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Revision of the federal constitution

# To fortify Switzerland

**S**witzerland wants to give itself a new constitution as a 150th birthday present in 1998. Everyone has been asked to express their opinions on the ideas put forward by the experts.

*Pierre-André Tschanz*

In the view of Federal Councillor Arnold Koller, head of the Federal Department of Justice and Police, reform is needed for reasons of content, form and democratic principle. The present constitution dates from 1874 and no longer meets our requirements in several respects. In addition, the 1874 text has over the years been amended 136 times, the effect of which has been to make it into an incomprehensible and unreadable patchwork. There also exists today a vast body of unwritten constitutional law stemming from administrative practice, Federal Supreme Court jurisprudence and international treaties, such as the European Convention on Human Rights. An added aim is to give democratic legitimacy to these new elements.

The proposed revision is not a complete revision in the traditional sense. Only two areas would be subject to wide-ranging change: the provisions relating to popular rights and those relating to legal institutions. The rest would be subject to a general clearing up operation which would give the constitution a new system and a new form, expressed in modern language. The new text should be easily readable and comprehensible to every citizen.

## New: the general popular initiative

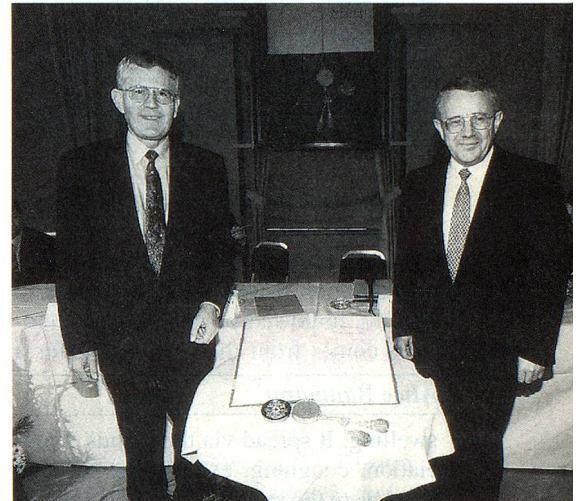
Regarding the chapter on popular rights, the experts have been trying to find a balance between restrictions and innovations. The measure which will be at the centre of discussion will without any doubt be the one doubling the number of signatures required for popular initiatives and optional referendums. For the classic popular initiative – which amends the federal constitution – the number of signatures required would be raised from 100,000 to 200,000 (which is still less than 5% of

all voters). But 100,000 signatures would be enough for a new type of initiative, to be known as the general popular initiative. This would be a proposal formulated in general terms which would not necessarily require a constitutional amendment. It would be put to the popular vote – requiring a majority of voters only if there were no constitutional amendment and the dual majority of the people and the cantons if there were – only if it had not received the support of parliament or if its realisation would require a constitutional amendment.

## Extending the right of referendum

With respect to referendums it has also been thought desirable to counteract the doubling of the number of signatures by means of qualitative improvements. Thus the optional referendum would be extended to international treaties containing legal dispositions or requiring federal laws or federal decisions having general effect (e.g. the transit agreement between Switzerland and the European Union) to be adapted. At present only executive legislation is subject to the optional referendum. In the new text this would no longer apply since approval of an international treaty would automatically be extended to approval of the necessary executive legislation. The experts are also proposing the introduction of an optional administrative

*The new draft federal constitution is at present undergoing a large-scale consultation procedure. Those interested may order the relevant documents from the Federal Office for Printed Materials, EDMZ, CH-3003 Berne. Any opinions should be addressed to the Federal Office of Justice, Bundeshaus West, CH-3003 Berne. The documents may also be consulted on the internet (<http://www.unil.ch/isdc/const/>), through which opinions may also be transmitted.*



**Federal Councillors Kaspar Villiger (left) and Arnold Koller with the 1874 federal constitution which is still in force today. (Photo: Keystone)**

and financial referendum which would make it possible to put to the vote certain types of credit allocation, such as that necessary for the purchase of new fighter aircraft.

## Towards a constitutional court

In the chapter on legal institutions the most spectacular new proposal is that concerning the introduction of constitutional jurisdiction which would enable the Federal Supreme Court to examine whether any federal law is in accordance with the constitution and/or international law. The federal judges would also be given the power to decide on the validity of a popular initiative – a matter which at present is under the sole jurisdiction of parliament. In addition, the new draft constitution would limit access to the Federal Supreme Court and would provide for harmonisation of cantonal standards in criminal and civil law procedure. ■

## The Swiss Abroad

*The statute of the Swiss Abroad is defined in Article 43 of the new draft constitution. The present wording (Article 45 bis) is revised in the following way:*

- "1. The Confederation shall further relations of Swiss Abroad amongst themselves and with Switzerland.*
- 2. The Confederation may legislate on the rights and obligations of Swiss Abroad in their relations with Switzerland, in particular with respect to the exercise of political rights, the carrying out of military obligations and assistance".*