", it should be noted that they are **not absolute**, especially the freedoms. The State can - and sometimes should - restrict them. The reason for this lies in the fact that individual freedoms can conflict with each other (for example, the freedom of expression of one person can impact the freedom of belief of another person). There can also be a contradiction between individual freedom and common interest: for life in society to be possible, individual freedom cannot be an absolute value (for example public health requirements may justify vaccination or medical checks at school). Thus mechanisms exist that make it possible to limit, in other words to «restrict» these freedoms. However, these "restrictions" are subject to strict conditions. Any such restrictions must be founded on a legal basis, be justified by public interest or by the need to protect another fundamental right, and be proportionate to the objective pursued.

### FREEDOMS

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**Personal freedoms** include for example the right to life and personal liberty, the right to marry, freedom of language and religious freedom.

The **right to marry**, for example, guarantees all adults the right to marry and to decide for themselves with whom they want to be married. Indirectly, it protects the right to live with another person.

The Constitution only protects monogamous marriage. Bigamy and polygamy are prohibited as they are contrary to Swiss customs.

Additionally, only unions between men and women are protected by the right to marry. Persons of the same sex do however have the possibility of having their shared life officially registered as a «partnership».

### WHAT IS A LIBERAL STATE?

**A liberal State is a State that guarantees fundamental human rights, the first of which, human dignity, is the right not to be treated in an inhumane and degrading manner. It protects against torture and all other forms of cruelty.**

### ARE FREEDOMS FUNDAMENTAL RIGHTS?

**Yes. They consist of personal freedoms such as the right to life and personal liberty, the right to marry, freedom of language and religious freedom, communication freedom (which includes freedom of opinion and expression, the right to information, freedom of association, assembly and demonstration), and finally, economic freedoms and the right to form and join trade unions.**

**CAN THESE FREEDOMS BE RESTRICTED?**

**The State can restrict them if they enter into mutual conflict.**

**For example, the freedom of expression of certain individuals can sometimes hurt the freedom of belief of others. The State can therefore restrict freedoms when a contradiction arises between an individual's freedom and the common interest. Any restriction must however be founded on a legal basis and justified by public interest.**

**A LIBERAL STATE****FREEDOMS (...)**

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To take another example, *freedom of language* guarantees all persons the right to use their own language or the language of their choice in their professional or private relationships with others, whether orally or in writing (or sign language). In principle, the State should not interfere in the choice of language used in interpersonal relations. As far as relations between individuals and the State are concerned, the State can define one or more official languages, in which it communicates with individuals and conversely in which individuals communicate with the State. The freedom of language does not confer a general right to address the authorities in any language insofar as official language regulations prevail on the principle of freedom of language.

In Switzerland, the official languages of the Confederation are German, French and Italian, and Romansh when dealing with people who use that language. In the Canton of Neuchâtel, the official language is French. The Federal Law on Foreigners restricts freedom of language for the purpose of integration by providing that foreigners "become familiar with society and the way of life in Switzerland and, in particular, that they learn a national language". The Confederation, the Cantons and the Municipalities are required to encourage the learning of an official language. Additionally, the granting of a residence permit or a short term permit may depend on participation in a language or an integration course. This principle also applies to the granting of a permit under the family reunification. In such a case, the competent authorities will take into account the degree of integration and knowledge of a national language when granting a resident permit or when deciding to deport or to deny someone entrance into Switzerland.

Communication freedoms include in particular the freedom of opinion and expression, the right to information, the freedom of assembly and demonstration.

For example, freedom of association protects the right to freely create (or dissolve) an association, i.e. an organized, and voluntary grouping of people who pursue a common ideal goal. This freedom includes the right for any person to join or belong to an association, but also the right not to join or to leave an association.

However, freedom of association protects only associations that are not unlawful, that is to say whose goals (or means) are not contrary to law (for example associations that advocate or use violence or threaten the State). Freedom of association may also be restricted if the activities of an association pose a threat to health or are contrary to public morality (for example a sect that would endanger the health of its followers).

