

FOUNDING PRINCIPLES OF THE REPUBLIC AND CANTON OF NEUCHÂTEL

NEUCHÂTEL

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

 **ne.ch**
RÉPUBLIQUE ET CANTON DE NEUCHÂTEL

YOU COME FROM ABROAD OR FROM ANOTHER CANTON AND DECIDE TO SETTLE IN THE CANTON OF NEUCHÂTEL. YOU ALREADY LIVE HERE AND WELCOME NEWCOMERS. WHAT ARE THE FOUNDING PRINCIPLES OF THE STATE WHERE YOU HAVE CHOSEN TO LIVE IN? WHAT IS A «DEMOCRATIC, SECULAR, AND SOCIAL REPUBLIC, PROTECTOR OF FUNDAMENTAL RIGHTS », SUCH AS THE ONE DEFINED BY THE FIRST ARTICLE OF THE CONSTITUTION NEUCHÂTELOISE OF 24 SEPTEMBRE 2000?

INTRODUCTION

Switzerland, the Canton of Neuchâtel, and all the other Swiss Cantons are States based on a number of 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 Neuchâteloise 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 resident population fundamental freedoms and rights (a liberal State),
- a State in which the people participates in the development of common will and in 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 state religion but where freedom of religion is the rule (a secular State).

Neither Swiss nor foreign nationals have an obligation to adhere to these principles and values. But everyone 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 founding principles of a state are generally transcribed as laws, which are concrete legal rules, that every person, Swiss or foreigner, is expected to respect.

Even if there is no legal obligation to adhere to the principles themselves, in order for a State like Neuchâtel to function, it is necessary that a majority of the population know, respect and undertake to defend these laws.

Even if there is no legal obligation to adhere to these values, in order for a State like Neuchâtel to function, it is necessary that a majority of the population know and respect and these laws. Commitment to defend them is a matter of personal freedom and responsibility.

This brochure intends to explain how this country understands the founding principles of a liberal, democratic, secular, and social State. It aims to present these founding 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 its resident population fundamental rights and freedoms, that it gives the people the possibility to get involved in the exercise of power, that it grants social protection to its fellow citizens, that there is no state religion and that it guarantees religious freedom.

«A liberal constitutional State guarantees fundamental freedoms»

A LIBERAL STATE DEFINITION

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 the most important of all human rights, **human dignity**.

Human dignity is the right not to be treated in an inhumane 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 any other form of cruel or inhumane treatment.

- Stemming from human dignity, all other "fundamental rights" can be divided into different categories: **freedoms** (personal freedoms, communication freedoms and economic freedoms), which **guarantee 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 in the case of freedoms. The State can - and sometimes must - restrict them. The reason for this lies in the fact that individual freedoms can conflict with each other (for example, freedom of expression for some individuals could, in particular cases, collide with freedom of belief for others.). There can also be a contradiction between freedom of the individual and the common interest: for life in society to be possible, the freedom of individuals cannot be an absolute value (for example public health requirements may justify vaccination or compulsory 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

Personal freedoms include rights like the right to life and personal freedom, the right to marry, freedom of language and freedom of religion.

For example, the **right to marry** 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 by law. In addition, the right to marry only protects unions between men and women. It is however possible for persons of the same sex to have their shared life officially registered as a «partnership».

WHAT IS A LIBERAL CONSTITUTIONAL STATE?

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

ARE FREEDOMS FUNDAMENTAL RIGHTS?

Yes. They refer to personal freedoms like the right to life and personal freedom, the right to marriage, freedom of speech, and freedom of religion; freedom of communication, which includes freedom of opinion and of expression, the right to information and freedom of association, of assembly and demonstration; lastly, economic freedoms, such as the guarantee of ownership, economic freedom and trade-union freedom.

CAN THESE FREEDOMS BE RESTRICTED?

The state could do so if there is conflict between certain freedoms. For example, freedom of expression for some individuals could, in particular cases, collide with freedom of belief for others. It can also restrict them if there is a contradiction between freedom of the individual and the common interest. All restrictions should nevertheless be founded on a legal basis and justified by public interest.

A LIBERAL STATE

FREEDOMS (...)

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. 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 and integration (LEI) restricts freedom of language for the purpose of integration by providing that nationals of other countries "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 therefore required to encourage the learning of an official language. The required levels of knowledge of the official language of the place of residence for the different residence permits are defined by the Ordinance on admission, residence and gainful employment (OASA). In specific cases, integration agreements may be demanded regarding integration.

The competent authorities also take into consideration the degree of integration and of knowledge of a national language in the exercise of their assessment power, in particular in cases of expulsion or of prohibition on entering Switzerland.

Freedom of communication includes freedom of opinion and of expression, the right to information and freedom of association, of assembly and demonstration

For example, freedom of association protects the right to freely create (or dissolve) an association, i.e. an organised, 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 constitute 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 trade-union freedom. 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

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

The principles of *equal treatment* and *prohibition of discrimination* require the State to treat in the same way what is similar and in a 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 a different treatment.

