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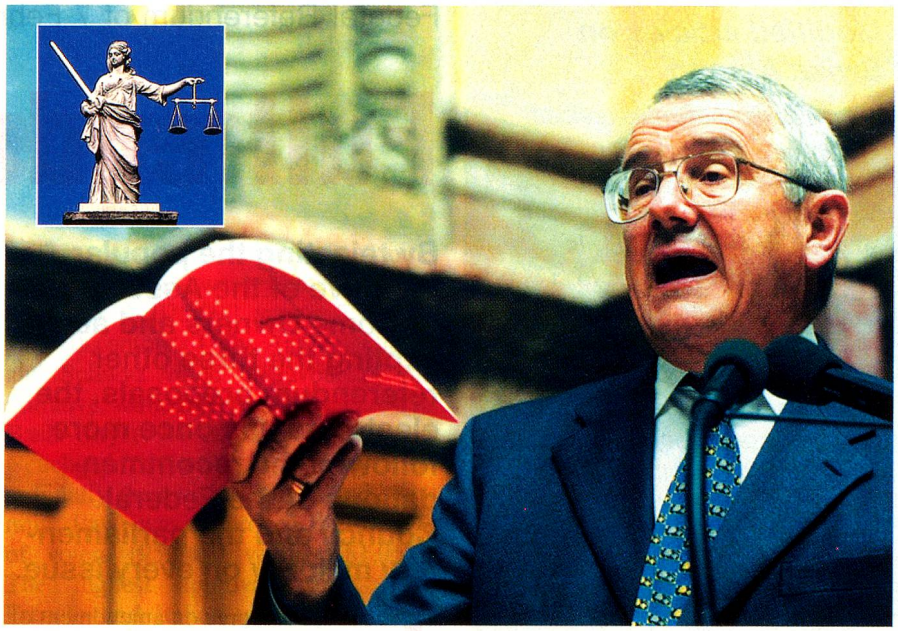

**Federal Councillor Arnold Koller has laboured long and hard to present the amended Federal Constitution to the people. Justicia, the symbol of justice, served as a leitmotif in the implementation of the reform. (Photos: Keystone)**

Federal referendum of 18 April 1999

# The new federal constitution

**On 18 April the people and cantons of Switzerland go to the polls to vote on constitutional reforms proposed by the Federal Council in 1996. The aim was to furnish Switzerland, on the occasion of the 150th anniversary of the founding of the modern Federal State, with an updated constitutional text more suited to the present.**

By voting for or against the issue put before them on 18 April, the electorate will be making a decision with far-reaching consequences. The people must decide which constitution they want: the present constitution,

*Pierre-André Tschanz*

which is based on the 1848 text, was completely revised in 1874, and has since undergone more than 140 legal amendments; or the proposed constitution which was passed by Parliament on 17 December last year. A double Yes from the people and States will usher in the new constitution to replace the old. A No would mean a rejection of the constitutional reforms. This in turn would entail another defeat. In 1987, following the failure to push through a proposal for total revision of the constitution in the mid-eighties, Parliament commissioned the Federal Council to concentrate its efforts on updating the existing constitutional law.

## New provisions

The main objective of the constitutional reform project is to modernise the current wording and adapt the format to a more systematic structure. In addition the revised version supplements the existing basic law with constitutional provisions that are not included in the existing text (for example international legal standards which are of general importance or which Switzerland has agreed to observe). "In terms of the Federal Court's administration of justice, the right to individual freedom or the principle of proportional representation are indisputably of a constitutional nature although they are not explicitly prescribed in the constitutional text," explained the Federal Council in its 1996 address to Parliament. This unwritten constitutional law was therefore incorporated in the revised text. One of the main tasks of a constitution, after all, is to ensure transparency.

At the same time the project team disposed of outmoded provisions which have not been applied for decades: provisions like the ban against cantons keeping a permanent force of more than 300 men. The revised constitution also contains a number of new provisions that reflect contemporary constitutional reality. For instance, the foreword mentions the responsibility of the people and cantons towards future generations and the Creation.