Finally, economic freedoms include the guarantee of ownership, economic freedom, and the right to form and join trade unions. All foreigners are not entitled to the guarantee of ownership and economic freedom. They have to fulfil certain conditions, for example those related to their residence status in Switzerland.

## GUARANTEES OF THE RULE OF LAW

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Besides these various liberties, the **guarantees of the rule of law**, which also stem from human dignity, consist of rules that require the State to behave in a specific way with regards to individuals. Examples include equal treatment and the prohibition of discrimination.

**The principles of *equal treatment* and *prohibition of discrimination* require the State to treat in the same way what is similar and different way what is unlike. They prevent the State from making distinctions that have no objective basis. A difference in treatment violates this principle or is discriminatory when it cannot be reasonably justified. In particular, woman and man are equal. They enjoy the same rights and should therefore be treated equally. Only reasons such as pregnancy allow or may even require different treatment.**

## SOCIAL RIGHTS

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Finally, **social rights** guarantee certain benefits to individuals from the State.

- All these fundamental rights and freedoms - that form the basis of liberalism - imply **pluralism**, i.e. the acknowledgment and acceptance of a diversity of political, cultural and religious opinions as well as various forms of social behaviour.
- In turn, this pluralism influences the political system and forms the basis of liberal **democracy**.

### WHAT OTHER RIGHTS ARE ALSO GUARANTEED?

**The principle of equal treatment, the prohibition of discrimination, as well as social rights, which guarantee access to certain State benefits, are essential for ensuring the respect for human dignity.**

*"In a democratic State,  
power belongs to the people"*

## WHAT IS A DEMOCRATIC STATE?

It is a State where power belongs to the people. A distinction should be made between the system of representative democracy whereby people elect their representatives in parliament or government, and those of direct democracy, whereby people can also intervene directly by means of an initiative and a referendum. This is the case in Switzerland and Neuchâtel.

## WHO HAS POLITICAL RIGHTS?

These rights are conferred to citizens. In most countries, foreigners are excluded from citizenship. In Switzerland only Swiss nationals over 18 years old have political rights at the federal level. At the cantonal level, the Canton of Neuchâtel has extended political rights to certain categories of foreigners in its 2000 Constitution.

## A DEMOCRATIC STATE DEFINITION

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A democratic State is a State in which the people, i.e. the citizens, participate actively in the formation of the will of the State and the exercise of power.

- According to the intensity of participation, one can distinguish **representative democracy** from **direct democracy**.

**In a system of representative democracy, people elect their representatives who then act on their behalf. Power is therefore concentrated in the elected bodies: Parliament and eventually Government.**

**In a system of direct democracy, like in Switzerland and Neuchâtel, people also have the possibility to participate more directly in the decision-making process. In addition to taking part in elections, citizens can intervene on specific issues by initiative and referendum.**

- Participation of citizens is guaranteed by the so-called **political rights**. They represent both a fundamental right (the right of citizens to participate in political decisions within their community) and a function or duty (to participate in the electoral body as an organ of the State).
- The main actor of democracy is the **people**. Politically and legally, this concept does not include all inhabitants, but only the **citizens**. In several countries, **citizenship** is limited to nationals and foreigners are excluded from the political process.
  - In Switzerland only Swiss women and men over 18 years old have political rights at the **federal level**. Foreigners do not have the right to vote on federal matters.
  - By contrast, the Canton of **Neuchâtel** has traditionally expanded the definition of the electoral body and granted the right to vote and even stand for office to certain categories of foreigners, especially in its Constitution of 2000.

## HISTORY OF VOTING AND STANDING RIGHTS IN THE CANTON OF NEUCHÂTEL

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- ***Voting rights*** for foreigners at the municipal level have existed for a long time. They were first introduced in 1849, when the Republic was born. They were removed in 1861 and introduced again in 1875.
- In 1970 a first unsuccessful attempt was made to extend voting rights to the cantonal level. This eventually led to a total revision of the Constitution in September 2000. As soon as the Constitution came into force on 1 January 2002, foreigners were granted voting rights in cantonal matters.
- ***Standing rights*** for foreigners were introduced in Neuchâtel in 1875 at the same time as voting rights. They were abolished thirteen years later and reintroduced only in 2007. In the meantime, an initiative and a bill (1980 and 1988) had tried unsuccessfully to put the issue on the agenda once again. In 2003, a new initiative proposed that foreigners be eligible at both municipal and cantonal levels. A counter-proposal by the authorities offered standing rights at the municipal level only. In June 2007, the initiative was rejected and the counter-proposal was accepted. Thus, foreign residents in the Canton can be elected to municipal office since 2007.