SOCIAL RIGHTS

Finally, **social rights** guarantee certain benefits to individuals from the State (see below under *socia*/ 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 its people. It is important to distinguish between a representative democratic government, where the people elect their representatives in a parliament or government, and that of direct democracy, where the people can also directly intervene by means of an initiative and a referendum. This is the case in Switzerland and in Neuchâtel.

WHO HAS POLITICAL RIGHTS?

These rights are conferred to all citizens. In most countries, foreign persons are excluded from citizenship. In Switzerland only Swiss people over the age of 18 have this right at federal level. However, the canton of Neuchâtel has extended this right to certain categories of foreigners in its 2000 Constitution.

A DEMOCRATIC STATE DEFINITION

A *democratic* State is a State in which the people, i.e. the citizens, actively participate in the development of democratic will and in 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 possibly 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.

- Citizen participation is guaranteed by the so-called **political rights**. They represent both a fundamental right (the right 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 therefore the **people**. Politically and legally, this concept does not include all inhabitants, but only **citizens**. In several countries, **citizenship** is limited to national citizens, and other people are excluded from the political process.
 - In Switzerland only Swiss people 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 to stand as candidates, to certain categories of foreigners, especially in its 2000 Constitution.

HISTORY OF VOTING AND STANDING RIGHTS IN THE CANTON OF NEUCHÂTEL

- ***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.
- ***Eligibility*** for foreigners was introduced in Neuchâtel in 1875 at the same time as voting rights. It was 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 eligibility 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 ELIGIBILITY RIGHTS IN THE CANTON OF NEUCHÂTEL

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 feeble-mindedness**
- **to be Swiss and domiciled in the Canton or, for foreign nationals, 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 five years residency in the Canton;**
- **vote and stand for office at *municipal* level after at least one year residency in the Canton.**

WHO CAN VOTE AMONGST FOREIGN NATIONALS?

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 five years residency in the Canton**
- **vote and be elected 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 a social and distributive justice. It takes social measures to ensure everyone can have training, a job, suitable housing, social protection (unemployment, old age, illness, accident). It guarantees social rights indispensable for the respect to human dignity, namely the right to minimum living conditions and the right to sufficient free basic education.

A SOCIAL STATE DEFINITION

A social State is a State in which government authorities enact a series of social policies

- Social policies consist in measures that enable all persons to receive 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's 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 to 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 by participating in occupational or integration programmes, but refuses to do so.

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

Sufficient basic education is an 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 any religious basis. There is no State religion but a government that recognises religious freedom. This freedom includes freedom of conscience and belief as well as freedom of worship. By virtue of this freedom, a municipality in Neuchâtel cannot forbid Muslim pupils to wear headscarves in class. It is however not the same for teachers because this violates the principle of denominational neutrality in public schools. The state has an obligation to be open to all religious and philosophic beliefs. Nonetheless, that does not prevent it from recognising three Christian churches as public interest institutions. The new Constitution also provides for the possibility to extend this recognition to other religious communities who request it.

A SECULAR STATE?

DEFINITION

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 State religion but a government that recognises religious freedom.

RELIGIOUS FREEDOM

Religious freedom - which includes freedom of conscience and belief as well as freedom of worship - is the right that 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. It enables to establish religious associations and to participate in the corresponding acts of worship, but also to display one's beliefs 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, if it 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 – is 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 to wear 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

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). The new Constitution however provides for the possibility to extend this recognition to other religious communities who request it.

CONCLUSION

AND TOLERANCE?

A liberal, social, democratic and secular state supposes that the individuals who compose it accept and tolerate diversity of opinions. Only tolerance and open-mindedness can ensure the balance in 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, any person who enjoys religious freedom must tolerate and respect that 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.

Authors

Pascal Mahon, professor for Constitutional Law
Fanny Matthey, assistant for Constitutional Law

Chair in constitutional law – Law Faculty / University of Neuchâtel

In collaboration with

The Office for Multicultural Cohesion (COSM)
The Community for Integration and Multicultural Cohesion (CICM)

With the support of

Etienne Piguët, Professor – Geography Institute
Gianni d'Amato, Professor – SFM Institute

Faculty of Literature and Humanities / University of Neuchâtel

Memento

Stéphane Devaux, journalist

Graphics

Inox Communication SA, Neuchâtel

Photos

Guillaume Perret / Stefano Iori, Town of Neuchâtel / Bernard Vaucher, Town of Le Locle

Edition 2019

DÉPARTEMENT OF ECONOMY
AND SOCIAL AFFAIRS
OFFICE FOR MULTICULTURAL COHESION
Place de la Gare 6
2300 La Chaux-de-Fonds
T +41 (0)32 889 74 42
F +41 (0)32 722 04 04

For the Constitution of the Canton of Neuchâtel,
see www.ne.ch or www.ne.ch/constitutionNE