Sustained development is defined as an objective in the foreword and more specifically in Articles 2 and 73. The promotion of equal opportunities is outlined in Article 2. Article 6 expressly mentions the principles of subsidiarity and solidarity, and emphasises that the individual has obligations as well as rights. Moreover, an entire catalogue of basic rights has been drawn up (the right to human dignity, a prohibition against discrimination, protection against arbitrariness, the right to life and personal freedom, protection for children and youths, protection of the private sphere, freedom of speech etc.).

Article 41 comprises the social objectives which to date have figured separately in various provisions or international agreements. Article 50 commits the Federation to have regard for the interests of the cities, agglomerations and alpine regions in the performance of its duties. Article 137 stresses the key role of the parties in the opinion-forming and decision-making process, and by so doing acknowledges their importance to the State.

## Material innovations

Although the constitutional reforms, which were the subject of a successful broad-based national survey in 1995 that exceeded all expectations (143,000 copies of the draft were ordered, and

11,000 private individuals responded), are primarily of a formal nature, they nevertheless introduce several material improvements. However, in order to avoid endangering the entire reform by introducing elements considered too controversial in nature, the proposals were restricted to recommendations that had found broad consensus in Parliament. Other partial reforms are to be discussed in the near future, specifically concerning institutional bodies (judicial reform, reform of popular rights, government and financial equalisation).

Among the material improvements it is worth singling out the integration of handicapped persons (Art. 8), which obligates legislators to introduce measures against the discrimination of handicapped persons, the option of altering cantonal regions without a federal referendum (according to Art. 53, al., all that is needed is the approval of the Federal Assembly), the Federation's mandate to support multilingual cantons (Art. 70), and the federal commitment to the promotion of art and music (Art. 69).

## The key formal improvements

On the linguistic side, the project team selected formulations that are in line with contemporary speech. Specialised terminology and foreign words were avoided as far as possible. To cater to the equality of sexes, a neutral or feminine and masculine form was selected. For example (Art. 8.11, Equality): "All people are equal before the law." The structure and layout are clearer and every article is given a specific title. Moreover, the articles are often shorter than in the present version. The new basic law governs the entire area of constitutional law: it contains, for instance, provisions on data protection, which are regarded as constitutionally and legally relevant. On the other hand, several provisions in the present text were legally "downgraded", such as the ban on absinthe. ■

### *Modified articles on Swiss Abroad*

*Art. 40 Swiss nationals resident abroad*

*1 The Confederation promotes relations between Swiss Abroad among themselves and with Switzerland. It is entitled to support organisations which pursue this objective.*

*2 It enacts provisions governing the rights and obligations of Swiss Abroad, in particular with respect to the exercise of political rights within the Confederation, the performance of military or civil obligations, and the provision of support and social security insurance.*

Federal Referendum of 7 February

# Full endor

**By rejecting the popular initiative of the Association of Home Owners and accepting the three other referendum proposals, the electorate has once more followed the recommendations of the Federal Council and the parliamentary majority on every issue.**

The federal decree on amendment of the conditions for eligibility to the Federal Council (elimination of the cantonal quota system) was approved by 74.7% of voters (1,286,768 Yes versus 436'518 No) and 21 cantons. Only the Valais and Jura rejected the proposal, while the clearest approval came from Geneva (82.1%), Zurich (81.9%) and Basle-City (80.9%).

The constitutional provision on transplant medicine was accepted by overwhelming majority in all the cantons. The nation-wide vote in favour of the provision was 87.8% (1,501,954 versus 209,454). In the cantons of Geneva, Vaud, Fribourg and Ticino approval exceeded 90%.

### Federal referendums

**18 April 1999**
Federal Constitution

**13 June 1999**
**28 November 1999**
Subjects not yet decided

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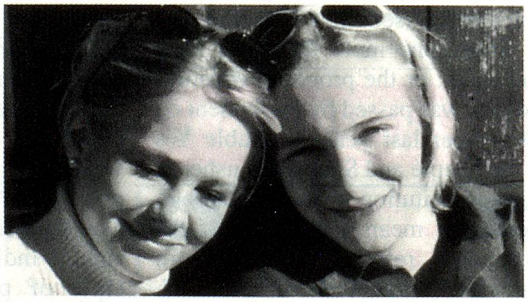
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