## CURRENT VOTING AND STANDING RIGHTS IN THE CANTON OF NEUCHÂTEL

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To be part of the electoral body of the Canton of Neuchâtel (hence to have political rights at the cantonal level), it is necessary to fulfil three conditions:

- **be over 18 years old**
- **not to be forbidden because of mental illness or weakness of the spirit**
- **to be Swiss and domiciled in the Canton or, for foreigners, to hold a Swiss residence permit and be domiciled in the Canton for at least 5 years**

In other words, foreigners over 18 years old and holding a permanent residence permit (C permit) can:

- **vote at the *cantonal* level after at least 5 years residency in the Canton;**
- **vote and stand for office at *municipal* level after at least one year residency in the Canton.**

### **WHICH FOREIGNERS CAN VOTE?**

**In the Canton of Neuchâtel, foreigners over 18 years old who hold a permanent residence permit (C permit) can:**

- **vote at the *cantonal* level after at least 5 years residency in the Canton**
- **vote and stand for office at the *municipal* level after at least one year residency in the Canton.**

*"A social State ensures social justice and fair distribution."*

## WHAT IS A SOCIAL STATE?

**A social State ensures social justice and fair distribution. It takes measures to ensure that everyone has access to education, employment, suitable housing, social protection (unemployment, old age, illness, accident).**

**It guarantees social rights that are indispensable for the respect of human dignity, namely the right to minimum living conditions and the right to sufficient and free basic education.**

## A SOCIAL STATE

### DEFINITION

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A social State is a State in which government enacts a series of social policies

- Social policies consist of measures that enable all persons to receive an education, have a job that satisfies their needs, be protected against the consequences of unemployment, find suitable housing and benefit from social protection, in particular for reasons of old age, sickness or injury.
- Amongst all these measures, a distinction should be made between those that are real **social rights** and those that are mere **social goals**.

Like other fundamental rights, **social rights** are answerable insofar as they can be directly put forward before the courts and a judge can implement them without referring to the legislator. By contrast to more «classical» fundamental rights, the State does not refrain from action (respect of the individual private sphere), but delivers a benefit. As a result, and given the limited resources of the State, social rights contained in the federal and cantonal constitutions are rather limited. They are limited to rights which are absolutely essential to enable the development of the individual and the exercise of (other) fundamental rights. The benefits provided by these rights are those that are essential for the respect of human dignity.

**The right to minimum conditions of existence for example is a right that is directly justiciable. It offers a minimal guarantee and is limited to persons who are in need. Anyone in such a situation is entitled to a shelter, medical care and the resources necessary to preserve his or her dignity.**

**This right can however be restricted, for example if there is abuse of law or if a person refuses a suitable job. The Federal Court has ruled that the State has no obligation to provide material support to a person if the latter is objectively able to find adequate resources by accepting suitable work or participating in occupational or integration programmes, but refuses to do so.**

Other rights are directly enforceable and also form part of the fundamental rights. Examples are the child's right to free education or the right to be protected and assisted.

**A sufficient basic education is a essential prerequisite for equal opportunity. *The right to sufficient and free basic education is essential for a democratic society. All children living in Switzerland have such a right, regardless of their nationality or the residency status of their parents.***

Apart from these social rights, other social measures implemented by the State are not directly justiciable, but require intervention from the legislator who must implement them. In general, these social measures have a subsidiary character and are limited. The government intervenes according to the means available (especially financial) and acts in most cases, as the Constitution says, "as a complement to the initiative and responsibilities of other communities and individuals".

*"A secular State has no official religion  
but guarantees religious freedom"*

## WHAT IS A SECULAR STATE?

**A secular State is a State where public institutions are separated from the Church. There is no official religion but the State recognises religious freedom. This freedom includes both freedom of thought and belief as well as freedom of worship. A municipality in Neuchâtel cannot forbid a Muslim pupil from wearing a headscarf in class. This does not apply to a teacher because that would contradict the principle of religious neutrality of public schools. The State has an obligation to be open to all religious and philosophic beliefs. However that does not prevent it from recognising the three Christian churches the status of institutions of public interest.**

## A SECULAR STATE ? DEFINITION

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A secular State is a State in which the State and public institutions are separated from the Church and other religious communities. There is no official religion but a government that recognises religious freedom.

## RELIGIOUS FREEDOM

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Religious freedom - which includes freedom of conscience and belief as well as freedom of worship - is the right every person has to practice, without State interference, a given belief or a particular view of the world and of relations between human beings and the divine. It includes the freedom to believe or not to believe, to believe in many gods or in one (choice of the person), to affirm faith or disbelief, and to manifest religion or belief, in private and in public, in particular by establishing religious associations and participating in acts of worship, but also through speech, writing, images, music or the wearing of religious clothing or accessories.

Like all fundamental rights, religious freedom can be restricted when the restriction has a legal basis, is justified by an overriding public interest and respects the principle of proportionality. However, only the outward expression may be limited. The inward aspect - the right to form a belief – forms the core of religious freedom. It cannot be hampered under any circumstances.

**For example, the authorities of the Canton of Neuchâtel have ruled that municipalities cannot forbid a Muslim pupil from wearing a headscarf in class.**

**The federal court has ruled that the same case cannot be made for a teacher wearing of a headscarf in a public school. In this case, a headscarf ban is not contrary to religious freedom given the fact that the principle of religious neutrality in public schools – an institution in which the teacher represents the State – prevails over the individual freedom of belief of the teacher.**

## SECULARISM

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In effect the principle of religious freedom means that the State must remain neutral in religious matters. In other words, the State has an obligation to be open to and respectful of all religious and philosophical beliefs.

However, this does oblige the State to adopt an attitude devoid of any religious dimension. The State can favour certain religious communities and give them special recognition without causing prejudice to religious freedom. The Canton of Neuchâtel has done so by giving three Christian churches the status of institutions of public interest. Thus, if the State does not seem totally secular, it remains nonetheless separated from all religious communities, which are therefore independent. This difference in treatment, which is inherent to any privileged status, can be explained both by demographic and historical factors (the majority of the population of the Canton is Christian as is the traditional culture of Neuchâtel). But the cantonal Constitution provides for the possibility of extending this recognition to other religious communities who request it.

## CONCLUSION

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### AND TOLERANCE ?

**A liberal, social, democratic and secular State supposes that the individuals who form it, accept and tolerate a diversity of opinions. Tolerance and open-mindedness are essential ingredients to withhold the stability of mixed communities.**

As a *liberal, social, democratic and secular State*, Switzerland, and the Canton of Neuchâtel in particular, seek to offer their inhabitants a number of rights, fundamental rights and personal freedoms, political rights and rights to participate in the exercise of power, and social rights.

Even if there is no legal obligation to adhere to these principles and to the values of a *liberal, social, democratic and secular State*, such a State cannot operate unless a majority of the population knows, recognizes and respects these principles and values. Every person is free to defend them. Such a State implies that the individuals, who form society, accept and tolerate diversity and pluralism of opinions and ideas. For example, if a person enjoys religious freedom, he or she must also tolerate and respect the religious freedom of others.

**Tolerance and open-mindedness: tolerance is the ability of an individual to accept something with which he or she does not agree or which differs from his or her own values. Thus, if people are naturally characterised by diversity, it is tolerance, open-mindedness, respect and appreciation of the wealth and diversity of cultures that can ensure the long-run stability of mixed communities.**

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For the Constitution of the Canton of Neuchâtel,  
see [www.ne.ch](http://www.ne.ch) or [www.ne.ch/constitutionNE](http://www.ne.ch/constitutionNE)